

SUPREME COURT OF APPEALS OF WEST VIRGINIA

State of West Virginia ex rel. Charlotte Pritt v. Charles M. Vickers,
Judge of the Fayette County Circuit Court, et al.

588 S.E.2d 210, 214 W. Va. 221 (2003) · No. No. 31356 · Decided October 10, 2003

SUMMARY

The Supreme Court of Appeals of West Virginia considered a petition for a writ of prohibition challenging the circuit court's refusal to permit additional discovery after reversal of a pre-answer summary judgment ruling. The court held that when a dispositive pre-answer motion is denied or reversed, the plaintiff must be allowed post-answer discovery even if pre-answer discovery occurred. The writ was granted as moulded, the scheduling order was vacated, and the case was remanded for a scheduling order permitting expert and other discovery.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Davis, Justice; Maynard, Justice, disqualified and not participating
JURISDICTION	West Virginia
DECIDED	October 10, 2003
DOCKET	No. 31356
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Petition for a writ of prohibition challenging the circuit court's refusal to permit additional discovery after reversal of summary judgment, including the exclusion of petitioner's proposed expert witnesses.
STANDARD OF REVIEW	A writ of prohibition may issue when a lower tribunal exceeds its legitimate powers and there is clear legal error resulting from a substantial abuse of discretion concerning discovery. In nonjurisdictional prohibition cases, the court considers the five factors identified in State ex rel. Hoover v. Berger, with clear legal error receiving substantial weight.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	State of West Virginia ex rel. Charlotte Pritt v. Charles M. Vickers, Judge of the Fayette County Circuit Court, Republican National

TOPICS

discovery dispute writ of certiorari appellate procedure civil procedure standard of review

PRACTICE AREAS

civil procedure appellate procedure discovery extraordinary writs

QUESTIONS PRESENTED

1. Whether a plaintiff must be permitted to conduct discovery after a defendant files an answer when the defendant's dispositive pre-answer motion was granted but reversed on appeal.
2. Whether the circuit court substantially abused its discretion by incorporating an expired pre-answer discovery cutoff into a post-answer scheduling order and precluding further discovery and expert-witness discovery.
3. Whether a writ of prohibition was an available remedy for the alleged discovery error.

HOLDINGS

1. When a defendant's dispositive pre-answer motion is denied by the trial court, or granted but reversed by the Supreme Court, the plaintiff must be permitted to conduct discovery after the defendant files an answer, even if the parties previously engaged in pre-answer discovery.
2. A writ of prohibition is available to correct a clear legal error resulting from a trial court's substantial abuse of discretion in regard to discovery orders.
3. A separate motion to reopen discovery was not required where the petitioner properly raised the issue through a motion seeking entry of a Rule 16(b) scheduling order, particularly because no post-answer scheduling order had yet been entered.

KEY QUOTATIONS

"We believe as a matter of fundamental fairness, and so hold, that when a dispositive pre-answer motion by a defendant is denied by a trial court, or granted but reversed by the Supreme Court, a plaintiff must be permitted to conduct discovery after the defendant files an answer even though the parties may have previously engaged in pre-answer discovery." (at 215)

"A writ of prohibition is available to correct a clear legal error resulting from a trial court's substantial abuse of its discretion in regard to discovery orders." (at 213)

FACTUAL BACKGROUND

Pritt brought a defamation action against the respondents. Before answering, the defendants conducted discovery and obtained summary judgment, but the Supreme Court later reversed that judgment and remanded the case for trial. After the defendants filed an answer, Pritt sought a new scheduling order allowing post-answer discovery

and the designation and deposition of expert witnesses. The circuit court instead incorporated the expired 1998 discovery cutoff and struck Pritt's expert-witness disclosure.

PROCEDURAL HISTORY

Pritt filed a defamation action in 1997. The defendants initially filed a Rule 12(b) motion, conducted pre-answer discovery, and then obtained summary judgment. The Supreme Court of Appeals reversed and remanded for trial in *Pritt v. Republican National Committee*. After remand, the circuit court entered a scheduling order incorporating the expired pre-answer discovery cutoff, struck Pritt's expert-witness disclosure, and barred further discovery. Pritt sought prohibition, and the Supreme Court granted the writ as moulded.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

Vacate the circuit court's January 28, 2003, scheduling order to the extent it precludes further discovery and remand for entry of a scheduling order permitting either party to name and depose expert witnesses and conduct any other discovery allowed under the West Virginia Rules of Civil Procedure. Discovery must proceed expeditiously.

CASES CITED

- *Pritt v. Republican National Committee*, 210 W. Va. 446, 557 S.E.2d 853 (2001)
- *Crawford v. Taylor*, 138 W. Va. 207, 75 S.E.2d 370 (1953)
- *State ex rel. Hoover v. Berger*, 199 W. Va. 12, 483 S.E.2d 12 (1996)
- *State Farm Mut. Auto. Ins. Co. v. Stephens*, 188 W. Va. 622, 425 S.E.2d 577 (1992)
- *State ex rel. Peacher v. Sencindiver*, 160 W. Va. 314, 233 S.E.2d 425 (1977)
- *Gray v. Whisenaut*, 258 Ga. 242, 368 S.E.2d 115 (Ga. 1988)
- *Elliott v. Schoolcraft*, 213 W. Va. 69, 576 S.E.2d 796 (2002)
- *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604 (9th Cir. 1992)
- *Painter v. Peavy*, 192 W. Va. 189, 451 S.E.2d 755 (1994)
- *First Nat'l Bank of Arizona v. Cities Serv. Co.*, 391 U.S. 253, 88 S. Ct. 1575, 20 L. Ed. 2d 569 (1968)
- *INVST Fin. Group, Inc. v. Chem-Nuclear Sys., Inc.*, 815 F.2d 391 (6th Cir. 1987)
- *Southern Pac. Transp. Co. v. National Molasses Co.*, 540 F.2d 213 (5th Cir. 1976)
- *Hubicki v. ACF Indus., Inc.*, 484 F.2d 519 (3d Cir. 1973)
- *Poe v. Cristina Copper Mines, Inc.*, 15 F.R.D. 85 (D. Del. 1953)
- *Rashidi v. Albright*, 818 F. Supp. 1354 (D. Nev. 1993)
- *Steele v. Morris*, 608 F. Supp. 274 (S.D. W. Va. 1985)
- *Godlewski v. Affiliated Computer Servs., Inc.*, 210 F.R.D. 571 (E.D. Va. 2002)
- *Finnegan v. University of Rochester Med. Ctr.*, 180 F.R.D. 247 (W.D.N.Y. 1998)

- Hoffman v. Hunt, 845 F. Supp. 340 (W.D.N.C. 1994)
- Brocksopp Eng'g, Inc. v. Bach-Simpson Ltd., 136 F.R.D. 485 (E.D. Wis. 1991)
- State v. LaRock, 196 W. Va. 294, 470 S.E.2d 613 (1996)
- Addair v. Bryant, 168 W. Va. 306, 284 S.E.2d 374 (1981)

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