

SUPREME COURT OF APPEALS OF WEST VIRGINIA

State ex rel. Farber v. Mazzone, 213 W. Va. 661

584 S.E.2d 517 (2003) · No. No. 31277 · Decided June 26, 2003

SUMMARY

The Supreme Court of Appeals of West Virginia granted Michael C. Farber's petition for a writ of prohibition in an underlying legal-malpractice action. The court held that service of process by restricted certified mail received by a temporary secretary was defective under West Virginia Rule of Civil Procedure 4, depriving the circuit court of personal jurisdiction. The resulting default judgment and subsequent enforcement proceedings were void, and the absence of a prior appeal did not bar prohibition relief.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam
JURISDICTION	West Virginia
DECIDED	June 26, 2003
DOCKET	No. 31277
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Petition for a writ of prohibition challenging the circuit court's personal jurisdiction over the petitioner and seeking to quash a subpoena duces tecum in an underlying legal-malpractice action.
STANDARD OF REVIEW	A writ of prohibition will not issue merely to correct a trial court's abuse of discretion. It issues as a matter of right when the inferior court lacks jurisdiction or, having jurisdiction, exceeds its legitimate powers. When the challenge concerns lack of jurisdiction, prohibition may issue regardless of the availability of another remedy, including appeal.
PRECEDENTIAL VALUE	Published precedential opinion

TOPICS

- service of process
- personal jurisdiction
- default judgment
- appellate procedure
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether service of process by certified mail with restricted delivery was valid when the mailing was accepted by the defendant's temporary secretary rather than by the defendant or an authorized agent.
2. Whether defective service deprived the circuit court of personal jurisdiction and rendered the default judgment void.
3. Whether a writ of prohibition was available despite the petitioner's failure to appeal the default judgment and related orders.

HOLDINGS

1. Service of process was defective and void because the certified mailing restricted delivery to Farber was accepted by a temporary secretary who was not authorized to receive it on his behalf.
2. Defective service deprived the circuit court of personal jurisdiction over Farber, and the resulting default judgment was void.
3. The failure to appeal the default judgment did not bar relief by writ of prohibition because the writ was based on the circuit court's lack of personal jurisdiction.

KEY QUOTATIONS

“Based upon the evidence regarding the manner in which service of process was attempted, this Court agrees with Mr. Farber that service was defective and therefore void; the lower court did not thereby obtain jurisdiction over Mr. Farber.” (522)

“Consequently, we find that the default judgment rendered against Mr. Farber is void for lack of jurisdiction.” (523)

“While Mr. Bailey and the lower court have expressed concern with the delay occasioned by Mr. Farber's failure to immediately pursue an appeal or to obtain relief through a writ of prohibition, we must emphasize that the passage of time does not confer jurisdiction upon the court.” (523)

FACTUAL BACKGROUND

Bailey filed a legal-malpractice action against Farber arising from Farber's representation of Bailey in a domestic-relations matter. Service was attempted by certified mail with delivery restricted to Farber, but a temporary secretary accepted and signed for the mailing even though Farber had not authorized her to receive restricted-delivery mail. The circuit court entered a default judgment, awarded Bailey \$71,885 in compensatory damages, and ordered Farber to produce financial information relevant to punitive damages.

PROCEDURAL HISTORY

John R. Bailey filed a legal-malpractice complaint against Michael C. Farber and attempted service by certified mail with restricted delivery. A temporary secretary at Farber's law office accepted the mail, after which the circuit court entered a default judgment and later ordered Farber to provide financial information concerning

punitive damages. Farber did not appeal the default judgment or the order denying relief under Rule 60(b), but petitioned the Supreme Court of Appeals for a writ of prohibition while the circuit court continued proceedings. The Supreme Court granted the writ.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

The lower court was prohibited from asserting personal jurisdiction over Farber in the underlying matter and from enforcing proceedings based on the void judgment and subpoena.

CASES CITED

- State ex rel. Peacher v. Sencindiver, 160 W. Va. 314, 233 S.E.2d 425 (1977)
- State ex rel. Kees v. Sanders, 192 W. Va. 602, 453 S.E.2d 436 (1994)
- State ex rel. United Hospital Center, Inc. v. Bedell, 199 W. Va. 316, 484 S.E.2d 199 (1997)
- State ex rel. Valley Distributors, Inc. v. Oakley, 153 W. Va. 94, 168 S.E.2d 532 (1969)
- Jennings v. McDougle, 83 W. Va. 186, 98 S.E. 162 (1919)
- Crawford v. Taylor, 138 W. Va. 207, 75 S.E.2d 370 (1953)
- State ex rel. Shelton v. Burnside, 212 W. Va. 514, 575 S.E.2d 124 (2002)
- State ex rel. Williams v. Narick, 164 W. Va. 632, 264 S.E.2d 851 (1980)
- State v. Muntzing, 146 W. Va. 878, 122 S.E.2d 851 (1961)
- Willis v. Warth, 108 W. Va. 517, 151 S.E. 707 (1930)
- State ex rel. Lemley v. Roberts, 164 W. Va. 457, 260 S.E.2d 850 (1979)
- Stalnaker v. Roberts, 168 W. Va. 593, 287 S.E.2d 166 (1981)
- State ex rel. Vance v. Arthur, 142 W. Va. 737, 98 S.E.2d 418 (1957)
- West Virginia Secondary School Activities Commission v. Wagner, 143 W. Va. 508, 102 S.E.2d 901 (1958)
- Morris v. Calhoun, 119 W. Va. 603, 195 S.E. 341 (1938)
- Bowers v. Wurzburg, 205 W. Va. 450, 519 S.E.2d 148 (1999)
- Teachout v. Larry Sherman's Bakery, Inc., 158 W. Va. 1020, 216 S.E.2d 889 (1975)
- Jones v. Crim, 66 W. Va. 301, 66 S.E. 367 (1909)
- State ex rel. Hoover v. Berger, 199 W. Va. 12, 483 S.E.2d 12 (1996)
- Woodall v. Laurita, 156 W. Va. 707, 195 S.E.2d 717 (1973)