

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Myra Kay Reilley, Administrator of the Estate of Francis E. Reilley
and Myra Kay Reilley, Individually v. The Board of Education of the
County of Marshall

Reilley · No. No. 20-0849 · Decided April 26, 2022

SUMMARY

The Supreme Court of Appeals of West Virginia reviewed claims arising from flooding allegedly caused by a road embankment and bridge over Little Grave Creek. The court affirmed the circuit court’s ruling on untimely service and proximate cause, but held that damages from two earlier flooding events were barred by the statute of limitations. It also reversed and remanded the injunction requiring removal of the road and bridge because the circuit court’s order lacked adequate findings of fact and conclusions of law.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Justice Armstead; Justice Alan D. Moats, sitting by temporary assignment
JURISDICTION	West Virginia
DECIDED	April 26, 2022
DOCKET	No. 20-0849
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Petitioners appealed from a circuit court judgment entered after a jury trial that imposed liability and damages for multiple flooding events and granted injunctive relief requiring removal of a road embankment and bridge.
STANDARD OF REVIEW	The denial of the Rule 4(k) motion to dismiss was reviewed for abuse of discretion, with factual findings reviewed for clear error and legal conclusions de novo. The denial of summary judgment and judgment as a matter of law was reviewed de novo. The denial of a new trial was reviewed for abuse of discretion. The injunction was reviewed under a three-part standard: abuse of discretion for the final order and ultimate disposition, clear error for underlying factual findings, and de novo review for questions of law.

PRECEDENTIAL VALUE	published
PARTIES	Myra Kay Reilley, Administrator of the Estate of Francis E. Reilley, Myra Kay Reilley, individually v. The Board of Education of the County of Marshall

TOPICS

service of process statute of limitations injunctions negligence appellate procedure

PRACTICE AREAS

civil procedure appellate procedure torts real property equitable remedies

QUESTIONS PRESENTED

1. Whether the circuit court properly allowed service of the summons and complaint 148 days after filing under West Virginia Rule of Civil Procedure 4(k).
2. Whether damages from the September 17, 2004, and February 1, 2008, flooding events were barred by the two-year statute of limitations.
3. Whether sufficient evidence supported the jury's finding that the Duck Lane embankment and bridge were the proximate cause of the Board's damages.
4. Whether the circuit court erred by granting permanent injunctive relief without making findings of fact and conclusions of law as required by Rules 52(a) and 65.

HOLDINGS

1. The circuit court did not abuse its discretion in finding good cause to extend the time for service where the plaintiff provided pre-service notice, the defendant knew about the lawsuit, service was only 28 days late, and the defendant suffered no prejudice.
2. The statute of limitations was not tolled by the continuing-tort doctrine because the flooding events were separate, occasional, intermittent, and recurring traumatic events. Damages from the September 17, 2004, and February 1, 2008, floods were therefore time-barred.
3. The evidence was sufficient for the jury to find that the Duck Lane embankment and bridge proximately caused the Board's flooding damages.
4. The circuit court erred by granting injunctive relief without making specific findings of fact and conclusions of law under Rule 52(a), and without an order satisfying Rule 65. The injunction was reversed and remanded for a compliant order.

KEY QUOTATIONS

"We find that the circuit court did not abuse its discretion in finding good cause." (10)

"Because the flooding events causing damages were occasional, intermittent, and recurring, they were temporary in nature." (15)

“Because the circuit court failed to follow the mandate of Rule 52(a), our review of its order granting injunctive relief is substantially hindered because we are unable to ascertain the circuit court’s reasoning for doing so.” (20)

“Affirmed, in part, reversed, in part, and remanded.” (21)

FACTUAL BACKGROUND

Francis Reilley and others constructed an embankment and bridge across Little Grave Creek in 1984 to provide access to the Reilley property; the roadway became known as Duck Lane. The creek first overflowed and damaged the Board's baseball field during remnants of Hurricane Ivan on September 17, 2004, followed by flooding events on February 1, 2008, June 17, 2009, and June 5, 2010. The Board alleged that the embankment and bridge obstructed the creek's flow and caused the flooding. Trial evidence, including eyewitness and expert testimony, supported the jury's finding that the obstruction proximately caused the property damage.

PROCEDURAL HISTORY

The Board sued Francis E. Reilley for alleged flood damage caused by Duck Lane, asserting continuing trespass, interference with riparian rights, nuisance, and seeking injunctive relief. Reilley moved to dismiss for untimely service and on statute-of-limitations grounds. The circuit court denied the motions, the case proceeded to a jury trial, and the jury awarded \$122,861.79 for four flooding events. The circuit court later denied post-trial motions and granted an injunction without separate findings of fact and conclusions of law. The Supreme Court of Appeals affirmed the rulings on service and proximate cause, reversed the statute-of-limitations ruling, and remanded the injunction and damages issues.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The circuit court must recalculate damages to exclude damages from the September 17, 2004, and February 1, 2008, flooding events and must enter an order addressing the injunctive relief that contains findings of fact and conclusions of law complying with Rule 52(a), as well as the specificity requirements of Rule 65.

CASES CITED

- *Burkes v. Fas-Chek Food Mart Inc.*, 217 W. Va. 291, 617 S.E.2d 838 (2005)
- *Estate of Hough ex rel. Lemaster v. Estate of Hough ex rel. Berkeley County Sheriff*, 205 W. Va. 537, 519 S.E.2d 640 (1999)
- *Painter v. Peavy*, 192 W. Va. 189, 451 S.E.2d 755 (1994)
- *State v. Sutphin*, 195 W. Va. 551, 466 S.E.2d 402 (1995)
- *Keplinger v. Virginia Electric & Power Co.*, 208 W. Va. 11, 537 S.E.2d 632 (2000)
- *Henderson v. United States*, 517 U.S. 654 (1996)
- *Harrison v. Davis*, 197 W. Va. 651, 478 S.E.2d 104 (1996)

- Handley v. Town of Shinnston, 169 W. Va. 617, 289 S.E.2d 201 (1982)
- Hall's Park Motel, Inc. v. Rover Construction, Inc., 194 W. Va. 309, 460 S.E.2d 444 (1995)
- Graham v. Beverage, 211 W. Va. 466, 566 S.E.2d 603 (2002)
- Ricottilli v. Summersville Memorial Hospital, 188 W. Va. 674, 425 S.E.2d 629 (1992)
- Roberts v. West Virginia American Water, 221 W. Va. 373, 655 S.E.2d 119 (2007)
- Ziler v. Contractor Services, Inc. of W. Va. (Conserv), No. 16-0269, 2017 WL 1347714 (W. Va. Apr. 10, 2017)
- Oresta v. Romano Bros., 137 W. Va. 633, 73 S.E.2d 622 (1952)
- Taylor v. Culloden Public Service District, 214 W. Va. 639, 591 S.E.2d 197 (2003)
- Mays v. Chang, 213 W. Va. 220, 579 S.E.2d 561 (2003)
- Hartley v. Crede, 140 W. Va. 133, 82 S.E.2d 672 (1954)
- In re Flood Litigation, 216 W. Va. 534, 607 S.E.2d 863 (2004)
- West v. National Mines Corp., 175 W. Va. 543, 336 S.E.2d 190 (1985)
- United Maintenance and Manufacturing Co. v. United Steel Workers of America, 157 W. Va. 788, 204 S.E.2d 76 (1974)
- Commonwealth Tire Co. v. Tri-State Tire Co., 156 W. Va. 351, 193 S.E.2d 544 (1972)
- Clark Apartments ex rel. Hood v. Walaszczyk, 213 W. Va. 369, 582 S.E.2d 816 (2003)
- Burgess v. Porterfield, 196 W. Va. 178, 469 S.E.2d 114 (1996)
- Findley v. State Farm Mutual Automobile Insurance Co., 213 W. Va. 80, 576 S.E.2d 807 (2002)
- Fredeking v. Tyler, 224 W. Va. 1, 680 S.E.2d 16 (2009)
- Carpenter v. Luke, 225 W. Va. 35, 689 S.E.2d 247 (2009)
- Sanders v. Georgia-Pacific Corp., 159 W. Va. 621, 225 S.E.2d 218 (1976)
- Marsch v. American Electric Power Co., 207 W. Va. 174, 530 S.E.2d 173 (2000)
- Bansbach v. Harbin, 229 W. Va. 287, 728 S.E.2d 533 (2012)