

SUPREME COURT OF APPEALS OF WEST VIRGINIA

State of West Virginia ex rel. Robert Hooff v. The Honorable Ronald E. Wilson, Judge of the Circuit Court of Ohio County, and The Estate of Sylvia Peace, by and through Tony Peace, Executor, and E. Phillips Polack

Hooff · No. No. 23-53 · Decided October 20, 2023

SUMMARY

The Supreme Court of Appeals of West Virginia granted Robert Hooff's petition for a writ of prohibition challenging an order requiring him to permit neighboring property owners to conduct percolation testing on his property for a potential septic drainage field. The court held that the circuit court clearly erred by granting preliminary injunctive relief without considering the likelihood of success on the claimed implied easement and the other required injunction factors. The court also held that orders purporting to bind the Ohio County Health Department, the City of Wheeling, and the city's Water Department were ineffective because those entities were not parties to the action.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per curiam; Chief Justice Elizabeth D. Walker; Justice Tim Armstead; Justice John A. Hutchison; Justice William R. Wooton; Justice C. Haley Bunn
JURISDICTION	West Virginia
DECIDED	October 20, 2023
DOCKET	No. 23-53
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Petition for a writ of prohibition challenging a circuit court order granting preliminary injunctive relief and requiring the petitioner to permit neighboring property owners to enter his land for percolation testing and related septic-system purposes.
STANDARD OF REVIEW	For prohibition cases not involving an absence of jurisdiction, the Court considers whether the petitioner lacks another adequate means of relief, would suffer irreparable prejudice, the lower tribunal's order is clearly erroneous as a matter of law, the order reflects repeated error

or disregard of law, and the order raises new and important legal issues. Although the five factors are guidelines and need not all be satisfied, clear legal error receives substantial weight. The granting or refusal of an injunction is reviewed for sound judicial discretion in light of the circumstances, but an injunction may not issue without applying the required preliminary-injunction factors.

PRECEDENTIAL VALUE

nonprecedential memorandum decision

PARTIES

State of West Virginia ex rel. Robert Hooff v. The Honorable Ronald E. Wilson, Judge of the Circuit Court of Ohio County, The Estate of Sylvia Peace, by and through Tony Peace, Executor, E. Phillips Polack

TOPICS

writ of certiorari injunctions implied easements appellate procedure civil procedure

PRACTICE AREAS

Civil procedure Appellate procedure Real property Injunctions

QUESTIONS PRESENTED

1. Whether the circuit court clearly erred by granting preliminary injunctive relief requiring access to Hooff's property for percolation testing without evaluating the likelihood of success on the claimed implied easement by necessity.
2. Whether the circuit court failed to apply the remaining preliminary-injunction factors, including comparative irreparable harm and the public interest.
3. Whether orders restricting the Ohio County Health Department, the City of Wheeling, and the City's Water Department were effective against those nonparties under West Virginia Rule of Civil Procedure 65(d).
4. Whether Hooff was entitled to extraordinary relief in prohibition.

HOLDINGS

1. A court may not grant preliminary injunctive relief requiring entry onto another party's property to investigate or implement a claimed implied easement without considering the claimant's likelihood of success on the merits of that easement claim.
2. The circuit court clearly erred by granting preliminary injunctive relief without requiring the movants to satisfy the applicable procedural and substantive requirements, including likelihood of success, comparative irreparable harm, and public interest.
3. Orders granting injunctions are ineffective against nonparties that are neither parties to the action nor persons in active concert or participation with parties, as provided by West Virginia Rule of Civil Procedure 65(d).

KEY QUOTATIONS

“These factors are general guidelines that serve as a useful starting point for determining whether a discretionary writ of prohibition should issue. Although all five factors need not be satisfied, it is clear that the third factor, the existence of clear error as a matter of law, should be given substantial weight.” (4)

“To establish an implied easement by necessity, the claimant must prove, by clear and convincing evidence, four elements: (1) prior common ownership of the dominant and servient estates; (2) severance (that is, a conveyance of the dominant and/or servient estates to another); (3) at the time of the severance, the easement was strictly necessary for the benefit of either the parcel transferred or the parcel retained; and (4) a continuing necessity for an easement.” (5)

“In short, the circuit court granted injunctive relief without requiring Mr. Polack or the Peace Estate to satisfy the applicable procedural and substantive requirements.” (6)

“Plainly, the Ohio County Health Department, the City of Wheeling, and the Water Department of the City of Wheeling are not parties to this civil action.” (6)

FACTUAL BACKGROUND

Hooff, Polack, and the Peace Estate owned neighboring parcels derived from a common tract that formerly contained four homes and a shared sewage-disposal system located mainly on land later owned by Hooff. Polack and the Peace Estate claimed an implied easement permitting sewage disposal, testing, and improvements on Hooff's property, and sought access to conduct percolation testing for a potential drainage field. The circuit court ordered the testing without determining the likelihood that the claimed easement existed and also entered restrictions affecting the Ohio County Health Department, the City of Wheeling, and the City's Water Department, none of which were parties to the civil action.

PROCEDURAL HISTORY

Polack and the Estate of Sylvia Peace sued Hooff, asserting an implied easement and related claims concerning sewage disposal and seeking injunctive relief and damages. After a November 2022 hearing, the Circuit Court of Ohio County ordered percolation testing on Hooff's property and temporarily restricted governmental entities from disconnecting water service. The circuit court entered orders on January 19 and January 24, 2023, and denied Hooff's request to suspend proceedings. Hooff petitioned for prohibition on January 26, 2023; the Supreme Court stayed execution of the order and ultimately granted the writ.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

The Court prohibited enforcement of the January 24, 2023 order of the Circuit Court of Ohio County. No further remand instructions were stated.

CASES CITED

- State ex rel. Allstate Ins. Co. v. Gaughan, 203 W. Va. 358, 508 S.E.2d 75 (1998)
- State ex rel. Hoover v. Berger, 199 W. Va. 12, 483 S.E.2d 12 (1996)
- State ex rel. Donley v. Baker, 112 W. Va. 263, 164 S.E. 154 (1932)
- Jefferson Cty. Bd. of Educ. v. Jefferson Cty. Educ. Ass'n, 183 W. Va. 15, 393 S.E.2d 653 (1990)
- Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Bradley, 756 F.2d 1048 (4th Cir. 1985)
- Cobb v. Daugherty, 225 W. Va. 435, 693 S.E.2d 800 (2010)
- State ex rel. Bell Atlantic-West Virginia, Inc. v. Ranson, 201 W. Va. 402, 497 S.E.2d 755 (1997)
- Hedrick v. Grant Cty. Pub. Serv. Dist., 209 W. Va. 591, 550 S.E.2d 381 (2001)

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