

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Isaac W. Ferguson v. Aggregate Industries Building Materials, LLC

Ferguson · No. No. 11-1328 · Decided April 16, 2013

SUMMARY

The West Virginia Supreme Court of Appeals affirmed a circuit court judgment entered after a jury rejected Isaac W. Ferguson’s claims for disability discrimination, workers’ compensation discrimination, and invasion of privacy. The court held that the answer deadline was properly extended by stipulation, that unpreserved jury-instruction objections and trial errors could not be considered, and that Ferguson failed to adequately support several appellate arguments.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Brent D. Benjamin; Justice Robin Jean Davis; Justice Margaret L. Workman; Justice Menis E. Ketchum; Justice Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	April 16, 2013
DOCKET	No. 11-1328
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner appealed from a circuit court order entering judgment for the defendant after a jury verdict rejecting all of his claims.
STANDARD OF REVIEW	Refusal to give a requested jury instruction is reviewed for abuse of discretion; whether the jury was properly instructed is reviewed de novo. A trial court's formulation and wording of jury instructions are reviewed with substantial deference and for abuse of discretion so long as the charge accurately reflects the law. Unpreserved errors and alleged trial errors barred by the failure to move for a new trial are not considered on appeal.
PRECEDENTIAL VALUE	Unpublished memorandum decision under West Virginia Rule of Appellate Procedure 21; no substantial question of law was found.
PARTIES	Isaac W. Ferguson v. Aggregate Industries Building Materials, LLC

TOPICS

disability discrimination

workers compensation

appellate procedure

preservation of error

torts

PRACTICE AREAS

employment law

civil rights

torts

appellate procedure

QUESTIONS PRESENTED

1. Whether Ferguson was entitled to a default judgment because the answer deadline had been extended by stipulation without his personal knowledge.
2. Whether the circuit court erred in connection with jury instructions concerning financial hardship, disability, and invasion of privacy.
3. Whether the jury's findings on disability discrimination and workers' compensation discrimination were erroneous.
4. Whether the circuit court improperly excluded evidence concerning the cause of Ferguson's workplace injury.
5. Whether Ferguson preserved his alleged instructional and trial errors for appellate review.

HOLDINGS

1. The answer deadline was properly extended by stipulation under West Virginia Trial Court Rule 20.01, and Ferguson was not entitled to a default judgment.
2. Ferguson waived his objections to the jury instructions by failing to object to them in the circuit court.
3. The court would not address Ferguson's remaining assignments of error because he failed to make a timely motion for a new trial.
4. The court would consider only assignments of error supported by argument and specific record references; unsupported or unaddressed claims did not establish reversible error.

KEY QUOTATIONS

“A skeletal ‘argument,’ really nothing more than an assertion, does not preserve a claim.” (at 1)

“To preserve an issue for appellate review, a party must articulate it with such sufficient distinctness to alert a circuit court to the nature of the claimed defect.” (at 3)

FACTUAL BACKGROUND

Ferguson worked for Aggregate Industries for approximately three and a half years before being terminated on May 19, 2009. In February 2009, he suffered a herniated disc in his lower back while working for the company; his workers' compensation claim was initially held compensable but was later denied because of the employer's inadequate insurance. At trial, the jury rejected Ferguson's disability discrimination, workers' compensation discrimination, and invasion-of-privacy claims, and found that he was not a disabled person under the instructions.

PROCEDURAL HISTORY

Ferguson sued Aggregate Industries in the Circuit Court of Jefferson County, alleging disability discrimination and workers' compensation discrimination under West Virginia law, plus invasion of privacy based on drug testing. Following a jury trial on August 9 and 10, 2011, the jury found that Ferguson had not proved his claims by a preponderance of the evidence and found that he was not a disabled person under the jury instructions. The circuit court entered judgment on August 22, 2011, and Ferguson appealed; the Supreme Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Myers, 229 W. Va. 238, 728 S.E.2d 122, 130 (2012)
- WV Dept. of Health & Human Resources Employees Federal Credit Union v. Tennant, 215 W. Va. 387, 599 S.E.2d 810 (2004)
- Morgan v. Price, 151 W. Va. 158, 150 S.E.2d 897 (1966)
- Damron v. Haines, 223 W. Va. 135, 139 n.5, 672 S.E.2d 271, 275 n.5 (2008)
- In re Edward B., 210 W. Va. 621, 625 n.2, 558 S.E.2d 620, 624 n.2 (2001)
- State v. Hinkle, 200 W. Va. 280, 489 S.E.2d 257 (1996)
- State v. Guthrie, 194 W. Va. 657, 461 S.E.2d 163 (1995)
- State v. Kendall, 219 W. Va. 686, 639 S.E.2d 778 (2006)
- State ex rel. Cooper v. Caperton, 196 W. Va. 208, 470 S.E.2d 162 (1996)
- Miller v. Triplett, 203 W. Va. 351, 507 S.E.2d 714 (1998)
- Twigg v. Hercules Corp., 185 W. Va. 155, 406 S.E.2d 52 (1990)