

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Mills v. Davis, 211 W. Va. 569

567 S.E.2d 285 (2002) · No. No. 30121 · Decided July 3, 2002

SUMMARY

The Supreme Court of Appeals of West Virginia held that dismissing the plaintiffs' tort action with prejudice was an unduly harsh sanction for a single failure to attend an independent medical examination. The court emphasized that dismissal under Rule 37 generally requires a prior order compelling discovery and must be proportionate to the misconduct. The judgment was reversed, and the action was reinstated and remanded for consideration of appropriate sanctions.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	McGraw, Justice
JURISDICTION	West Virginia
DECIDED	July 3, 2002
DOCKET	No. 30121
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Plaintiffs appealed the dismissal with prejudice of their tort and underinsured-motorist action as a discovery sanction after Milton Mills failed to attend an independent medical examination.
STANDARD OF REVIEW	A circuit court's imposition of sanctions under West Virginia Rule of Civil Procedure 37(b) is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published West Virginia Supreme Court of Appeals opinion; precedential.
PARTIES	Milton Lee Mills, Vanessa F. Mills v. Herman William Davis, U-Haul Rental Company, Republic Western Insurance Company, State Farm

TOPICS

- sanctions
- discovery dispute
- civil procedure
- appellate procedure
- standard of review

PRACTICE AREAS

- civil procedure
- appellate procedure
- remedies
- insurance
- torts

QUESTIONS PRESENTED

1. Whether the circuit court abused its discretion by dismissing the action with prejudice as a sanction for a single failure to attend an independent medical examination.
2. Whether dismissal under West Virginia Rule of Civil Procedure 37(b) was permissible absent a prior motion to compel and order specifically requiring the discovery.

HOLDINGS

1. Dismissal with prejudice was an excessively harsh and disproportionate sanction under the circumstances, where the failure was isolated, mitigating circumstances existed, and the record did not show a pattern of wrongdoing or flagrant bad faith.
2. In the absence of an order compelling discovery granted pursuant to a party's motion, it is an abuse of discretion to dismiss an action with prejudice for a single or isolated failure to comply with a discovery request.

KEY QUOTATIONS

“Thus, in light of the guidance provided by the federal courts and our own holdings that dismissal is a severe sanction, to be used sparingly, we hold that in the absence of an order compelling discovery granted pursuant to a motion made by a party, it is an abuse of a circuit judge’s discretion to dismiss an action with prejudice for a single or isolated failure to comply with a discovery request.” (211 W. Va. 577; 567 S.E.2d 293)

FACTUAL BACKGROUND

Milton and Vanessa Mills were injured when Herman William Davis struck their vehicle with a rented U-Haul truck. After the original defendants' insurance limits were exhausted and the Millses settled with the other defendants, State Farm defended the remaining underinsured-motorist claim. Milton Mills failed to attend an independent medical examination because of back and neck pain, medication, and his belief that he could not make the drive. Although counsel for State Farm suggested that the trial might need to be continued, State Farm later sought sanctions without first moving to compel the examination, and the circuit court dismissed the case with prejudice.

PROCEDURAL HISTORY

The Millses sued after a motor-vehicle accident and later pursued an underinsured-motorist claim against State Farm after settling with the original defendants. State Farm sought sanctions after Milton Mills failed to attend a scheduled independent medical examination, but did not first move to compel attendance. The circuit court dismissed the action with prejudice, denied reconsideration, and entered a final dismissal order. The Supreme Court of Appeals of West Virginia reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reinstate Civil Action 99-C-126 and remand for review of appropriate sanctions and further proceedings consistent with the opinion.

CASES CITED

- Bell v. Inland Mutual Insurance Co., 175 W. Va. 165, 332 S.E.2d 127 (1985), cert. denied sub nom. Camden Fire Insurance Ass'n v. Justice, 474 U.S. 936 (1985)
- Arnold Agency v. West Virginia Lottery Commission, 206 W. Va. 583, 526 S.E.2d 814 (1999)
- Lipscomb v. Tucker County Commission, 206 W. Va. 627, 527 S.E.2d 171 (1999)
- Bartles v. Hinkle, 196 W. Va. 381, 472 S.E.2d 827 (1996)
- Prager v. Meckling, 172 W. Va. 785, 310 S.E.2d 852 (1983)
- State ex rel. McGraw v. West Virginia Judicial Review Board, 165 W. Va. 704, 271 S.E.2d 344 (1980)
- Chambers v. NASCO, Inc., 501 U.S. 32 (1991)
- State ex rel. Rusen v. Hill, 193 W. Va. 133, 454 S.E.2d 427 (1994)
- Cox v. State, 194 W. Va. 210, 460 S.E.2d 25 (1995) (per curiam)
- Hadox v. Martin, 209 W. Va. 180, 544 S.E.2d 395 (2001) (per curiam)
- Woolwine v. Raleigh General Hospital, 194 W. Va. 322, 460 S.E.2d 457 (1995) (per curiam)
- Hathcock v. Navistar International Transportation Corp., 53 F.3d 36 (4th Cir. 1995)
- Coane v. Ferrara Pan Candy Co., 898 F.2d 1030 (5th Cir. 1990)
- Batson v. Neal Spelce Associates, Inc., 765 F.2d 511 (5th Cir. 1985)
- In re Dierschke, 975 F.2d 181 (5th Cir. 1992)
- Brinkmann v. Abner, 813 F.2d 744 (8th Cir. 1987)
- F.D.I.C. v. Conner, 20 F.3d 1376 (5th Cir. 1994)
- R.W. International Corp. v. Welch Foods, Inc., 937 F.2d 11 (1st Cir. 1991)
- Fleet National Bank v. Tellier, 171 B.R. 478 (D.R.I. 1994)
- Williams v. United States, 215 B.R. 289 (D.R.I. 1997)