

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Christine Blanda v. Martin & Seibert, L.C.

Blanda v. Martin & Seibert, L.C. · No. No. 19-0317 · Decided November 22, 2019

SUMMARY

The Supreme Court of Appeals of West Virginia answered a certified question from the United States District Court for the Southern District of West Virginia concerning whether West Virginia Code § 61-3-24 establishes a substantial public policy supporting a Harless wrongful-discharge claim. The court reformulated the question and held that the statute does not create such a public policy for an employee of a non-public employer who reports suspected criminal conduct to an appropriate authority and alleges retaliation. The opinion distinguishes cases involving employees discharged for refusing to engage in illegal activity.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Walker; Judge Wharton, sitting by temporary assignment; Judge Ewing, sitting by temporary assignment
JURISDICTION	West Virginia
DECIDED	November 22, 2019
DOCKET	No. 19-0317
DISPOSITION	other
PROCEDURAL POSTURE	The Supreme Court of Appeals of West Virginia answered a certified question from the United States District Court for the Southern District of West Virginia concerning whether West Virginia Code § 61-3-24 supplies a substantial public policy supporting a Harless wrongful-discharge claim.
STANDARD OF REVIEW	De novo plenary review of the legal issue presented by a certified question.
PRECEDENTIAL VALUE	precedential
PARTIES	Christine Blanda v. Martin & Seibert, L.C., Walter M. Jones III, Geoffrey A. Haddad, Michael M. Stevens, E. Kay Fuller, Susan R. Snowden, Nikki Moore Gress

TOPICS

wrongful termination

retaliation

whistleblower

employment at-will

appellate procedure

PRACTICE AREAS

employment law

wrongful termination

retaliation

whistleblower law

statutory interpretation

QUESTIONS PRESENTED

1. Whether West Virginia Code § 61-3-24 constitutes a substantial public policy under *Harless v. First National Bank* sufficient to support a wrongful-discharge claim by an employee of a non-public employer who reported suspected criminal conduct to the appropriate authority and alleges retaliatory discharge.
2. Whether the certified question should be reformulated to address the narrower factual and legal issue presented by the case.

HOLDINGS

1. The court may reformulate the certified question when the question as framed does not permit the court to fully address the law involved, and the question was properly narrowed to concern an employee of a non-public employer who reported suspected criminal conduct to the appropriate authority.
2. Legal issues presented by a certified question from a federal district or appellate court are reviewed de novo.
3. West Virginia Code § 61-3-24 does not constitute a substantial public policy under *Harless* and its progeny protecting an employee of a non-public employer who reports suspected criminal conduct to the appropriate authority and claims retaliation as a result.
4. *Lilly* does not control because it involved an employee discharged for refusing to engage in illegal activity and rested on specific statutory and common-law safety policies, whereas *Blanda* alleged retaliation for reporting suspected criminal conduct.

KEY QUOTATIONS

“Therefore, we hold that West Virginia Code § 61-3-24 does not constitute a substantial public policy under Harless v. First National Bank, 162 W. Va. 116, 246 S.E.2d 270 (1978), and its progeny, to protect an employee of a non-public employer who reported suspected criminal conduct to the appropriate authority and claims to have been retaliated against as a result.” (22-23)

“The rule that an employer has an absolute right to discharge an at will employee must be tempered by the principle that where the employer’s motivation for the discharge is to contravene some substantial public policy principle, then the employer may be liable to the employee for damages occasioned by this discharge.” (7)

“An employer should not be exposed to liability where a public policy standard is too general to provide any specific guidance or is so vague that it is subject to different interpretations.” (8)

FACTUAL BACKGROUND

Christine Blanda worked as an accounts receivable clerk for the law firm Martin & Seibert, L.C., where she billed clients for work performed by attorneys and staff. She alleged that the firm engaged in illegal billing practices, including billing paralegal and secretarial services at attorney rates, and repeatedly voiced those concerns internally. After the firm issued her a performance warning and posted her position for hiring, Blanda emailed herself 227 attachments containing billing data and was immediately terminated for violating the firm's confidentiality policy. She later provided information to the FBI and claimed that her discharge was retaliation for reporting suspected criminal conduct.

PROCEDURAL HISTORY

Blanda filed a federal whistleblower action under the Dodd-Frank Act after her termination from Martin & Seibert. Her Dodd-Frank claim became unavailable under *Digital Realty Trust, Inc. v. Somers* because she had not reported the alleged violation to the Securities and Exchange Commission. She then pursued a common-law retaliatory-discharge theory under *Harless*, asserting that West Virginia Code § 61-3-24 embodied a substantial public policy protecting employees who report suspected criminal conduct. The federal district court certified the legal question to the West Virginia Supreme Court, which reformulated and answered it in the negative.

DISPOSITION

other

CASES CITED

- *Light v. Allstate Ins. Co.*, 203 W. Va. 27, 506 S.E.2d 64 (1998)
- *Harless v. First National Bank in Fairmont*, 162 W. Va. 116, 246 S.E.2d 270 (1978)
- *Birthisel v. Tri-Cities Health Servs. Corp.*, 188 W. Va. 371, 424 S.E.2d 606 (1992)
- *Swears v. R.M. Roach & Sons, Inc.*, 225 W. Va. 699, 696 S.E.2d 1 (2010)
- *Lilly v. Overnight Transp. Co.*, 188 W. Va. 538, 425 S.E.2d 214 (1992)
- *Frohnepfel v. ArcelorMittal USA LLC*, 235 W. Va. 165, 772 S.E.2d 350 (2015)
- *Tiernan v. Charleston Area Med. Ctr., Inc.*, 203 W. Va. 135, 506 S.E.2d 578 (1998)
- *Shell v. Metropolitan Life Ins. Co.*, 183 W. Va. 407, 396 S.E.2d 174 (1990)
- *Kincaid v. Mangum*, 189 W. Va. 404, 432 S.E.2d 74 (1993)
- *Digital Realty Trust, Inc. v. Somers*, 138 S. Ct. 767 (2018)
- *Feliciano v. 7-Eleven, Inc.*, 210 W. Va. 740, 559 S.E.2d 713 (2001)
- *Kanagy v. Fiesta Salons, Inc.*, 208 W. Va. 526, 541 S.E.2d 616 (2001)
- *Cordle v. General Hugh Mercer Corp.*, 174 W. Va. 321, 325 S.E.2d 111 (1984)
- *Washington v. Union Carbide Corp.*, 870 F.2d 957 (4th Cir. 1989)
- *Williamson v. Greene*, 200 W. Va. 421, 490 S.E.2d 23 (1997)
- *Travis v. Alcon Laboratories, Inc.*, 202 W. Va. 369, 504 S.E.2d 419 (1998)
- *Stanley v. Sewell Coal Co.*, 169 W. Va. 72, 285 S.E.2d 679 (1981)

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