SUPREME COURT OF APPEALS OF WEST VIRGINIA

Ally Financial, Inc. v. Catherine A. Smallwood

No. 12-0636 (W. Va. Sept. 26, 2013) · No. No. 12-0636 · Decided September 26, 2013

SUMMARY

The Supreme Court of Appeals of West Virginia dismissed Ally Financial's appeal without prejudice for lack of appellate jurisdiction. The court held that the circuit court's partial summary judgment determining liability under the West Virginia Consumer Credit Protection Act, without determining discretionary damages, was an interlocutory order rather than a final appealable judgment.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam; 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	September 26, 2013
DOCKET	No. 12-0636
DISPOSITION	dismissed
PROCEDURAL POSTURE	Ally Financial appealed the circuit court's denial of its motion for relief from a prior order granting Catherine Smallwood partial summary judgment on liability for alleged violations of the West Virginia Consumer Credit Protection Act.
STANDARD OF REVIEW	De novo review of appellate jurisdiction and finality of the circuit court order.
PRECEDENTIAL VALUE	Nonprecedential memorandum decision
PARTIES	Ally Financial, Inc. v. Catherine A. Smallwood

TOPICS

appellate jurisdiction · interlocutory appeal · final judgment rule · consumer protection · civil procedure

PRACTICE AREAS

Appellate procedure · Civil procedure · Consumer protection · Debt collection · Summary judgment

QUESTIONS PRESENTED

1. Whether the Supreme Court of Appeals had appellate jurisdiction over an order determining liability but leaving damages unresolved.
2. Whether the unresolved damages determination could be characterized as ministerial so that the liability order was immediately appealable.

HOLDINGS

1. The court lacked appellate jurisdiction because the circuit court's order determined liability but did not determine damages, and the unresolved damages calculation was not ministerial.

KEY QUOTATIONS

> *"It is axiomatic that this Court's appellate jurisdiction extends only to final judgments."* (at 2)

> *"Given the discretion afforded the court in affixing the amount of damages for the statutory violations, it cannot be said that the computation of damages in this instance is mechanical and unlikely to produce a second appeal."* (at 3)

> *"Accordingly, for the reasons set forth above, this case is dismissed without prejudice."* (at 4)

FACTUAL BACKGROUND

Catherine Smallwood and her husband jointly financed the purchase of a 2007 Chevrolet Impala through a retail installment sale contract that was later assigned to Ally Financial. After the Smallwoods defaulted, Smallwood sued Ally, alleging that Ally violated the West Virginia Consumer Credit Protection Act by making sixty telephone calls after it appeared that she was represented by counsel. The circuit court granted partial summary judgment on liability but left the amount of statutory and actual damages unresolved.

PROCEDURAL HISTORY

Smallwood sued Ally alleging violations of the West Virginia Consumer Credit Protection Act and various tort claims arising from debt-collection communications. The Circuit Court of Raleigh County granted Smallwood partial summary judgment on liability for sixty statutory violations, but did not determine damages. After the circuit court denied Ally's motion for relief from that ruling, Ally appealed. The Supreme Court of Appeals of West Virginia dismissed the appeal without prejudice as premature because the order was interlocutory.

DISPOSITION

dismissed

CASES CITED

- James M.B. v. Carolyn M., 193 W. Va. 289, 456 S.E.2d 16 (1995)
- C & O Motors, Inc. v. West Virginia Paving, Inc., 223 W. Va. 469, 677 S.E.2d 905 (2009)
- McDaniel v. Kleiss, 198 W. Va. 282, 480 S.E.2d 170 (1996)

- Sipp v. Yeager, 194 W. Va. 66, 459 S.E.2d 343 (1995)

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