

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Mark Gomez, a Registered West Virginia Lobbyist v. A.C.R. Promotions, Inc., a West Virginia Corporation

No. 21-0807 · No. 21-0807 · Decided October 26, 2022

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed summary judgment for A.C.R. Promotions, Inc. in Mark Gomez’s breach-of-contract action concerning alleged compensation for lobbying services. The court held that Gomez presented no evidence beyond his self-serving assertion that the parties agreed he would receive a contingency fee from litigation proceeds in exchange for those services. The court therefore concluded that no rational trier of fact could find for Gomez on the contract-formation element of his claim.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice John A. Hutchison; Justice Elizabeth D. Walker; Justice Tim Armstead; Justice William R. Wooton; Justice C. Haley Bunn
JURISDICTION	West Virginia
DECIDED	October 26, 2022
DOCKET	21-0807
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner appealed the circuit court's order granting respondent's renewed motion for summary judgment in a breach-of-contract action.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. Summary judgment is appropriate when the record as a whole could not lead a rational trier of fact to find for the nonmoving party, including when the nonmoving party fails to make a sufficient showing on an essential element for which that party bears the burden of proof.
PRECEDENTIAL VALUE	Unpublished memorandum decision; precedential effect not stated in the opinion.
PARTIES	Mark Gomez, a Registered West Virginia Lobbyist v. A.C.R. Promotions, Inc., a West Virginia Corporation

TOPICS

summary judgment

breach of contract

contract formation

standard of review

appellate procedure

PRACTICE AREAS

Contracts

Civil procedure

Appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court properly granted summary judgment when the only evidence supporting the alleged oral contingency-fee agreement was petitioner's unsupported assertion.
2. Whether petitioner presented sufficient evidence of contract formation, an essential element of his breach-of-contract claim, to create a genuine issue of material fact.

HOLDINGS

1. Summary judgment was proper because petitioner presented no more than a self-serving assertion that respondent agreed to pay him a contingency fee from a court action in exchange for lobbying services, and therefore failed to create a genuine issue of material fact on contract formation.

KEY QUOTATIONS

“ “[S]elf-serving assertions without factual support in the record will not defeat a motion for summary judgment.” ” (at 3)

“ “more than a mere ‘scintilla of evidence’ and . . . produce evidence sufficient for a reasonable jury to find in [the] nonmoving party’s favor.” ” (at 3)

FACTUAL BACKGROUND

Gomez, a former attorney who surrendered his Georgia law license after a felony theft-by-conversion conviction, claimed that he provided lobbying services to A.C.R. Promotions in 2015. He alleged that A.C.R. agreed to pay him one-third of the net proceeds from an action against the West Virginia Athletic Commission in exchange for those services. A.C.R. denied making that agreement, and the record contained no evidence supporting the alleged contingency-fee arrangement beyond Gomez's own assertion.

PROCEDURAL HISTORY

Gomez alleged that he performed lobbying services for A.C.R. Promotions under an oral agreement providing that he would receive one-third of the net proceeds from an action against the West Virginia Athletic Commission. The circuit court initially granted judgment on the pleadings, but the Supreme Court of Appeals reversed and remanded because the wrong pleading standard had been applied. After the circuit court denied a renewed motion for judgment on the pleadings and an earlier summary judgment motion, it granted respondent's renewed motion for summary judgment, concluding that Gomez's unsupported assertion did not establish a genuine issue of material fact. The Supreme Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- In re Gomez, 546 S.E.2d 487 (Ga. 2001)
- Gomez v. A.C.R. Promotions, Inc., No. 17-1048, 2019 WL 2499617 (W. Va. June 17, 2019)
- Painter v. Peavy, 192 W. Va. 189, 451 S.E.2d 755 (1994)
- Sneberger v. Morrison, 235 W. Va. 654, 669, 776 S.E.2d 156, 171 (2015)
- State ex rel. Thornhill Grp., Inc. v. King, 233 W. Va. 564, 759 S.E.2d 795 (2014)
- Williams v. Precision Coil, Inc., 194 W. Va. 52, 60-61 n.14, 459 S.E.2d 329, 337-38 n.14 (1995)
- Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986)

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