

SUPREME COURT OF APPEALS OF WEST VIRGINIA

M & J Garage and Towing, Inc. v. West Virginia State Police, 227 W. Va. 344

709 S.E.2d 194 (2010) · No. No. 35466 · Decided October 14, 2010

SUMMARY

The Supreme Court of Appeals of West Virginia held that the West Virginia State Police may exercise reasonable discretion in dispatching registered towing services but lacks authority to resolve billing disputes between towing companies and customers. Such disputes must be referred to the West Virginia Public Service Commission. The court affirmed dismissal of the action because the State Police had rescinded its separate wrecker-service list, rendering the requested declaratory and injunctive relief moot.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Justice Ketchum
JURISDICTION	West Virginia
DECIDED	October 14, 2010
DOCKET	No. 35466
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order of the Circuit Court of Kanawha County granting the West Virginia State Police's motion to dismiss under West Virginia Rules of Civil Procedure 12(b)(1) and 12(b)(6).
STANDARD OF REVIEW	De novo review applies to an order granting a motion to dismiss under West Virginia Rules of Civil Procedure 12(b)(1) and 12(b)(6), as well as to the entry of a declaratory judgment.
PRECEDENTIAL VALUE	Published West Virginia Supreme Court of Appeals opinion
PARTIES	M & J Garage and Towing, Inc. v. West Virginia State Police

TOPICS

[administrative law](#) [judicial review of agency action](#) [motions to dismiss](#) [mootness](#) [declaratory judgment](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the circuit court erred in dismissing M & J's declaratory and injunctive claims after the State Police rescinded its wrecker-service list.
2. Whether the West Virginia State Police had authority to resolve customer billing disputes involving a registered towing carrier or to remove or substantially limit the carrier because of those disputes.
3. Whether the circuit court's failure to address M & J's Freedom of Information Act and attorney-fee claims warranted reversal when those issues were not adequately briefed on appeal.

HOLDINGS

1. The West Virginia State Police and its detachments lack authority to resolve billing disputes between a registered towing or wrecker service and its customers. Complaints concerning permitted rates or alleged overbilling must be referred to the West Virginia Public Service Commission.
2. In fulfilling its statutory mission, State Police detachments may exercise reasonable discretion in dispatching or utilizing an appropriate towing or wrecker service registered as a common carrier with the Public Service Commission.
3. M & J's requests for declaratory and injunctive relief were moot because the State Police rescinded and ceased using its separate list of available wrecker services, and M & J abandoned its damages claim.
4. A judgment may be affirmed when it is correct on any legal ground disclosed by the record, even if the lower court assigned a different ground.
5. M & J waived its challenge to the circuit court's failure to address its Freedom of Information Act and attorney-fee claims by failing to adequately brief the issue.

KEY QUOTATIONS

“State Police detachments may exercise reasonable discretion in dispatching or utilizing an appropriate towing or wrecker service registered as a common carrier with the West Virginia Public Service Commission. However, the State Police and its detachments are without authority to resolve billing disputes between a registered towing or wrecker service and its customers.” (at 200)

“Administrative agencies and their executive officers are creatures of statute and delegates of the Legislature. Their power is dependent upon statutes, so that they must find within the statute warrant for the exercise of any authority which they claim.” (at 199)

FACTUAL BACKGROUND

M & J was a registered common carrier for towing wrecked or disabled vehicles, and its rates were subject to regulation by the West Virginia Public Service Commission. The West Virginia State Police removed M & J from its list of available wrecker services after receiving complaints alleging excessive billing and after M & J did not provide rates it was actually charging customers. After M & J filed suit, the State Police rescinded its separate wrecker-service list and stopped using it.

PROCEDURAL HISTORY

M & J filed an action seeking declaratory and injunctive relief, damages, costs, and attorney fees after the West Virginia State Police removed it from a list of available wrecker services based on alleged overbilling. The State Police rescinded the list after the lawsuit was filed and moved to dismiss, arguing that the requested relief was moot. The circuit court dismissed the action, concluding that M & J had no statutory right to be called by the State Police and that the State Police's action was fair and equitable. On appeal, M & J waived its damages claim, and the Supreme Court affirmed the dismissal because the declaratory and injunctive claims were moot, although it rejected the circuit court's reasoning concerning the State Police's authority to resolve billing disputes.

DISPOSITION

affirmed

CASES CITED

- State ex rel. McGraw v. Scott Runyan Pontiac-Buick, 194 W. Va. 770, 461 S.E.2d 516 (1995)
- Lontz v. Tharp, 220 W. Va. 282, 647 S.E.2d 718 (2007)
- Rhododendron Furniture & Design v. Marshall, 214 W. Va. 463, 590 S.E.2d 656 (2003)
- Randolph County Board of Education v. Adams, 196 W. Va. 9, 467 S.E.2d 150 (1995)
- Cox v. Amick, 195 W. Va. 608, 466 S.E.2d 459 (1995)
- Mountaineer Disposal Service v. Dyer, 156 W. Va. 766, 197 S.E.2d 111 (1973)
- McDaniel v. West Virginia Division of Labor, 214 W. Va. 719, 591 S.E.2d 277 (2003)
- Barnett v. Wolfolk, 149 W. Va. 246, 140 S.E.2d 466 (1965)
- State ex rel. Farmer v. McBride, 224 W. Va. 469, 481 n. 15, 686 S.E.2d 609, 621 n. 15 (2009)
- Covington v. Smith, 213 W. Va. 309, 317 n. 8, 582 S.E.2d 756, 764 n. 8 (2003)
- Tiernan v. Charleston Area Medical Center, 203 W. Va. 135, 140 n. 10, 506 S.E.2d 578, 583 n. 10 (1998)

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