

SUPREME COURT OF APPEALS OF WEST VIRGINIA

State ex rel. Credit Control, LLC v. Wilson and Thompson

No. 20-0045 (W. Va. Nov. 6, 2020) · No. No. 20-0045 · Decided November 6, 2020

SUMMARY

The West Virginia Supreme Court of Appeals denied Credit Control, LLC’s petition for a writ of prohibition challenging an order permitting a second deposition of its corporate representative. The court held that the circuit court acted within its discretion in allowing the deposition as a discovery sanction for failures to supplement interrogatory responses concerning the unintentional-conduct defense under the West Virginia Consumer Credit and Protection Act. The court also concluded that the proposed deposition topics were not impermissibly duplicative under West Virginia Rule of Civil Procedure 26(b).

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Tim Armstead; Justice Margaret L. Workman; Justice Elizabeth D. Walker; Justice Evan H. Jenkins; Justice John A. Hutchison
JURISDICTION	West Virginia
DECIDED	November 6, 2020
DOCKET	No. 20-0045
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Credit Control petitioned for a writ of prohibition seeking to prevent the Circuit Court of Ohio County from enforcing an order permitting Melissa Thompson to depose Credit Control's corporate representative a second time. The Supreme Court of Appeals denied the writ.
STANDARD OF REVIEW	For a writ of prohibition in a case not involving an absence of jurisdiction, the Court examines whether the petitioner lacks another adequate remedy, will suffer irreparable prejudice, the lower tribunal's order is clearly erroneous as a matter of law, the order reflects repeated error or persistent disregard of law, and the order raises new and important legal issues. The third factor receives substantial weight. Discovery orders are reviewed for clear legal error resulting from a substantial abuse of discretion.

PRECEDENTIAL VALUE	memorandum decision
PARTIES	State ex rel. Credit Control, LLC v. Ronald Wilson, Melissa Thompson

TOPICS

discovery dispute sanctions appellate procedure consumer protection civil procedure

PRACTICE AREAS

civil procedure appellate procedure consumer protection commercial litigation

QUESTIONS PRESENTED

1. Whether the circuit court exceeded its legitimate authority by permitting a second deposition of Credit Control's corporate representative as a sanction for Credit Control's failure to supplement its discovery responses.
2. Whether the topics proposed for the second deposition were unnecessarily duplicative of the first deposition and therefore prohibited under West Virginia Rule of Civil Procedure 26(b).
3. Whether Credit Control established grounds for a writ of prohibition based on the circuit court's denial of its motion for a protective order.

HOLDINGS

1. The circuit court acted within its discretion in permitting a second deposition as a discovery sanction because Credit Control repeatedly failed to supplement its response to Interrogatory Number 7 and failed to provide the specific information ordered by the court.
2. The second deposition topics were not unnecessarily duplicative because they sought information relevant to Credit Control's asserted unintentional-conduct defense and were reasonably calculated to lead to the discovery of admissible evidence.
3. Credit Control was not entitled to a writ of prohibition because the circuit court did not abuse its discretion or commit clear legal error in ordering the second deposition and denying the protective order.

KEY QUOTATIONS

"Although Rules 11, 16, and 37 of the West Virginia Rules of Civil Procedure do not formally require any particular procedure, before issuing a sanction, a court must ensure it has an adequate foundation either pursuant to the rules or by virtue of its inherent powers to exercise its authority." (5)

"As such, we conclude that the circuit court did not err in permitting Ms. Thompson to raise the foregoing topics in the second deposition, as they are not unnecessarily duplicative of the first deposition so as to violate Rule 26(b) of the West Virginia Rules of Civil Procedure." (8)

FACTUAL BACKGROUND

Melissa Thompson had two outstanding credit card accounts and retained counsel, who notified Credit Control that communications concerning her accounts should be directed to counsel. Because of an alleged clerical error, Credit Control continued collection communications concerning one account. Credit Control initially stated in discovery that it was not asserting the unintentional-conduct or bona fide-error defense, later asserted unintentional conduct, and repeatedly failed to provide requested supplemental information concerning that defense.

PROCEDURAL HISTORY

Thompson sued Credit Control under the West Virginia Consumer Credit and Protection Act based on collection communications made after Credit Control received notice that she was represented by counsel. After the parties filed cross-motions for summary judgment, the circuit court found a violation of West Virginia Code § 46A-2-128(e) but left factual issues concerning Credit Control's unintentional-conduct defense. The circuit court ordered Credit Control to supplement its discovery responses and permitted a second deposition after Credit Control failed to provide the requested information. Credit Control sought a writ of prohibition after the circuit court denied its motion for a protective order.

DISPOSITION

writ_denied

CASES CITED

- State ex rel. Hoover v. Berger, 199 W. Va. 12, 483 S.E.2d 12 (1996)
- State Farm Mut. Auto. Ins. Co. v. Stephens, 188 W. Va. 622, 425 S.E.2d 577 (1992)
- Bartles v. Hinkle, 196 W. Va. 381, 472 S.E.2d 827 (1996)
- Jenkins v. CSX Transp. Inc., 220 W. Va. 721, 649 S.E.2d 294 (2007)
- LTD Fin. Servs., L.P. v. Collins, No. 18-008, 2019 WL 1223251 (W. Va. Mar. 15, 2019)

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