

## SUPREME COURT OF APPEALS OF WEST VIRGINIA

# State of West Virginia ex rel. Steven O. Dale, Acting Commissioner, West Virginia Division of Motor Vehicles v. Joseph C. Pomponio, Jr., Judge of the Circuit Court of Pocahontas County, and Erik T. Larson

No. 12-1253 (Pocahontas County 12-AA-02) (W. Va. June 13, 2013) · No. No. 12-1253 (Pocahontas County 12-AA-02) · Decided June 13, 2013

### SUMMARY

The Supreme Court of Appeals of West Virginia denied a writ of prohibition challenging a circuit court's decision to allow an administrative appeal from a driver's license revocation to proceed. The Court held that the circuit court did not clearly exceed its legitimate powers by treating the date of a faxed petition as the filing date, despite the original petition and filing fee reaching the clerk's office later.

### CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                             |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Appeals of West Virginia                                                                                                                                                                                                                                                                                                                                                   |
| WRITING FOR THE COURT | 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               | June 13, 2013                                                                                                                                                                                                                                                                                                                                                                               |
| DOCKET                | No. 12-1253 (Pocahontas County 12-AA-02)                                                                                                                                                                                                                                                                                                                                                    |
| DISPOSITION           | writ_denied                                                                                                                                                                                                                                                                                                                                                                                 |
| PROCEDURAL POSTURE    | The Acting Commissioner of the West Virginia Division of Motor Vehicles commenced an original proceeding seeking a writ of prohibition to prevent the Circuit Court of Pocahontas County from allowing Erik T. Larson's administrative appeal of a driver's-license revocation to proceed as timely filed.                                                                                  |
| STANDARD OF REVIEW    | A writ of prohibition lies as of right when an inferior court has no jurisdiction or exceeds its legitimate powers, but it does not lie for a simple abuse of discretion. In cases involving an alleged excess of legitimate powers, the court considers the five Hoover factors, giving substantial weight to whether the lower tribunal's order was clearly erroneous as a matter of law. |

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|---------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>PRECEDENTIAL VALUE</b> | Memorandum decision; the opinion states that it is issued under Rule 21 because no substantial question of law or prejudicial error is present.                                                          |
| <b>PARTIES</b>            | State of West Virginia ex rel. Steven O. Dale, Acting Commissioner, West Virginia Division of Motor Vehicles v. Joseph C. Pomponio, Jr., Judge of the Circuit Court of Pocahontas County, Erik T. Larson |

## TOPICS

judicial review of agency action

administrative law

appellate procedure

standard of review

remedies

## PRACTICE AREAS

administrative law

appellate procedure

remedies

## QUESTIONS PRESENTED

1. Whether the Circuit Court of Pocahontas County exceeded its legitimate powers by treating April 13, 2012, the date of fax transmission, as the filing date for Larson's administrative appeal.
2. Whether the Commissioner was entitled to a writ of prohibition to prevent the circuit court from proceeding with the allegedly untimely administrative appeal.

## HOLDINGS

1. The writ of prohibition was denied because the circuit court had jurisdiction over the administrative appeal and its decision to treat the fax-transmission date as the filing date was not clearly erroneous under the circumstances.
2. The circuit court did not commit clear legal error by accepting the petition for appeal as timely based on the April 13 fax transmission.

## KEY QUOTATIONS

*“Prohibition lies only to restrain inferior courts from proceeding in causes over which they have no jurisdiction, or, in which, having jurisdiction, they are exceeding their legitimate powers and may not be used as a substitute for writ of error, appeal or certiorari.”*

*“After analyzing these factors, and giving particular weight to the third factor- whether there was clear legal error- we see no error in the circuit court’s acceptance of the petition for appeal and we therefore deny the writ of prohibition.”*

## FACTUAL BACKGROUND

Erik T. Larson, who was not a West Virginia resident, was arrested for driving under the influence, and the West Virginia Division of Motor Vehicles revoked his driving privileges after an administrative hearing. Larson faxed a petition for administrative review to the Pocahontas County circuit clerk on April 13, 2012, and simultaneously mailed the original petition and filing fee to the circuit judge. The clerk received and stamped the original

documents on April 26, 2012; the circuit court treated the fax date as the filing date and allowed the appeal to proceed.

## PROCEDURAL HISTORY

Larson's driving privileges were revoked after an administrative hearing following his DUI arrest. He sought administrative review in the Circuit Court of Pocahontas County, transmitting the petition by fax on April 13, 2012, while mailing the original petition and filing fee. The clerk stamped the documents filed on April 26, 2012, but the circuit court treated April 13 as the filing date and denied the Commissioner's motion to dismiss the appeal as untimely. The Commissioner then sought prohibition in the Supreme Court of Appeals of West Virginia, which denied the writ.

## DISPOSITION

writ\_denied

## CASES CITED

- State ex rel. Peacher v. Sencindiver, 160 W. Va. 314, 233 S.E.2d 426 (1977)
- State ex rel. Hoover v. Berger, 199 W. Va. 12, 483 S.E.2d 12 (1996)
- Crawford v. Taylor, 138 W. Va. 207, 75 S.E.2d 370 (1953)

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