

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Anita Cecil, et al. v. Bluestone Coal Corporation, EQT Production Company, and Jim C. Hamer Company

No. 13-0076 (W. Va. Mar. 31, 2014) · No. No. 13-0076 · Decided March 31, 2014

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed summary judgment for Bluestone Coal Corporation, EQT Production Company, and Jim C. Hamer Company in a property-damage action arising from flooding allegedly caused by the defendants' land-use activities. The court held that the plaintiffs lacked probative evidence linking the defendants' operations to the flooding and rejected the challenge to denial of reconsideration; other arguments concerning dismissal under Rules 37(b) and 41(b) were deemed moot.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Robin Jean Davis; Justice Brent D. Benjamin; Justice Margaret L. Workman; Justice Menis E. Ketchum; Justice Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	March 31, 2014
DOCKET	No. 13-0076
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioners appealed the Circuit Court of Wyoming County's orders granting respondents' motions for summary judgment and denying petitioners' motion for reconsideration.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. The standard of review applicable to an appeal from a Rule 59(e) motion to alter or amend is the same standard applicable to the underlying judgment.
PRECEDENTIAL VALUE	Nonprecedential memorandum decision
PARTIES	Anita Cecil, et al. v. Bluestone Coal Corporation, EQT Production Company, Jim C. Hamer Company

TOPICS

summary judgment

motion for reconsideration

sanctions

appellate procedure

environmental law

PRACTICE AREAS

civil procedure

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torts

minerals

QUESTIONS PRESENTED

1. Whether the circuit court's summary judgment order was legally deficient because it did not include findings of material fact.
2. Whether the circuit court improperly dismissed the case under West Virginia Rules of Civil Procedure 37(b) and 41(b).
3. Whether the circuit court erred in denying petitioners' motion for reconsideration treated as a Rule 59(e) motion.

HOLDINGS

1. The circuit court did not err in granting summary judgment because its order contained sixteen findings of fact and four conclusions of law, and the record lacked probative evidence linking respondents' operations to the May 2, 2002 flooding.
2. The challenge to the alternative dismissal grounds under Rules 37(b) and 41(b) was moot because the first assignment of error concerning summary judgment was dispositive of the appeal.
3. The circuit court properly denied petitioners' motion to reconsider because, having been filed within ten days of judgment, it was treated as a Rule 59(e) motion, and petitioners did not establish grounds warranting alteration or amendment of the judgment.

KEY QUOTATIONS

“A circuit court's entry of summary judgment is reviewed *de novo*.” (1)

“When a party filing a motion for reconsideration does not indicate under which West Virginia Rule of Civil Procedure it is filing the motion, the motion will be considered to be either a Rule 59(e) motion to alter or amend a judgment or a Rule 60(b) motion for relief from a judgment order.” (3)

“Under Rule 59(e), the reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly.” (3)

FACTUAL BACKGROUND

Petitioners alleged that respondents' coal and other land-use activities caused property damage following flooding on May 2, 2002. In response to discovery concerning the locations of the damaged properties, petitioners were ordered to provide latitude and longitude information and to identify the properties to respondents. Respondents' experts and petitioners' experts were deposed, but petitioners' experts provided no opinions or studies linking respondents' operations to the flooding, and there was no fact testimony establishing that connection.

PROCEDURAL HISTORY

Petitioners filed a complaint in 2004 alleging that respondents' land-use activities proximately caused property damage from flooding in May 2002. After discovery disputes, motions to compel, and expert depositions, the circuit court granted respondents' motions for summary judgment on August 17, 2012. The court denied petitioners' motion to reconsider on January 3, 2013, and petitioners appealed both orders. The Supreme Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Painter v. Peavy, 192 W. Va. 189, 451 S.E.2d 755 (1994)
- Richardson v. Kennedy, 197 W. Va. 326, 475 S.E.2d 418 (1996)
- Powderidge Unit Owners Ass'n v. Highland Properties, Ltd., 196 W. Va. 692, 474 S.E.2d 872 (1996)
- Wickland v. American Travellers Life Insurance Co., 204 W. Va. 430, 513 S.E.2d 657 (1998)
- Mey v. Pep Boys-Manny, Moe & Jack, 228 W. Va. 48, 717 S.E.2d 235 (2011)
- Small v. Hunt, 98 F.3d 789 (4th Cir. 1996)
- Palmer v. Champion Mortgage, 465 F.3d 24 (1st Cir. 2006)
- Templet v. HydroChem Inc., 367 F.3d 473 (5th Cir. 2004)
- Pacific Insurance Co. v. American National Fire Insurance Co., 148 F.3d 396 (4th Cir. 1998)