

SUPREME COURT OF APPEALS OF WEST VIRGINIA

WV Department of Health & Human Resources Employees Federal
Credit Union v. Tennant, 215 W. Va. 387

599 S.E.2d 810 (2004) · No. No. 31506 · Decided June 30, 2004

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed a circuit court judgment against Cynthia Tennant for breach of a revolving MasterCard credit agreement. The court held that Tennant waived her right to a jury trial by failing to make a jury demand under the West Virginia Rules of Civil Procedure after removal to circuit court, and rejected her arguments concerning the contract, continuance, venue, intervention, and trial conduct. Separate concurring and dissenting opinions addressed the jury-demand issue.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per curiam; Justice Albright; Justice Davis; Justice Starcher
JURISDICTION	West Virginia
DECIDED	June 30, 2004
DOCKET	No. 31506
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a judgment entered after a bench trial in the Circuit Court of Kanawha County on a credit-card debt and breach-of-contract claim.
STANDARD OF REVIEW	For a bench trial, the final order and ultimate disposition are reviewed for abuse of discretion, underlying factual findings are reviewed for clear error, and questions of law are reviewed de novo. A denial of a continuance is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published opinion; precedential decision of the Supreme Court of Appeals of West Virginia.
PARTIES	Cynthia Tennant v. West Virginia Department of Health and Human Resources Employees Federal Credit Union

TOPICS

civil procedure

breach of contract

venue

standing

motions to dismiss

PRACTICE AREAS

civil procedure

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QUESTIONS PRESENTED

1. Whether a jury demand made in magistrate court automatically remained effective after Tennant removed the case to circuit court.
2. Whether Tennant waived her right to a jury trial by failing to make a jury demand under West Virginia Rule of Civil Procedure 38 after removal and by failing to object to the bench trial.
3. Whether the record established a valid credit-card contract and Tennant's breach of that contract.
4. Whether the circuit court abused its discretion by denying Tennant's motions for continuance.
5. Whether venue was improper in Kanawha County.
6. Whether Moses Tennant had a right to intervene or whether Cynthia Tennant could assert his alleged rights.
7. Whether Tennant's unsupported claims of trial error were preserved and supported by the record.

HOLDINGS

1. Under the majority's reasoning, a party who removes a case to circuit court must comply with the West Virginia Rules of Civil Procedure governing jury demands; Tennant did not do so and therefore waived the right to a jury trial.
2. Tennant also waived appellate review of the jury-trial issue by failing to object when the circuit court proceeded with a bench trial.
3. A valid credit-card contract existed between Tennant and the Credit Union, and Tennant breached it by failing to make required payments on the account.
4. The circuit court did not abuse its discretion by denying Tennant's motions for continuance.
5. Tennant's improper-venue argument lacked merit because she requested removal to the Kanawha County Circuit Court and thereby acquiesced in that venue.
6. Moses Tennant was not a party to the credit-card transaction or action, and Cynthia Tennant could not assert his alleged rights to intervention.
7. The court declined to consider Tennant's unsupported and inadequately preserved claims of trial error and affirmed the judgment.

KEY QUOTATIONS

“After reviewing the facts of the case, the issues presented, and the relevant statutory and case law, this Court affirms the decision of the circuit court.” (215 W. Va. 388; 599 S.E.2d 812)

“Because Ms. Tennant failed to file a demand for a jury trial in the circuit court as required by Rule 38(b), she waived her right.” (215 W. Va. 392; 599 S.E.2d 816)

“We specifically find that a valid contract existed and Ms. Tennant was in breach of that contract.” (215 W. Va. 395; 599 S.E.2d 818)

“As such, Mr. Tennant simply is not a party in this action and any appeal with regard to Mr. Tennant’s standing to intervene in any case cannot be asserted by Ms. Tennant.” (215 W. Va. 396; 599 S.E.2d 819)

“Accordingly, for the reasons set forth above, the final order of the Circuit Court of Kanawha County entered on December 5, 2002, is affirmed.” (215 W. Va. 397; 599 S.E.2d 820)

FACTUAL BACKGROUND

Tennant obtained a MasterCard account from the Credit Union, with her credit limit increased from \$1,500 to \$5,000 through several approved requests. She failed to make required payments, accumulated a balance exceeding the credit limit, and acknowledged or promised to resume payments on several occasions. The Credit Union sued for the unpaid debt, and after removal to circuit court, the circuit court found Tennant liable for \$5,811.02 plus interest and costs.

PROCEDURAL HISTORY

The Credit Union sued Tennant in Kanawha County Magistrate Court for breach of a revolving MasterCard agreement. Tennant demanded a jury trial in magistrate court, asserted a counterclaim, and then moved to remove the case to circuit court. After removal, the circuit court denied motions for continuance, improper venue, and intervention, conducted a bench trial, and entered judgment for the Credit Union in the amount of \$5,811.02 plus post-judgment interest and costs. The Supreme Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Public Citizen, Inc. v. First National Bank, 198 W. Va. 329, 480 S.E.2d 538 (1996)
- Barker v. Benefit Trust Life Insurance Co., 174 W. Va. 187, 324 S.E.2d 148 (1984)
- State v. Thomas, 157 W. Va. 640, 203 S.E.2d 445 (1974)
- State v. Browning, 199 W. Va. 417, 485 S.E.2d 1 (1997)
- State v. Grimmer, 162 W. Va. 588, 251 S.E.2d 780 (1979)
- Wimer v. Hinkle, 180 W. Va. 660, 379 S.E.2d 383 (1989)
- State v. LaRock, 196 W. Va. 294, 470 S.E.2d 613 (1996)
- Blair v. Maynard, 174 W. Va. 247, 324 S.E.2d 391 (1984)
- Viles v. Scofield, 128 Colo. 185, 261 P.2d 148 (1953)
- Alexander v. Jeanerette, 371 So. 2d 1245 (La. Ct. App. 1979)

- *Shrewsbury v. Miller*, 10 W. Va. 115 (1877)
- *Alexander v. Jennings*, 150 W. Va. 629, 149 S.E.2d 213 (1966)
- *Morgan v. Price*, 151 W. Va. 158, 150 S.E.2d 897 (1966)
- *Pozzie v. Prather*, 151 W. Va. 880, 157 S.E.2d 625 (1967)
- *Ward v. County Court*, 141 W. Va. 730, 93 S.E.2d 44 (1956)
- *Scott v. Newell*, 69 W. Va. 118, 70 S.E. 1092 (1911)
- *Dudley v. Barrett*, 58 W. Va. 235, 52 S.E. 100 (1905)
- *McGraw v. Roller*, 47 W. Va. 650, 35 S.E. 822 (1900)
- *Zumbro v. Stump*, 38 W. Va. 325, 18 S.E. 443 (1893)
- *State v. Bush*, 163 W. Va. 168, 255 S.E.2d 539 (1979)
- *Nutter v. Maynard*, 183 W. Va. 247, 395 S.E.2d 491 (1990)
- *Levy v. Scottish Union & National Insurance Co.*, 58 W. Va. 546, 52 S.E. 449 (1905)
- *State ex rel. Leung v. Sanders*, 213 W. Va. 569, 584 S.E.2d 203 (2003)
- *Findley v. State Farm Mutual Automobile Insurance Co.*, 213 W. Va. 80, 576 S.E.2d 807 (2002)
- *Louisiana Environmental Action Network v. Browner*, 87 F.3d 1379 (D.C. Cir. 1996)
- *Sale ex rel. Sale v. Goldman*, 208 W. Va. 186, 539 S.E.2d 446 (2000) (per curiam)
- *Tiernan v. Charleston Area Medical Center, Inc.*, 203 W. Va. 135, 506 S.E.2d 578 (1998)
- *State v. Lilly*, 194 W. Va. 595, 461 S.E.2d 101 (1995)
- *Adkins v. Foster*, 187 W. Va. 730, 421 S.E.2d 271 (1992)
- *Roberts v. Stevens Clinic Hospital, Inc.*, 176 W. Va. 492, 345 S.E.2d 791 (1986)
- *Winter v. Minnesota Mutual Life Insurance Co.*, 199 F.3d 399 (7th Cir. 1999)
- *Istituto Per Lo Sviluppo Economico Dell'Italia Meridionale v. Sperti Products, Inc.*, 47 F.R.D. 310 (S.D.N.Y. 1969)
- *Freeman v. Bee Machine Co.*, 319 U.S. 448, 63 S. Ct. 1146, 87 L. Ed. 1509 (1943)
- *Wyatt v. Hunt Plywood Co.*, 297 F.3d 405 (5th Cir. 2002)
- *Mondor v. United States District Court for the Central District of California*, 910 F.2d 585 (9th Cir. 1990)
- *Crum v. Ward*, 146 W. Va. 421, 122 S.E.2d 18 (1961)
- *Conservation Commission v. Price*, 193 Conn. 414, 479 A.2d 187 (1984)

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