

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Mervin Roderick v. Marlyn Keesecker, Bettina Truitt, and Lorelei Freshman

No. 18-0334 (Jefferson County 06-C-368) · No. No. 18-0334 · Decided April 15, 2019

SUMMARY

The West Virginia Supreme Court of Appeals affirmed a circuit court order ratifying the final report of a special receiver appointed to liquidate Avon Hill Farms, Inc. The court held that the petitioner could not collaterally attack the prior order establishing the liquidation and damages process because his claims were barred by res judicata. The court also rejected challenges to the calculation and allegedly punitive nature of the damages.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Elizabeth D. Walker; Justice Margaret L. Workman; Justice Tim Armstead; Justice Evan H. Jenkins; Justice John A. Hutchison
JURISDICTION	West Virginia
DECIDED	April 15, 2019
DOCKET	No. 18-0334
DISPOSITION	affirmed
PROCEDURAL POSTURE	Mervin Roderick appealed the Jefferson County Circuit Court's order ratifying, confirming, approving, and adopting the Special Receiver's final report following the liquidation and dissolution of Avon Hills Farm, Incorporated.
STANDARD OF REVIEW	Rulings concerning a new trial and the existence of reversible error are reviewed for abuse of discretion; underlying factual findings are reviewed for clear error; and questions of law are reviewed de novo.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Mervin Roderick v. Marlyn Keesecker, Bettina Truitt, Lorelei Freshman

TOPICS

corporate law

dissolution

fiduciary duty

res judicata

appellate procedure

PRACTICE AREAS

corporate law

commercial litigation

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remedies

QUESTIONS PRESENTED

1. Whether the Special Receiver improperly calculated or imposed punitive damages by applying the liquidation methodology established in the circuit court's December 30, 2008, order.
2. Whether Roderick could challenge the damages methodology and the December 30, 2008, order in his appeal from the order adopting the receiver's final report, or whether those claims were barred by res judicata and the failure to appeal the prior final order.
3. Whether the circuit court erred by failing to consider tax consequences associated with Roderick's allocation of income during the dissolution process.

HOLDINGS

1. The circuit court did not err in adopting the Special Receiver's final report because the report executed the liquidation methodology and distribution provisions established by the December 30, 2008, order, and the record showed that the receiver accounted for the effect of the changed ownership percentages.
2. Roderick's claims challenging the damages and liquidation methodology were barred by res judicata because he failed to appeal the final order denying his Rule 60(b) motion and could not use the later appeal from the receiver's final report to collaterally attack the earlier judgment.
3. The court declined to consider Roderick's tax-consequences assignment of error because he mentioned it but did not adequately argue or support it with pertinent authority.

KEY QUOTATIONS

“Having failed to appeal the September 16, 2009, order, Roderick may not now collaterally attack the order by creatively arguing that, in its July 3, 2013, order, the circuit court “failed to recognize” its “errors” in the December [30], 2008, underlying judgment order.” (at 6)

FACTUAL BACKGROUND

Avon Hills Farm, Incorporated, held substantial real-property assets, with Roderick owning a majority interest and serving as president. Respondents alleged, and the circuit court found, that Roderick sold corporate property without notice, used corporate assets for personal purposes, made unauthorized distributions, and breached fiduciary duties owed to the minority shareholders. The circuit court ordered dissolution, appointed a special receiver, and established a process for liquidating assets and distributing proceeds. After years of liquidation, the receiver determined that Roderick's prior distributions, obligations, and expenses exceeded his 25% share of the proceeds, leaving him with no final distribution and producing an amount owed to the corporation.

PROCEDURAL HISTORY

Respondents obtained default judgment in 2007 on claims involving fraud, conversion, and breach of fiduciary duty and sought dissolution of Avon and appointment of a special receiver. The circuit court's December 30, 2008, order established the liquidation methodology, adjusted the shareholders' interests to equal 25% shares, and awarded damages and attorney's fees. Roderick's Rule 60(b) motion was denied in 2009, and he did not appeal that order. After the receiver liquidated the remaining assets and submitted a final report, the circuit court adopted the report on March 15, 2018. The Supreme Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Avon Hill Farms, Inc. v. Keesecker, No. 13-0977, 2014 WL 2682036 (W. Va. June 13, 2014)
- State v. Kaufman, 227 W. Va. 537, 711 S.E.2d 607 (2011)
- State v. Vance, 207 W. Va. 640, 535 S.E.2d 484 (2000)

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