

SUPREME COURT OF APPEALS OF WEST VIRGINIA

State ex rel. Justice v. The Honorable Charles E. King, Jr.

Justice · No. No. 19-1132 · Decided November 20, 2020

SUMMARY

The Supreme Court of Appeals of West Virginia denied Governor James Conley Justice II's petition for a writ of prohibition challenging a circuit court order allowing a mandamus action concerning the Governor's constitutional duty to reside at the seat of government. The court held that the residency requirement in Article VII, Section 1 of the West Virginia Constitution imposes a mandatory, nondiscretionary duty that may be enforced through mandamus.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Acting Chief Justice Jenkins; Justice Workman; Justice Hutchison; Judge Bridget Cohee, sitting by temporary assignment
JURISDICTION	West Virginia
DECIDED	November 20, 2020
DOCKET	No. 19-1132
DISPOSITION	writ_denied
PROCEDURAL POSTURE	The Governor petitioned the Supreme Court of Appeals of West Virginia for a writ of prohibition under its original jurisdiction to prevent the Circuit Court of Kanawha County from proceeding with a mandamus action seeking to compel him to comply with the constitutional residency requirement.
STANDARD OF REVIEW	A writ of prohibition is available only to restrain a lower court that lacks jurisdiction or exceeds its legitimate powers, and is not a substitute for appeal. For the clear-error factor in a prohibition proceeding, purely legal issues are reviewed de novo. The court applied the five-factor test from State ex rel. Hoover v. Berger, giving substantial weight to whether the lower court clearly erred as a matter of law.
PRECEDENTIAL VALUE	published and precedential
PARTIES	State of West Virginia ex rel. James Conley Justice, II, Governor of the State of West Virginia v. The Honorable Charles E. King, Jr., Judge of

TOPICS

writ of certiorari appellate procedure remedies constitutional law civil procedure

PRACTICE AREAS

constitutional law appellate procedure civil procedure remedies separation of powers

QUESTIONS PRESENTED

1. Whether the Circuit Court of Kanawha County had jurisdiction to entertain a mandamus petition seeking to enforce the Governor's constitutional duty to reside at the seat of government.
2. Whether the political question doctrine and separation-of-powers principles barred mandamus relief against the Governor.
3. Whether the constitutional term "reside" imposed a mandatory, nondiscretionary duty that could be enforced through mandamus.
4. Whether the circuit court clearly erred by denying Governor Justice's motion to dismiss.

HOLDINGS

1. For purposes of Article VII, section 1, "reside" means to live primarily at the seat of government, with the executive official's principal place of physical presence located there for the duration of the term. Temporary absence does not terminate residency; the controlling factor is the intent to return to that principal place of physical presence.
2. The duty of executive officers to reside at the seat of government is a mandatory, nondiscretionary constitutional duty.
3. Mandamus may lie to require executive officers to comply with the mandatory, nondiscretionary duty to reside at the seat of government.
4. Governor Justice failed to establish that the circuit court lacked jurisdiction or exceeded its legitimate powers, and the Supreme Court therefore denied the writ of prohibition.

KEY QUOTATIONS

"We now hold that, for purposes of the residency provision located in Section 1 of Article VII of the West Virginia Constitution, "reside" means to live, primarily, at the seat of government and requires that the executive official's principal place of physical presence is the seat of government for the duration of his or her term of office." (at 28-29)

"Indeed, public officials may come and go from the seat of government as they please, at their discretion, as the needs of the office or their personal situations require. But, executive officials who must comply with the duty to reside at the seat of government for the duration of their term must establish the seat of government as their "home base," so to speak." (at 30-31)

“Accordingly, we hold that the duty of executive officers to reside at the seat of government, as required by Section 1 of Article VII of the West Virginia Constitution, is a mandatory, non-discretionary duty for which a writ of mandamus may lie to require compliance with that duty.” (at 32)

“Therefore, we deny the requested writ to prohibit enforcement of the Circuit Court of Kanawha County’s October 21, 2019 order.” (at 36)

FACTUAL BACKGROUND

Governor James Conley Justice, II, was required by Article VII, section 1 of the West Virginia Constitution to reside at the seat of government during his term. G. Isaac Sponaugle alleged that Governor Justice had spent only a handful of nights at the Governor's Mansion or another Charleston residence and had publicly stated that he would not reside in Charleston. Sponaugle sought mandamus to enforce the residency requirement, while Governor Justice argued that the requirement involved executive discretion and could not be enforced judicially.

PROCEDURAL HISTORY

G. Isaac Sponaugle filed a mandamus petition in the Circuit Court of Kanawha County seeking to require Governor Justice to reside at the seat of government under Article VII, section 1 of the West Virginia Constitution. An earlier mandamus petition was dismissed for failure to satisfy pre-suit requirements, and this Court previously refused to issue a rule to show cause on a subsequent petition. Sponaugle filed a renewed circuit-court petition in December 2018. The circuit court denied Governor Justice's motion to dismiss, declined to certify questions, stayed further proceedings, and entered findings and conclusions supporting its ruling. Governor Justice then sought prohibition; the Supreme Court denied the writ.

DISPOSITION

writ_denied

CASES CITED

- State ex rel. Peacher v. Sencindiver, 160 W. Va. 314, 233 S.E.2d 425 (1977)
- State ex rel. Hoover v. Berger, 199 W. Va. 12, 483 S.E.2d 12 (1997)
- State ex rel. Kucera v. City of Wheeling, 153 W. Va. 538, 170 S.E.2d 367 (1969)
- State ex rel. Greenbrier Cty. Airport Auth. v. Hanna, 151 W. Va. 479, 153 S.E.2d 284 (1967)
- Nobles v. Duncil, 202 W. Va. 523, 505 S.E.2d 442 (1998)
- Crawford v. Taylor, 138 W. Va. 207, 75 S.E.2d 370 (1953)
- State ex rel. Suriano v. Gaughan, 198 W. Va. 339, 480 S.E.2d 548 (1996)
- State ex rel. Am. Elec. Power Co. v. Nibert, 237 W. Va. 14, 784 S.E.2d 713 (2016)
- State ex rel. West Virginia Div. of Natural Resources v. Cline, 200 W. Va. 101, 488 S.E.2d 376 (1997)
- State ex rel. Bobrycki v. Hill, 202 W. Va. 335, 504 S.E.2d 162 (1998)
- Hinkle v. Black, 164 W. Va. 112, 262 S.E.2d 744 (1979)
- State ex rel. Thornhill Grp., Inc. v. King, 233 W. Va. 564, 759 S.E.2d 795 (2014)

- State ex rel. Gessler v. Mazzone, 212 W. Va. 368, 572 S.E.2d 891 (2002)
- State ex rel. Forbes v. Caperton, 198 W. Va. 474, 481 S.E.2d 780 (1996)
- State ex rel. Bagley v. Blankenship, 161 W. Va. 630, 246 S.E.2d 99 (1978)
- State ex rel. Trent v. Sims, 138 W. Va. 244, 77 S.E.2d 122 (1953)
- Meadows ex rel. Prof'l Emps. of W. Va. Educ. Ass'n v. Hey, 184 W. Va. 75, 399 S.E.2d 657 (1990)
- Simms v. Sawyers, 85 W. Va. 245, 101 S.E. 467 (1919)
- Harbert v. Cty. Court, 129 W. Va. 54, 39 S.E.2d 177 (1946)
- Nelson v. W. Va. Pub. Employees Ins. Bd., 171 W. Va. 445, 300 S.E.2d 86 (1982)
- Underwood v. Cty. Comm'n of Kanawha Cty., 176 W. Va. 740, 349 S.E.2d 443 (1986)
- Slack v. Jacob, 8 W. Va. 612 (1875)
- State ex rel. Lemon v. Langlie, 45 Wash. 2d 82, 273 P.2d 464 (1954)
- People v. Gonzales, 183 Cal. App. 4th 24 (2010)
- Gallagher v. Bd. of Sup'rs of Elections, 219 Md. 192, 148 A.2d 390 (1959)
- Farmers Mut. Ins. Co. v. Tucker, 213 W. Va. 16, 576 S.E.2d 261 (2002)
- State ex rel. Buxton v. O'Brien, 97 W. Va. 343, 125 S.E. 154 (1924)
- Walter v. Ritchie, 156 W. Va. 98, 191 S.E.2d 275 (1972)
- Cooper v. Gwinn, 171 W. Va. 245, 298 S.E.2d 781 (1981)
- United Mine Workers of America v. Miller, 170 W. Va. 177, 291 S.E.2d 673 (1982)
- United Mine Workers of America v. Scott, 173 W. Va. 356, 315 S.E.2d 614 (1984)
- Trumka v. Moore, 180 W. Va. 284, 376 S.E.2d 178 (1988)
- State ex rel. Biafore v. Tomblin, 236 W. Va. 528, 782 S.E.2d 223 (2016)
- Dadisman v. Moore, 181 W. Va. 779, 384 S.E.2d 816 (1988)
- State ex rel. Brotherton v. Moore, 159 W. Va. 934, 230 S.E.2d 638 (1976)
- State v. Allen, 208 W. Va. 144, 539 S.E.2d 87 (2000)
- State, Dept. of Health v. Robert Morris N., 195 W. Va. 759, 466 S.E.2d 827 (1995)
- United States v. Dunkel, 927 F.2d 955 (7th Cir. 1991)
- State v. LaRock, 196 W. Va. 294, 470 S.E.2d 613 (1996)
- State v. Adkins, 209 W. Va. 212, 544 S.E.2d 914 (2001)
- State v. Easton, 203 W. Va. 631, 510 S.E.2d 465 (1998)
- State v. Lilly, 194 W. Va. 595, 461 S.E.2d 101 (1995)
- State v. Kaufman, 227 W. Va. 537, 711 S.E.2d 607 (2011)