

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**Billy Stewart and Dorothy Stewart, his wife
Defendants Below, Petitioners**

vs) **No. 101525** (Wayne County 08-C-176)

**Crystal Young, Administratrix
of the Estate of Eva Crabtree, deceased,
Plaintiff Below, Respondent**

FILED

May 13, 2011

RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioners Billy and Dorothy Stewart appeal the circuit court's order denying their motion for new trial or, in the alternative, their motion to alter and amend the circuit court's judgment order based upon a jury verdict in favor of respondent, Crystal Young, Administratrix of the Estate of Eva Crabtree, deceased, for breach of fiduciary duty. Respondent has filed a response.

This Court has considered the parties' briefs and the record on appeal. Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this case is appropriate for consideration under the Revised Rules. The facts and legal arguments are adequately presented in the parties' written briefs and the record on appeal, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules.

In 2007, petitioners were appointed briefly as conservators for an elderly woman named Eva Crabtree. During their conservatorship, petitioners paid themselves fees and expenses of \$6,848.16 from funds belonging to Eva Crabtree. Following Eva Crabtree's death, respondent, the administratrix of Eva Crabtree's estate, brought suit against the petitioners for breach of fiduciary duty, and alleged, *inter alia*, that they improperly paid out various sums belonging to Crabtree, including the referenced conservator fees and expenses in the amount of \$6,848.16. The complaint sought both compensatory and punitive damages. Respondent argued that the Estate was entitled to recover such fees and expenses from

petitioners because they were paid without court approval in violation of West Virginia Code §44A-1-13(a), which provides:

Any guardian or conservator, whether full, temporary, or limited, is entitled to reasonable compensation as allowed by the court from the estate, including reimbursement for costs advanced. The frequency and amount of all compensation must be approved by the court.

The case proceeded to trial. Prior to the start of the trial, the circuit court ruled that the issue of punitive damages “should be held in the breast of the Court until the presentation of evidence had been completed or had reached such point as the Court could make a further disposition; and until such time, counsel should not make mention of punitive damages in their opening statements.”¹ Despite this ruling, respondent’s counsel made the following statement regarding exemplary damages during his opening statement:

We have asked in our complaint that we be awarded a judgment for the amounts that they misappropriated and utilized for their own self and we’ve asked for exemplary damages against the Stewarts.

At the conclusion of respondent’s opening statement, petitioners’ counsel requested a bench conference and objected to the statement. The circuit court “declined to take further actions, or to take any other steps at such time, with the exception of allowing [petitioners’ counsel] to respond on the topic of punitive damages should he elect to do so.” Petitioners’ counsel did not avail himself of this option. The circuit court ultimately determined that the issue of punitive damages should not go to the jury.

During trial, respondent presented evidence to the effect that petitioners had misappropriated monies belonging to Eva Crabtree during the time of their conservatorship. Conversely, petitioners presented evidence to demonstrate that all payments made by them during the conservatorship were necessary and proper. The jury returned a verdict awarding respondent plaintiff \$17,500.00 in compensatory damages and included on its verdict form a hand-written statement: “plus punitive damages as determined by the judge.”²

¹ Due to court reporting problems, the circuit court entered an order on November 3, 2010, setting forth its recollection of those matters that were not transcribed, such as its ruling *in limine* regarding punitive damages.

² No punitive damages were awarded by the circuit court. This Court previously refused respondent’s appeal of the circuit court’s ruling, which declined to allow the jury to consider punitive damages.

Following the verdict, petitioners filed post-trial motions, including a motion for a new trial. Petitioners asserted that they were so prejudiced by the mention of punitive³ damages by respondent's counsel during his opening statement that a new trial was required. Petitioners also argued that they were entitled to a new trial based upon insufficient evidence to support the portion of the verdict awarding compensatory damages of \$6,848.16 based upon their conservator fees and expenses. The circuit court denied the petitioners' motion for new trial concluding that there was no prejudice caused by the mention of punitive damages in respondent's counsel's opening statement. In drawing this conclusion, the circuit court noted that "the jury demonstrated a significant degree of thoughtfulness during the proceedings and there was no indication to show that they maintained any preoccupation with 'punitive damages in their minds.'"

Contemporaneously with the motion for new trial, petitioners filed an alternative motion essentially seeking a remittitur of the \$6,848.16 arguing that respondent had failed to prove that their conservator fees and costs were obtained in violation of the statutory requirement of court approval. Petitioners argued that the only evidence on the issue of court approval demonstrated that their actions in submitting an accounting to the *guardian-ad-litem*, which disclosed that such fees and expenses had been disbursed, constituted substantial compliance with West Virginia Code §44A-1-13(a) and was an acceptable method of gaining court approval of such payments. The circuit court denied the motion and recognized that while petitioners presented evidence at trial in an attempt to show substantial compliance with the statute, the jury was not convinced by such evidence.

Motion for New Trial

Petitioners argue that the circuit court erred in refusing to grant a new trial based upon the prejudice caused by respondent's counsel's mention of punitive damages in his opening statement, which violated the circuit court's pre-trial ruling *in limine* barring mention of such damages. This Court has recognized that "[a] deliberate and intentional violation of a trial court's ruling on a motion *in limine*, and thereby the intentional introduction of prejudicial evidence into a trial, is a ground for reversing a jury's verdict. However, in order for a violation of a trial court's evidentiary ruling to serve as the basis for a new trial, the ruling must be specific in its prohibitions, and the violation must be clear." Syl. Pt. 5, *Honaker v. Mahon*, 210 W.Va. 53, 552 S.E. 2d 788 (2001). Respondent contends that the reference to "exemplary" damages was inadvertent and denies that the remark was an attempt to circumvent the *in limine* ruling regarding punitive damages. Petitioners acknowledge in their

³ Respondent's counsel actually referred to such damages as "exemplary," rather than "punitive," in his opening statement.

petition for appeal that the remark by respondent's counsel might have been inadvertent, but note that the remark was made in the "immediate wake" of the circuit court's ruling that punitive damages were not to be mentioned.

This Court has long held that "[t]he ruling of a trial court in granting or denying a motion for a new trial is entitled to great respect and weight, [and] the trial court's ruling will be reversed on appeal [only] when it is clear that the trial court has acted under some misapprehension of the law or the evidence." Syl. pt. 4, in part, *Sanders v. Georgia-Pacific Corp.*, 159 W.Va. 621, 225 S.E. 2d 218 (1976)." Syl. Pt. 2, *Estep v. Mike Ferrell Ford Lincoln-Mercury, Inc.*, 223 W.Va. 209, 672 S.E.2d 345 (2008). "The discretion of the trial court in ruling on the propriety of argument by counsel before the jury will not be interfered with by the appellate court, unless it appears that the rights of the complaining party have been prejudiced, or that manifest injustice resulted therefrom." Syl. Pt. 3, *State v. Boggs*, 103 W.Va. 641, 138 S.E. 321 (1927). Petitioners contend that the circuit court erred in finding that there was no prejudice occasioned by counsel's remark and argue that the prejudice was manifested in the jury's hand-written note on the verdict form that the circuit court should award punitive damages. Respondent argues that there was no prejudice evinced by the jury's notation on the verdict form, particularly as the jury did not feel strongly enough to add a dollar amount. After careful consideration, the Court concludes that the circuit court did not err in denying the motion for new trial.

Motion for Remittitur

Petitioners argue that the circuit court erred in denying their motion to alter or amend the judgment. "The standard of review applicable to an appeal from a motion to alter or amend a judgment, made pursuant to W.Va. R. Civ. P. 59(e), is the same standard that would apply to the underlying judgment upon which the motion is based and from which the appeal to this Court is filed." Syl. Pt. 1, *Wickland v. American Travellers Life Insurance Company*, 204 W.Va. 430, 513 S.E. 2d 657 (1998) "Where the issue on an appeal from the circuit court is clearly a question of law or involving an interpretation of a statute, we apply a *de novo* standard of review." Syl. Pt. 1, *Chrystal R.M. v. Charlie A.L.*, 194 W.Va. 138, 459 S.E. 2d 415 (1995).

Petitioners argue that they were entitled to remittitur in the amount of \$6,848.16 because they presented unrefuted evidence of substantial compliance with West Virginia Code §44A-1-13(a). Petitioners assert that barring the obvious fact that they did not bring on a separate petition for hearing to obtain court approval of their fees and expenses, there was no evidence presented by respondent to demonstrate liability for recoupment of the fees and expenses of \$6,848.16. Conversely, respondent contends that the circuit court properly denied remittitur and asserts that it was the jury's province to determine whether petitioners'

actions in “simply handing a copy of . . . final accounting” to Eva Crabtree’s *guardian-ad-litem* constituted the statutory requisite court approval for the payment of fees and expenses to a conservator as required by West Virginia Code §44A-1-13(a). “Where the language of a statute is clear and without ambiguity[,] the plain meaning is to be accepted without resorting to the rules of interpretation.” Syl. Pt. 2, *State v. Elder*, 152 W.Va. 571, 165 S.E. 2d 108 (1968). The Court concludes that under the facts and circumstances of the case *sub judice*, the circuit court did not err in denying the motion to alter or amend judgment by remittitur.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: May 13, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Thomas E. McHugh

DISSENTING:

Justice Menis E. Ketchum