

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

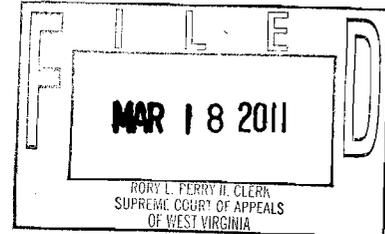
WILLIAM R. HUGGINS and
DENISE L. HUGGINS, Husband
and Wife, Plaintiffs Below

Appellants,

v.

No. 35761

THE CITY OF WESTOVER SANITARY
SEWER BOARD, a public agency; THE
CITY OF WESTOVER, a municipal
corporation; and DAVE JOHNSON,
Defendants Below.



Appellees.

APPELLEES' BRIEF

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RESPONSE TO ASSIGNMENT OF ERRORS

- I. The Circuit Court was correct in its conclusion “that the [Westover] Sewer Board did not fire, discharge, or cause . . . [William] Huggins to be involuntarily terminated—he voluntarily resigned from his employment in order to be available for another position . . .” and he never sought to rescind the resignation”

Appellant, William Huggins, submitted his resignation to the Westover Sanitary Sewer Board on October 14, 2007, stating, in part, "I would like to transfer to work at the [city of Westover] garage and leave my position in the Sewer Department." (Ex. 1, October 14, 2008 unsigned letter.) Appellant submitted that letter of resignation voluntarily; it is unequivocal that no one forced him to resign and that he never rescinded the resignation. (Ex. 3, excerpts, dep. of William Huggins, at 33-34, 50-51; Ex. 5, ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND DENYING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT, at 5.)

On October 27, 2008, Appellant suffered an on-the-job injury. Complaint, ¶ 9. However, reinforcing his intent to resign, on November 21, 2008, Appellant signed the October 14, 2008 resignation letter—the exact same letter he previously had submitted without his signature. (Ex. 2.) For example:

Q. Did there come a time when you actually signed that October 14, 2008 letter?

A. Yes, it was November.

Q. Why do you say that?

A. I remember it being the Friday before deer season came in, but I don't want to say for sure[;:] but I think it was the 21st.

* * *

Q. Again, you never attempted to withdraw your original unsigned letter, did you?

A. No.

Q. And you never attempted to withdraw your signed letter, did you?¹

A. No.

(Ex. 3, at 50.)

While Appellant contended he was actually seeking a "transfer," from the Westover Sanitary Sewer Board, to a totally separate legal entity, the city of Westover, nonetheless he clearly acknowledged that there was no policy or ordinance whatsoever to allow him to effect this supposed "transfer" from one separate legal entity to another. (*Id.*)

Likewise, Appellant admitted that he never sought to rescind his October 14, 2008 resignation. (Ex. 3, at 34 and Ex. 5, ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND DENYING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT, at 5.)

Q. Did you ever try to rescind the letter you wrote on October 14, 2008?

A. By that meaning?

Q. Did you ever try to take your letter back?

A. No.

* * *

¹Appellant likewise admitted that he was not attempting to transfer to another job from within the Westover Sanitary Sewer Board. (Ex. 3, at 51.) Also see Ex. 4, "DEFENDANTS' SUPPLEMENTARY SUBMISSION IN RESPONSE TO PLAINTIFFS' SUPPLEMENTARY SUBMISSION IN OPPOSITION TO MISCELLANEOUS DEFENSE MOTIONS." Further, he also called to make sure his resignation was on the Westover Sewer Board November 12, 2008 agenda. (Ex. 6, excerpt, dep. Robin Glover, at 30.)

Q. Did anyone ever prevent you from rescinding your October 14, 2008 letter?

A. You mean asking me to take it back?

Q. No. Did anyone ever say you can't take that letter back?

A. No.

(Ex. 3 at 34.)

Moreover, Appellant confirmed that, after he resigned from his position as working field supervisor for the Westover Sewer Board, he never applied for any positions with the second legal entity, the city of Westover, and, further, that no one ever prevented him from applying for jobs with the city of Westover. By way of example:

Q. From October 14, 2008 on, I'm asking you if you—well, my question was, was there anything that prevented you from applying for any jobs with the [c]ity of Westover from October 2008 until today?

A. Well, my understanding is I could not do it, being that it's separate entities, I was still collecting [workers' compensation] off the sewer department [sic].

Q. How did you get that understanding, being that it was separate entities?

A. I don't recall right now.

Q. But nevertheless, you didn't apply for any positions with the [c]ity of Westover?

A. No.

(Ex. 3, at 36.)

* * *

Q. Had you applied for any job with the [c]ity of Westover within two weeks before the October 14, 2008 resignation?

A. No.

(Ex. 3, at 44.)

* * *

Q. Just so I'm clear, what job do you allege you were going to transfer to in the city garage?

A. Just any job. I mean I done them all in the past.

Q. But you knew of no job opening, correct, at the city garage?

A. Not at that time, no.

Q. Did you know of any job opening with the [c]ity of Westover at that time?

A. No, not that I'm aware of. Can I take a quick break?

Q. Of course you can.

A. I rubbed my eyes and I've got creme in them.

(Ex. 3, at 48.)

Moreover, while Appellant has suggested that there was something untoward about the November 12, 2008 Westover Sanitary Sewer Board meeting, the motion discussed in the meeting was, in fact, to accept Appellant's resignation, as working field supervisor, and hire someone to replace him in that working field supervisor position--not to transfer anyone. In other words, the second portion of that motion was to allow the position of working field supervisor to be posted internally, for filling the position, consistent with equal employment opportunity laws; no transfer was effected. (See Ex. 4, "DEFENDANTS' SUPPLEMENTARY SUBMISSION IN RESPONSE TO PLAINTIFFS' SUPPLEMENTARY

SUBMISSION IN OPPOSITION TO MISCELLANEOUS DEFENSE MOTIONS," and Ex. 1 of that SUBMISSION, "MINUTES CITY OF WESTOVER SANITARY SEWER BOARD.")

Further, immediately after that November 12, 2008 Westover Sanitary Sewer Board meeting, an "INTERNAL JOB POSTING: WORKING FIELD SUPERVISOR," bearing a date of November 12, 2008, indeed was posted pursuant to equal employment opportunity guidelines established by state and federal law. (See Ex. 4, "DEFENDANTS' SUPPLEMENTARY SUBMISSION IN RESPONSE TO PLAINTIFFS' SUPPLEMENTARY SUBMISSION IN OPPOSITION TO MISCELLANEOUS DEFENSE MOTIONS," and its Ex. 2, "INTERNAL JOB POSTING: WORKING FIELD SUPERVISOR.")

As a result of that November 12, 2008 internal posting caused by the resignation of the Appellant, there were then two (2) internal applicants for the Appellant's former position. Those applicants were David Huggins, Appellant's brother, and Jeffrey Hunt, Appellant's former subordinate. (See Ex. 4, "DEFENDANTS' SUPPLEMENTARY SUBMISSION IN RESPONSE TO PLAINTIFFS' SUPPLEMENTARY SUBMISSION IN OPPOSITION TO MISCELLANEOUS DEFENSE MOTIONS," and Ex. 3 to that SUBMISSION, "Application for Employment" for both David Huggins and Jeffrey Hunt.)

After interviews were conducted for the position of working field supervisor, the Appellant's brother, David Huggins, was placed in the position with the lawful approval of Mayor Dave Johnson. (See Ex. 4, "DEFENDANTS' SUPPLEMENTARY SUBMISSION IN RESPONSE TO PLAINTIFFS' SUPPLEMENTARY SUBMISSION IN OPPOSITION TO MISCELLANEOUS DEFENSE MOTIONS," and Ex. 3 to that SUBMISSION, notation of "Hire date[,] 12-1-08.")

- II. The Circuit Court was correct in its conclusion that "Plaintiff William Huggins was not terminated from his employment as contemplated under West Virginia Code Section 23-5A-3(a). Rather, Mr. Huggins voluntarily resigned."
- III. The Circuit Court was correct in its conclusion that "[t]he Huggins' health insurance ceased as a consequence of Mr. Huggins' resignation[]" not because he filed a workers' compensation claim.

While there was no ordinance or policy requiring the Westover Sewer Board to approve Appellant's resignation, since he was an at-will employee and could resign his job without the approval of anyone, once he voluntarily signed the letter of resignation, his health insurance was terminated on November 12, 2008.

Notwithstanding the unequivocal testimony of the Appellant set forth above, confirming that he voluntarily resigned, he has alleged "[t]he termination of Mr. Huggins's employment[,] with the defendant [Westover Sanitary] Sewer Board[,] was a discriminatory practice in violation of West Virginia Code § 23-5A-3." Complaint, ¶ 16. In addition, he claimed that the "action was specifically taken at the request and at the urging of the defendant Johnson." Complaint, ¶ 17. Again, the claim in paragraph 17 is not supported by any testimony whatsoever. More particularly,

Q. I was at 13, but maybe I need to read 12 first, Jacques. Okay, in [p]aragraph 12, sir, you say, 'The defendant Sewer Board improperly cancelled the plaintiffs' insurance coverage in violation of West Virginia Code 23-5A-2.'[:] and then[,] in the next paragraph, you allege, 'This action was specifically taken at the request and the urging of the defendant Johnson.'

What facts do you have to support your claim that the cancellation of your insurance coverage was specifically taken at the request and urging of defendant Johnson?

A. Well, that decision would have had to be done by Mayor Johnson and the board.

Q. Well, how do you know that Mayor Johnson urged anyone to cancel your insurance policy, if you do?

A. **I can't really say that he urged it.** Like I say, it had to be a decision by all three. (emphasis added)

Q. Why do you say that?

A. Because it had to be discussed in a meeting and voted on, you know, to do so.

Q. Are you aware of any meeting where the cancellation of your insurance was discussed?

A. No, ma'am.

Q. So you really just guessing, right?

MR. WILLIAMS: Object to the form of the question.

Q. Give me specific knowledge that you have that Mayor Johnson urged that your insurance coverage be cancelled?

A. Like I said, it had to be the whole board. I don't think he could make that decision on his own.

Q. You have no knowledge[,] though[,] with respect to how that happened, do you, the cancellation of your insurance policy?

A. Not really. The only thing I know is we got a letter in the mail that it was canceled.

Q. That's all you know about it.

A. Right.

The elements of a claim for discrimination based on filing a workers' compensation claim, West Virginia Code § 21-5A-1, are completely lacking, in the case *sub judice*, as evidenced in Appellant's deposition transcript as outlined above. In *Powell v. Wyoming Cablevision, Inc.*, 184 W. Va. 700, 704, 403 S.E.2d 717, 721 (1991), the Supreme Court of Appeals of West Virginia held that

in order to make a prima facie case of discrimination under W. Va. Code 23-5A-1, *et seq.*, the employee must prove that: (1) an on-the-job injury was sustained; (2) proceedings were instituted under the Workers' Compensation Act, W. Va. Code, 23-1-1, *et seq.*; and (3) the filing of a workers' compensation claim was a significant factor in the employer's decision to **discharge** or otherwise discriminate against the employee (footnote omitted) (emphasis added).

While the Appellees have acknowledged Appellant met elements (1) and (2) above, i.e., that Appellant sustained an on-the-job injury and filed a workers' compensation claim, nevertheless, Appellant offered no evidence whatsoever that he was able to establish the remaining element, that "(3) the filing of a workers' compensation claim was a significant factor in the employer's decision to discharge or otherwise discriminate against the employee." *Id.* The evidence is simply overwhelming, Appellant resigned from his job; he never was terminated. Hence, the Circuit Court was correct—Appellant's claim that he was terminated while on workers' compensation is not remotely supported by any facts. *Mounts v. Corbin, Ltd.*, 771 Supp. 145 (S.D. W. Va. 1991).

V. The Circuit Court was correct in its conclusion that William Huggins cannot prove fraud and that "[a]t the time . . . [Mayor] Johnson made his statements to Mr. Huggins, they were not false."

VI. The Circuit Court was correct in its conclusion that, "[a]s to the allegations of misrepresentation, Plaintiff cannot prove[,] by clear and convincing evidence[,] substantial, outrageous, and reprehensible conduct on the part of . . . [Mayor] Johnson. Mayor Johnson did not unequivocally promise Mr. Huggins a transfer to the City of Westover."

VII. The Circuit Court was correct in its conclusion that, “[i]mportantly, even if Mr. Huggins had an agreement for employment, he could not have fulfilled his end of the arrangement . . . [since] [a]t the time of his resignation[,] he was receiving Worker’s [sic] Compensation and was not able to work. He could not have gone to work for the City of Westover if he had been offered a job . . . [as] he was not cleared to return to work until after he filed this suit.”

The Appellant cannot support his claim of misrepresentation, either—, i.e., that “[o]n various occasions[,] in October and in November 2008[,] the defendant [Appellee] Johnson represented to the plaintiff, William R. Huggins, that he would be transferred to employment with [t]he [c]ity garage contingent upon resigning his employment with [t]he [Westover Sanitary] Sewer Board.” Complaint, ¶ 27. Appellant additionally made unsupported claims that those “representations on the part of defendant, Johnson, were either negligently or fraudulently made to the plaintiff, William R. Huggins, for the purpose of eliminating him from employment with both [t]he [Westover Sanitary] Sewer Board and [t]he [c]ity of Westover, which are related entities.” Complaint, ¶ 28. Yet again, Appellant’s testimony regarding that conversation with Mayor Johnson, however, belies his claim of misrepresentation or fraud as demonstrated below:

Q. Let’s go to [p]aragraph [s]even of the Complaint, sir[]; it begins right there at the bottom and goes to the second page. That states, ‘At various times on and before October 14, 2008, the plaintiff William R. Huggins and the defendant Johnson had discussed Mr. Huggins’s desire to transfer to employment at the City [of Westover] garage and leave his position with the [Westover] Sewer Board.’

I want you to tell me the first time that you allege that you discussed your desire to transfer employment to the [city of Westover] garage and leave your position with the [Westover Sanitary] Sewer Board with Dave Johnson.

A. It was on October 14th in the parking lot at City Hall.

Q. All right, who was present there besides you?

A. Me, Mr. Johnson, and Mr. Panico was [sic] in the lot also.

Q. Tell me everything you recall that was said in that conversation.

A. Well, I approached him and told him, you know, my wishes, if I could step down because of stress and stuff going on. I knew I'd have to take a cut in pay.

Q. When you say[,] 'him[,]' do you refer to Mayor Johnson?

A. Yes.

Q. All right.

A. And Mr. Panico asked me if I was on medication[;] and I told him yeah, but I could not remember and I still cannot remember the name of the medication.

Q. What else occurred during that conversation?

A. And Mr. Johnson asked me if that would be permanent or just till my mother- and father-in-law passed away.

Q. Just until your mother- and father-in-law passed away?

A. Um-huh (yes).

Q. What did you say, if anything?

A. I don't recall exactly what I said at that point.

Q. All right, sir. Do you recall anything else that Mr. Panico said?

A. No.

Q. Do you recall anything else that Mayor Johnson said?

A. Yes, he said that I would need to put my wishes in black and white so it could be presented to the board.

Q. What else do you allege that Mayor Johnson said during that conversation on October 14, 2008?

A. As far as I remember, nothing else was discussed.

Q. When was the next time you had a discussion, you allege, with respect to your desire to transfer to employment with the city garage and leave your position with the sewer board?

A. I really can't recollect that there was another time right now.

Q. All right. Is there anything that would refresh your memory?

A. Not at this time.

(Ex. 3, at 45-48.)

In *Horton v. Tyree*, 104 W. Va. 238, 242, 139 S.E. 737, 738, that court noted that "in order to prove an action for fraud, a plaintiff must prove (1) that the act claimed to be fraudulent was the act of the defendant or induced by him; (2) that it was material and false; false; that plaintiff relied upon it and was justified under the circumstances in relying upon it; and (3) that he was damaged because he relied on it." Applying these elements to the case before this Court, nothing the Appellant has said, outlined in pages 45-48 of his deposition testimony above, at pages 9-11, established the elements of a claim for fraud. Thus, any claim for fraud was appropriately dismissed by the Circuit Court.

Furthermore, the claim for misrepresentation likewise lacks merit because,

[I]n order for a plaintiff employee to prevail on the narrowly construed cause of action by the employer against an employer for fraudulent misrepresentation . . . the employee must plead his or her claim with particularity, specifically identifying the facts and circumstances that

constitute misrepresentation, and (2) prove by clear and convincing evidence all essential elements of the claim, including the injury resulting from the fraudulent conduct. A plaintiff employee is not entitled to recover unless the evidence at trial is persuasive enough for both the judge and jury to find substantial, outrageous and reprehensible conduct which falls outside of the permissible boundary of protected behavior under the statute. If the pleadings or evidence adduced is insufficient to establish either of the two factors stated above, the trial court may dismiss the action pursuant to Rule 12(b), Rule 56, or Rule 50 of the West Virginia Rules of Civil Procedure.

Persinger v. Peabody Coal, 196 W. Va. 707, 718-719, 474 S.E.2d 887, 898-899 (1996).

Simply nothing outlined in Ex. 3, pages 45-48 of Appellant's testimony, even remotely established any of the elements of misrepresentation since no one ever induced him to resign; nor did anyone terminate him—he terminated himself. Neither Mayor Johnson or anyone else could keep Appellant from resigning; he had ample time to reconsider his resignation and even called to ensure his resignation was on the November 12th agenda. (Ex. 6, excerpt, dep. of Robin Glover, at 30). Appellant charted his own course, no one else. Further, he readily admitted he relied on hearsay to support his claim, in paragraph 28 of the Complaint, that Mayor Johnson was trying to eliminate his position. (Ex. 3, 106-108.)

IV. The Circuit Court was correct in its conclusion "that the substance of . . . [Appellant's] conversation with . . . [Mayor] Johnson did not form a contract."

Even given his admission that only the members of the Westover City Council could approve, by a public vote, any employment with the City, in paragraph 24 of his Complaint, Appellant nevertheless alleged that he "had an agreement with [t]he City [of Westover][.] on the basis of negotiations with it's [sic] agent, the defendant Johnson, to be employed at [t]he City [of Westover] garage to begin immediately and concurrently with his departure from employment with the [Westover Sanitary] Sewer Board." For instance:

Q. You [formerly] worked for the [c]ity of Westover, you've told me, before, and[,] in fact, your employment had to be approved by the city council, didn't it?

A. You mean when I was first hired by the city?

Q. Yeah, they had to vote on your employment.

A. Back then, I'm trying to think, back then, it was a strong mayor, weak council. The mayor had the decision at the time.

Q. It's changed since then, hasn't it?

A. Yes.

Q. And it's the council that makes the decision to employ?

A. Yes, ma'am.

Q. Not the mayor.

A. Well, the mayor would just submit, you know.

Q. And the council votes on it.

A. Yes.

Q. The mayor doesn't have a vote, right?

A. No.

(Ex. 3, at 105-106.)

Moreover, Appellant clearly misapprehends state law dealing with public contracts since, a public body in West Virginia, may only speak through the vote of its members. Thus any contention that the Appellant, a public employee, could enter into an oral contract for employment, with Mayor Johnson, would constitute an act committed *ultra vires*. *Pennsylvania Lightning Rod Co. v. Board of Educ.*, 20 W. Va. 360 (1882); *Honaker v.*

Board of Educ., 42 W. Va. 170, 24 S.E. 544 (1896); *State ex rel. Dilley v. West Virginia Public Employees Retirement System*, 184 W. Va. 570, 401 S.E.2d 916 (1991); *City of Fairmont v. Hawkins*, 172 W.Va. 240, 304 S.E.2d 824 (1983); *Ray v. City of Huntington*, 81 W. Va. 607, 95 S.E. 23 (1918).

In fact, in a case involving the city of Huntington, the *Ray* court cited above clearly defined what acts must occur in the public light. For example, it stated,

when it undertakes to exercise the right conferred and perform the duty imposed, it can do so only by ordinance, order, or resolution regularly passed and recorded as required by sec. 38 of the charter [of the city of Huntington] (Acts 1901, ch. 150), which shall be kept open and subject, whenever convenient, to inspection by any one interested in knowing what the corporation has done affecting his interest.

81 W. Va. 607, 610, 95 S.E. 23, 24 (1918). Hence, any claim by the Appellant that he entered into an oral contract with Mayor Johnson is void as a matter of public policy and state law. *City of Fairmont v. Hawkins*,² 172 W.Va. 240, 243-244, 304 S.E.2d 824, 827-828 (1983); *Ray v. City of Huntington*, 81 W. Va. 607, 95 S.E. 23 (1918); *Pennsylvania Lightning Rod Co. v. Board of Educ.*, 20 W. Va. 360 (1882); *Honaker v. Board of Educ.*, 42 W. Va. 170, 24 S.E. 544 (1896); *State ex rel. Dilley v. West Virginia Public Employees Retirement System*, 184 W. Va. 570, 401 S.E.2d 916 (1991).

In *City of Moundsville v. Yost*, 75 W. Va. 224, 83 S.E. 910 (1914), the court held that "[a] municipality acts only through its assembled council, whose will can be expressed only by a vote embodied in some distinct and definite form." *Id.* at syl. pt. 1. See also, *City of Fairmont v. Hawkins*, syl. pt. 3, 172 W. Va. 240, 304 S.E.2d 824 (1983) (same); *Ray v. City of Huntington*, 81 W. Va. 607, 95 S.E. 23 (1918) (same). This legal principle was reaffirmed

²The *Hawkins* court dealt with a case where the failed to obtain the approval of city council before settling an insurance claim in violation of the Charter of the City of Fairmont.

relatively recently in *State ex rel. Dilley v. West Va. Pub. Employees Ret. Sys.*, 184 W. Va. 570, 401 S.E.2d 916 (1991), when the court recognized that it has

repeatedly held that the actions of one member of a corporate body cannot bind the entire body. In *Pennsylvania Lightning Rod Co. v. Board of Education of Cass Township*, 20 W. Va. 360 (1882), the plaintiff had contracted with each of the board of education members separately and individually to furnish and erect lightning rods on various school buildings. The Court of that day held that the contract was unenforceable, stating in Syllabus Point 3:

"The members of a corporation aggregate cannot separately and individually give their consent, or enter into a contract, in such a manner as to oblige themselves as a collective body or board."

See *Edwards v. Hylbert*, 146 W. Va. 1, 118 S.E.2d 347 (1960) (city council); *Daugherty v. Ellis*, 142 W. Va. 340, 97 S.E.2d 33 (1956) (county commission); *Goshom's Ex'rs v. County Court*, 42 W. Va. 735, 26 S.E. 452 (1896) (county court); *Honaker v. Board of Ed.*, 42 W. Va. 170, 24 S.E. 544 (1896) (county board of education).

Id., 184 W. Va. at 576, 401 S.E.2d at 922.

Early on, in *Honaker v. Board of Educ.*, 42 W. Va. 170, 24 S.E.544 (1896), the court considered a debt allegedly incurred by a local board of education for the purchase of school charts. In its discussion of the applicable law, in deciding in that case that the board was obligated on the debt, the court held that "[t]he members of the board, acting individually and separately, and not as a board convened for the transaction of business, cannot accept a proposal or make any contract whatever that will bind them as a corporation." *Id.*, syl. pt. 2. Earlier still, the court had concluded that "[t]he members of a corporation aggregate cannot separately and individually give their consent, or enter into a contract, in such a manner as to oblige themselves as a collective body or board." *Pennsylvania Lightning Rod Co. v. Board of Education of Cass Township*, 20 W. Va. 360 (1882). See also, *Edwards v. Hylbert*, 146 W. Va. 1, 10, 118 S.E.2d 347, 352 (1960) ("the

members of a fiscal body such as a municipal council may act only as a group, and that such members can not bind the fiscal body by acting separately and individually"); *Daugherty v. Ellis*, syl. pt. 4, 142 W. Va. 340, 97 S.E.2d 33 (1956) ("The members of a county court can not separately and individually give their consent or enter into a contract and in that manner obligate the court as a corporate entity."); *Wysong v. Walden*, syl. pt. 10, 120 W. Va. 122, 196 S.E. 573 (1938) ("A county board of education can act only as a body, at a meeting duly and regularly called or held, and the test of the legality or illegality of a particular act is to be determined by the action taken at such meeting. The mere fact that prior to such meeting a majority of its members may have determined on a particular course, will not render the subsequent action of the board thereon illegal, if otherwise properly taken."); *Goshorn's Ex'rs v. County Court*, syl. pt. 2, 42 W. Va. 735, 26 S.E. 452 (1896) ("the members of such corporation [county court] cannot individually give their consent or enter into a contract in such manner as to oblige the corporate body").

Likewise, in this case, Mayor Johnson could not bind the city of Westover; he was not vested with that authority; Appellant acknowledged that in his deposition (Ex. 3, at 105-106.) Moreover, nothing in Mayor Johnson's words or deeds, as the Circuit Court rightly concluded, established the terms of a contract of employment for the Appellant.

VIII. The Circuit Court was correct in its conclusion that "Defendant Johnson was acting within his scope as an employee of political subdivision when he spoke to Mr. Huggins about changing jobs and when he presented Mr. Huggins' letter to the [Westover] Sewer Board[] [and that] Plaintiffs' claim for punitive damages is prohibited by statute."

Appellant's claim for punitive damages, stated in his WHEREFORE paragraph, at 18, clearly is unsupported and forbidden against a political subdivision, even if the Appellant

were able to adduce evidence to support any such claim; and he wholeheartedly has not been able to do so as fully demonstrated in this matter. The West Virginia Legislature has clearly and unambiguously provided that “[i]n any civil action involving a political subdivision or any of its employees as a party defendant, an award of punitive or exemplary damages against such political subdivision is prohibited.” (emphasis added). W. Va. Code § 29-12A-7(a).

Further, any claim against Mayor Johnson otherwise fails and is wholly unsubstantiated; Appellant’s sole support of that claim was “they terminated my employment.” (Ex. 3, at 64-65.) Of course, while being untrue, Appellant cannot remotely establish the elements of a claim for punitive damages. For example, pursuant to syllabus points 12 and 13 of *Marsch vs. American Electrical Power Company*, 207 W.Va. 174, 530 S.E.2d. 173 (1999):

“Punitive or exemplary damages are such as, in a proper case, a jury may allow against the defendant by way of punishment for willfulness, wantonness, malicious, or other like aggravation of his wrong to the plaintiff, over and above full compensation for all injuries directly or indirectly resulting from such wrong.’ Syl. pt.1 *O’Brien v. Snodgrass*, 123 W. Va. 483, 16 S.E.2d. 621 (1941).” Syl. pt. 4 *Harless v. First Nat’l Bank*, 169 W.Va. 673, 289 S.E.2d. 692 (1982).

“Punitive damage instructions are legitimate only where there is evidence that the defendant acted with wanton, willful, or reckless conduct, or criminal indifference to civil obligation effecting rights of others to appear, or where the legislature so authorizes.” Syl. pt.7, *Michael v. Sabao*, 192 W.Va. 585 453 S. E. 2d 419 (1994).

Accordingly, the Circuit Court just held that Appellant’s claim for punitive damages should be dismissed.

RELIEF PRAYED FOR

Based upon the foregoing, the Appellees, city of Westover; Dave Johnson; and the Westover Sanitary Sewer Board, respectfully request that the decision of the Circuit Court

of Monongalia County be affirmed, there being no genuine issues of material fact to entitle Appellees a trial on any issues.

CITY OF WESTOVER SANITARY SEWER BOARD,
CITY OF WESTOVER, and DAVE JOHNSON,

By Counsel,

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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

WILLIAM R. HUGGINS and
DENISE HUGGINS, Husband
and Wife,

Appellants,

v.

No. 35761

THE CITY OF WESTOVER SANITARY
SEWER BOARD, a public agency, THE
CITY OF WESTOVER, a municipal
corporation, and DAVE JOHNSON ,

Appellees.

CERTIFICATE OF SERVICE

I, Barbara G. Arnold, counsel for Appellees/Defendants, The City of Westover Sanitary Sewer Board; The City of Westover; and Dave Johnson, do hereby certify that, on the 18th day of March, 2011, I served the foregoing "Appellee's Brief," upon the following, by depositing a true copies of the same, in the United States mail, in envelopes addressed as follows:

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