

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

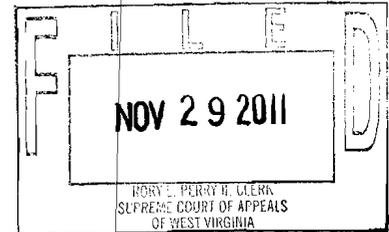
No. 11-11615

ON PETITION FOR WRIT OF PROHIBITION TO THE CIRCUIT COURT OF
JEFFERSON COUNTY

STATE OF WEST VIRGINIA EX REL.
JULIE MASSANOPOLI PIPER,
ADMINISTRATRIX OF THE ESTATE
OF WILLIAM LEE PIPER,
DECEASED,

Petitioner,

Appealed from the Circuit Court
of Jefferson County, Civil Action
No. 09-C-415



v.

HONORABLE DAVID H. SANDERS,
JUDGE OF THE CIRCUIT COURT OF
JEFFERSON COUNTY, AND ROBIN
SKINNER PRINZ, AS PERSONAL
REPRESENTATIVE FOR THE
ESTATE OF KYLE HOFFMAN, JR.

Respondents

VERIFIED WRIT OF PROHIBITION

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I. QUESTION PRESENTED

1. Did the Circuit Court ignore Christian v. Sizemore, 181 W.Va. 628 (1989) when it refused to stay the trial of the underlying tort claim pending final resolution of the declaratory judgment action against State Farm seeking insurance coverage?

II. STATEMENT OF THE CASE

On October 28, 2007, William Piper and Kyle Hoffman, Jr. suffered fatal injuries when the vehicle they were traveling in collided with another vehicle. Mr. Piper was insured by Geico Indemnity Company (“Geico”). Robin Skinner Prinz, as Administratrix of the Estate of Kyle L. Hoffman Jr., deceased (“Ms. Prinz”), reached a settlement agreement with Geico. Appendix 79-107. As detailed in the Petition for Approval of Wrongful Death Settlement filed in April 2009, Ms. Prinz agreed to accept the \$25,000 policy limits amount under Mr. Piper’s Geico policy in exchange for a full release of liability for the Estate of William Piper. Appendix 79-107. Ms. Prinz later withdrew the wrongful death settlement petition, so that Ms. Prinz could investigate the possibility of other available insurance policies. The Circuit Court dismissed the petition without prejudice on April 6, 2010. Appendix 108-109.

Ms. Prinz and Kyle Hoffman, Sr. later filed a Complaint with four counts. Appendix 4-49. Count I asserts a wrongful death claim against John Doe, Administrator of the Estate of William Piper, Counts II and III assert declaratory judgment and Unfair Trade Practices Act claims against Erie Insurance Exchange, and Count IV asserts a declaratory judgment claim against State Farm Fire & Casualty Company (“State Farm.”) Appendix 4-49. The parties later agreed to substitute Julie Massanopoli Piper as Administratrix of the Estate of William Piper (“Ms. Piper”). Appendix 110-112.

The parties filed a Joint Motion to Bifurcate and for Stay, requesting the Circuit Court stay Ms. Prinz’s underlying tort claim in Count I, pending full and final resolution of Ms. Prinz’s

claims regarding insurance coverage asserted in Counts II-IV. Appendix 113-118. On July 22, 2010, the Circuit Court granted the motion, staying the wrongful death claim in Count I, pending full and final resolution of the claims stated in Counts II-IV. Appendix 119-121. Ms. Prinz and Kyle Hoffman, Sr. settled the claims asserted in Counts II and III against Erie Insurance Exchange. The Circuit Court dismissed Kyle Hoffman, Sr.'s claims with prejudice, pursuant to the agreement of the parties. Appendix 122-123.

From June 1, 2011 through June 2, 2011, the Circuit Court conducted a jury trial on Count IV of Ms. Prinz's Complaint. Appendix 124-125. Pursuant to the jury's finding, the Circuit Court held that the State Farm umbrella policy at issue provides liability coverage for the purportedly negligent actions of William Piper for the death of Kyle Hoffman, Jr. Appendix 124-125. State Farm filed a Notice of Appeal to this Court, Case No. 11-1265, appealing the judgment entered against it. Appendix 126-136. State Farm's appeal remains pending before this Court.

On June 28, 2011, the Circuit Court entered a Scheduling Order, providing that trial for the wrongful death claim in Count I¹ will occur on January 17, 2012. Appendix 181-184. On August 30, 2011, Ms. Piper filed a Motion for Stay, requesting the Circuit Court stay Count I of Ms. Prinz's Complaint pending final resolution of Ms. Prinz's claim against State Farm. Appendix 137-152. Ms. Prinz opposed Ms. Piper's request for a stay. Appendix 153-162. On October 31, 2011, the Circuit Court denied Ms. Piper's Motion for Stay. Appendix 1-3. Without this Court's intervention, trial on the underlying wrongful death claim will proceed on January 17, 2012 before the existence of State Farm coverage is finally adjudicated.

III. SUMMARY OF ARGUMENT

¹ The Scheduling Order contains a typographical error. While the Scheduling Order indicates that the January 17, 2012 trial date is for Counts II through IV, the trial date is for Count I. Ms. Prinz previously settled Counts II-III against Erie Insurance Exchange, and the trial for Count IV was held from June 1, 2011 through June 2, 2011.

On July 22, 2010, the Circuit Court stayed the underlying tort claim in Count I of Ms. Prinz's Complaint, pending full and final resolution of the insurance claims in Counts II-IV of Ms. Prinz's Complaint. The Order specifically cites Christian v. Sizemore, 181 W.Va. 628 (1989), stating that when a insurance coverage question is separable from the issues in the underlying tort action, the coverage issue should ordinarily be decided first, as it often may be dispositive of the personal injury litigation. Applying this principle, the Circuit Court found that the insurance coverage questions should be decided first, and that no party will suffer prejudice from the Circuit Court bifurcating the issues of coverage and the underlying tort action. Although Ms. Prinz's insurance coverage claim against State Farm remains pending, the Circuit Court ignores the findings in its July 22, 2010 Order and seeks to force the underlying tort claim to trial. The Circuit Court's October 31, 2011 Order denying Ms. Piper's Motion to Stay ignores the rule from Christian v. Sizemore.

As a result of the Circuit Court's failure to follow the rule from Christian v. Sizemore, Ms. Piper suffers substantial prejudice. Ms. Prinz has offered to release Ms. Piper from liability in exchange for the policy limits from Geico and State Farm. While Geico has offered its policy limits, State Farm refuses to make a settlement offer to date as the existence of the State Farm coverage has not been finally adjudicated. Without a settlement offer from State Farm, Ms. Piper faces the substantial risk of incurring a excess verdict at the January 17, 2012 trial of the underlying tort claim. This Court can save Ms. Piper from this prejudice, by permitting the final adjudication of Ms. Prinz's claim against State Farm before the trial of the underlying tort claim. Christian v. Sizemore calls for such a stay, as noted in the Circuit Court's July 22, 2010 Order. This Court should issue a writ of prohibition ordering the Circuit Court to vacate its October 31,

2011 Order, and stay the underlying wrongful death claim pending full and final resolution of Ms. Prinz's claim against State Farm.

IV. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Ms. Piper submits that review of the record should allow this Court to dispose of the pending case without either issuance of a Rule or oral argument. However, if this Court schedules oral argument, Ms. Piper submits that the argument should proceed under Rule 19.

V. ARGUMENT

A. Standard of Review.

“The writ of prohibition shall lie as a matter of right in all cases of usurpation and abuse of power, when the inferior court has no jurisdiction of the subject matter in controversy, or, having such jurisdiction, exceeds its legitimate powers.” W.Va. Code § 53-1-1.

This Court should consider the following five factors,

In determining whether to entertain and issue the writ of prohibition for cases not involving an absence of jurisdiction but only where it is claimed that the lower tribunal exceeded its legitimate powers, this Court will examine five factors: (1) whether the party seeking the writ has no other adequate means, such as direct appeal, to obtain the desired relief; (2) whether the petitioner will be damaged or prejudiced in a way that is not correctable on appeal; (3) whether the lower tribunal's order is clearly erroneous as a matter of law; (4) whether the lower tribunal's order is an oft repeated error or manifests persistent disregard for either procedural or substantive law; and (5) whether the lower tribunal's order raises new and important problems or issues of law of first impression. These factors are general guidelines that serve as a useful starting point for determining whether a discretionary writ of prohibition should issue. Although all five factors need not be satisfied, it is clear that the third factor, the existence of clear error as a matter of law, should be given substantial weight.

Syl. Pt. 4, State ex rel. Hoover v. Berger, 199 W.Va. 12 (1996). For the first factor, Ms. Piper has no other adequate means to obtain the desired relief of a stay in the underlying tort claim. Without action by this Court, the scheduled trial on the underlying tort claim will proceed on

January 17, 2012 before the final adjudication of Ms. Prinz's insurance coverage action against State Farm.

For the second factor, Ms. Piper will suffer prejudice in a way not correctable on appeal if this Court refuses to intervene. While Ms. Prinz has offered to settle for Geico and State Farm's policy limits, State Farm refuses to make a settlement offer because the issue of State Farm coverage has not been finally adjudicated. Geico offered Ms. Prinz its policy limits, and Ms. Piper remains at the mercy of State Farm. Without final adjudication of Ms. Prinz's claim against State Farm, State Farm will not make a settlement offer on behalf of Ms. Piper and the trial on the wrongful death claim will proceed. At the trial on the wrongful death claim, Ms. Piper runs the substantial risk of suffering a verdict in excess of her insurance coverage. Such a excess verdict is not correctable on appeal. However, a excess verdict can likely be avoided altogether if Ms. Prinz's coverage claim against State Farm is finally adjudicated before a trial on the underlying wrongful death claim.

Under the third factor, the Circuit Court's order denying Ms. Piper's motion to stay violates the principles established in Christian v. Sizemore. In Christian v. Sizemore, 181 W.Va. 628, 632-633 (1989), this Court held "[w]here the coverage question is separable from the issues in the underlying tort action, it should ordinarily be decided first, as it often may be dispositive of the personal injury litigation." The same rule applies to the current case, but the Circuit Court refused to follow the rule. For the fourth factor, the Circuit Court expressly refused to consider the controlling authority of Christian v. Sizemore. While Ms. Piper raised Christian v. Sizemore in Ms. Piper's motion to stay, the Circuit Court refused to consider Christian v. Sizemore at all, stating in its Order, "Defendant [Ms. Piper] has offered no authority - statutory, precedential or otherwise - supporting her claim that such a stay is proper." Appendix 1-3. For the fifth factor,

the Circuit Court's order does not raise new and important problems or issues of law of first impression. Instead, the Circuit Court's order ignores the controlling authority of Christian v. Sizemore. Accordingly, the writ should issue so this Court can correct the Circuit Court's clear error of law.

B. This Court should stay the underlying wrongful death claim pending full and final resolution of Ms. Prinz's coverage claim against State Farm.

As this Court held in Christian v. Sizemore, "[w]here the coverage question is separable from the issues in the underlying tort action, it should ordinarily be decided first, as it often may be dispositive of the personal injury litigation." Christian v. Sizemore, 181 W.Va. 628, 632-633 (1989). The coverage question at issue in Count IV of Ms. Prinz's Complaint against State Farm is separable from the issues in the underlying tort action in Count I. Thus, this Court should stay Count I pending final resolution of Count IV.

Christian v. Sizemore involves similar facts to the current case. In Christian v. Sizemore, Plaintiff Willetta Christian brought a personal injury action against Defendants Rodney and Hester Sizemore for injuries resulting from a car accident. Id. at 629. The Sizemore's automobile insurer disclaimed coverage, and filed a declaratory judgment action in federal court on the coverage issue. Id. Plaintiff moved to dismiss the insurer's federal action, and Plaintiff filed a motion in state court requesting leave to add a declaratory judgment claim regarding the existence of coverage. Id. Plaintiff agreed to bifurcated trials on the insurance coverage issue and the personal injury claim, but the Circuit Court denied Plaintiff's request. Id. On appeal, this Court reversed the Circuit Court, and held that Plaintiff could bring the declaratory judgment action regarding coverage. Id. at 633. This Court noted, "[t]here is every indication that resolution of the coverage issue by declaratory judgment will expedite the litigation below." Id.

Just as this Court ordered in Christian v. Sizemore, this Court should order that the insurance issue be determined first. The current case is very similar to Christian v. Sizemore, because each case has separate issues of insurance coverage and a underlying tort action involving a car accident. Concluding the insurance issue in Count IV before the adjudication of the underlying wrongful death claim in Count I will promote settlement of the underlying personal injury claim. Specifically, if the judgment as to Count IV is upheld against State Farm, State Farm will be more inclined to come to a settlement agreement with Ms. Prinz in light of Shamblin v. Nationwide Mut. Ins. Co., 183 W.Va. 585 (1990). Such a settlement would benefit judicial economy by eliminating the need for a trial on Count I of Ms. Prinz's claim.

In a Order entered July 22, 2010, by consent of the parties, the Circuit Court stayed the underlying tort claim in Count I pending full and final resolution of the insurance claims in Counts II-IV. Appendix 119-121. The Order cites Christian v. Sizemore, stating, “[w]here a insurance coverage question is separable from the issues in the underlying tort action, the coverage issue should ordinarily be decided first, as it often may be dispositive of the personal injury litigation.” Appendix 119-121, ¶ 2. The Order further provides, “[t]he issues of insurance coverage and the underlying tort claim are separable in this case, and the Court should decide the insurance coverage questions first.” Appendix 119-121, ¶ 3. The Order further provides, “[d]eciding the coverage issues first will be conducive to the expedition of the litigation, will promote judicial economy, and will promote the possibility of a joint resolution of the underlying tort claim.” Appendix 119-121, ¶ 4. Lastly, the Order provides, “[n]o party will suffer prejudice from the Court bifurcating the issue of coverage and the underlying tort action.” Appendix 119-121, ¶ 5. The same reasoning contained in this Order still applies, but the Circuit Court refused to apply to the same principles in its October 31, 2011 Order.

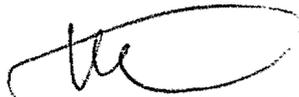
Without a stay in the underlying tort claim, Ms. Piper runs the substantial risk of incurring a verdict in excess of the available insurance coverage. For example, Ms. Prinz has disclosed the opinions of Dr. Richard Lurito, who believes Ms. Prinz has suffered a economic loss between \$2,184,847 and \$3,800,465. Appendix 163-179. Ms. Piper does not need to suffer such a excess verdict, as Ms. Prinz has offered to settle her claim against Ms. Piper for the State Farm policy limits of \$1,000,000, and the Geico policy limits of \$25,000. Appendix 180. While Geico has offered its \$25,000 policy limits, State Farm has refused to make a settlement offer because the existence of the State Farm policy has not been finally adjudicated. Once Ms. Prinz's claim against State Farm is finally adjudicated, State Farm in all likelihood will make a settlement offer to Ms. Prinz. Such a settlement would save Ms. Piper from a potential excess verdict. However, State Farm refuses to make a settlement offer until the final adjudication of Count IV. A stay in the underlying tort claim would save Ms. Piper from the risk of a excess verdict, permitting the final adjudication of Count IV of Ms. Prinz's Complaint against State Farm.

VI. CONCLUSION

The Circuit Court ignored Christian v. Sizemore, 181 W.Va. 628 (1989) when it refused to stay the trial of the underlying tort claim pending final resolution of the declaratory judgment action against State Farm seeking insurance coverage. Without a stay, Ms. Piper unnecessarily suffers a substantial risk of incurring a excess verdict. This Court should issue a writ of prohibition ordering the Circuit Court to vacate its October 31, 2011 Order, and stay the underlying wrongful death claim pending full and final resolution of Ms. Prinz's claim against State Farm.

**JULIE MASSANOPOLI PIPER,
ADMINISTRATRIX OF THE ESTATE
OF WILLIAM LEE PIPER, DECEASED**

Defendant, By Counsel



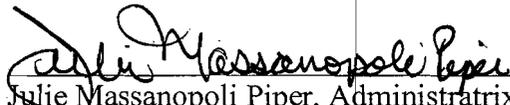
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VII. VERIFICATION

STATE OF WEST VIRGINIA

COUNTY OF JEFFERSON

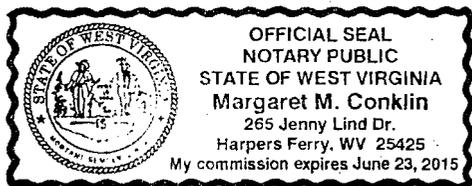
In accordance with the requirements of W.Va. Code § 53-1-3, the undersigned hereby verifies that the foregoing Petition constitutes a fair and correct statement of the proceedings in the civil action identified in this Petition, based upon her information and belief.


Julie Massanopoli Piper, Administratrix Of
The Estate Of William Lee Piper, Deceased

Subscribed and sworn before me this 28th day of November, 2011.

My commission expires on: 6/23/2015


Notary Public



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HONORABLE DAVID H. SANDERS,
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SKINNER PRINZ, AS PERSONAL
REPRESENTATIVE FOR THE
ESTATE OF KYLE HOFFMAN, JR.

Respondents.

CERTIFICATE OF SERVICE

I, Michael D. Lorensen, counsel for Julie Massanopoli Piper, Administratrix of the Estate of William Lee Piper, deceased, do hereby certify that a true and exact copy of the foregoing Verified Writ Of Prohibition has been served by United States mail, postage prepaid, upon the following:

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Dated this 29th day of November, 2011.



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