

12-1506

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA
DIVISION NO. 3

VICKY LOU HUGHES,

Plaintiff,

v.

Case No. 12-C-321
Judge Phillip D. Gaujot

WEST VIRGINIA UNIVERSITY,
JEANETTE MOTSCH and MARY ROBERTA
"Bobbie" BRANDT,

Defendants.

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

On July 24, 2012, the West Virginia University, Jeanette Motsch, and Mary Roberta "Bobbie" Brandt ("the Defendants") filed a Motion to Dismiss Vicky Lou Hughes's Complaint of May 2, 2012. Ms. Hughes filed her response to the motion on August 30, 2012, to which the Defendants filed a Reply in Support of Their Motion to Dismiss on September 11, 2012.

The parties appeared before this Court on the 14th day of September, 2012, for a hearing on the Defendants' Motion to Dismiss. The Plaintiff appeared by and through her counsel, Walt Auvil; the Defendants appeared by and through their counsel, Deeva Solomon.

Having reviewed the parties' written submissions, having conscientiously studied pertinent legal authority, and having carefully considered the arguments presented on the 14th day of September, 2012, the Court finds that the Defendants' Motion to Dismiss should be, and hereby is, GRANTED.

12-15-12

STANDARD OF REVIEW

West Virginia Rule of Civil Procedure 12(b)(6) provides that a trial court should dismiss a plaintiff's complaint if the plaintiff "fails to state a claim upon which relief can be granted." "The purpose of a motion to dismiss for failure to state a claim is to test the sufficiency of the complaint." *Cantley v. Lincoln County Commission*, 221 W. Va. 468, 655 S.E.2d 490 (2007). "The trial court, in apprising the sufficiency of a complaint on a Rule 12(b)(6) motion, should not dismiss the complaint unless it appears beyond doubt the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Syl. Pt. 1, *McGinnis v. Cayton*, 173 W. Va. 102, 312 S.E.2d 765 (1984) (quoting Syl. Pt. 2, *Sticklen v. Kittle*, 168 W. Va. 147, 287 S.E.2d 148 (1981)). "When a court is considering a motion to dismiss, the complaint must be construed in the light most favorable to the plaintiff, and its allegations should be considered as true. The plaintiff's burden in resisting a motion to dismiss, then, is a light one." *McGinnis*, 173 W. Va. at 104, 312 S.E.2d at 768 (internal citations omitted).

A trial court should not dismiss a complaint merely because it doubts that the plaintiff will prevail. *John W. Lodge Distrib. Co., Inc. v. Texaco, Inc.* 161 W. Va. 603, 606, 245 S.E.2d 157, 159 (1978). A 12(b)(6) motion tests the sufficiency of the pleading. "It does not resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses." *Republican Party of North Carolina v. Martin*, 980 F.2d 943, 952 (4th Cir.1992) (citations omitted). Motions to dismiss are viewed with disfavor, and the Supreme Court of Appeals counsels lower courts to rarely grant such motions. *Forshey v. Jackson*, 222 W. Va. 743, 749, 671 S.E.2d 748, 754 (2008) (citing *Lodge*, 161 W. Va. at 605-06, 245 S.E.2d at 159).

FINDINGS OF FACT

1. The incidents precipitating the filing of this lawsuit.

The Plaintiff, Ms. Hughes, was employed by the West Virginia University as a Traumatic Brain Injury (“TBI”) Coordinator/Clinical Associate in December, 2007 (Pl.’s Compl. ¶ 1.) She was assigned to the Big Chimney (Kanawha County) office of the Center for Excellence in Disabilities (CED) (Pl.’s Compl. ¶ 1.) Ms. Hughes’s responsibilities required her to provide resource coordination to individuals with TBI and to conduct regional outreach to identify and assist such individuals who needed access to services and support.¹

Upon her hiring, Ms. Hughes advised her employer that she suffered a disability and was initially given reasonable accommodations for it (Pl.’s Compl. ¶ 5.) On several occasions, the requirements of Ms. Hughes’s job responsibilities necessitated her request for accommodation. The first such occasion specified in the Plaintiff’s Complaint occurred in 2008, when she was initially allowed to use her personal vehicle for work-related travel, as her use of a rental car would interfere with her multiple chemical sensitivities (Pl.’s Compl. ¶ 6.) However, in the summer of 2009, the Defendant requested medical verification of Ms. Hughes’s restrictions, and after receipt of her documentation and referral to Medical Management and an ADA Administrator, the CED requested Medical Management cease assistance to Ms. Hughes (Pl.’s Compl. ¶ 7.)

The Plaintiff’s second request for accommodation occurred in January, 2010. She then asked to not work at the Big Chimney location during renovation of an office in the building, again encumbered by her multiple chemical sensitivities. Ms. Hughes provided the requisite documentation and had her first ADA meeting with Charles Morris and Jennifer Motsch, West

¹ A full description of Ms. Hughes’s specific job responsibilities can be found on Pages 1 and 2 of her Complaint.

Virginia University's TBI Program Manager (Pl.'s Compl. ¶ 8-9, 17.) She was allowed to continue work with reasonable accommodations (Pl.'s Compl. ¶ 9.)

On April 6, 2010, Ms. Motsch and Mr. George² met with Ms. Hughes to discuss alleged consumer complaints regarding her performance, resulting in an investigation and the issuance of a warning letter indicating unsatisfactory performance (Pl.'s Compl. ¶ 10.) Ms. Hughes asserts that Mr. George subsequently alleged that she had committed additional inappropriate and potentially unethical infractions, which the Plaintiff maintains the Defendant knew to be false and used to harass her (Pl.'s Compl. ¶ 11.)

In June, 2010, Ms. Hughes suffered an injury resulting in a medical leave of absence of approximately one year and was again referred to Medical Management and the ADA Coordinator when she tried to return to work (Pl.'s Compl. ¶ 12.) Mary Roberta "Bobbie" Brandt, the ADA Compliance Officer and Associate Director for West Virginia University, advised Ms. Hughes that the Defendant had considered and rejected several accommodations she requested to be able to return to work (Pl.'s Compl. ¶ 13, 18.)

Ms. Hughes participated in the ADA monitoring process run by the Defendant for four months, and during this time, she charges that it failed and refused to accommodate her by returning her to work. This process ended October 31, 2011, when the Defendant terminated Ms. Hughes's employment (Pl.'s Compl. ¶ 14.)³

² The pleadings do not make clear Mr. George's title.

³ The Defendant notes that West Virginia University is improperly named as a defendant in this action, and the proper Defendant is the West Virginia University Board of Governors, Ms. Hughes's employer (Defs.' Mem. in Supp. of Defs.' Mot. to Dismiss 1.)

2. The Plaintiff's allegations and damages.

Ms. Hughes alleges that when Ms. Brandt advised her that the Defendant had considered and rejected several accommodations for her to return to work, the West Virginia Human Rights Act was violated. She asserts that pursuant to it, the Defendant is obligated to provide reasonable accommodation for an individual such as herself (Pl.'s Compl. ¶ 13.) Ms. Hughes further charges that the Defendant's failure and refusal to aid her in opportunities for continued employment frustrated her ability to obtain employment during the last ADA process (Pl.'s Compl. ¶ 15.) Ms. Hughes alleges that Ms. Motsch and Ms. Brandt both aided and abetted the West Virginia University in discriminating against her based upon her disability and in failing and refusing to accommodate her disabilities (Pl.'s Compl. ¶ 17-18.)

Ms. Hughes seeks damages for lost wages, the value of lost benefits, mental and emotional distress, punitive damages, costs and attorneys fees, injunctive relief, including but not limited to reinstatement, and other appropriate relief (Pl.'s Compl. ¶ 18.)

3. Procedural history.

As a public employee, Ms. Hughes initiated grievance proceedings, pursuant to W. VA. CODE § 6C-2-4 (2008), reflecting her allegations relating to West Virginia University's conduct.⁴ The procedure involves a three-level process, and Ms. Hughes had her Level One conference on September 27, 2011, addressing her filing of three previous grievances (Defs.' Mem. in Supp. of Defs.' Mot. to Dismiss Ex. A "Level One Grievance Decision," at 2); *Id.* On June 30, 2010, she filed two grievances, the first dated April 22, 2010, and the second dated June 22, 2010.⁵ On July

⁴ The Court relies on the Defendants' presentation of Ms. Hughes's involvement in the varying levels of the grievance process, as their Motion to Dismiss is the only place in the record that addresses it.

⁵ The record does not contain copies of these grievances for the Court's review.

8, 2011, she filed a third grievance, dated July 6, 2011⁶ (Defs.' Mem. in Supp. of Defs.' Mot. to Dismiss Ex. A "Level One Grievance Decision," at 1.) In its decision dated October 18, 2011, the West Virginia Public Employees Grievance Board denied Ms. Hughes's grievance, explaining that she had failed to prove it possible to complete the essential duties of TBI Resource Coordinator with reasonable accommodations (Defs.' Mem. in Supp. of Defs.' Mot. to Dismiss Ex. A "Level One Grievance Decision," at 13) Ms. Hughes subsequently participated in an unsuccessful Level Two mediation, and a Level Three hearing is expected to take place in November or December of 2012 (Defs.' Mem. in Supp. of Defs.' Mot. to Dismiss 4.)⁷

The Plaintiff filed her complaint in this Court on May 2, 2012, to which the Defendants Responded with a Motion to Dismiss on July 24, 2012. They primarily contend that her complaint should be dismissed because she has not exhausted her administrative remedies before proceeding to Circuit Court. On August 30, 2012, the Plaintiff responded that requiring public employees to exhaust the statutorily provided administrative grievance procedure would have the practical effect of impermissibly dividing employees into two classes: one that must exhaust administrative remedies and another that may proceed directly to court to vindicate its rights under the West Virginia Human Rights Act ("WVHRA") (Pl.'s Resp. to Defs.' Mot. to Dismiss.) On September 11, 2012, the Defendants replied, further supporting their argument that Ms. Hughes was first required to exhaust her administrative remedies.

⁶ It appears that Page 1 of the Level One Grievance Decision erroneously notes that Ms. Hughes dated her third grievance on June 6, 2011, as opposed to July 6, 2011, as the attached Grievance Form indicates (Defs.' Mem. in Supp. of Defs.' Mot. to Dismiss Ex. A "Grievance Form for Levels 1, 2, and 3".)

⁷ Other than appearing in the Defendants' Memorandum, mention is made of neither the Level Two or Three phases, nor the details surrounding those events.

DISCUSSION

The Defendants' Motion to Dismiss should be granted because Ms. Hughes has failed to exhaust her available administrative remedies by pursuing an action in Circuit Court while the grievance process she had previously commenced is still pending. Additionally, West Virginia caselaw concerning the WVHRA supports *alternatives* to administrative exhaustion, as opposed to justifying incomplete exhaustion.

A. Ms. Hughes has already begun the administrative grievance procedure and may not abandon it prior to completion.

Ms. Hughes has not completed the requisite stages of the administrative grievance process and may not file her action in this Court until she has done so. The West Virginia State Administrative Procedures Act § 29A-5-1 (2012) addresses contested cases,⁸ or proceedings before an agency that implicate the legal rights, duties, interests or privileges of specific parties, and their applicable notice and hearing requirements. This code section has been interpreted to require exhaustion of administrative remedies, and this tenet has become deeply embedded in the law. *Bank of Wheeling v. Morris Plan Bank & Trust Co.*, 155 W. Va. 245, 183 S.E.2d 692 (1971); Syl. Pt. 2, *Sturm v. Bd. of Educ. of Kanawha County*, 223 W. Va. 277, 672 S.E.2d 606 (2008) (citing Syl. Pt. 1, *Daurette v. Traders Fed. Sav. & Loan Ass'n*, 143 W. Va. 674, 104 S.E.2d 320 (1958)).⁹ The Courts have recognized that the administrative exhaustion rule serves several important functions, including:

⁸ Pursuant to the West Virginia State Administrative Procedures Act § 29A-1-2(b) (2012), a “contested case” means “a proceeding before an agency in which the legal rights, duties, interests or privileges of specific parties are required by law or constitutional right to be determined after an agency hearing, but does not include cases in which an agency issues a license, permit or certificate after an examination to test the knowledge or ability of the applicant where the controversy concerns whether the examination was fair or whether the applicant passed the examination and does not include a rule making.”

⁹ The case law embodying the administrative exhaustion principle is extensive, and for the sake of brevity, the Court has only cited a few such examples.

(1) permitting the exercise of agency discretion and expertise on issues requiring these characteristics; (2) allowing the full development of technical issues and a factual record prior to court review; (3) preventing deliberate disregard and circumvention of agency procedures established by Congress [or the Legislature]; and (4) avoiding unnecessary judicial decision by giving the agency the first opportunity to correct any error. *Sturm*, 223 W. Va. at 282, 672 S.E.2d at 611 (citing *Doe v. Alfred*, 906 F. Supp. 1092, 1097 (S.D. W.Va. 1995) (quoting *Association for Comty. Living v. Romer*, 992 F.2d 1040, 1044 (10th Cir. 1993))).

In *Beichler v. West Virginia University at Parkersburg*, the Plaintiff was initially an assistant professor, and after being denied tenure, filed a complaint against the University in Kanawha County Circuit Court, grounded in the Wage Payment and Collection Act. 226 W. Va. 321, 700 S.E.2d 532 (2010).¹⁰ Alleging that the University had failed to compensate him per several discretionary contracts he had entered into with it, the University filed a motion to dismiss, charging that Beichler had failed to exhaust available administrative remedies. On appeal, the Court held that “a person whose wages have not been paid in accord with the West Virginia Wage Payment and Collection Act may initiate a claim for the unpaid wages *either* through the administrative remedies provided under the Act or by filing a complaint for the unpaid wages directly in circuit court.” *Beichler*, 226 W. Va. at 325, 700 S.E.2d at 536 (emphasis added).

In *Vest v. Board of Education of the County of Nicholas*, the Plaintiff, a substitute teacher, filed a grievance with the Grievance Board, asserting that she was fired on the basis of pregnancy and sex. 193 W. Va. 222, 455 S.E.2d 781 (1995). In her post-level IV hearing brief, Vest voluntarily relinquished her claim. A decision was rendered by the Board, containing no conclusions of law regarding the discrimination claim, and Vest’s grievance was denied. She subsequently filed a discrimination claim with the Equal Employment Opportunity Commission (EEOC), who issued her a right to sue letter. Vest then filed a claim in federal district court, with

¹⁰ Nothing in the record indicated that Beichler, a public employee, had filed any sort of grievance. *Beichler*, 226 W. Va. at 323, 700 S.E.2d at 534.

the Defendant alleging that the doctrines of *res judicata* and collateral estoppel barred her claim because she had a prior hearing in front of the Grievance Board. Upon responding to several certified questions, the Supreme Court held that a civil action filed pursuant to the West Virginia Human Rights Act (WVHRA) was *not* precluded by a prior grievance proceeding involving the same parties and arising out of the same facts and circumstance, which did *not* result in any findings of fact or conclusions of law regarding the discrimination claim.¹¹

In the instant case, Ms. Hughes presents a slight, but critically important, nuance in the traditional administrative exhaustion framework as interpreted by the courts. In her case, she did not neglect to avail herself of an administrative remedy, and she did not complete one remedy, subsequently seeking another; she instead commenced her administrative remedy without seeing it to its finality. The Plaintiff argues that parallel remedies are permissible, while the Defendants maintain that administrative exhaustion is required and that *Beichler* is an election of remedies case (Hearing of Sept. 14, 2012 on Defs.' Mot. to Dismiss.) The Plaintiff is correct in arguing that parallel remedies may be elected, namely that a plaintiff can *choose* between remedies in certain instances. However, the *Vest* case does not stand for the proposition that parallel *contemporaneous* remedies may be elected, nor does *Beichler*. In *Beichler*, the Court found that because the statutory language did not *preclude* initially filing an action in Circuit Court, the Plaintiff could institute an action there. In *Vest*, though the Plaintiff relinquished her claim, the administrative hearing had already taken place. Neither *Beichler* nor *Vest*, the cases heavily at issue in the instant action, spoke to a plaintiff with a *pending* grievance process, like Ms. Hughes.

¹¹ This Court has specifically discussed the *Beichler* and *Vest* cases because they were heavily relied upon by the parties during the September 14, 2012, hearing, and their holdings were disputed.

The West Virginia Supreme Court has squarely addressed an issue very similar to that of Ms. Hughes in *Ewing v. Board of Education of County of Summers*. 202 W.Va. 228, 239, 303 S.E.2d 541, 552 (1998). In that case, the Plaintiff had filed a grievance that she requested to be continued, subsequently obtaining counsel to file a statutorily permitted mandamus petition. *Ewing*, 202 W.Va. at 232, 303 S.E.2d at 545. In no uncertain terms, the Court found that “[o]nce [the Plaintiff] elected to seek a remedy through the grievance process . . . she was required to see that remedial course to its completion. She was not permitted to commence her grievance then, during the pendency of those proceedings, abandon her grievance and select the previously unchosen route of . . . mandamus.” *Ewing*, 202 W.Va. at 236, 237 S.E.2d at 549.

Like the Plaintiff in *Ewing*, Ms. Hughes has already commenced the grievance process and pursued an alternative form of relief, namely this lawsuit, before seeing the administrative process to its end. Before completing Level Three of the process and participating in the hearing that is expected to take place in November or December of this year, Ms. Hughes resorted to Circuit Court (Defs.’ Mem. in Supp. of Defs.’ Mot. to Dismiss 4.) Ms. Hughes has already elected to pursue the grievance course, and pursuant to the Court’s ruling in *Ewing*, she may not pursue an alternative form of relief before the grievance process she began is complete.¹²

¹² Established exceptions to the exhaustion rule exist, but Ms. Hughes has not specifically alleged that any of them are applicable in her case. These judicially recognized exceptions include, for example, lack of an adequate available remedy (*Sturm v. Bd. of Educ. Of Kanawha County*, 223 W.Va. 277, 672 S.E.2d 606 (2008)); remedies are duplicative or effort to obtain them is futile (Syl. Pt. 6, *Wiggins v. Eastern Associated Coal Corp.*, 178 W.Va. 63, 357 S.E.2d 745 (1987)); the law provides no administrative remedy, and no such remedy exists (*Bank of Wheeling v. Morris Plan Bank & Trust Co.*, 155 W.Va. 245, 249, 183 S.E.2d 692, 695 (1971) (citing Syl. Pt. 2, *Daurette v. Traders Federal Savings & Loan Association of Parkersburg*, 143 W.Va. 674, 104 S.E.2d 320 (1958))). Additional exceptions include the possible occurrence of irreparable injury, absent immediate judicial relief; the plaintiff raises a substantial constitutional question which cannot be resolved through the administrative process; the question raised is one of statutory interpretation; the action raises only questions of law and not matters requiring administrative discretion or an administration finding of fact; interests of justice so require abrogating the exhaustion rule; a party is challenging the facial validity of the statute; and the agency’s action is challenged as either unconstitutional or wholly beyond its grant of power. 2. Am. Jur. 2d Administrative Law § 478. Further, as the Court in *Doe v. Alfred* stated: “[t]he burden of proving an exception to the exhaustion requirement rests on the party seeking to avoid the mandate.” 906 F. Supp. 1092, 1097 (S.D. W.Va. 1995). Ms. Hughes has not met this burden.

The Plaintiff may argue that the potential for unfairness and/or prejudice exists because if a Plaintiff is forced to choose between remedies and carry her selection to completion, she may miss filing deadlines while awaiting the completion of a grievance process. However, this argument is not highly persuasive; not only does it seem to simply be a risk that a plaintiff may have to take, but the Court has addressed it. In *Independent Fire Company No. 1 v. West Virginia Human Rights Commission*, the Court said that “[u]nder West Virginia Code 5-11-10, the time period for filing a complaint with the Human Rights Commission alleging a violation of the Human Rights Acts is not jurisdictional in nature and is subject to waiver and equitable doctrines of tolling and estoppel.” Syl. Pt. 1, 180 W. Va. 406, 376 S.E.2d 612 (1988).

In *Mull v. ARCO Durethene Plastics, Inc.*, the Court stated: “Indeed, two types of equitable modification are generally recognized: ‘(1) equitable tolling, which often focusses on the plaintiff’s excusable ignorance of the limitations period and on lack of prejudice to the defendant and (2) equitable estoppel, which usually focuses on the actions of the defendant.’” 784 F.2d 284, 291 (7th Cir. 1986) (citing *Naton v. Bank of California*, 649 F.2d 691, 696 (9th Cir. 1981) (citations omitted)). These cases stand for the proposition that deadlines are not impermeable, and that in certain cases, good cause may save a case with which a missed deadline may otherwise have dispensed. Ms. Hughes must complete her previously instituted grievance process before pursuing an action in Circuit Court.

B. The WVHRA case law supports alternatives to administrative remedies, not remedies commenced but incomplete.

Ms. Hughes may not commence administrative procedures and abandon them midstream in favor of litigation, simply because her case implicates a potential WVHRA violation. In WVHRA cases, the Court has made it clear that resort to Circuit Court is a feasible alternative to initiating an administrative action when human rights violations are alleged. *FMC v. West*

Virginia Human Rights Commission and Teresa A. Frymier, 184 W. Va. 712, 717, 403 S.E.2d 729, 734 (1991). Specifically, in *Price v. Boone County Ambulance Authority*, the Court stated: “A plaintiff may, as an *alternative* to filing a complaint with the Human Rights Commission, initiate an action in circuit court to enforce rights granted by the West Virginia Human Rights Act.” Syl. Pt. 1, 175 W. Va. 676, 337 S.E.2d 913 (1985) (emphasis added). The FMC Court was careful to note that these two avenues of relief are in fact, mutually exclusive. 184 W. Va. at 717, 403 S.E.2d at 734 (citing *Price*, 175 W. Va. at 679, 337 S.E.2d at 916).

The Court has treated the WVHRA, which the Plaintiff claims to have been violated in her case, with special significance (Compl. ¶ 13.) Certified to the *Price* Court was the following question: whether or not a plaintiff may sue to enforce the substantive provisions of the West Virginia Human Rights Act, chapter 5, article 11 of the Code, without complying with the Act’s procedural requirements. 175 W. Va. at 676, 337 S.E.2d at 914. This question is pertinent because in the instant case, at issue is whether or not the Plaintiff has followed the proper procedure in exhausting administrative remedies. In answering this question, which the Court did in the affirmative, it specifically utilized legislative intent in its reasoning, finding that:

The purpose of creating an administrative enforcement mechanism was to circumvent civil or criminal suits for civil rights violations, which had proven expensive and ineffective, and to utilize instead administrative investigation, conciliation, and enforcement. *See generally* Note, *The Right to Equal Treatment: Administrative Enforcement of Antidiscrimination Legislation*, 73 HARV. L. REV. 526, 526-28, 573-74 (1961). If this route proved too slow, the Legislature provided, in 1983 amendments, a mechanism for transferring a case to circuit court for resolution. W. Va. Code ¶ 5-11-13(b) (Supp. 1985). This provision for transfer, along with the express savings clause, demonstrates that the Legislature intended some combination of administrative and judicial enforcement of the rights granted by the Human Rights Act. It may reasonably be concluded that although the Legislature created the Human Rights Commission as the primary enforcement mechanism for rights created by the Act, it intended to preserve the ability of a complainant to resort to circuit court when either he had an independent right to do so or when the administrative process proved ineffective. *Price*, 175 W. Va. at 678, 337 S.E.2d at 915.

In the instant case, the Plaintiff has begun the grievance process; she did not choose between available remedies and select only one. Ms. Hughes initiated the three-level grievance administrative procedure, and her grievance was denied at a Level One hearing (Defs.' Mem. in Supp. of Defs.' Mot. to Dismiss Ex. A "Level One Grievance Decision," at 1.) She participated in a Level Two mediation, and a Level Three hearing is expected to take place in November or December of this year (Defs.' Mem. in Supp. of Defs.' Mot. to Dismiss Ex. A "Level One Grievance Decision," at 1.) Though her case implicates the revered WVHRA, the law does not grant her the ability to select the administrative avenue and abandon it prior to completion. Again, the case law supports resort to Circuit Court as an *alternative* remedy, as opposed to one that runs concurrently with a pending administrative remedy. Thus, even though Ms. Hughes's case implicates a possible violation of the WVHRA, she must complete the grievance process she has already commenced before resorting to Circuit Court.

CONCLUSION

Ms. Hughes cannot resort to Circuit Court while the administrative grievance process she commenced is still pending. The Court has spoken to the precise issue in her case in its holding in *Ewing*, expressly stating that "[o]nce [the Plaintiff] elected to seek a remedy through the grievance process . . . she was required to see that remedial course to its completion. She was not permitted to commence her grievance then, during the pendency of those proceedings, abandon her grievance and select the previously unchosen route of . . . mandamus." 202 W.Va. at 232, 237 S.E.2d at 550. Further, though the sanctity afforded the WVHRA permits grievants to resort to Circuit Court as an *alternative* to administrative proceedings. The law does not permit them to elect this route after abandoning, midstream, the previously selected administrative route.

Applying this Court's standard of review to the facts of this case, it is clear that the relief Ms. Hughes seeks cannot be granted because the law does not permit her to abandon a pending administrative remedy in favor of resort to Circuit Court. Therefore, the Defendants' Motion to Dismiss is properly GRANTED.

ORDER

For the foregoing reasons, the Court **ADJUDGES** and **ORDERS** as follows:

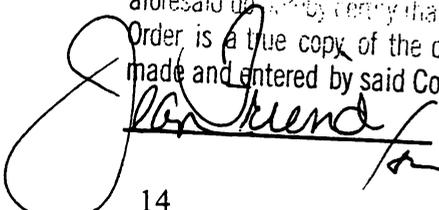
1. The Defendants' Motion to Dismiss is **GRANTED**.
2. The Monongalia County Circuit Clerk's Office shall strike this matter from the Court's docket, and shall forward certified copies of this Order to all parties and counsel of record.

ENTER: *November 13, 2012*



PHILLIP D. GAUJOT, JUDGE

STATE OF WEST VIRGINIA SS:
I, Jean Friend, Clerk of the Circuit Court and Family Court for Monongalia County State aforesaid do hereby certify that the attached Order is a true copy of the original Order made and entered by said Court.



Circuit Clerk