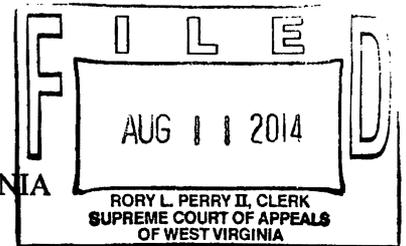


14-0258



IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

DAVID RAGONESE,

PETITIONER,

V.

RACING CORPORATION OF  
WEST VIRGINIA,  
d/b/a MARDI GRAS CASINO  
AND RESORT, A WEST VIRGINIA  
CORPORATION.

RESPONDENT.

PETITIONER'S REPLY TO RESPONDENT'S BRIEF

**COUNSEL FOR PETITIONER**  
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**I. Mr. Ragonese Was Not a Trespasser as a Matter of Law.**

Mr. Ragonese was a business invitee to Mardi Gras Casino and Resort when he arrived. That is undisputed. The Circuit Court ruled that he exceeded the scope of his invitation when he walked off of a sidewalk, past some shrubs and onto the lawn of Mardi Gras Hotel. The Court's decision ignores the facts. Mr. Ragonese did not ignore any "no trespassing" signs. He did not jump a fence or sneak into some heavy secured private area of the casino. The shrubbery relied upon by the Defendant in this matter was hardly a barrier to passage. That much is evident from the photo of the shrubbery in daytime let alone at night. Mardi Gras essentially argues the shrubbery was meant as a symbolic "no trespass" sign. Wouldn't it have been easier to put up a clearly stated "no trespass" sign, a fence or even adequate lighting rather than relying on a symbolic jester open for interpretation. No one in Mr. Ragonese's position would possibly believe they were trespassing on the property of a business that invited them as guests simply because they walked onto it's lawn. Common sense dictates the answer that he was not a trespasser and a decision to the contrary would have an immediate impact on unknowing business invitees - especially those who are invited to a property, not for a limited purpose or time period, but for the purpose of living and sleeping as a guest of a hotel.

The Respondent would have this Court believe that Mr. Ragonese took action comparable to entering a carnival ride through a gap in a fence. Mr. Ragonese admits that if he had passed through a gap in a fence he would not have much of an argument against being a trespasser. As far as symbolic "no trespassing" signs go, a fence is about as good as it gets. In fact, Mr. Ragonese argued to the Circuit Court his position would be different if he would have entered into the Kitchen of the Hotel or Casino, into its

maintenance operation room or he would have jumped the fence onto the dog track. (Appx. Vol II, pg 9) Those areas are obviously not places for a guest to be; however, the lawn<sup>1</sup> of a casino is an entirely different category.

Mr. Ragonese was not notified, warned or prevented from walking onto the lawn. On top of that it was dark when he did so. All of these facts, when viewed in a light most favorable to him, create a genuine issue as to whether a jury would consider him a trespasser or an invitee. The only reason Mardi Gras considers Mr. Ragonese as a trespasser is because he was severely injured on their property. A jury would be able to see past this frivolous argument and they should have the opportunity to do so.

#### CONCLUSION

Mr. Ragonese respectfully requests his appeal be granted and the case be remanded to the Circuit Court for trial.

**David Ragonese,  
Petitioner,**

By Counsel:



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<sup>1</sup> According to Random House Dictionary, Random House, Inc., 2014 the word “lawn” is defined as “a stretch of open, grass-covered land, especially on closely mowed, as near a house, on an estate, or in a park.”

**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**

DOCKET NO. 14-0258

**DAVID RAGONESE,**

Petitioner,

V.)

Appeal from a final order  
Of the Circuit Court of Kanawha  
Cabell County (13-C-1092)

**RACING CORPORATION OF  
WEST VIRGINIA,  
d/b/a/ MARDI GRAS CASINO  
AND RESORT, A WEST VIRGINIA  
CORPORATION,**

Respondent.

**CERTIFICATE OF SERVICE**

I, Connor D. Robertson, do hereby verify that I served the "PETITIONER'S  
REPLY BRIEF" this 8<sup>th</sup> day of August, 2014, by sending it U.S. Postal Service  
postage pre-paid and addressed to:

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