IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

STATE OF WEST VIRGINIA ex rel. DANITA LADANYE, ADMINISTRATRIX OF THE ESTATE OF JONATHAN S. LADANYE,

Petitioner,

v.

Docket No.: 18-0356
(Claims Commission Case No.: CC-15-2038)

WEST VIRGINIA LEGISLATIVE CLAIMS COMMISSION and WEST VIRGINIA DEPARTMENT OF TRANSPORTATION, DIVISION OF HIGHWAYS,

Respondents.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

The facts of this case are few and tragic. On February 17, 2014, a cold, snowy night in Morgantown, West Virginia, which had been preceded by two weeks' worth of cold, snowy nights, three young men, James Coffman, Jonathan Stopiak, and Jonathan LaDanye decided to go out drinking. JA 472-474, 510-517; Chart attached to Claimant's Joint Appendix. Additionally, Mr. Coffman chose to use illegal drugs. JA 515. After a night of drinking and drug use, the three young men got in a car to go home. JA 472-474, 510-517. Mr. Coffman and Mr. LaDanye, who were both intoxicated, argued about who should drive. JA 472-474, 510-517. Ultimately, Mr. LaDanye and Mr. Stopiak chose to get in the car with Mr. Coffman, who had a blood alcohol content of .218 and illegal drugs in his system. JA 515.

Mr. Coffman used I-79 to get home. JA 510-517. Getting on the entrance ramp, Mr. Coffman excessively accelerated until he caused the car to complete three, 360 degree spins on the icy roadways. JA467. Although the car came to a complete stop after this, none of the young

men got out. JA 467. Instead, Mr. Coffman continued to drive, fish-tailing the car around on the road until he hit, and drove over, the side of a bridge. JA 467. Mr. Coffman was seriously injured in the resulting crash. JA 510-517. Mr. LaDanye was killed. JA 510-517.

This action involves a suit by Mr. LaDanye's mother to hold the State of West Virginia responsible for the drunk driver that took her son's life. Specifically, Claimant alleges that had snow, recently removed from the roadway, not been piled in front of the bridge parapet, Mr. Coffman would not have been able to drive over the side of the bridge. JA 235.

At trial, both parties agreed that for Respondent West Virginia Division of Highways to be held responsible, Claimant was required to prove by a preponderance of the evidence that Respondent had "actual or constructive notice of the defect and a reasonable time to take corrective action under all the circumstances presented." JA-18. Claimant was also required to prove that the alleged "defect" in the roadway was a "proximate cause of the accident." JA-18.

Claimant attempted to meet her burden of proof through the testimony of her expert witness, Kevin Beachy. Mr. Beachy presented a chart of weather patterns for the fifteen (15) days preceding the accident. Chart attached to Claimant's Joint Appendix. Mr. Beachy's testimony centered around the colors on the chart, which he claimed were based on operational postures provided by a DOH office in Charleston, West Virginia. Mr. Beachy argued that, although it had snowed thirteen (13) of the fifteen (15) days preceding the accident, there were almost two (2) days, forty-seven (47) hours, where DOH could have cleared the snow built up along the bridge parapet where the crash occurred. JA 208. Mr. Beachy maintained that these forty-seven (47) hours it was not snowing during the course of fifteen (15) days of snow should have allowed DOH plenty of time to close the entrance ramp and right-hand lane of the Westover Bridge on I-79 to traffic, use an endloader, a dump truck, and a complete crew to remove the snow from the side of

the bridge parapet. JA 355, 389. The rationale behind Mr. Beachy's reasoning was that DOH had been able to run its snow plow through a park-n-ride and weigh station during that time even though they were not directly on the Interstate. JA 355, 389.

Respondent presented two witnesses to counter the testimony offered by Mr. Beachy, Larry Weaver, a supervisor responsible for the section of highway where the crash occurred, and Jerry Pigman, a traffic safety engineer.[1] Mr. Weaver explained how his staff of eleven (11) people, including his mechanics, supervisors, and equipment operators, who covered six (6) counties and two (2) interstates, received the operational postures from Charleston that Mr. Beachy testified about but made actual decisions about which roads to clear when based on local conditions. JA 96, 372. Mr. Weaver testified that, locally, the roads where the accident occurred were not considered to be in a safe, normal condition until February 19, 2014, two days after the accident. JA 373. Mr. Weaver explained that his limited crew could not abandon icing and plowing, as would be required to remove the snow at issue from the bridge parapet wall, until roads had returned to a safe, normal condition. JA 373-74. Mr. Weaver further explained that clearing weigh stations and park-n-rides was necessary so that commercial and other travel could continue on the interstates as traffic backup in those locations would back up traffic onto the interstate. JA 376.

Mr. Pigman, a traffic safety engineer, also testified for Respondent. Mr. Pigman, who has a B.S. and an M.S. in civil engineering from the University of Kentucky, is currently the Manager of the Traffic and Safety Section and a Transportation Research Engineer for the University of Kentucky, College of Engineering. Additionally, Mr. Pigman has been performing accident

[1] Both Claimant and Respondent also relied on the reports and/or testimony of investigating officers. This testimony differed as to how icy the roadway was, although it is clear from the West Virginia Uniform Traffic Crash Report that at the time of the accident there was "snow" and "sleet, hail, or freezing rain." JA 510.

reconstruction since 1981 and has investigated several hundred accidents. Mr. Pigman has testified at 87 trials and 203 depositions.

Mr. Pigman testified that he had reviewed the DOT-12 and MM-77 forms completed by the DOH personnel who were actually on the scene in Monongalia County. JA 330. Mr. Pigman explained that these reports showed that DOH was actively working to keep road surfaces clear of ice and snow in this area and had not had time to devote the extensive manpower needed away from road surfaces to road sides, such as bridge parapets. JA 305. Further, Mr. Pigman explained that government standards mandate that roadways be free and clear of ice before any work is done on roadsides, such as bridge parapets, a condition that was not attained until February 19. JA 305-306, 330. Mr. Pigman testified there had been no negligence on behalf of Respondent.

Mr. Pigman also testified on the limited effect the snow on the parapet wall actually had on the crash. Specifically, Mr. Pigman explained that if the car, which witnesses had seen fish-tailing around in the snow, had approached the parapet at a greater than 20 degree angle, the car would have vaulted over the parapet wall regardless of the snow. JA 301-305. Mr. Pigman explained that, based on the scratches in the pavement where the car had vaulted over the parapet wall, it was likely the car had approached the wall at a 40 degree angle. JA 301. Thus, Mr. Pigman testified, the snow on the parapet wall was not the proximate cause of the accident. JA 304-305.

After hearing all of the testimony, reviewing the evidence presented, and conducting its own investigation, the West Virginia Claims Commission determined that Claimant had not proved by a preponderance of the evidence that Respondent was negligent in maintaining the bridge parapet where the accident occurred. JA 18. The Commission further found that Mr. LaDanye had to bear some responsibility for his own decision to get into a car with a drunk driver. JA 18. The claim was disallowed.

Claimant appealed the recommendation of the Claims Commission. JA 3-14. The Claims Commission carefully considered that appeal, determined no new evidence had been presented, and elected to uphold its recommendation. Claimant has now exhausted her appeal rights, so she begs this Court to issue the extreme writ of certiorari. Claimant's request must be denied.

SUMMARY OF ARGUMENT

Claimant brings this matter before this Court on a Writ of Certiorari asking this Court to order the Claims Commission to change its recommendation as Claimant does not agree with the recommendations proffered by the Claims Commission. Knowing this argument is not permitted under a Writ of Certiorari, Claimant couches her argument as objecting to the manner in which the Claims Commission obtains evidence and the manner in which the Claims Commission interprets evidence. None of Claimant's objections, however, are well-founded under the law or the facts.

Claimant's primary argument is that the Claims Commission's recommendation must be altered simply because the Claims Commission is not bound to follow the West Virginia Rules of Evidence. This argument, however, ignores the fact that the Claims Commission is not a court and the fact that numerous other administrative hearing bodies are permitted to create their own rules of evidence and procedure in West Virginia. *See* W. Va. Code § 23-1-15 (2018), W. Va. Code § 23-5-9 (2018), W. Va. Code § 6C-2-3 (2018); *see also Casdorph v. West Virginia Office Ins. Com'r,* 225 W. Va. 94, 105, 690 S.E.2d 102, 113 (2009). Claimant's argument regarding evidence also fails on an even deeper level. This is because the primary evidence to which Claimant objects, that pertaining to Mr. Coffman's intoxication which is contained in the West Virginia Uniform Traffic Crash Report pertaining to the collision, was admissible under both the rules of evidence adopted by the Claims Commission and the West Virginia Rules of Evidence. *Hadox v. Martin,* 209 W. Va. 180, 544 S.E.2d 395 (2001).

Once the evidence contained in the West Virginia Uniform Traffic Crash Report is considered, Claimant's other arguments fail. Claimant's secondary failed argument is that Claimant's decedent could not have been found contributorily negligent as there was no proof he knew he was getting into a car with a drunk driver. Mr. Coffman's blood alcohol content, however, as established by the West Virginia Uniform Traffic Crash report was .218, a level where he would have been visibly impaired. Under West Virginia law, "a passenger has a duty to exercise reasonable care for his own safety." Syl. pt. 8, *Price v. Halstead,* 177 W. Va. 592, 355 S.E.2d 380 (1987). Claimant's decedent failed to do this when he chose to ride in a vehicle with a visibly impaired driver and the Claims Commission held him accountable for this decision. Claimant makes several more arguments regarding the weight the Claims Commission gave the evidence, but none of those arguments are permitted on a Writ of Certiorari.

Finally, Claimant attempts to distract the Court with arguments regarding the Court's ability to reverse a recommendation of the Claims Commission.[2] This argument is unnecessary as nothing in the Claims Commission's recommendation needs reversed. Yet, even if this Court disagreed with the recommendation of the Claims Commission, it has no authority to alter the recommendation made by one of the Legislature's investigative bodies to the Legislature.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Pursuant to West Virginia Rules of Appellate Procedure 19 and 20, this case does not present an issue proper for oral argument. Rather, this case presents as one appropriate for memorandum decision pursuant to West Virginia Rule of Appellate Procedure 21.

[2] Previously known at the West Virginia Court of Claims.

ARGUMENT

A. THE WEST VIRGINIA CLAIMS COMMISSION, A LEGISLATIVE BODY, IS NOT, AND SHOULD NOT BE, BOUND BY THE WEST VIRGINIA RULES OF EVIDENCE.

Claimant did not meet her burden of proof at the underlying trial of this action. Now, instead of acknowledging she did not meet her burden of proof, Claimant asks this Court to reconsider the arguments she made before the Claims Commission and reach a different decision based on the same facts. Claimant, however, brings this matter before the Court on a Writ of Certiorari. "Certiorari is an extraordinary remedy resorted to for the purpose of supply[ing] a defect of justice in cases obviously entitled to redress and yet unprovided for by the ordinary forms of proceeding." Syl. pt. 1, *Poe v. Machine Works,* 24 W. Va. 517 (1884). "The scope of review under the common law writ of certiorari is very narrow. It does not involve an inquiry into the intrinsic correctness of the decision of the tribunal below, but only into the manner in which the decision was reached." Syl. pt. 2, *Foster Foundation v. Gainer,* 228 W. Va. 99, 717 S.E.2d 883 (2011).

Claimant's primary argument regarding the manner in which the Claims Commission reached its decision alleges that the decision of the Claims Commission must be reversed simply because the Claims Commission is not bound by the West Virginia Rules of Evidence. This argument fails. First, it fails because the West Virginia Claims Commission is not a court of law. It is a legislative body that presents recommendations to the West Virginia Legislature about the spending decisions of that body. W. Va. Code § 14-2-4 (2018). As such, it is not bound by the West Virginia Rules of Evidence. W. Va. Code § 14-2-15 (2018). Second, it fails because the main evidentiary recommendation to which Claimant objects, that the West Virginia Uniform

Traffic Crash Report pertaining to this incident is admissible, is correct under the rules established by the Claims Commission and the Rules of Evidence. Syl. pt. 4, *Haddox v. Martin,* 209 W. Va. 180, 544 S.E.2d 395 (2001).

1. The Purpose of the West Virginia Claims Commission Mandates it Follow Different Evidentiary Guidelines than the West Virginia Rules of Evidence.

The West Virginia Claims Commission is not, and should not be, bound by the West Virginia Rules of Evidence. W. Va. Code § 14-2-15 (2018). The rules followed by the West Virginia Claims Commission are "designed to assure a simple, expeditious and inexpensive consideration of claims." *Id.* They are designed to make matters simple for the pro se claimants who represent the vast majority of claimants before the Claims Commission. *Id.*

While the Claims Commission follows some of the discovery rules contained within the West Virginia Rules of Civil Procedure, it is not "bound by the usual common law or statutory rules of evidence." W. Va. Code § 14-2-15 (2018). Rather the Commission "may accept and weigh, in accordance with its evidential value, any information that will assist the commission in determining the factual basis of a claim." *Id.*

The Claims Commission is not the only quasi-judicial body in West Virginia that is not bound by the West Virginia Rules of Evidence. The Workers' Compensation Board of Review, Insurance Commission, and Public Employees Grievance Board all prescribe their own evidentiary procedures. *See* W. Va. Code § 23-1-15 (2018), W. Va. Code § 23-5-9 (2018), W. Va. Code § 6C-2-3 (2018); *see also Casdorph v. West Virginia Office Ins. Com'r,* 225 W. Va. 94, 105, 690 S.E.2d 102, 113 (2009).

Indeed, this Court has repeatedly considered the issue of whether due process requires administrative agencies and other non-judicial bodies to follow *any* set rules of evidence or procedure. In *Tasker v. Mohn,* 165 W. Va. 55, 267 S.E.2d 183 (1980), this Court considered what

rules and procedures the parole board must follow when considering whether a prisoner should be paroled. Even when considering this substantial liberty interest, this Court held that the notice element of due process only "requires that administrative boards follow their own rules and statutes." Syl. pt. 3, *Tasker,* 165 W. Va. 55, 267 S.E.2d 183. The same decision was reached in *Trimboli v. Bd. Of Ed. Of Wayne County,* 163 W. Va. 1, 254 S.E.2d 561 (1979), with regard to county boards of education, finding that "[a]n administrative body must abide by the remedies and procedures it properly establishes to conduct its affairs." Syl. pt. 1, *Trimboli,* 163 W. Va. 1, 254 S.E.2d 561 (citing Syl. pt. 1, *Powell v. Brown,* 160 W. Va. 723, 238 S.E.2d 220 (1977)).

Following its properly established rules, the Commission "may accept and weigh, in accordance with its evidential value, any information that will assist the [C]ommission in determining the factual basis of a claim" and may even consider evidence not produced by either party. W. Va. Code § 14-2-15 (2018), W. Va. Code § 14-2-16 (2018). The purpose of the Claims Commission is to conduct investigations to aid the Legislature in reaching spending decisions. *State ex rel. Stollings v. Gainer,* 153 W. Va. 484, 491 S.E.2d 817, 822 (1969).

In this case, the Claims Commission was presented with information pertaining to the criminal charges filed against the driver of the vehicle in question. The Claims Commission, while not expressly ruling on the admissibility of this evidence at the hearing of this matter, later determined that this evidence would assist it in determining the factual basis of the claim and considered it. JA 15, 18. Contained within this evidence was proof that the drivers' blood alcohol content was .218, a blood alcohol content that does not exist without visible impairment. JA 515. Based on this fact, the Claims Commission concluded that Claimant's decedent likely knew he was riding with an impaired driver. Based in part on that evidence and in part on the evidence

presented by Respondent's expert witness, the Claims Commission recommended that the Legislature not pay Claimant's claim.

2. The West Virginia Rules of Evidence permit the evidence considered by the Claims Commission.

The Claims Commission reached its determination regarding the admissibility of the driver's blood alcohol content following its own rules and procedures, but even if it had followed the West Virginia Rules of Evidence, this information would still have been admissible. Claimant alleges that the information about the driver's intoxication contained in the West Virginia Uniform Traffic Crash Report was inadmissible hearsay. This allegation is inconsistent with West Virginia law.

In *Hadox v. Martin,* this Court specifically considered whether accident reports constitute hearsay. *Hadox,* 209 W. Va. 180, 544 S.E.2d 395 (2001). It found that accident reports fall under the public records exception to the hearsay rule. *Hadox,* 209 W. Va. at 187, 544 S.E.2d at 402, W. Va. R. Evid. 803(8). These documents have been determined to be intrinsically trustworthy and can be considered by a court as non-hearsay. *Id.* Additionally, the reporting officer need not be present to testify to the contents of the report. *Id.* Accordingly, whether under its own rules and procedures or under the West Virginia Rules of Evidence, the Claims Commission properly considered the West Virginia Uniform Traffic Crash Report pertaining to the collision.[3]

[3] In her brief, Claimant also makes an argument that the criminal file pertaining to the State's prosecution of Mr. Coffman was not properly disclosed. Claimant never argues, however, that it was unaware of or unfairly surprised by these documents. Indeed, having represented Claimant in her claims against Mr. Coffman prior to her claims against Respondent, Claimant's counsel would have had access to these documents for several years prior to the hearing in this matter.

B. CLAIMANT'S DECEDENT WAS CONTRIBUTORILY NEGLIGENT

As the driver of the vehicle had a blood alcohol content of .218 and would have been visibly impaired, Claimant's decedent was contributorily negligent under West Virginia law for getting into a motor vehicle with an impaired driver.

> Under the laws of this state, the driver of a motor vehicle owes to an invited guest, reasonable care for his safety, but the guest must exercise ordinary care for his own safety and when he knows, or by due diligence should know, that the driver is not taking proper precautions, it becomes the duty of the guest to remonstrate, and failure to do so bars his right to damages in case of injury.

Syl. pt. 1, *Herold v. Clendennen,* 111 W. Va. 121, 161 W. Va. 21 (1931). While this rule of law has been softened by the doctrine of contributory negligence, it is still well-accepted law that "a passenger has a duty to exercise reasonable care for his own safety." Syl. pt. 8, *Price v. Halstead,* 177 W. Va. 592, 355 S.E.2d 380 (1987).

In this case, Claimant's decedent was well aware that the driver of the motor vehicle had been drinking and was intoxicated. Indeed, the evidence even suggests that the Claimant's decedent may have purchased some or all of the alcohol consumed by the driver. JA 522. Certainly, the Claimant's decedent, who argued with the driver over whether he was sober enough to drive and who had been out drinking with the intoxicated driver all evening, knew the driver was intoxicated. JA 472-474, 510-517. Similar evidence, when considered by this Court, has been sufficient to bar recovery in an extended line of cases.

First, in *Clise v. Prunty,* a guest was injured by the skidding of her host's automobile on an icy road and it was held that she had acquiesced in the operation of her host's automobile without chains, though the danger was evident. 108 W. Va. 635, 637, 152 S.E. 201, 203 (1930). Under the standard set by this case, Claimant's decedent may be found contributorily negligent for getting

in the vehicle with an intoxicated driver, or even for getting in the vehicle with a driver with icy roads.

In *Adams v. Hutchinson,* the plaintiff was injured when an automobile carrying her and three others ran off the road at a late hour on a foggy night while the party was headed home from a dance where there was much drinking of intoxicating liquor. 113 W. Va. 217, 218, 167 S.E. 135, 136 (1932). The driver had been drinking and the plaintiff was aware of that fact. *Id.* This Court found that an "automobile guest who fails to protest driver's action in encountering apparent danger is contributorily negligent." Syl., *Adams,* 113 W. Va. 217, 167 S.E. 135.

In *Broyles v. Hagerman,* the plaintiff was injured in an automobile collision while she was a guest passenger in a five passenger automobile in which there were eleven people riding. 116 W. Va. 267, 268, 180 S.E. 99, 100 (1935). This Court held that as extreme overloading was a contributing cause of the plaintiff's injury, she could not recover as "[a]n automobile guest failing to protest the action of the driver in encountering a possible danger reasonably apparent to both is, ordinarily, barred from recovery." Syl., *Broyles,* 116 W. Va. 267, 180 S.E. 99. A similar holding was reached in *Kelly v. Checker White Cab Company, Inc.,* which held that the guest of the driver of an automobile could not recover as a matter of law where such guest had acquiesced in the operation of an automobile at excessive speed or over obviously hazardous highways. *Kelly,* 131 W. Va. 816, 822-23, 50 S.E.2d 888, 893 (1948).

In *Hutchinson v. Mitchell,* a fact pattern very similar to the fact pattern present here was presented; the driver and the passenger went out drinking together and the passenger was aware of the driver drinking five or six bottles of beer. 143 W. Va. 280, 285, 101 S.E.2d 73 76-77 (1957). The passenger had the opportunity to leave the vehicle as Mr. LaDanye did here both when the

trip began and when the car did several 360 degree turns and then came to a stop entering the interstate. *Id.* This Court found the passenger contributorily negligent. *Id.*

Thus, under the long-established precedent of this state, Mr. LaDanye, who went out drinking with a drunk driver and then let that drunk driver drive him home over icy roads, could be found contributorily negligent for his own injuries. Claimant attempts to avoid this well-established precedent by arguing Respondent did not proffer contributory negligence as a defense and by arguing Respondent did not allege that Claimant's decedent was contributorily negligent. Yet, the defense of contributory negligence is clearly set forth, along with all other Rule 8(c) defenses, in Respondent's Answer. JA 524. Also, while Respondent did not "contend that the decedent did anything to cause the accident, it [did] assert that the deceased was negligent in becoming a passenger in an automobile driven by an impaired driver." JA 15. Further, while Claimant attempts to muddy this clear issue by arguing Mr. LaDanye could not have been found guilty of a joint enterprise, which is an issue not present, it is clear, under West Virginia law, that the Claims Commission could consider Mr. LaDanye to be contributorily negligent.

C. CLAIMANT'S ARGUMENTS CONCERNING THE WEIGHT THE CLAIMS COMMISSION GAVE TO THE EVIDENCE CANNOT BE CONSIDERED IN A PETITION FOR WRIT OF CERTIORARI

Claimant's other arguments all concern the weight the Claims Commission gave the evidence. Specifically, Claimant alleges that the Claims Commission should have afforded more weight regarding weather conditions to her witness than it did to the West Virginia Uniform Traffic Crash Report, that the Claims Commission should not have afforded any weight to Respondent's expert witness, Jerry Pigman's, interpretation of events regarding the snow removal capabilities of Respondent's employees, that the Claims Commission should not have afforded any weight to

Respondent's expert witness, Jerry Pigman's, opinions regarding proximate cause,[4] and that the Claims Commission could not adopt the theory offered by Respondent that its employees were in "snow removal mode" at the time of the accident.

All of these arguments fall outside the narrow scope of review afforded by a Writ of Certiorari. Syl. pt. 2, *Foster,* 228 W. Va. 99, 717 S.E.2d 883. Accordingly, none of these arguments can form the basis for this Court to grant certiorari and review this matter. Further, each of these decisions by the Claims Commission were supported by evidence.[5] Not even Claimant argues they were not. Instead, Claimant disagrees with the weight the Claims Commission afforded that evidence. This Court was not present at the hearing of this matter and

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[4] Claimant's argument is truly merely meant to mislead as the issue of proximate cause did not even factor in the Claims Commission's decision as it determined there was no negligence.

[5] Claimant first argues that the Claims Commission should not have afforded any weight to the West Virginia Uniform Traffic Crash Report's finding that there was "snow" and "sleet, hail, or freezing rain" at the time of the accident merely because Claimant's accident reconstructionist testified the roads were dry. JA 510. The Claims Commission, perhaps even based in part on Claimant's evidence that it had snowed 13 out of the preceding 15 days, determined that the roads were snowy or icy. This is not a determination that is reviewable on a writ of certiorari.

Claimant next argues that the Claims Commission should have chosen to believe her expert witness's interpretation of Respondent's snow removal policies and postures over that provided by Respondent's expert witness, Jerry Pigman, and Respondent's employee, Larry Weaver. There is no evidence, however, that the Claims did not listen to all of the evidence, weigh Mr. Pigman's significant experience with snow removal procedures against Claimant's expert's limited experience, weigh Mr. Weaver's first-hand experience about how Respondent manages snow removal and determine that Claimant had not met her burden of proving Respondent had "actual or constructive notice of the defect and a reasonable time to take corrective action under all the circumstances presented." JA-18. This is not a determination that is reviewable on a writ of certiorari.

Finally, Claimant argues that the Claims Commission should not have afforded any weight to the accident reconstruction opinions offered by Respondent's expert witness, Jerry Pigman, an expert with 37 years of accident reconstruction experience who had participated in several hundred accident reconstructions. This determination is not only not reviewable on a writ of certiorari, it is irrelevant as the issue of proximate cause was never reached due to the fact the Claims Commission found no negligence on the part of Respondent.

cannot weigh the credibility of the evidence. That falls to the Claims Commission. These arguments must be disregarded.

D. THIS COURT DOES NOT NEED TO REVIEW THE RECOMMENDATION OF THE CLAIMS COMMISSION AND HAS NO POWER TO REVIEW THAT RECOMMENDATION.

As discussed above, each of the disputed recommendations made by the Claims Commission were supported by the evidence considered by the Claims Commission. Further, while Claimant objects to the rules adopted by the Claims Commission regarding what evidence it considered, Claimant does not allege that the Claims Commission made up facts or considered facts that were not present in the evidence. Credibility determinations are for a trial court and "determinations of witness credibility are accorded great deference." Syl. pt. 2 and 3, *State v. Juntilla,* 227 W. Va. 492, 711 S.E.2d 562 (2011) (citing Syl. pt. 3, *State v. Guthrie,* 194 W. Va. 657, 461 S.E.2d 163 (1995); Syl. pt. 3, *State v. Stuart,* 192 W. Va. 428, 452 S.E.2d 886 (1994)). Accordingly, this Court has no need to review the decision of the Claims Commission.

Even if this Court were to consider a need to review the recommendations of the Claims Commission, however, it would not have a right to review those recommendations. This is because the "decisions" Claimant points to are not actually decisions. They are recommendations. "In order to validate a legislative appropriation of public money for private use, it must affirmatively appear that the legislature in making the appropriation has found that it was necessary in order to discharge a moral obligation of the State." Syl. pt. 2, *State ex rel. Stollings v. Gainer,* 153 W. Va. 484, 170 S.E.2d 817 (1969); Syl., *State ex rel. Adkins v. Sims,* 127 W. Va. 786, 34 S.E.2d 585 (1945). The Claims Commission is the fact-finding arm of the Legislature which helps the Legislature investigate where to spend the money of the people of the State of West Virginia. *Stollings,* 153 W. Va. at 494, 170 S.E.2d at 823.

Previously, there was some confusion as to whether this Court could review those recommendations and whether the Claims Commission was a court. Indeed, the Claims Commission was once named the Court of Claims. W. Va. Code § 14-2-4 (2018). At that time, the recommendations were deemed reviewable as they were decisions of a "court."[6] The Legislature has since removed any doubt that the Claims Commission is merely an investigatory agency by removing the word "court" from its title. W. Va. Code § 14-2-4 (2018). Additionally, the Legislature has clarified that "[b]ecause a decision of the commission is a recommendation to the Legislature based upon a finding of moral obligation, the enactment process of passage of legislation authorizing payments of claims recommended by the commission is at legislative discretion, no right of appeal exists to findings and recommendations of the West Virginia Legislative Claims Commission and they are not subject to judicial review. W. Va. Code § 14-2-28.

To argue that this Court can review a recommendation made by the Claims Commission to the Legislature gives the Claims Commission power it does not actually have. This is because, regardless of what this Court might order the Claims Commission to find or recommend, the Legislature is under no obligation to give Claimant any money. Unlike the Workers Compensation Board of Review or other similar quasi-judicial bodies, the Claims Commission has no actual authority to award anything. It simply makes recommendations. Nowhere in the law are recommendations made to the Legislature reviewable. Thus, this Court has no ability to alter the recommendation made by the Claims Commission in this case.

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[6] Claimant also argues that the doctrine of separation of powers should bar the very existence of the Claims Commission. This argument forgets the doctrine of sovereign immunity. Were the Claims Commission not to exist, it would not be replaced with a judicial system of recovery. It would be replaced with a scenario where claimants who are legitimately injured by the State have no ability to recover at all.

CONCLUSION

Claimant's decedent chose to get into a car with a drunk driver on an icy night in mid-February. JA 472-474, 510-517. Now, Claimant is left with the loss of her son. The State of West Virginia, however, is not responsible for that loss.

The West Virginia Claims Commission, following the rules it has adopted to aid pro se claimants in the ability to recover, weighed the evidence presented by Claimant and the evidence presented by Respondent. W. Va. Code § 14-2-15 (2018). It heard the testimony of Respondent's employee who confirmed that, at the time of the accident, his region was in snow removal mode and it would not have been safe to close a lane of the interstate and an entrance ramp to remove snow from a parapet wall. JA 373-74. It heard the testimony of Respondent's expert witness who testified that not only was Respondent not negligent in not removing the snow from the parapet wall, the accident would have happened regardless as the drunk driver fish-tailed into the parapet wall, hitting it at an angle greater than twenty degrees. JA 301-305, 306, 330. And, based on all of the evidence presented, the Claims Commission concluded Claimant had not met her burden of proof. JA 15.

This decision is not reviewable on a Writ of Certiorari. Further, Claimant's attempts to make this decision reviewable by first casting doubt on the manner in which the Claims Commission determines what is evidence, and second, by alleging there was no evidence of intoxication where there was clearly significant evidence of intoxication presented to and considered by the Claims Commission, are unfounded. The Claims Commission is not limited to only admitted evidence. W. Va. Code § 14-2-15 (2018). It can conduct its own investigation. *Id.* In this case, it determined a drunk passenger got into a car with a drunk driver and they ran off the road through no fault of the State of West Virginia. JA 15. Accordingly, it recommended that the

Legislature not compensate Claimant for her son's death as such compensation was not a moral obligation of the State of West Virginia. JA 15. This recommendation is simply that, a recommendation. W. Va. Code § 14-2-4 (2018). The Legislature can choose to follow it or not follow it. Regardless, this recommendation is not reviewable by this Court and, under the facts presented, should not be reviewed by this Court.

Respectfully submitted,
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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

STATE OF WEST VIRGINIA ex rel. DANITA LADANYE, ADMINISTRATRIX OF THE ESTATE OF JONATHAN S. LADANYE,

Petitioner,

v. **Docket No.: 18-0356**
(Claims Commission Case No.: CC-15-2038)

WEST VIRGINIA LEGISLATIVE CLAIMS COMMISSION and WEST VIRGINIA DEPARTMENT OF TRANSPORTATION, DIVISION OF HIGHWAYS,

Respondents.

CERTIFICATE OF SERVICE

I, Stacy A. Jacques, Esq, counsel for West Virginia Department of Transportation, Division of Highways, do hereby certify that on the 21st day of June, 2018, I served a true copy of the foregoing "Motion for Disposition by Memorandum Decision" upon counsel for the parties to this action via United States mail, postage prepaid, addressed as follows:

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