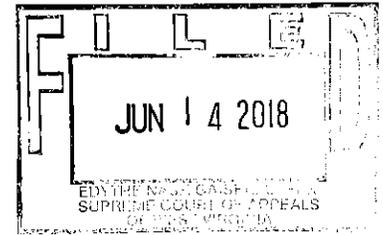


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JASON FARLEY

Petitioner

Appeal from a final order

**Of the Circuit Court of
Cabell County (17-CAP-22)**

V.)

RONNIE MYERS

Respondent

Petitioner's Brief

Counsel for Petitioner, Jason Farley, Pro se

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ASSIGNMENTS OF ERROR

1. THE CIRCUIT COURT ERRED IN NOT ACCEPTING THAT THIS IS A COMMERCIAL PROPERTY WHILE MR. PEOPLES STATED IN COURT THAT IT IS AN UNLAWFUL DETAINER, THE RULING WAS FOR A WRONGFUL OCCUPATION, AND AS SO IT IS FOR RESIDENTIAL. FILED AS SUCH WAS DISMISSED TWICE BEFORE AND SHOULD FALL UNDER *RES JUDICATA*.
2. THE CIRCUIT COURT CEASED MY EXPLANATION THAT THE EXECUTION OF CIVIL PROCESS OR ORDER IS NOT PERMITTED ON SUNDAY.
3. THE CIRCUIT COURT DISMISSED THE PROOF AND DECEPTION BEHIND THE SERVER OF THE SUMMONS HOLDING ONTO THE PAPERWORK AND FILING IT UNTIMELY. AS A RESULT EXPIRING THE PETITIONER'S ABILITY TO FILE AN ANSWER.
4. DEFAULT JUDGEMENT WAS IMPROPER BECAUSE THE PETITIONER DEMONSTRATED REASONABLE DOUBT OF PERSECUTION, EVIDENCE OF CHARACTER, MOTIVE AND OPPORTUNITY WAS DENIED.

5. THE CIRCUIT COURT OVERLOOKED THAT WHILE THE PROCESS SERVER FOR BARR & ASSOCIATES WAS FLUMMOXED AT THE FACT AT MR. FARLEY'S ABSENCE, HE NEGLECTED SERVICE WHEN ALL LEGAL OPPORTUNITIES WERE GIVEN PURSANT TO THE RULES OF CIVIL PROCEDURE.

6. THE CIRCUIT COURT DENIED EVIDENCE OF THE MAN THAT SPOKE WITH THE PROCESS SERVER FROM BARR & ASSOCIATES.

STATEMENT OF THE CASE

This case was fraudulently brought to court in attempts to sabotage my business into shutting down as Mr. Myers repeatedly has attempted to do so since 2015, and has failed. Twice before using these same methods in Case No. 15-M06C-02695 and Case No> 16-M06C-02666 under wrongful occupation in resulting in the cases being thrown out. This case ruled under that same code and should fall under *res judicata*.

Mr. Cremeans lied about his service to Mr. Farley to gain a started date for the five days of service. Mr. Cremeans used his sister-in-law to postdate documents to give an excuse of late service, however the clerk at the Magistrates Office can notarize it as well when the papers get returned.

Mr. Myers has tried for three years harassing Mr. Farley, trying to shut his business down so he could regain access. In Magistrate Court the Judge said Mr. Farley could not prove he was not served, but with the burden of proof on Mr. Myers he as well could not have proven they had been served to Mr. Farley.

Under WV Code (56-3-16) Sunday service is improper and should be grounds to dismiss the case. With this kind of rules in place it would not be difficult to obtain default judgment on anyone with a dishonest credible witness. If a person is unaware of said service then the proof of service is filed untimely no person can stand a chance for due process, before default judgment falls into place.

SUMMARY OF THE ARGUMENT

If initial service had happened it would not have been properly served. If the service was legal by filing the proof of service untimely there would be no time to answer before the fifth day deadline automatically giving default judgment. By filing under wrongful occupation the case should have been thrown out due to wrongful filing, and if not due to that, than due to *res judicata* pertaining to past Case Law.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

The petitioner contends that the oral argument is necessary in this case. The petitioner contends that the oral argument in this case should be subject to Rule 19 of the Rules of Appellate Procedure. The petitioner contends that the case is appropriate for a Rule 19 argument in that the Petitioner claims the Circuit Court erred in his Pro se rights of Due Process.

ARGUMENT

I. THE CIRCUIT COURT ERRED IN NOT ACCEPTING THAT THIS IS COMMERCIAL PROPERTY WHILE MR. PEOPLES STATED IN COURT THAT IT IS AN UNLAWFUL DETAINER, THE RULING WAS FOR WRONGFUL OCCUPATION, AND AS SO IT IS FOR RESIDENTIAL. FILED AS SUCH WAS DISMISSED TWICE BEFORE AND SHOULD FALL UNDER *RES JUDICATA*.

- a. The initial case of the 17-M06C-02546 was filed leaving out that it was being filed as a wrongful occupation as time stamped and filed on December 20th, 2017 at 2:38p.m. four days after the court ruled for default judgment. Under WV Code 55-3A-1. This code is a petition for summary relief for wrongful occupation of a residential rental property. Twice before Mr. Myers has attempted this course of action in previous case October 21, 2015 Case No.15-M06C-02695 and again in November 2, 2016 Case No.16-M06C-02666. Mr. Myers in both cases tried to give service with only hours to prepare and he gave no proof of service because under Rule 6(d)(2)(b), you are to give at least two days before the time set for the hearing if served by hand delivery. Both cases were ruled on and was never contested and as such should fall under *res judicata*. Mr. Myers' decision to mark out residential to write commercial does not make it legal changing of WV Code. Common law can be changed only through legislation. Residential codes have residential rules and procedures. Proper service for commercial property falls under Rule 4(b)(1) within twenty days after service of the summons and complaint.

II. THE CIRCUIT COURT CEASED MY EXPLANATION THAT THE EXECUTION OF CIVIL PROCESS OR ORDER IS NOT PERMITTED ON SUNDAY.

- a. Under WV Code (56-3-16) Execution of Process on Sunday. No civil process order shall be executed on Sunday, except in case of persons escaping from custody or where it may be specially provided by law. Mr. Cremean's allegation of his service on Mr. Farley states on Sunday, November 5, 2017. If this was a fact then the service would not have been legally served.

III. THE CIRCUIT COURT DISMISSED THE PROOF AND DECEPTION BEHIND THE SERVER OF THE SUMMONS HOLDING ONTO THE PAPERWORK AND FILING IT UNTIMELY. AS A RESULT EXPIRING THE PETITIONER'S ABILITY TO FILE AN ANSWER.

- a. Mr. Cremeans with the help of his sister-in-law Martena Cremeans, used the excuse that he served me on Sunday November 5, 2017 and that it took him until November 10, 2018 to find her to notarize the proof of service. Mr. Myers had tried this twice before in Case No. 15-M06C-02695 and the Case No. 16-M06C-02666 and lost both cases. With the help of a notary and a person willing to say

that I was served, court could be set up without my knowledge and default judgment may be granted. Claiming Mr. Farley was served on Sunday November 5, 2017, Mr. Cremeans erred in thinking after having Ms. Cremeans postdate her date of service. They found out they had to file a day early due to the holiday Veteran's Day. Now showing the timestamp for November 9, 2017 at 12:25 p.m. yet notarized by Martena Cremeans on November 10, 2017 a day after being filed. Going against Article 4 Revised Uniform Law on Notarial Acts. WV Code (39-4-21)(a)(6) Use of false or misleading advertising or representation by the Notary Republic representing that the notary has a duty, right or privilege that the notary does not have. Under WV Code (39-4-25) (a)(5) a notary must include provisions to prevent fraud or mistake in the performance of notarial acts. If on November 5, 2017 Mr. Farley was served and it was legal, the use of wrongful occupation for residential property was correct. That only gives five days to file an answer instead of twenty. Through the Magistrate Courts De facto Rules of Procedure you cannot file and answer to a summons until you have been served. So, going against WV Code (56-3-16) Execution of Process on Sunday. If served on Sunday November 5, 2017, proof of service was not filed until the 5th day which would be November 9th 2017. He would never have had an opportunity to file an answer before the fifth day automatically causing default judgment. After supposed service was made under Rule 5(d)(1) service and filing of pleadings and other papers D) Filing a Certificate of Service (1) All papers after the complaint required to be served upon a party together with a certificate of service shall be filed with the Court in a reasonable time after service.

IV. DEFAULT JUDGEMENT WAS IMPROPER BECAUSE THE PETITIONER DEMONSTRATED REASONABLE DOUBT OF PERSECUTION, EVIDENCE OF CHARACTER, MOTIVE AND OPPORTUNITY WAS DENIED.

- a. Burden of Proof: The Duty to prove disputed facts in cases a plaintiff generally has the burden of proving his or her case. When shown past case law, the three years of court and harassment from Mr. Myers. Mr. Myers has no sound evidence that reasonable doubt, backed by laws cannot be disputed.

V. THE CIRCUIT COURT OVERLOOKED THAT WHILE THE PROCESS SERVER FOR BARR & ASSOCIATES WAS FLUMMOXED AT THE FACT THAT MR. FARLEY'S ABSENCE, HE NEGLECTED SERVICE WHEN ALL OPPORTUNITIES WERE GIVEN PURSANT TO THE RULES OF CIVIL PROCEDURE.

- a. Robert Grant Jr. at Barr & Associates came by on October 24, 2017 at 11:15a.m. Mr. Farley did not know him, yet he acted as if he knew Mr. Farley and was asking if he was there. Mr. Farley acknowledged that Mr. Farley did reside at that residence but was not home at that current time. Mr. Farley is clearly over 18 years of age and asked Mr. Grant if there was anything he wanted to relay to Mr. Farley giving Mr. Grant the legal opportunity to serve him under Rule 4(d)(B) in the WV Rules of Civil Procedure. Mr. Grant stated, "No thank you, I will come back."

VI. THE CIRCUIT COURT DENIED EVIDENCE OF THE MAN THAT SPOKE
WITH THE PROCESS SERVER FROM BARR & ASSOCIATES.

- a. The gentleman that Mr. Grant spoke to was found but as this court is not a fact finding body and as such, cannot accept any evidence not introduced in circuit court.

CONCLUSION

The Circuit Court's order granting default judgment should be reversed, and this matter is requested to be dismissed with prejudice.

Signed: Jason Farley, Pro se

Jason Farley, Pro se