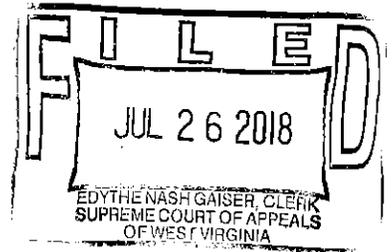


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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA



**Jason Farley,
Defendant Below, Petitioner**

vs.) **No. 18-0235**

**Ronnie Myers,
Plaintiff Below, Respondent**

**Summary Response by Respondent responding to Brief of
Petitioner and in support of affirming decision below by Cabell County
Circuit Court denying the Motion of Defendant Below to Set Aside
Judgment and dismissing appeal.**

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SUMMARY RESPONSE BY RESPONDENT

Petitioner's Failure To Comply with the WV Rules of Appellate Procedure

Petitioner proceeds pro se in this appeal. As such, he is required by **Rule 4, WV Rules of Appellate Procedure**, to comply with those Rules to the fullest extent.

Petitioner's Assignments of Error (**Petitioner's Brief, pp. i, ii**) are for the most part unintelligible or otherwise not supported by the record. Further, Petitioner's Statement of the Case (**Petitioner's Brief, pp. 2, 3**) contains nothing more than Petitioner's assertions of fact unsupported by any references to the record nor relevant to the assignments of error asserted in his Brief as required by **Rule 10(c)(4), WV Rules of Appellate Procedure**.

Respondent's Summary Response

Petitioner appeals from a ruling and Order of the Circuit Court of Cabell County (Case No. 17-CAP-022), entered February 13, 2018, denying his Motion To Set Aside Judgment and dismissing his appeal. Petitioner asserted in the Circuit Court that the judgment entered against him in Magistrate Court below was improper because he was never served with summons and complaint (**Transcript of Proceedings on January 26, 2018, p. 5, lines 18-21, p. 6, lines 14-15**). In ruling upon the Motion To Set Aside Judgment, the Circuit Court determined that the evidence was clear and convincing Petitioner was properly served with the summons and complaint (**Transcript of Proceedings on February 9, 2018, p.15, lines 18-24, p.16, lines 4-11**). In addition, the record in Circuit Court reflects that attempts to serve Petitioner with

summons and complaint prior to the actual personal service upon him were thwarted by virtue of Petitioner's misrepresentation of his identity to a process server (**Transcript of Proceedings on January 26, 2018, p. 8, lines 2-24, p. 9, lines 1-5, p. 9, lines 19-24, p. 10, lines 1-18**), leading to the Circuit Court finding that Petitioner misrepresented his identity on two distinct occasions.

Petitioner's Statement of the Case as well as the majority of his Arguments in support of the Assignments of Error are grounded on mere assertions of fact by Petitioner as evidenced by the lack altogether in that Statement of the Case of appropriate and specific references to the designated record to establish facts relevant to the Assignments of Error.

The majority of Petitioner's Assignments of Error and supporting arguments are inappropriately asserted under the circumstances as reflected by the record and the Transcripts of Proceedings. That record does not reflect any evidence in support of the various arguments submitted by Petitioner regarding his Assignments of Error. The sole issue before this Tribunal should be whether or not the Circuit Court erred in denying Petitioner's Motion To Set Aside Judgment. Instead, Petitioner sets forth Assignments of Error which are at best convoluted and conceived on the basis of facts and circumstances Petitioner mistakenly believes exist but which are without support in the record. A prime example of this is Petitioner's argument in support of his first Assignment of Error (**Petitioner's Brief, p. 4, Paragraph I**), wherein he launches into a discussion of his interpretation of a series of prior cases involving the parties, none of which finds any support whatsoever in the record now before this Court. He then concludes that the doctrine of "*res judicata*" should apply to overturn the Circuit Court's ruling on his Motion To Set Aside Judgment. In another argument, Petitioner asserts that "default judgment was improper because the Petitioner ("...demonstrated reasonable doubt of Persecution, evidence of

character, motive and opportunity was denied.” (**Petitioner’s Brief, p. 7, Paragraph IV**). This argument is nonsensical at best and, once again, has no support whatsoever in the record. Among Petitioner’s other arguments is that the Circuit Court denied evidence “... of the man that spoke with the process server from Barr & Associates.” Again, nonsensical, without merit and entirely without support in the record.

It is difficult, if not impossible, to respond in an intelligent manner to the arguments made by Petitioner other than to simply state with all due respect, that those arguments are neither supported by the record nor are those arguments relevant to the issue of whether the Circuit Court erred in denying Petitioner’s Motion To Set Aside the Judgment and dismissing his appeal. On appeal, Petitioner clearly contends that he was never served with the summons and complaint. Consequently, the entry of judgment against him was improper according to his argument. However, as stated, a review of the record lends no support to Petitioner’s argument. Instead, and as reflected both in the record and by the Circuit Court’s findings in the final Order, the evidence was clear and convincing that Petitioner was properly served in compliance with **Rule 4 (c)(2) and (d)(1)(A) West Virginia Rules of Civil Procedure**, by a person who was not a party, who was at least 18 years of age, and who handed and delivered a copy of the summons and complaint to Petitioner personally (**Transcript of proceedings on January 26, 2018, p. 17, lines 16 - 24, p. 18, lines 1 - 5, p. 19, lines 15 and 16**). Service of process being proper, the Circuit Court’s denial of Petitioner’s Motion To Set Aside Judgment was proper and supported by the evidence.

Conclusion

Respondent prays that the Court affirm the ruling of the Circuit of Cabell County denying Petitioner's Motion To Set Aside Judgment.

RESPECTFULLY SUBMITTED,



CHARLES W. PEOPLES, JR.

Counsel for Respondent