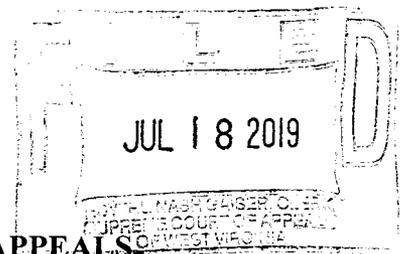


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BEFORE THE WEST VIRGINIA SUPREME COURT OF APPEALS

**Robert Lee Mattingly, Jr.,
Plaintiff Below, Petitioner**

vs.

No. 19-0055

**Robert Moss
Defendant Below, Respondent**

**(On Appeal from the Circuit Court of
Ritchie County, West Virginia Case No. 18-C-2)**

PETITIONER'S REPLY TO RESPONDENT'S BRIEF

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GENERAL OBJECTIONS

I. The Respondent brought forward facts not on the record.

The Petitioner objects to all facts argued by the Respondent that were not previously on the record. Namely, the Respondent's assertions that the Petitioner was "on home confinement," was "arrested for violating home confinement for an alcohol-related criminal conviction," and "began drinking heavily and accusing" the Respondent after his release from jail. (Respondent's Summary Response to Petitioner's Brief – pg. 1, 2.) None of these facts are included on the record below and do nothing but disparage the Petitioner and his claim. The Petitioner thus requests that this Honorable Court disregard all such comments and arguments.

II. The Respondent brought forward numerous speculations.

The Petitioner objects to all the Respondent's speculations. Namely, the Respondent's assertions that the Petitioner was "fairly sophisticated and knew a Magistrate Court claim must be under \$10,000 in damages per case to avoid Circuit Court . . . knew that the checks in Case No. 1 exceeded the jurisdictional limits and tried to waive anything over that amount." (Respondent's Summary Response to Petitioner's Brief – pg. 6, 7); the Petitioner "harassed" the Respondent by exchanging letters with the Respondent (Respondent's Summary Response to Petitioner's Brief – pg. 7); the Magistrate Court's Motion to Dismiss "should have been treated as a Motion for Summary Judgement and as a clear final ruling on the merits." (Respondent's Summary Response to Petitioner's Brief – pg. 8); the Petitioner "is sophisticated enough to prepare a Power of Attorney and analyze multiple financial transactions on the basis of written documents . . . dividing them into two separate civil actions . . . in an attempt to avoid jurisdictional limits of Magistrate Court." (Respondent's Summary Response to Petitioner's Brief – pg. 12); and the Petitioner would clearly not prevail in Circuit Court (Respondent's

Summary Response to Petitioner's Brief – pg. 12). All of these arguments and statements are pure speculation and are not based on any fact or pleading in the record below.

ARGUMENT

A. *Res Judicata* Does Not Bar the Petitioner's Complaint because both actions were **not fully litigated on the merits.**

The Respondent's repeated claims that both Magistrate Court actions were decided on the merits throughout his brief are not accurate. Expressed clearly on the Magistrate's Civil Judgement Order for the Petitioner's second Magistrate Court action (Case No 2) is the language, "Dismissed without prejudice," with no further language following. Additionally, no evidence, recordings, or transcripts are present to support the Respondent's claim that Case No 2 was adjudicated on the merits. The Respondent specifically acknowledges the lack of such evidence by stating that "[n]o recording of the trial was preserved." (Respondent's Summary Response to Petitioner's Brief – pg. 3).

In addition to the lack of evidence, the Magistrate signed the Civil Judgement Order herself (Appendix – pg. 61 Civil Judgment Order), indicating that the Magistrate was aware of the contents of the Civil Judgement Order and affirmed the dismissal without prejudice. Aside from the "Dismissed without prejudice" language expressly written on the Order, no other language is present that offers insight into the Magistrate's reasoning or thought process when the dismissal was issued. At the time of the hearings for Case No 1 and Case No 2, the Magistrate, after determining jurisdiction was proper for Case No 1, heard arguments and considered evidence before providing judgment in favor of the Respondent. Afterwards, the Magistrate determined Case No 2 was not within its jurisdiction and correctly dismissed Case No 2 without prejudice due to lack of jurisdiction. Specifically, the Petitioner's claim in Case No 2 for "extortion" was not within the Magistrate's jurisdiction.

The Respondent inappropriately relied upon the Circuit Court's holding that the "Magistrate's characterization as without prejudice was an erroneous statement" (Respondent's Summary Response to Petitioner's Brief – pg. 8 citing Appendix pg. 1-4 Order Granting Summary Judgement). The crux of the Petitioner's appeal is that the Circuit Court was wrong in its determination due to its own speculation. Again, there was no evidence, recordings, or transcripts to support that Case No 2 was adjudicated on the merits. The Circuit Court arbitrarily and capriciously ruled that the Magistrate's dismissal was "erroneous" because the matters in the Petitioner's first Magistrate Court action (Case No 1) were "factually and legally argued." (Appendix – pg. 2 Order Granting Summary Judgment) This underlying logic that "one case was heard, therefore both were heard" used by the Circuit Court was improper. Both Case No 1 and Case No 2 involved separate causes of action supported by different evidence, and each Complaint deserves the opportunity to be separately and fully litigated.

The Respondent's position is erroneously supported by more speculation than fact, all of which should be disregarded by this Court. For example, the Respondent further argues that the Magistrate's dismissal "*appears* to be based upon the Motion to Dismiss filed . . . by Robert Moss," (Respondent's Summary Response to Petitioner's Brief – pg. 4) and that "The Motion to Dismiss *should* have been treated as a Motion for Summary Judgment and as a clear final ruling on the merits." (Respondent's Summary Response to Petitioner's Brief – pg. 8). These are not facts, but more speculations by the Respondent. Moreover, the Respondent claimed the Magistrate has no authority to determine whether a dismissal is with or without prejudice by citing *W. Va. Code* §50-4-12 (Respondent's Summary Response to Petitioner's Brief – pg. 9). However, this is also inaccurate because the Magistrate has authority to dismiss without prejudice "when an action involves a matter outside of . . . the jurisdiction of the magistrate

court” (*W. Va. Code* §50-4-11). The Petitioner’s second Complaint involved the criminal action of extortion, which falls outside the Magistrate Court’s jurisdiction. As a result, *W. Va Code* §50-4-11 provided the Magistrate proper authority to dismiss the Petitioner’s second Complaint without prejudice.

Taken altogether, the Court should give greater deference to the Magistrate’s ruling because the Magistrate was in the best position to consider the evidence presented and provide appropriate judgment. Therefore, the Court should rule that the Magistrate’s intent of dismissal without prejudice was expressed clearly in the Civil Judgement Order for Case No 2, the dismissal without prejudice was proper, there was no judgment on the merits for Case No 2 as a result of the Magistrate’s dismissal without prejudice, the doctrine of *res judicata* does not apply, and the Circuit Court’s Order for Summary Judgment was improper.

B. The Petitioner’s Second Complaint does not involve the same series of transactions and was not an attempt to file a second lawsuit like the first.

The Petitioner’s second complaint is distinguishable from the first in that it asserts a different cause of action (breach of contract vs. extortion, civil vs. attempted criminal, and different acts and resources.) The Respondent continues to incorrectly argue that the Petitioner’s second Complaint, Case No 2, is an attempt to litigate Case No 1 a second time because both actions arose same from money and duties claimed against the Respondent. (Respondent’s Summary Response to Petitioner’s Brief – pg. 10). This is not accurate because the Petitioner’s Complaints included different causes of action and evidence. In Case No 1, the Petitioner claimed a breach of contract due to the Respondent failing to care for the Petitioner’s dog and apartment as agreed upon. Attached to his first Complaint, the Petitioner included a copy of the Power of Attorney assigned to the Respondent and checks (Appendix, pp. 40-44, Complaint Exhibits, Check Nos. 1363, 1365, 1366, 1368, and 1369). In Case No 2, the Petitioner claimed the Respondent

extorted money from the Petitioner and attached ten (10) different checks compared to Case No 1 (Appendix, pp. 157-159, Complaint Exhibits, Check Nos. 726, 727, 729, 730, 731, 732, 733, 741, 742, and one miscellaneous check).

The Respondent further reiterates the different evidence between the Petitioner's Complaints by stating that the checks filed with Case No 2 are "from a different bank and account" compared to Case No 1. (Respondent's Summary Response to Petitioner's Brief – pg. 7.)

Taken altogether, the evidence supports the Petitioner's claims that both of the prior Complaints are distinct from each other, the causes of action and evidence are actually and constructively different, and Case No 2 is not an attempt by the Petitioner to file a second lawsuit just like Case No 1.

C. Equity demands that the Petitioner be given his day in court.

The Respondent apparently considers "sophistication" as performing common simple tasks such as monitoring personal finances and arriving at a certain place on time. The Petitioner proving himself to be responsible, however, is not evidence that he was legally sophisticated enough to understand the nuances of civil procedure. The Respondent indicated that the Petitioner was able to file his Complaints, attach exhibits to his Complaint, and utilize the Sheriff's office to serve his Complaints as evidence of "sophistication" in addition to "[appearing] at the time of bench trial" (Respondent's Summary Response to Petitioner's Brief – pg. 12).

The initial steps of filing a complaint are frequently performed by individuals without legal training or experience and are commonly done with the assistance of the County Clerk's office staff. The Petitioner is no different as he was assisted by office staff at the Pleasants

County Clerk's Office when he filed both Case No 1 and Case No 2. Moreover, the Petitioner's supposed "sophistication" was clearly not evident given the numerous misspellings in his Complaints, which was, ironically, noted by the Respondent (Respondent's Summary Response to Petitioner's Brief – pg. 2, 3). Specifically, in Case No 1, the Petitioner wrote, "He even cash two cks 1368 & 1369 the same day . . . surly not for my selfe . . . I feel he has dfnitly went over board"¹ and in Case No 2, the Petitioner wrote, "Mr. Moss with drew . . . under the same circomestance, I feel this is extorson."² Moreover, the Petitioner's lack of alleged sophistication is further evident by his attempt to file a criminal action for extortion in magistrate court as a civil action. Contrary to the assertions of the Respondent, this obvious lack of sophistication is appropriate grounds for finding in favor of the Petitioner based on principles of equity and fair jurisprudence.

The Respondent's assertions that the doctrine of collateral estoppel should bar the Petitioner from litigating issues arising from "any funds from 2015 until 2017 under the Power of Attorney which has been decided in the issue ruled in favor of Bob Moss in Case No. 1 and Case No. 2" are also without merit. Again, Case No 2 was not decided nor ruled in favor for the Respondent. Rather, Case No 2 was dismissed *without prejudice*, which provides the Petitioner the opportunity to refile and relitigate issues from his second Complaint, which he ultimately did. Equity demands that Mr. Mattingly be given his day in court, at least on the merits of his second complaint.

Principles of equity and justice demand that the Petitioner be given an opportunity to fairly and fully litigate all of his claim and have his day in court. The Court should determine that the Petitioner is not as "sophisticated" as the Respondent claims and would not be able to

¹ Appendix – pg. 38 First Complaint and Attachments filed by Robert Mattingly, Jr. in Magistrate Court (3/3/17)

² Appendix – pg. 55 Second Complaint and Attachments filed by Robert Mattingly, Jr. in Magistrate Court (3/3/17)

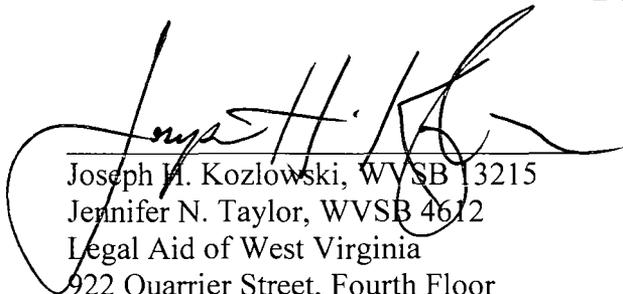
understand complex civil procedure, jurisdictional issues, or legal doctrines like collateral estoppel. Therefore, the Court should grant the Petitioner leniency to due to his lack of capability, knowledge, and expertise, and provide him an opportunity to have his day in court.

CONCLUSION

The Petitioner respectfully requests that this Honorable Court REVERSE the Order Granting Summary Judgement entered by the Circuit Court of Ritchie County, West Virginia, and REMAND this matter for trial.

Respectfully submitted:

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