

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**Keith West and Susan West,
Plaintiffs below, Respondents**

vs.) No. 101145 (Brooke County 06-C-61)

**West Virginia Department of
Transportation, Division of Highways,
Defendant below, Petitioner**

FILED

February 25, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

This appeal arises from the circuit court’s order entered on remand following the issuance of the Court’s opinion in *West v. The West Virginia Department of Transportation, Division of Highways*, 224 W.Va. 563, 687 S.E.2d 346 (2009) (*per curiam*). In *West*, the Court reversed the judgment in the case and remanded the matter for “further proceedings to address the threshold legal determination of whether a properly executed State insurance policy was in effect at the time the West accident occurred.” *West*, 224 W.Va. at 569, 687 S.E.2d at 352. The petitioner, the West Virginia Department of Transportation, Division of Highways (“the DOH”), appeals and asserts that the limited remand from this Court in *West* was misinterpreted by the circuit court. The DOH asks that the circuit court’s order entered on remand be reversed and the DOH’s motion to dismiss be granted *de novo*.

Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this matter is appropriate for consideration under the Revised Rules. Upon consideration of the standard of review, as well as the parties’ briefs and the record, the Court finds no substantial question of law nor does the Court disagree with the decision of the lower tribunal as to the question of law. Moreover, the Court finds no prejudicial error. For these reasons, and having reviewed the relevant decision of the circuit court, the Court is of the opinion that the decisional process would not be significantly aided by oral argument and that a memorandum decision is appropriate under Rule 21 of the Revised Rules.

“A circuit court’s interpretation of a mandate of this Court and whether the circuit court complied with such mandate are questions of law that are reviewed *de novo*.” Syllabus Point 4, *State ex rel. Frazier & Oxley, L.C. v. Cummings*, 214 W. Va. 802, 591 S.E.2d 728 (2003).” Syl. Pt. 1, *Zaleski v. West Virginia Mutual Insurance Company, formerly known as West Virginia Physicians Mutual Insurance Company*, 224 W.Va. 544, 687 S.E.2d 123 (2009) (*per curiam*).

Following this Court’s remand in *West*, the DOH filed a motion to dismiss. The exhibits attached to the motion included a certified and signed copy of the State

Policy, including Endorsement No. 7. On March 11, 2010, the circuit court conducted a hearing on the DOH's motion to dismiss. At the hearing, respondents, Keith and Susan West ("the Wests"), argued that the State insurance policy attached to the DOH's motion to dismiss was a "fugitive" document that should not be considered by the circuit court because it was not a part of the record.

On June 2, 2010, the circuit court entered an order denying the DOH's Motion to Dismiss. The circuit court noted the directions from this Court in *West* and stated that it had reviewed the DOH's motion and supporting memoranda, the Wests' responsive memoranda, the pertinent law, and the oral argument of counsel. The circuit court stated that it could **not** reopen the record to admit the documents attached to the DOH's motion to dismiss because the record was closed after the case was tried to a verdict. The circuit court concluded that a properly executed insurance policy was in effect at the time of the West accident and that it was "of no moment" that the certified policy in the record was unsigned because the DOH had admitted in its Answer to the Complaint that said policy was valid and in effect at the time of the West Accident, and such admission was conclusively binding upon the DOH.

The circuit court then turned to the unsigned Endorsement No. 7 in the record and noted in its order that while no party contested the validity of the State Policy, the Wests **did** contest the validity of Endorsement No. 7. The circuit court concluded in its order, as follows:

The record during the underlying proceedings is clear: Defendants admitted that an insurance policy was in effect at the time of the West accident. Defendants also admitted that Endorsement #7, a document which would have amended the effective insurance policy and removed the West accident from coverage, was not signed. It is generally axiomatic that in order for an amendment to a contract, i.e. an insurance policy, to be valid and effective, it must be signed. Because Endorsement #7 was not signed in this instance, it simply cannot amend the underlying insurance policy. . . Accordingly, the insurance policy in effect at the time of the West accident provides the Defendants coverage for the West accident, and there is no exclusion applicable. Furthermore, the Court hereby **FINDS** and **CONCLUDES** that the aforementioned decision(s)/findings have no effect upon the Court's prior determination that Endorsement #7 does not apply to exclude coverage in this matter.

Having reviewed the record designated for appeal and the parties' briefs, the Court concludes that the circuit court properly interpreted the scope of the remand in *West* and committed no reversible error.

Affirmed.

ISSUED: February 25, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Menis E. Ketchum

Justice Thomas E. McHugh