

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

**State of West Virginia ex rel.
Baker Installation, Inc., Petitioner**

vs.) No. 11-1627

**Honorable Carrie Webster, Judge of the
Circuit Court of Kanawha County, Respondent**

FILED

February 10, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

In the original proceeding now before this Court, the petitioner, Baker Installation, Inc., by counsel Barbara Arnold, seeks a writ of mandamus against the respondent, the Honorable Carrie Webster, Judge of the Circuit Court of Kanawha County, to compel her to rule upon a motion for new trial that has been pending for decision since January 2011. Upon consideration of the petition, we conclude that the writ of mandamus should be granted.

The Court has considered the petition for writ of mandamus and the record presented by the petitioner. The facts and legal arguments are adequately set forth therein and the Court has previously decided that oral argument is not necessary to the decision in this case. The facts in this case are not complex and the case does not present a novel or significant question of law. For these reasons, a memorandum decision is appropriate under Rule 21 of the Rules of Appellate Procedure.

On September 29, 2010 the petitioner in this action filed a Motion for New Trial pursuant to Rule 59(a) of the Rules of Civil Procedure following an adverse jury verdict. The plaintiff below responded to the motion on October 7, 2010. The petitioner filed a notice of hearing on December 1, 2010, which was held on December 22, 2010. Thereafter the petitioner submitted proposed findings of fact and conclusions of law on January 7, 2011. The plaintiff below submitted a proposed order denying the motion for new trial on the same day. Thereafter, on March 7, 2011, the petitioner submitted a proposed order granting the motion for new trial. On June 22, 2011 — six months after the hearing on the motion for new trial — counsel for the plaintiff below inquired of Judge Webster by letter regarding the status of the ruling on the motion for new trial. Just over two months later, on September 1, 2011, the plaintiff below filed a notice of status conference to take place on September 30,

2011. However, according to the verified petition filed in this matter, counsel received a phone call from staff in Judge Webster's office on September 29, 2011 "indicating that the trial court was denying [the motion] and that an order would be entered within the next week." However, no order was forthcoming.

On December 1, 2011 the petitioner filed a petition for writ of mandamus seeking to compel Judge Webster to issue a ruling on the motion. On January 12, 2012, this Court issued a rule to show cause returnable February 8, 2012, unless sooner mooted by entry of an order on the motion for new trial. The Clerk of this Court contacted the circuit clerk's office this morning, and Judge Webster has still failed to issue an order disposing of the petitioner's motion for new trial.

Section 17 of Article III of the West Virginia Constitution provides that "justice shall be administered without sale, denial or delay." Furthermore, Canon 3B(8) of the West Virginia Code of Judicial Conduct provides that "[a] judge shall dispose of all judicial matters promptly, efficiently, and fairly." This Court has also pointed out that "judges have an affirmative duty to render timely decisions on matters properly submitted within a reasonable time following their submission." Syllabus point 1, in part, *State ex rel. Patterson v. Aldredge*, 173 W. Va. 446, 317 S.E.2d 805 (1984). The duty of judges to issue timely decisions is also clearly set forth in the West Virginia Trial Court Rules: "[T]he Supreme Court of Appeals has determined that the expeditious processing and timely disposition of cases by circuit courts are essential to the proper administration of justice. Accordingly, it directs circuit courts and their officers to comply with these rules, which provide time standards for the processing of all cases except for those governed by statute or in which the circuit court finds, on the record, that extraordinary circumstances exist for exemption from these standards." Trial Court Rule 16.01. *See also* Trial Court Rule 16.13(d) "It shall be the duty of circuit judges . . . to effectuate expeditious movement and timely disposition of all cases assigned to them. It shall further be the duty of such judicial officers to control their dockets and to control continuances by means of strict application of the Rules of Civil procedure, Rules of Criminal Procedure, and statutory time frame provisions governing continuances."

More specifically, Trial Court Rule 16.05(e) requires that, in civil cases such as this, "[a]n order shall be entered on post-trial motions within one month of submission." This matter was submitted for decision on December 22, 2010, and therefore the order should have been entered by January 22, 2011. Accordingly, Judge Webster is over one year late in entering the order, and it is abundantly clear that the petitioner is entitled to the relief requested in this matter.

In granting such relief it is important to note that this Court cannot compel Judge Webster to rule in a particular manner. This Court held in Syllabus point 2 of *State ex rel. Patterson v. Aldredge, supra*:

“Mandamus will not lie to direct the manner in which a trial court should exercise its discretion with regard to an act either judicial or quasi-judicial, but a trial court, or other inferior tribunal, may be compelled to act in a case it unreasonably neglects or refuses to do so.” *State ex rel. Cackowska v. Knapp*, 147 W. Va. 699, 130 S.E.2d 204 (1963).

Accordingly, it is ADJUDGED and ORDERED that a writ of mandamus be issued directing the respondent, the Honorable Carrie Webster, to render a decision on the Motion for New Trial filed below and currently pending in the Circuit Court of Kanawha County (Civil Action No.08-C-720) within ten days of the date of this Memorandum Decision.

Writ Granted.

ISSUED: February 10, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Thomas E. McHugh