



DECISIONS, NOTICES AND ORDERS

Friday, August 28, 2015

The Supreme Court of Appeals of West Virginia has taken action in the following cases. This list contains only the action taken by the Court, not the content or actual date of orders or decisions.

REHEARINGS

The Court took the following action on petitions for rehearing:

Elizabeth Rainey v. WV Department of Health and Human Resources Office of Healthcare Facility Licensure and Certification Nurse Aide Registry, No. 14-0536 (Mason 11-AA-76)
Petition refused (5-0)

Miguel Delgado v. David Ballard, Warden, No. 14-0503 (Berkeley 07-C-94)
Petition refused (4-1) (Justice Davis)

Shelli Smith v. Berkeley County Board of Education, No. 14-0851 (Kanawha 14-AA-30)
Petition refused (4-0) (Chief Justice Workman disqualified)

State of West Virginia v. William Ivan Murphy, No. 14-0014 (Kanawha 08-F-395, 08-F-439)
Petition refused (5-0)

State of West Virginia v. Robert Lee Lewis, No. 14-0339 (Kanawha 09-F-505, 09-M-67)
Petition refused (5-0)

State of West Virginia v. Orville M. Hutton, No. 14-0603 (Harrison 13-P-119-3)
Petition refused (4-1) (Justice Benjamin)

State of West Virginia v. William Cline, No. 14-1098 (Mingo 95-F-74)
Petition refused (4-1) (Justice Ketchum)

Joel Rosenthal v. Christopher Mihans, No. 14-1041 (Pocahontas 14-C-15)
Petition refused (5-0)

Raymond A. Hinerman, Sr. and Barbara B. Hinerman v. Richard A. Rodriguez, Rita C. Rodriguez, KLM Properties, Inc., and Kathy L. Martin, No. 14-0371 (Monongalia 10-C-896)
Petition refused (5-0)

Norma K. Bowyer, et al. v. Beverly Dozier, No. 14-0577 (Kanawha 10-C-743)
Petition refused (5-0)

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Charles Kenneth Stone v. David W. Jones, Warden, No. 14-0715 (Fayette 13-C-325)
Petition refused (5-0)

Lawrence William Stuckey v. David Ballard, Warden, No. 13-1253 (Kanawha 09-MISC-205)
Petition refused (5-0)

State ex rel. James Campbell and Steven Foster v. Hon. David H. Sanders, Judge; and Glen Poe,
No. 15-0033 (Jefferson 08-C-223)
Petition refused (5-0)

State of West Virginia v. Darnell Carlton Bouie, No. 14-0639 (Harrison 13-F-76-3)
Petition refused (4-1) (Justice Davis)

MEMORANDUM DECISIONS

In accordance with Rule 21, memorandum decisions were entered
in the following cases:

Gregory Ivan Settle v. David Ballard, Warden, No. 14-0907 (Kanawha 09-MISC-319)
Affirmed (4-1) (Justice Davis dissenting)

Roy Montgomery v. Vince Bruno Construction, LLC, No. 14-0949 (Brooke 09-C-208)
Affirmed (5-0)

Clint E. Cothorn and Joan L. Cothorn v. Curtis R. Jones, No. 14-1056 (Summers 10-C-14)
Affirmed and Remanded with directions. (5-0)

Martha Knotts v. Grafton City Hospital, No. 14-0752 (Taylor 12-C-66)
Affirmed (5-0)

RULE 19 ARGUMENT GRANTED

The following cases will be scheduled for Rule 19 oral argument on
the dates stated:

State ex rel. Wheeling Hospital, Inc. v. Hon. Ronald E. Wilson, Judge; and Stephanie
Mills, No. 15-0558 (Original Prohibition)
October 7, 2015

Heartwood Forestland Fund, IV, LP v. Billy Hoosier, Jr., No. 14-1110 (Wyoming 10-C-34)
October 7, 2015

State of West Virginia v. Howard Clarence Jenner, No. 14-0876 (Upshur 12-F-17)
October 7, 2015

West Virginia Board of Education and L. Wade Linger, Jr. v. Jorea M. Marple, No. 14-1264
(Kanawha 14-C-731)
October 6, 2015

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RULE 20 ARGUMENT GRANTED

The following cases will be scheduled for Rule 20 oral argument on the dates stated:

State ex rel. Nationwide Assurance Company v. Hon. Robert B. Stone, Special Judge; and Joseph C. Rudish, Administrator of the Estate of Christina Rudish, No. 15-0490
October 6, 2015

State ex rel. Robert E. Barrat v. Nancy A. Dalby, Kirk H. Bottner, and David P. Skillman, Mental Hygiene Commissioners, No. 15-0669 (Original Prohibition)
October 6, 2015

Randy Waugh/Waugh's Mobile Home Park v. Morgan County Emergency Medical Services Board, Inc., No. 14-1209 (Morgan 13-C-147)
October 6, 2015

Navient Solutions, Inc. v. Jennifer Robinette, No. 14-1215 (Raleigh 14-C-231)
October 7, 2015

Joseph A. Buffey v. David Ballard, Warden, No. 14-0642 (Harrison 12-C-183-2)
October 6, 2015

Erie Insurance Property & Casualty Company and West Virginia Insurance Commissioner v. Vincent J. King, No. 14-1059 (Kanawha 13-AA-95)
October 7, 2015

Geological Assessment & Leasing and William Capouillez v. Michael O'Hara, et al., No. 14-1210 (Ohio 13-C-246)

AND

Geological Assessment & Leasing and William Capouillez v. Charles R. Corbin, Jr., et al., No. 14-1211 (Brook 14-C-36)

AND

Geological Assessment & Leasing and William Capouillez v. Beth Nelson Fish, et al., No. 14-1286 (Ohio 13-C-248)
Consolidated –October 7, 2015

ORDERS

Orders of note were entered in the following cases:

In Re: Robert V. Bickers, Jr. Petition to Voluntarily Resign from The West Virginia State Bar, No. 15-0394
Petition granted (5-0)

Lawyer Disciplinary Board v. Ira M. Haught, No. 14-1150 (Lawyer Disciplinary)
License to practice law annulled (5-0)

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Lawyer Disciplinary Board v. Ronald K. Hatfield, No. 14-0704 (Lawyer Disciplinary) License to practice law suspended for a three-year period (3-2) (Justices Ketchum and Loughry voted to annul the respondent's law license.)

Sandscrest Foundation, Inc. and Trustees of the Episcopal Diocese of West Virginia v. JPMorgan Chase Bank, NA, No. 15-0603 (Ohio 14-C-82) Interlocutory appeal not docketed. (5-0)

State ex rel. Pamela Kessler v. West Virginia Board of Examiners for Registered Professional Nurses, No. 15-0559 (Original Prohibition) Petition refused (3-2) (Chief Justice Workman and Justice Davis)

State of West Virginia v. Sylvester McNeil, No. 15-0573 (Bail) Petition refused (5-0)

State ex rel. The Health Plan of The Upper Ohio Valley, et al. v. Hon. James C. Stucky, Judge; et al., No. 15-0564 (Original Prohibition) Petition dismissed as moot. Petitioners granted leave to participate as party petitioners in WV Dept. of Health and Human Resources v. Patricia Rucker, et al., No. 15-0571 (5-0)

State ex rel. Wells Fargo Insurance Services of West Virginia, Inc., et al. v. Hon. Ronald E. Wilson, Judge; and Patrick Morrissey, Attorney General, No. 15-0632 (Original Prohibition) Petition refused (4-1) (Justice Ketchum)

State ex rel. Michael Buracker v. Hon. Gray Silver, III, Judge, No. 15-0634 (Original Prohibition) Petition refused (5-0)

State ex rel. Phillip Hudock, Gene Stalnaker and Thomas David House of Deegan v. Earl Ray Tomblin, Governor, et al., No. 15-0491 (Original Mandamus) Petition refused (5-0)

State ex rel. Edward Lamar Tyler v. Hon. James A. Matish, Judge, No. 15-0248 (Original Mandamus) Petition refused as moot. (5-0)

Jennifer W. High, et al. v. Alison Evans-Wood, No. 15-0447 (Mineral 14-C-114, 115) The Court refuses to docket the certified questions. Consideration of the certified questions is premature in the absence of the full development of a factual record. (5-0)

The circuit court certified the following questions to this Court:

1. UNDER WEST VIRGINIA LAW, IF AN EASEMENT BEGAN AS AN EXPRESS WRITTEN GRANT OF PERMISSION IN A DEED, BUT IS LATER EXTINGUISHED BY A COURT, BECAUSE THE SUBSEQUENT OWNER OF THE SERVIENT ESTATE IS DETERMINED TO BE A BONA FIDE PURCHASER, WITHOUT NOTICE, DOES THE RIGHT OF EASEMENT CEASE TO EXIST?

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The circuit court answered in the affirmative. If extinguished, does the use become adverse at the time of the Bona Fide Purchase without notice or at the time of the Court's declaration?
The court answered at the time of declaration by the court.

2. UNDER WEST VIRGINIA LAW, CAN HUNTING, FISHING, AND/OR BATHING RIGHTS ON THE LAND OF ANOTHER BE AN EASEMENT OR WOULD ANY SUCH RIGHTS BE A PROFIT A PENDRE?

The circuit court answered it is an easement.

State of West Virginia v. Stephen Dwight Herto, No. 15-0575 (Bail)
Petition refused (5-0)