



## DECISIONS, NOTICES, AND ORDERS

Monday, October 2, 2023

The Intermediate Court of Appeals of West Virginia has taken action in the following cases in the month of September 2023. This list contains only the actions of note taken by the Intermediate Court, not the content or actual date of orders or decisions.

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### SIGNED OPINIONS

In accordance with Rule 22, a signed opinion was entered in the following case:

*PITA, LLC, and Milan Puskar Revocable Trust Restated 9/28/11 v. Scott S. Segal and Scott S. Segal*  
*v. PITA, LLC, and Milan Puskar Revocable Trust Restated 9/28/11*, 22-ICA-4, 22-ICA-46 (Cir. Ct. Monongalia Cnty. No. 18-C-372)

Affirmed, in part, Reversed, in part, and Remanded (3-0)

### MEMORANDUM DECISIONS

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

*West Virginia Department of Health and Human Resources, Bureau for Child Support Enforcement v. Shawn O.*, 23-ICA-8 (Fam. Ct. Jefferson Cnty. No. FC-19-2022-D-107)

Reversed and Remanded (3-0)

*WorkForce West Virginia v. Beverly Kirker*, 22-ICA-125 (Cir. Ct. Kanawha Cnty. No. 21-AA-49)

Reversed and Remanded (3-0)

*Evans Construction Company v. Anthony Schau*, 22-ICA-322 (Workers' Compensation Board of Review)

Affirmed (3-0)

Abby L. Boyes v. Hospice of Southern West Virginia, Inc., 23-ICA-2 (Workers' Compensation Board of Review)  
Affirmed, in part, Vacated and Remanded, in part. (3-0)

Workforce West Virginia v. Christina Gaddy, 22-ICA-110 (Cir. Ct. Kanawha Cnty. No. 21-AA-63)  
Reversed and Remanded (3-0)

Workforce West Virginia v. Sara Jonese and Pocahontas County Board of Education, 22-ICA-131 (Cir. Ct. Kanawha Cnty. No. 21-AA-52)  
Reversed and Remanded (2-0) (Chief Judge Greear, not participating)

Glen Trader v. ACNR Resources, Inc., 23-ICA-126, 23-ICA-139 (Workers' Compensation Board of Review)  
Affirmed (3-0)

West Virginia Department of Transportation, Division of Highways v. Amanda Nicole Justus, 22-ICA-197 (West Virginia Public Employees Grievance Board No. 2022-0365-DOT)  
Affirmed (3-0)

Ryan Marsteller v. Masters of Disasters, LLC, 23-ICA-119 (Workers' Compensation Board of Review)  
Affirmed (2-0) (Judge Scarr, not participating)

Alvin J. Cook, Jr. v. Cecil I. Walker Machinery Co., 23-ICA-153 (Workers' Compensation Board of Review)  
Affirmed (3-0)

Wolf Run Mining, LLC v. Darden Woodford, 23-ICA-129 (Workers' Compensation Board of Review)  
Affirmed (3-0)

Kevin Davis v. Wayne County Board of Education, 23-ICA-209 (Workers' Compensation Board of Review)  
Affirmed (3-0)

Northwest Hardwoods, Inc. v. Mark Ferrell, 23-ICA-210 (Workers' Compensation Board of Review)  
Affirmed (3-0)

Virginia Smith, Dependent of Walter F. Smith (Deceased) v. Pine Ridge and West Virginia Offices of the Insurance Commissioner, in its capacity as administrator of The Self-Insured Employer Security Risk Pool, 23-ICA-156 (Workers' Compensation Board of Review)  
Affirmed (2-0) (Judge Scarr, not participating)

Stephen Saunders v. ACNR Resources, Inc., 23-ICA-161 (Workers' Compensation Board of Review)  
Reversed and Remanded (3-0)

Jackie W. Lewis, Sr. v. Columbia West Virginia Corporation, 23-ICA-204 (Workers' Compensation Board of Review)  
Affirmed (3-0)

Elmer Hurley v. Chubby's Logging, LLC, 23-ICA-6 (Workers' Compensation Board of Review)  
Vacated and Remanded with Directions (3-0)

Onnie Watson v. Schenker Logistics, 23-ICA-102 (Workers' Compensation Board of Review)  
Affirmed (3-0)

John J. Delsignore v. Timberline Logging Enterprises, LLC, 22-ICA-331 (Workers' Compensation Board of Review)  
Affirmed (3-0)

Gayla Adkins v. Brightspring Healthcare Services, 23-ICA-197 (Workers' Compensation Board of Review)  
Affirmed (2-0) (Judge Scarr, not participating)

Jared Smith v. ArcelorMittal, 23-ICA-113 (Workers' Compensation Board of Review)  
Affirmed (3-0)

Clinton T. Drainer v. Division of Highways, 22-ICA-195 (West Virginia Public Employees Grievance Board No. 2022-0179-DOT)  
Affirmed (3-0)

Rhino Energy, LLC v. Kenneth Cole, 23-ICA-136 (Workers' Compensation Board of Review)  
Affirmed (3-0)

Mark M. Samaan, M.D. v. West Virginia Board of Medicine, 22-ICA-175 (Cir. Ct. Kanawha Cnty. No. 22-AA-14)  
Reversed and Remanded (3-0)

Caitlin R. Workman v. ACNR Resources, Inc., 23-ICA-14 (Workers' Compensation Board of Review)  
Affirmed (2-1)(Judge Scarr, dissenting)

Jennifer Belcher v. West Virginia Parkways Authority, 23-ICA-61 (Workers' Compensation Board of Review)  
Affirmed (2-0)(Judge Scarr, not participating)

Brenda G. Blevins v. Princeton Community Hospital Association, 23-ICA-56 (Workers' Compensation Board of Review)  
Affirmed (2-0)(Judge Scarr, not participating)

Jeanette Wood, Dependent of John D. Wood (Deceased) v. Pine Ridge Coal Company, LLC and West Virginia Offices of the Insurance Commissioner, in its capacity as the administrator of The Self-Insured Guaranty Risk Pool, 23-ICA-177 (Workers' Compensation Board of Review)  
Affirmed (2-0) (Judge Scarr, not participating)

Emma Harris, Dependent of Carl L. Harris (Deceased) v. Pine Ridge Coal Company, LLC and Insurance Commissioner of West Virginia, in its capacity as the administrator of The Self-Insured Security Risk Pool, 23-ICA-188 (Workers' Compensation Board of Review)  
Affirmed (2-0) (Judge Scarr, not participating)

Nicholas Community Action Partnership, Inc. v. Maggie Jarrett, 23-ICA-133 (Workers' Compensation Board of Review)  
Affirmed (3-0)

Alcon Laboratories v. Sarah King, 23-ICA-268 (Workers' Compensation Board of Review)  
Affirmed (3-0)

Quinn Transportation, LLC v. Daniel T. Park, 23-ICA-186 (Workers' Compensation Board of Review)  
Affirmed (3-0)

Blackhawk Mining, LLC v. Joseph Browning, 23-ICA-163 (Workers' Compensation Board of Review)  
Affirmed (3-0)

ROC Service Company, LLC v. Antonio Smith, 23-ICA-152 (Workers' Compensation Board of Review)  
Affirmed (3-0)

Gordon Martin v. Food Lion, Inc., 23-ICA-120 (Workers' Compensation Board of Review)  
Affirmed (3-0)

Katherine C. v. A.A. Moore C., 23-ICA-78 (Fam. Ct. Kanawha Cnty. No. 20-D-367)  
Affirmed (3-0)

Cheryl Battista v. Andrew Battista, 23-ICA-40 (Fam. Ct. Wayne Cnty. No. 50-2021-D-90)  
Affirmed (3-0)

Matthew B. v. Kimberly W., 23-ICA-60 (Fam. Ct. Kanawha Cnty. No. 22-D-42)  
Affirmed (3-0)

Heidi Y. v. Jordan C., 23-ICA-62 (Fam. Ct. Putnam Cnty. No. FC-40-2021-D-106)  
Affirmed (3-0)

Evan C. v. Ali C., 23-ICA-73 (Fam. Ct. Kanawha Cnty. No. 21-D-254)  
Affirmed (3-0)

Candy Johnson and Princess Johnson v. Brian P. Tanguay, 22-ICA-231 (Cir. Ct. Berkeley Cnty. CC-02-2019-C-169)  
Affirmed (3-0)

Sara Fields v. Charleston Area Medical Center and Workforce West Virginia, 22-ICA-266 (Workforce West Virginia Board of Review No. R-2022-1714)  
Affirmed, in part, Vacated, in part, and Remanded (3-0)

Christopher Blake v. West Virginia Department of Education, 22-ICA-268 (West Virginia Public Employees Grievance Board No. 2023-0105-DOE)  
Affirmed (3-0)

Clinton T. Drainer v. Division of Highways, 23-ICA-53 (West Virginia Public Employees Grievance Board No. 2022-0706-DOE)  
Affirmed (3-0)

Justin R. v. Morgan F., 23-ICA-67 (Fam. Ct. Kanawha Cnty. No. 18-D-1000)  
Affirmed, in part, Reversed, in part, and Remanded (3-0)

Sharon Tasker v. Agency Insurance Company and Allan L. McVey, Insurance Commissioner of the State of West Virginia, 23-ICA-83 (Insurance Commissioner Administrative Procedure No. 22-IC-02378)

Affirmed (3-0)

In re: R.T., a minor, 23-ICA-115 (Fam. Ct. Wood Cnty. No. FC-54-2018-FIG-39)

Affirmed (3-0)

Curtis C. v. Casey V., 23-ICA-145 (Fam. Ct. Raleigh Cnty. No. FC-41-2023-D-106)

Vacated and Remanded with Directions (3-0)

Calvin Kirkbride, Jr. v. Ball Metal Food Container Corp., United States Can Co., and Ball Metalpack Aerosol Container and West Virginia Offices of the Insurance Commissioner, in its capacity as administrator of the Old Fund, 23-ICA-146 (Workers' Compensation Board of Review)

Affirmed (2-0) (Judge Scarr, not participating)

City of Huntington v. Steven Streets, 23-ICA-202 (Workers' Compensation Board of Review)

Affirmed (3-0)

Murray American Energy, Inc. v. Richard Yost, Jr., 23-ICA-205 (Workers' Compensation Board of Review)

Affirmed (3-0)

Angela Acord v. Family Dollar Stores of WV, LLC, 23-ICA-214 (Workers' Compensation Board of Review)

Affirmed (3-0)

Kenneth Shrader v. City of Mullens, 23-ICA-216 (Workers' Compensation Board of Review)

Affirmed (3-0)

ICG Tygart Valley, LLC v. Edgar R. Greene, 23-ICA-228 (Workers' Compensation Board of Review)

Affirmed (3-0)

Pepsi-Cola Metropolitan Bottling Company, Inc. v. Mohamed A. Gohar, 23-ICA-245 (Workers' Compensation Board of Review)

Affirmed (3-0)

Mon Valley Technologies, LLC v. Joel Huggins, 23-ICA-312 (Workers' Compensation Board of Review)

Affirmed (2-0) (Judge Scarr, not participating)

### **RULE 19 ARGUMENT GRANTED**

The following cases will be scheduled for Rule 19 oral argument:

Abigail Shoemaker, Mary Shoemaker, and Chris Shoemaker v. Tazewell County Public Schools and Kimberly Benson, 22-ICA-327 (Cir. Ct. Mercer Cnty. No. CC-28-2021-C-97)

Kapitus Servicing, Inc. v. Timberline Four Seasons Utilities, Inc., and Canaan Valley Public Service District, 23-ICA-22 (Cir. Ct. Tucker Cnty. No. CC-47-2022-C-4)

### **RULE 20 ARGUMENT GRANTED**

The following case will be scheduled for Rule 20 oral argument:

Jordan Linzy v. Beckley Galleria, LLC, Paramount Development Corporation, Paramount Development Properties, LLC, Marquee Cinemas, Inc., Marquee Cinemas-WV, Inc., and Marquee Cinemas Holdings, Inc., 23-ICA-31 (Cir. Ct. Raleigh Cnty. No. CC-41-2022-C-51)

### **ORDERS**

Orders of note were entered in the following cases:

Raleigh General Hospital, LLC v. Appalachian Regional Healthcare, Inc. d/b/a Beckley ARH Hospital and the West Virginia Health Care Authority, 23-ICA-138 (West Virginia Health Care Authority)  
Motion to Dismiss Refused (3-0)

St. Joseph's Hospital of Buckhannon, Inc. d/b/a St. Joseph's Hospital v. Stonewall Jackson Memorial Hospital Company and West Virginia Health Care Authority, 23-ICA-265 (West Virginia Health Care Authority)  
Motion to Dismiss Refused (3-0)

St. Joseph's Hospital of Buckhannon, Inc. d/b/a St. Joseph's Hospital v. Stonewall Jackson Memorial Hospital Company and West Virginia Health Care Authority, 23-ICA-265 (West Virginia Health Care Authority)  
Motion for Stay Granted (3-0)

Charleston Area Medical Center, Inc. v. Raleigh General Hospital and the West Virginia Health Care Authority, 22-ICA-169 (West Virginia Health Care Authority)  
Motion to Dismiss Granted (3-0)

Shelly Hawkins v. Oakwood Terrace Apartments, 23-ICA-391 (Cir. Ct. Kanawha Cnty. No. 23-C-AP-96)  
Motion for Stay Refused (3-0)

Evans Construction Company v. Anthony Schau, 22-ICA-322 (Workers' Compensation Board of Review)  
Petition for Rehearing Granted (3-0)

Globe Specialty Metals v. Vernon Carpenter, 23-ICA-380 (Workers' Compensation Board of Review)  
Motion for Stay Refused (3-0)

Stephen Scott Cross v. Mary Lucinda Cross, 23-ICA-269 (Fam. Ct. Barbour Cnty. No. 22-D-34)  
Motion to Dismiss Refused (3-0)

Sevita Health v. Kelli Wyatt, 23-ICA-385 (Workers' Compensation Board of Review)  
Motion for Stay Granted (3-0)