

**IN THE CIRCUIT COURT OF WETZEL COUNTY, WEST VIRGINIA**  
**Business Court Division**

**SWN PRODUCTION COMPANY, LLC,**

**Petitioner,**

**vs.**

**Civil Action No.: 18-C-21**

**Presiding Judge: James H. Young, Jr.**

**THE HONORABLE DALE STEAGER  
West Virginia State Tax Commissioner,  
THE HONORABLE SCOTT LEMELY,  
Assessor of Wetzel County, and  
THE COUNTY COMMISSION OF WETZEL COUNTY,  
Sitting as a Board of Assessment Appeals,**

**Respondents.**

**ORDER**

On the 26<sup>th</sup> day of October 2018, this matter came before the Court upon the Respondents' Motion to Dismiss for Lack of Jurisdiction. Petitioners appeared at the hearing through counsel, John Meadows, Esq. Respondents appeared at the hearing through counsel, Timothy Haught, Esq. and Jonathan Nicol, Esq. The State Tax Commission appeared at the hearing through counsel, L. Wayne Williams, Esq.

Thereupon, the Court proceeded to hear the arguments of the parties and at the conclusion of the same the Court held the motion in abeyance. Therefore, the Court upon reviewing the parties' pleadings, briefs, and legal authority finds as follows:

**I. Petitioners' initial filing challenging the decision of the County Commission of Wetzel County is sufficient despite being labeled as a "Complaint."**

Respondents first argue that because Petitioner filed the complaint/petition under the title of "Complaint," the complaint/petition must be dismissed as there exists no mechanism to challenge the decision of the County Commission by the filing of a complaint. While this is true in a vacuum, the Respondents overlook the notice pleading standards set forth in this State, which emphasize substance over form. West Virginia Code § 56-4-12 states, "[n]o action shall abate for want of form, where the declaration sets forth sufficient matter of substance for the court to proceed upon the merits of the case." Here, the complaint/petition declares that "SWN . . . petitions this Court." Complaint, p. 13. After reviewing the complaint/petition in its entirety, clearly the declaration, whether entitled complaint or petition, sets forth sufficient matter of substance for the court to proceed. As such, Respondents' Motion to Dismiss in regards to this matter is **DENIED**.

**II. The Business Court is constitutional and has jurisdiction to hear complex tax appeals like the one in dispute.**

In their Motion to Dismiss, Respondents make several arguments pertaining to the constitutionality of the Business Court and in particular, Trial Court Rule 29, which provides the scope, procedure, and jurisdictional limits of the Business Court. Respondents further argue that even if the Business Court is deemed to be constitutional, the Business Court lacks the authority to hear this matter because it involves tax issues and the County Commission of Wetzel County, a non-business entity. For organizational purposes, the Court will first analyze the constitutional issues and then proceed to analyze whether West Virginia Trial Court Rule 29 usurps jurisdiction

for the Business Court over matters that goes beyond what West Virginia Code § 51-2-15 permitted.

**A. The Business Court Division and West Virginia Trial Court Rule 29 are constitutional.**

Prior to delving into the specific constitutional arguments, the Court must note that it is bound to give “[e]very reasonable construction . . . in order to sustain constitutionality, and any reasonable doubt must be resolved in favor of the constitutionality of the legislative enactment in question.” *State ex rel. Cooper v. Tennant*, 229 W. Va. 585, 593, 730 S.E.2d 368, 376 (2012) (quoting Syl. Pt. 1, *State ex rel. Appalachian Power Company v. Gainer*, 149 W.Va. 740, 143 S.E.2d 351 (1965)). This is the mandated guiding principal in which the Court undertakes this analysis.

The crux of Respondents constitutional argument is that the Business Court Division is not an authorized court under West Virginia Constitution Article VIII, Section 1. While the Business Court Division is not mentioned in this section, what the Respondents overlook is that the Business Court is a division within the Circuit Courts. As such, this matter is currently pending in the Circuit Court of Wetzel County within the Business Court Division. Article VIII, Section 6 of the West Virginia Constitution provides that “[c]ircuit courts shall also have such other jurisdiction, authority or power, original or appellate or concurrent, as may be prescribed by law. W. Va. Const. Art. VIII § 6. To that point, the West Virginia Legislature enacted W. Va. Code § 51-2-15 that permitted the West Virginia Supreme Court of Appeals to promulgate rules for the establishment and jurisdiction of the Business Court Division within the Circuit Court system. Further, the West Virginia Constitution provides,

The court shall have power to promulgate rules for all cases and proceedings, civil and criminal, for all of the courts of the state relating to writs, warrants, process, practice and procedure, which shall have the force and effect of law.

The court shall have general supervisory control over all intermediate appellate courts, circuit courts and magistrate courts. The chief justice shall be the administrative head of all the courts. He may assign a judge from one intermediate appellate court to another, from one circuit court to another, or from one magistrate court to another, for temporary service. . . .

W. Va. Const. art. VIII § 3. Based upon the authority granted in W. Va. Code § 51-2-15 and W. Va. Const. art. VIII § 3, the Supreme Court promulgated West Virginia Trial Court Rule 29, which establishes the purpose, duties, and jurisdiction of the Business Court Division.

Finally, the Court finds the Business Court to be analogous to West Virginia's Mass Litigation Panel in so far as if the Court were to find the Business Court unconstitutional, the Mass Litigation Panel must also be unconstitutional. With that in mind, when discussing the Mass Litigation Panel the Supreme Court recognized that:

[T]he management of [mass tort] cases cannot be accomplished without granting the [circuit] courts assigned to these matters significant flexibility and leeway with regard to their handling of these cases. A critical component of that required flexibility is the opportunity for the [circuit] court to continually reassess and evaluate what is required to advance the needs and rights of the parties within the constraints of the judicial system. Out of this need to deal with "mass litigation" cases in non-traditional and often innovative ways, TCR 26.01 was drafted and adopted.

*State ex rel. J.C. ex rel. Michelle C. v. Mazzone*, 235 W. Va. 151, 157-158, 772 S.E.2d 336, 342-43 (2015). Although the Supreme Court was discussing the Mass Litigation Panel, the Court finds this rationale analogous to the Business Court and West Virginia Trial Court Rule 29.

Based on these foregoing reasons, the Court finds that the Business Court Division and West Virginia Trial Court Rule 29 do not violate the West Virginia Constitution.

**B. Complex tax appeals involving the County Commission of Wetzel County is within the jurisdiction of the Business Court Division**

Respondents contend that even if, *arguendo*, the Business Court and TCR 29 are constitutionally valid, the Court overstepped its jurisdiction by including complex tax matters and by not limiting the parties to business entities.

With the adoption of W.Va. Code § 51-2-15, the Legislature found the need for a “separate and specialized docket” with “specific jurisdiction over actions involving such commercial issues and disputes between businesses.” W.Va. Code § 51-2-15 (a). The legislature went on to provide an enabling clause within the same code section providing the Court with the means to satisfy the legislative found needs. In W.Va. Code § 51-2-15 (c), the legislature mandated that “the West Virginia Supreme Court of Appeals shall promulgate rules for the establishment and jurisdiction of the business court divisions within its circuit court system.” In accordance with this legislative mandate, the West Virginia Supreme Court of Appeals established TCR 29.04, which specifically states that complex tax appeals are eligible to be referred to the Business Court Division.

While Respondents stress that W. Va. Code § 51-2-15 (a) only mentions commercial issues and disputes between businesses, the Court finds this code section merely represents the legislative findings and legislative purposes. The Court finds that the Legislature meant W. Va. Code § 51-2-15 (c) to be the tool used by the Supreme Court to accomplish these purposes. Had the Legislature desired to do so, it could have narrowed this broad grant of authority for the establishment and jurisdiction of the Business Court Divisions by the Supreme Court. In the absence of any limiting language in code section (c), the Court must find that the Legislature

intended to enact the legislation with the broad grant of authority given to the Supreme Court to establish jurisdiction.

With the broad authority to establish jurisdiction in mind, the Supreme Court established Trial Court Rule 29, which provides, in part, “[t]hese rules apply to and govern all actions in the circuit courts that are referred and transferred by the Chief Justice as Business Litigation to the Division. These rules shall not be construed to limit the jurisdiction of the circuit courts or to create any new cause of action.” West Virginia Trial Court Rule 29.03. West Virginia Trial Court Rule 29.04 defines Business Litigation to specifically include complex tax appeals. Due to the inclusion of complex tax appeals as business litigation, the Supreme Court must have intended to include non-business entities, such as the County Commission of Wetzel County, to be under the jurisdiction of the Business Court Division.

Therefore, because W. Va. Code § 51-2-15 (c) grants the Supreme Court the broad authority to promulgate rules for the establishment and jurisdiction of the Business Court divisions within the Circuit Court system, the Supreme Court acted within its authority by promulgating rules for the jurisdiction of the Business Court Division, which ultimately included complex tax appeals and non-business entities.

Based on the foregoing reasons, the Court finds that the Business Court Division and Trial Court Rule 29 are permitted under the West Virginia Constitution and under W.Va. Code § 51-2-15. The Court further finds that the Business Court Division has jurisdiction to hear complex tax appeals. As such, the Court **DENIES** Respondents’ Motion to Dismiss on these issues.

**III. This matter being before the Business Court Division does not disenfranchise voters of Wetzel County.**

Respondents claim that the fact this matter is not held before the duly elected Circuit Judge of the Circuit Court of Wetzel County disenfranchises the voters of Wetzel County. Despite finding dubious standing grounds for the Respondents to bring this disenfranchisement claim, the Court concludes, for reasons that have been previously detailed, that Wetzel County voters are not disenfranchised by this matter being placed within the Business Court Division.

As explained above, the Business Court Division exists within the Circuit Court system of this State. W.Va. Code § 51-2-15 (c). As such, this matter is still pending before the Circuit Court of Wetzel County. Further, as explained above, the Court finds the Business Court Division to be analogous to the Mass Litigation Panel, which also consists of Circuit Judges who often hear cases from outside their judicial circuit. In discussing the Mass Litigation Panel, the West Virginia Supreme Court of Appeals stressed that the Circuit Court system needed “significant flexibility and leeway . . . to advance the needs and rights of the parties within the constraints of the judicial system” in explaining the origin of West Virginia Trial Court Rule 26.01, which created the Mass Litigation Panel. *State ex rel. J.C. ex rel. Michelle C. v. Mazzone*, 235 W. Va. 151, 157-158, 772 S.E.2d 336, 342-43 (2015). This Court finds that the West Virginia Supreme Court of Appeals would likely follow the same line of reasoning and uphold the creation of the Business Court Division and West Virginia Trial Court Rule 29.01.

Therefore, because this matter is still pending before the Circuit Court of Wetzel County and because the Court has upheld the constitutionality of the Mass Litigation Panel, which this Court believes to be significantly analogous to the Business Court Division, this Court finds that Respondents’ argument is without merit. As such, the Court **DENIES** Respondents’ Motion to

Dismiss on the grounds that placing this matter before the Business Court Division disenfranchises the voters of Wetzel County.

**IV. This matter being before the Business Court Division does not violate equal protection under the law.**

Respondents claim that placing this matter before the Business Court Division violates West Virginia's equal protection principle that is part of the Due Process Clause contained in West Virginia Constitution Article III, Section 10. Respondents base this claim on the premise that placing matters such as the current matter before the Business Court Division allows "Business Entities" to forum shop and that individuals and taxing authorities are not granted this same right. The Court disagrees with this assertion.

First, Respondents lack standing to bring this claim as they are not a person who is required equal protection under the law, nor have respondents claimed *jus tertii* standing to vindicate the rights of other tax payers. *Kanawha Cty. Pub. Library Bd. v. Bd. of Educ. of Cty. of Kanawha*, 231 W. Va. 386, 398, 745 S.E.2d 424, 436 (2013).

However, even if Respondents had standing, this claim still must fail. Respondents claim that West Virginia Trial Court Rule 29 allows "Business Entities" to forum shop and this right is denied to individual taxpayers and respective taxing authorities. However, Respondents do not point out a single instance in which an individual with a complex tax appeal was denied referral to the Business Court Division. More importantly, West Virginia Trial Court Rule 29 does not specifically require that only business entities bring the complex appeal. The rule makes a specific mention that "complex tax appeals are eligible to be referred to the Business Court Division." W. Va. Trial Ct. R., 29.04(a)(3). There is no language in the rule that specifically limits this eligibility to business entities.



Therefore, based upon these reasons, the Court finds that Respondents' equal protection argument is without merit and **DENIED**.

**WHEREFORE**, it is **ORDERED** and **ADJUDGED** that Respondents' Motion to Dismiss is **DENIED**.

All accordingly which is **ORDERED** and **DECREED**.

Enter this 31<sup>st</sup> day of October, 2018.

ORDER  
ENTER: *James H. Young, Jr.*  
HONORABLE JAMES H. YOUNG, JR

I HEREBY CERTIFY THAT THE ANNEXED INSTRUMENT  
IS A TRUE AND CORRECT COPY OF THE ORIGINAL ON  
FILE IN MY OFFICE.  
ATTEST: *Debra G. McLean* CLERK  
BY: \_\_\_\_\_ WETZEL CO. WEST VIRGINIA  
DEPUTY CLERK