

Starcher, J., concurring:

**FILED**  
July 11, 2001  
RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

**RELEASED**  
July 13, 2001  
RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

I differ with the dissenting view set forth in Justice Maynard’s separate opinion, which quotes Count Leo Tolstoy for the proposition that “where there is law there is injustice.”

I suggest that the law can be seen as a tool -- that, if we are fortunate, we can use, to further the ends of justice.<sup>1</sup>

The following summary from the record of the instant case speaks for itself, and explains why the Court’s decision in the instant case is unquestionably a step toward justice.

I.

Ron and Vera Stewart live in Huntington, West Virginia, where Ron does home improvements, general construction, and repair work. Dennis Johnson is a Huntington landlord, with over three million dollars in rental real estate, many of the properties in a distressed state.

In October of 1998, landlord Johnson met the Stewarts, who needed a place to live. They made the following agreement:

By Ron Stewart:

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<sup>1</sup>As an amateur carpenter and builder, I love and understand tools. Peter, Paul, and Mary sang: “If I Had a Hammer . . . I’d hammer out Justice . . . I’d hammer out Freedom . . . I’d hammer out Love between my brothers and sisters . . . all over this land.” Of course, like any tool, the law can be used for morally different purposes.

A. --well, first off, we met Dennis Johnson through some mutual friends of ours. I heard about him having a lot of property, needed a lot of work done to some of his property, and at the time we need a place to stay, a home, me and my wife. I made a verbal arrangement that I was to work for him on his maintenance work, 350 a month. Anything over that was an hourly wage.

Tr. at 69-70.

Asked to describe his hours and his work for landlord Johnson, Ron Stewart replied:

A. Anywhere from 7 to 12 hours a day.

Q. And how many days a week did you work?

A. Seven days a week.

Tr. at 70.

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A. I can recite most of the work, but it's hard to remember everything, so I'll try. The first restoration job was at 519 front. It needed some remodeling work done, needed new carpet. The bathroom was, of course, remodeled. New shower tub insert put in. The old claw type, I removed it, busted it out. The floor was damaged very bad. I replaced the floor in the restroom. Sheetrocked the ceiling, repainted, taped, and textured the ceilings, not just in the bathroom but the whole apartment.

Tr. at 71.

The transcript continues with three pages of description of the projects Stewart completed for Johnson. Ron Stewart stated that he was paid infrequently, but kept working because he continued to have the benefit of the housing:

Q. Did he owe you more money?

A. Yes, ma'am, I'd worked over my 350 rent.

Q. Did you ask him to pay you?

A. Yes ma'am.

Q. How many times did you ask him?

A. Three to five times. I called him personally at his home two or three times. He always assured me that he'd come by and bring me a check that he owed me for over the rent. He never showed up.

Q. He never did?

A. No ma'am.

Tr. at 73.

During the winter months in 1998-1999, Stewart admitted that, unpaid for weeks, and needing food, he improperly but temporarily pawned two tools that he was using which belonged to Johnson. One was retrieved and returned before Johnson ever knew it had been gone. Stewart did not yet have the \$20.00 required for the second. Johnson learned of the incident and was enraged.

Stewart explained that his last project was the work on Johnson's own residence, completed on February 3, 1999.

A. ... Along with that I did do some remodeling work to his own home.

Q. Is that the last project you were working on?

A. Yeah, that was my very last project.

Q. And when did you finish the work in his own home?

A. February 3rd was the day I finished up his house.

Q. And that was just before you were asked to leave?

A. Yes ma'am.

On the evening of February 4, 1999, the Stewarts returned home late from playing cards with friends. On the door was the following note, signed by Johnson:

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Feb 4 1999

I got a warrant for your arrest for selling & pawning my tools. You need to vacate my premises no later than tomorrow.

No warrant for Ron Stewart's arrest existed at that time. The Stewarts found the door open and the interior ransacked. Pawn tickets lay everywhere, some were missing, and a TV was gone.

Early the next morning Lou Porter, Johnson's associate, banged on the door, told them to move out and to be gone by afternoon. The Stewarts had witnessed other forcible on-the-spot evictions, and were fearful. Evidence of the other evictions was excluded at trial. The Stewarts left the apartment to try to get a truck. When they returned, all of their belongings, personal effects and household furnishings, as well as their two newborn kittens and the mother cat, had been removed from the residence.

Johnson admitted at trial that as of February 4 and 5, the Stewarts were in lawful possession of the unit. Johnson also admitted he had given Stewarts no 30-day notice to vacate, had not evicted them through the court, and had not then claimed they owed rent:

Q. Now, you never gave them a 30 day notice to terminate the tenancy, did you?

A. No, Ma'am.

Q. And you never evicted them through the Court?

A. No, ma'am.

Q. So they were still in lawful possession of the apartment on February 4th and 5th?

A. On February 4th and 5th, yes, ma'am.

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Q. Now, you don't have any records or documentation that you told them they owed you money? Like you never sent them a bill or anything?

A. No, ma'am.

Tr. at 124-125.

Johnson admitted in his handwritten Answer filed in Magistrate Court, and in his Answer to Plaintiffs' Amended Complaint in the circuit court, that he bagged the Stewarts' possessions, and cleaned out the unit. At trial, he changed the testimony, stating someone else removed the Stewarts' belongings. In any case, when the Stewarts returned from the search for a truck, everything was gone.

Johnson also admitted, after some equivocation, that the Stewarts had not, and he knew the Stewarts had not, abandoned the apartment:

Q. You knew on February 4 or February 5 that Ron was still working for the rent, the rent on the apartment for you?

A. Not on those dates. I'm not sure of the exact date -- but as of that time he was still --

A. Before that yes.

Q. -- he was a tenant?

A. Yes.

Q. He was a lawful tenant?

A. (Witness nodded in the affirmative.)

Q. Now you knew that he was still living there?

A. Yes.

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Q. Yea, on February 4 he had not been gone for a long period of time, he was living there the whole time?

A. Prior to February 4, yes.

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Q. All right. So as of the 4th of February, you weren't looking for him and you had no idea what -- that he -- would think that he would abandon the apartment --

A. No ma'am. I mean that date right there I'm sure accurate that it's on there . . .

Tr. at 129-130.

## II.

The above factual recital speaks for itself, and explains why the plaintiffs in the instant case have an absolute right to have their case decided on its merits by a jury.

The instant case is noteworthy because it is a pretty rare occasion when people who do not have a high income can take a relatively simple economic grievance to court and have a jury decide and

evaluate their claim.<sup>2</sup> When people are on the lower rungs of the economic ladder they usually do not have the money, or time, or energy to use the legal system as a tool – to seek the simple but powerful economic and personal justice that a jury can provide.

It is therefore good to see in the instant case that a Legal Aid lawyer fought persistently for her clients' right to have a jury speak on the issue of what justice is for these plaintiffs and this defendant.

I fully concur in the Court's opinion.

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<sup>2</sup>Personal injury cases are a different story; there are plenty of lawyers who will represent people with substantial personal injury claims, without regard to the client's income.