IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

January 2001 Term

FILED
February 22, 2001
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

No. 28716

RELEASED
February 23, 2001
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STATE OF WEST VIRGINIA EX REL. PATRICIA E. McLAUGHLIN,
BY HER COMMITTEE, CYNTHIA J. WARD,
Petitioner,

v.

THE WEST VIRGINIA COURT OF CLAIMS,
DAVID M. BAKER AND BENJAMIN HAYS WEBB, II,
JUDGES OF THE WEST VIRGINIA COURT OF CLAIMS, AND
CHERYL M. HALL, CLERK OF THE WEST VIRGINIA COURT OF CLAIMS,
Respondents

THE WEST VIRGINIA DEPARTMENT OF TRANSPORTATION,
DIVISION OF HIGHWAYS,
Intervenor

PETITION FOR A WRIT OF MANDAMUS

WRIT DENIED

Submitted: February 6, 2001
Filed: February 22, 2001

Robert T. Fitzsimmons

Michael R. Crane

Joseph J. John
Wheeling, West Virginia
Attorneys for the Petitioner

Forman & Crane
Charleston, West Virginia
M. E. “Mike” Mowery
Jennifer Bailey Walker
Charleston, West Virginia
Attorneys for the Respondents

Anthony G. Halkias
Charleston, West Virginia
Attorney for the Intervenor

The Opinion of the Court was delivered PER CURIAM.

CHIEF JUSTICE McGRAW dissents and reserves the right to file a dissenting opinion.

SYLLABUS BY THE COURT

1. "'A writ of mandamus will not issue unless three elements coexist--(1) a clear legal right in the petitioner to the relief sought; (2) a legal duty on the part of respondent to do the thing which the petitioner seeks to compel; and (3) the absence of another adequate remedy.' Syl. pt. 2, *State ex rel. Kucera v. City of Wheeling*, 153 W.Va. 538, 170 S.E.2d 367 (1969)." Syl. Pt. 10, *State ex rel. Marockie v. Wagoner*, 191 W.Va. 458, 446 S.E.2d 680 (1994).

2. "'Mandamus is a proper remedy to require the performance of a nondiscretionary duty by various governmental agencies or bodies.' Syllabus Point 1, *State ex rel. Allstate Insurance Co. v. Union Public Service District*, 151 W.Va. 207, 151 S.E.2d 102 (1966)." Syl. Pt. 4, *State ex rel. Affiliated Constr. Trades Found. v. Vieweg*, 205 W.Va. 687, 520 S.E.2d 854 (1999).

3. "'To entitle one to a writ of mandamus, the party seeking the writ must show a clear legal right thereto and a corresponding duty on the respondent to perform the act demanded.' Syl. Pt. 2, State ex rel. Cooke v. Jarrell, 154 W.Va. 542, 177 S.E.2d 214 (1970)." Syl. Pt. 1, *Dadisman v. Moore*, 181 W.Va. 779, 384 S.E.2d 816 (1988).

Per Curiam:

Petitioner Patricia E. McLaughlin, by committee, requests that this Court issue a writ of mandamus directing the Respondent Court of Claims to re-docket her claim for its consideration and requiring the Court of Claims to apply the doctrines of *res judicata* or collateral estoppel to give effect to a jury verdict of the Circuit Court of Marshall County, returned in her favor against the West Virginia Department of Transportation, Division of Highways "(DOT").[1] Upon our review of the record in conjunction with established principles of law, we find no basis for issuing the relief requested by Petitioner.

I. Factual and Procedural Background

On March 17, 1990, Petitioner was involved in a collision when another vehicle crossed the center line and collided head-on with her vehicle while she was traveling on State Route 86 in Marshall County. As a result of this accident, Petitioner sustained serious and permanent injuries which have left her confined to a wheelchair and rendered her an incompetent in need of a committee.[2] On January 2, 1991, Petitioner filed a civil action against both the driver of the other vehicle, Ross W. Campbell, and DOT in

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[1]Petitioner's suit against the DOT was permitted by West Virginia Code § 29-12-5(a) (1996) (Repl.Vol.1999), which "estop[s] [the State] from relying upon the constitutional immunity of the state of West Virginia" where policies of insurance are purchased by the State Board of Risk and Insurance Management. *See also* Syl. Pt. 2, *Pittsburgh Elevator Co. v. West Virginia Board of Regents*, 172 W.Va. 743, 310 S.E.2d 675 (1983) (holding that "[s]uits which seek no recovery from state funds, but rather allege that recovery is sought under and up to the limits of the State's liability insurance coverage, fall outside the traditional constitutional bar to suits against the State").

[2]According to the allegations of the complaint, Petitioner sustained injuries to her head, neck, arms, chest, legs, internal organs, as well as psychological manifestations, all of which have combined to render her permanently disabled.

the Circuit Court of Marshall County. DOT was named as a party due to Petitioner's allegation that it had negligently maintained the roadways by failing to erect guardrails during an ongoing construction project.[3]

A year after filing her civil complaint, Petitioner filed a Suggested Form of Notice of Claim and Claim in the Court of Claims,[4] to which she attached a copy of the complaint filed in circuit court. Her claim was docketed by the Court of Claims, but stayed pending the disposition of the circuit court action.

On October 25, 1993, this matter proceeded to trial on the issue of liability alone. Although the jury returned a verdict of no liability with regard to DOT, the circuit court entered a judgment notwithstanding the verdict in favor of Petitioner as to liability against DOT.[5] As a result of settlement negotiations that ensued between January and June of 1994, DOT tendered one million dollars to the circuit court on August 30, 1994, pursuant to Rule 68 of the West Virginia Rules of Civil Procedure.[6] Based on its position that it had tendered payment of the one million dollar limits of the State's insurance policy, DOT petitioned this Court for a writ of prohibition to prevent the trial court from proceeding to the damage portion of the trial. We denied DOT's request in *State ex rel. West Virginia DOT v. Madden*, 192

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[3]The trial court determined that DOT "was negligent for failing to erect guardrails in the area of the accident for five months after taking down the old guardrails." *State ex rel. West Virginia DOT v. Madden*, 192 W.Va. 497, 498, 453 S.E.2d 331, 332 (1994).

[4]*See* W.Va. Code § 14-2-16 (1967) (Repl.Vol.2000) (setting forth procedures for filing and docketing of claims before the Court of Claims).

[5]*See* W.Va.R.Civ.P. 50(b).

[6]Petitioner accepted that amount under subsection (b)(3) of Rule 68 as a partial payment of her claims on September 19, 1994.

W.Va. 497, 453 S.E.2d 331 (1994), upon our determination that "a final determination by the trial court as to the limits of insurance coverage available in this case is necessary." *Id.* at 500, 453 S.E.2d at 334. The issue of the amount of insurance coverage available was not resolved until the Kanawha County Circuit Court[7] issued an order, entered on September 14, 2000, finding only one million dollars of coverage.[8]

On August 30, 1994, a six-person jury heard the evidence and returned a verdict on the issue of damages. The jury assessed damages in the amount of 16.5 million dollars and the circuit court, by judgment order entered on March 30, 1995, reduced the verdict to the one million dollar offer of judgment that had already been tendered by DOT.

In March 1996, Petitioner sought to have the circuit court verdict given *res judicata* effect by the Court of Claims. In response, DOT filed a motion to dismiss the Court of Claims proceeding on grounds of lack of subject matter jurisdiction.[9] After hearing argument on the motion to dismiss, the Court

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[7]The case was transferred from Marshall County to Kanawha County upon the intervention of the Board of Risk pursuant to the requirements of West Virginia Code § 14-2-2 (1976) (Repl.Vol.2000).

[8]In that same ruling, the circuit court found that effective July 1, 1985, the Board of Risk reduced the insurance coverage at issue from six million to one million dollars. The fact that the state's insurance policy provided coverage in an amount less than 1/16th of the jury award underscores the potential for inequity inherent in the current statutory scheme, under which the Legislature addresses claims made against the state. One option available to reduce this potential for inequity is to increase the amount of the insurance coverage, at least to its pre-1985 level.

[9]In support of its motion to dismiss, DOT cited West Virginia Code § 14-2-14(5) (1967) (Repl.Vol.2000), which denies jurisdiction to the Court of Claims "[w]ith respect to which a proceeding (continued...)

of Claims dismissed Petitioner's claim on February 20, 1997, upon its conclusion that it lacked jurisdiction to hear the claim. Petitioner sought reconsideration of the decision to dismiss her Court of Claims action in October 2000, but in a letter dated October 20, 2000, the Court of Claims declined, stating that "the claim is and has been dismissed from the docket of the Court by its former order." Petitioner now seeks the issuance of a writ of mandamus from this Court to have her claim re-docketed with the Court of Claims.

II. Standard of Review

Our standard of review for issuing writs of mandamus is well-established:

> "A writ of mandamus will not issue unless three elements coexist--(1) a clear legal right in the petitioner to the relief sought; (2) a legal duty on the part of respondent to do the thing which the petitioner seeks to compel; and (3) the absence of another adequate remedy." Syl. pt. 2, *State ex rel. Kucera v. City of Wheeling*, 153 W.Va. 538, 170 S.E.2d 367 (1969).

Syl. Pt. 10, *State ex rel. Marockie v. Wagoner*, 191 W.Va. 458, 446 S.E.2d 680 (1994).

III. Discussion

This Court has original jurisdiction[10] to issue a writ of mandamus. We have previously relied upon this type of extraordinary relief when a public officer or body has failed in the performance of

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[9](...continued)
may be maintained against the State, by or on behalf of the claimant in the courts of the State."

[10]*See* W.Va. Const. art. VIII, § 3; W.Va. Code §§ 53-1-2 to -8 (1933) (Repl.Vol.2000).

a mandatory, non-delegable duty. "'Mandamus is a proper remedy to require the performance of a nondiscretionary duty by various governmental agencies or bodies.' Syllabus Point 1, *State ex rel. Allstate Insurance Co. v. Union Public Service District*, 151 W.Va. 207, 151 S.E.2d 102 (1966)." Syl. Pt. 4, *State ex rel. Affiliated Constr. Trades Found. v. Vieweg*, 205 W.Va. 687, 520 S.E.2d 854 (1999). Before this Court can compel the performance of such a nondiscretionary duty, however, we must first determine whether the Petitioner is entitled to the exercise of such duty. "'To entitle one to a writ of mandamus, the party seeking the writ must show a clear legal right thereto and a corresponding duty on the respondent to perform the act demanded.' Syl. Pt. 2, State ex rel. Cooke v. Jarrell, 154 W.Va. 542, 177 S.E.2d 214 (1970)." Syl. Pt. 1, *Dadisman v. Moore*, 181 W.Va. 779, 384 S.E.2d 816 (1988).

The Court of Claims is an administrative arm of the West Virginia Legislature, not a court created within the judicial branch of government. The Legislature has established the Court of Claims by law[11] and delegated to it the Legislature's power to investigate certain claims against the State that may not be prosecuted in the courts because of the State's sovereign immunity.[12] *See* W.Va. Code § 14-2-1 (1967) (Repl.Vol.2000). The Court of Claims is also charged by law with the duty of recommending payment of such of those claims as it finds worthy, in specified amounts, to be paid by specific appropriations designated by the Legislature for payment of claims against the State, which it recognizes as a moral obligation of the State notwithstanding the immunity of the State from suit in its various courts.

[11]W.Va. Code § 14-2-4 (1967) (Repl.Vol.2000).

[12]W.Va. Const. art. VI, § 35.

See Syl. Pt. 3, *State ex rel. C & D Equip. Co. v. Gainer*, 154 W.Va. 83, 174 S.E.2d 729 (1970) (holding that "[o]nly the legislature can authorize such payments [when sovereign immunity exits] if and when they are found and declared by it to be moral obligations of the State, and specific appropriations made for payment thereof"). Because the Court of Claims is a public body created by law, a writ of mandamus may issue against this body, in the same fashion as it issues against any other public officer or body to which the Legislature has delegated its powers.[13]

The issue that remains is whether the re-docketing of Petitioner's claim is a mandatory, non-delegable duty of the Court of Claims. Section 14 of the Court of Claims legislation reads as follows:

> The jurisdiction of the court shall not extend to any claim:
> 1. For loss, damage, or destruction of property or for injury or death incurred by a member of the militia or national guard when in the service of the State.
> 2. For a disability or death benefit under chapter twenty-three [§ 23-1-1 et seq.] of this Code.
> 3. For unemployment compensation under chapter twenty-one-A [§ 21A-1-1 et seq.] of this Code.
> 4. For relief or public assistance under chapter nine [§ 9-1-1 et seq.] of this Code.
> 5. With respect to which a proceeding may be maintained against the State, by or on behalf of the claimant in the courts of the State.

W.Va. Code § 14-2-14 (1967) (Repl.Vol.2000).

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[13]*See State ex rel. Brotherton v. Blankenship*, 157 W.Va. 100, 207 S.E.2d 421 (1973) (awarding writ of mandamus to legislative leaders who sought to compel the Clerk of the House of Delegates, a legislative officer, to publish the Budget Act, as passed, without certain changes attempted by the governor).

Given the very serious nature of Petitioner's injuries, as reflected by the record and the jury's large verdict, and given the fact that there was but one tortfeasor found at fault in the Marshall County action related to those injuries, it is more than understandable that the Petitioner in this case would seek a remedy from the Legislature in excess of the limited amount of insurance available to her. It is difficult for this Court to imagine a situation more deserving of the Legislature's careful consideration in light of its jurisdictional mandate to consider claims which the State "should in equity and good conscience discharge and pay." W.Va. Code § 14-2-13(1) (1967) (Repl.Vol.2000). We are, however, constrained to carefully respect the separation of powers set forth in our State's Constitution[14] and leave to the Legislature the consideration of that claim without inappropriate interference from either of the other branches of the government. Our sole inquiry is whether the Legislature has imposed on its Court of Claims a mandatory, non-delegable duty to re-docket Petitioner's claim. As noted, only the Legislature can authorize the payment of claims exempt from judicial consideration by virtue of principles of sovereign immunity. *See Gainer*, 154 W.Va. at 84, 174 S.E.2d at 730, syl. pt. 3.

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[14]Section one of article V, provides that:

> The legislative, executive and judicial departments shall be separate and distinct, so that neither shall exercise the powers properly belonging to either of the others; nor shall any person exercise the powers of more than one of them at the same time, except that justices of the peace shall be eligible to the legislature.

W.Va. Const. art. V, § 1.

Turning to the provisions of West Virginia Code § 14-2-14(5), upon which the Court of Claims relied in dismissing Petitioner's claim, we are compelled to apply this provision as written based on our conclusion that it is clear and free of ambiguity. *See* Syl. Pt. 2, *Crockett v. Andrews*, 153 W. Va. 714, 172 S.E.2d 384 (1970) (stating that "[w]here the language of a statute is free from ambiguity, its plain meaning is to be accepted and applied without resort to interpretation"). Under section 14, the Legislature has withheld from the Court of Claims the power to consider "any claim . . . [w]ith respect to which a proceeding may be maintained against the State, by or on behalf of the claimant in the courts of the State." W.Va. Code § 14-2-14(5). Petitioner argues that since she may not maintain a claim in excess of one million dollars in the courts, her claim for recovery in excess of one million dollars--seen by the Petitioner as the difference between the jury verdict and the insurance paid--may be maintained in the Court of Claims. We think the legislative decision to withhold certain claims from consideration by the Court of Claims, as delineated in section 14 of the Court of Claims legislation, is intended to be applied in a broader fashion than that suggested by Petitioner.

Petitioner's claim was for the negligence of the State in maintaining its highways during construction; this negligence was determined to be the proximate cause of Petitioner's injuries for which the Marshall County jury awarded more than sixteen million dollars in damages. Petitioner was permitted to, and did in fact, maintain a proceeding against the State in the Circuit Court of Marshall County with respect to her claim up to the amount of the state's insurance. Accordingly, the relevant statute clearly

states that the "jurisdiction" of the Court of Claims does not "extend to" that claim.[15] W.Va. Code § 14-2-14(5).

Nothing in this opinion should be construed to discourage the Legislature from carefully examining this and other similar claims, notwithstanding current procedures for handling matters before the Court of Claims. We have dealt here solely with the issue presented: the extent of the non-delegable, non-discretionary duty of the Court of Claims in the circumstances presented to us.[16] We leave to the Legislature the resolution of this and other like claims.

For the reasons stated, we deny Petitioner's request for a writ of mandamus.

Writ denied.

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[15] We note that in oral argument, Petitioner's counsel was asked for specific authorities that might support a "splitting" of the claim. Counsel has not supplied the Court with such authority and we have similarly found no authority, despite a careful search for the same.

[16] We do not reach Petitioner's claim that the doctrines of *res judicata* and collateral estoppel apply. The decision of the judicial branch of government in *Mellon-Stuart Co. v. Hall*, 178 W.Va. 291, 359 S.E.2d 124 (1987), to apply those doctrines in the judicial branch of government to decisions of the Court of Claims, does not, of itself, imply that the judicial branch would, or should, require the Legislature to apply those same doctrines in connection with claims presented for consideration in the Court of Claims.