

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**Colleen Starkey, Defendant
Below, Petitioner**

vs.) No. 101378 (Ohio County 10-C-AP-7)

**Richard Green, Plaintiff Below,
Respondent**

FILED
September 23, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Colleen Starkey appeals the circuit court's order in which the court awarded Respondent Richard Green \$665, plus interest at the legal rate until the judgment is paid, after finding that "each side has proven their claim/counterclaim to some extent" and that "[petitioner's] later judgment will be treated as a set-off against [respondent's] former (and larger) judgment." Petitioner had appealed the Magistrate Court of Ohio County's entry of judgment in respondent's favor for the amount he sought in his civil complaint, \$1,625.24. The instant appeal to this Court was timely filed by the *pro se* Petitioner with the entire record being designated on appeal. The Court has carefully reviewed the written arguments contained in the *pro se* petition, and the case is mature for consideration.

Pursuant to Revised Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this matter is appropriate for consideration under the Revised Rules. Having considered the petition and the relevant decision of the lower tribunal, the Court is of the opinion that the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the Court determines that there is no prejudicial error. This case does not present either a new or significant question of law. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

It appears that respondent and petitioner are former boyfriend and girlfriend. On November, 20, 2009, respondent filed a civil complaint that petitioner owed him for three months rent and for "storeing [sic] Colleen Starkeys [sic] belongings for the past eighteen months." Petitioner filed a counterclaim against respondent, alleging that he owed her money. The magistrate court entered judgment in respondent's favor for the amount he sought in his complaint, \$1,625.24, and dismissed petitioner's counterclaim.

Upon appeal, the circuit court conducted a trial *de novo*. Following the trial, the court

ruled as follows:

At the Bench Trial the Court heard the sworn testimony of the parties and the witness and received certain exhibits into evidence.

Upon consideration of all of which, the Court doth make the following findings of fact and conclusions of law: Both parties seek damages from the other. The evidence is sharply divided on the question of liability, and is evenly balanced on many of these questions, but the Court believes that each side has proven their claim/counterclaim to some extent, to-wit: The Court is satisfied that [respondent] has demonstrated that he is entitled to a judgment in the amount of \$790 for monies advanced by [respondent] to preserve [petitioner]'s personal property on a legal theory of quantum meruit and the Court is further satisfied that [petitioner] is entitled to a judgment in the amount of \$125.00 pursuant to the agreement on the telephone bill. Both sides being entitled to recover, the later judgment will be treated as a set-off against the former (and larger) judgment.

Accordingly, it is ORDERED and ADJUDGED that [respondent] do recover of and from [petitioner] a judgment in the amount of \$665.00, with interest thereon at the legal rate from this date until paid, and [respondent] is awarded costs as assessed by the Clerk of the Court.

Petitioner now appeals.

On appeal, petitioner makes the following argument:

I tried numerous times to call [respondent] to get my belongings he told me every time he would be on vacation, not home. I also went to his trailer, he would not answer the door. There is no contract for rent or storage. [Respondent] knew I wasn't returning to his trailer but, [sic] he took my belongings to another person's garage. I should not have to pay for his doings. I would like reimbursed for all the 900 mile round trip I made to Wheeling plus the classes I had to miss amounting to \$68.00. I would like this dismissed.

In awarding respondent a judgment of \$665 plus interest, the circuit court's most significant finding was that "[t]he evidence is sharply divided on the question of liability, and is evenly balanced on many of these questions." When a trial court sits without a jury, "[f]indings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." Rule 52(a), W.V.R.C.P. In the case *sub judice*, while the circuit court found that petitioner owed respondent \$790 for storing her personal property, the circuit court also found that he owed her \$125 for a phone bill. The circuit court set off the \$790 with the \$125 and awarded respondent only \$665, an amount almost \$1,000 less than sought in his civil complaint. It appears, therefore, that the circuit court, sitting as the trier of fact, judged the credibility of each party in regard to their particular claims and ruled accordingly. Therefore, the circuit court did not clearly err in awarding respondent a judgment of \$665 plus interest at the legal rate until paid.

For the foregoing reasons, we find no error in the decision of the circuit court and the entry of judgment in respondent's favor is affirmed.

Affirmed.

ISSUED: September 23, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Menis E. Ketchum
Justice Thomas E. McHugh