

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

**Bradley Guthrie,
Plaintiff Below, Petitioner**

vs.) No. 11-0308 (Marion County 10-C-AP-11)

**Hutchison Water Association, et al.,
Defendants Below, Respondents**

FILED

June 29, 2012

RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Bradley Guthrie appeals the circuit court's judgment following a trial *de novo* awarding him \$50.00 for the cost of finishing the repair of a hole in his yard where Respondent Hutchison Water Association ("the Water Association") moved the water meter back to its original location on his property. The circuit court denied petitioner's claims for mental anguish, plumbing and surveying costs, and various other expenses. Upon consideration of the standard of review, the record on appeal, and the briefs of the parties, the Court finds no substantial question of law has been presented. For these reasons, a memorandum decision is appropriate under Rule 21(d) of the Revised Rules of Appellate Procedure.

Petitioner lives at and owns a parcel of real estate located at 46 Canary Lane in Worthington, West Virginia. Petitioner's water is supplied by the Water Association. A co-defendant of the Water Association is petitioner's neighbor Kathy McIntire.

According to the circuit court's findings, when petitioner moved into his home in October of 2008, the water line to the house was broken. Petitioner hired D & S Plumbing to replace the line. Ms. McIntire objected to the digging because she believed petitioner's water meter was located on her property. "Because none of the parties were sure of the precise location of the property line dividing [petitioner]'s property from Ms. McIntyre's [sic] property, [petitioner] agreed that, until the property line was determined, the water association could move the water meter to a location that was clearly on [petitioner]'s property."

A subsequent survey paid for by petitioner showed that the original location of petitioner's water meter was, in fact, on his property. With the property line being determined, the West Virginia Public Service Commission ("the PSC") ordered the Water Association to move petitioner's water meter back to its original location. The Water Association moved petitioner's water meter back (at no cost to him) and filled, raked, seeded, and mulched the hole from which the meter was removed. "As shown in the photograph identified and admitted at trial as Plaintiff's Exhibit 4, the dirt placed in the hole has settled, indicating that the water association's repair efforts were inadequate or incomplete." In addition to the damages caused to petitioner's yard by the Water Association's failure to completely fill in the hole, petitioner requested damages for mental anguish, plumbing and surveying costs, and various other expenses. After a bench trial, the magistrate court dismissed petitioner's complaint with prejudice. Petitioner appealed to the circuit court.

The circuit court heard the parties' evidence at a trial *de novo* on November 14, 2010. The circuit court awarded petitioner \$50.00 from the Water Association for the cost of finishing the repair of the hole in his yard. The circuit court held that petitioner was not entitled to recover from the individual defendants, finding that "[petitioner] failed to present any evidence that he is entitled to [so] recover."¹

On appeal, petitioner argues that he should also recover on his claims for damages for mental anguish, plumbing and surveying costs, and various other expenses. Specifically, petitioner asserts that he should be reimbursed the \$500.00 he paid for the survey of his property and that he should be compensated for the pain and suffering this situation has caused him. The Water Association argues that it complied with the order of the PSC and moved petitioner's water meter back to its original location at no cost to him. The Water Association also paid an additional \$18.24 to restore petitioner's yard to its original condition. The Water Association further asserts that it also complied the circuit court's order and issued petitioner a check for \$50.00, which he subsequently cashed. In her response, Ms. McIntire notes that the property line had not previously been surveyed and that she had relied upon what the prior owner of her house told her as to the location of the property line.

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. The circuit court awarded petitioner damages on the one claim the court found he had proven, and the court found in favor of the defendants on the other claims on the ground that "[petitioner] failed to present any evidence that he is entitled to [so] recover." It appears, therefore, that the circuit court, sitting as the trier of fact, weighed the evidence on each of petitioner's claims and ruled accordingly. The circuit court did not clearly err in awarding petitioner \$50.00 to finish the repair of the hole in his yard and denying his other claims for damages.

For the foregoing reasons, we find no error in the decision of the circuit court and its judgment awarding petitioner \$50.00 for the cost of finishing the repair of the hole in his yard is affirmed.

Affirmed.

ISSUED: June 29, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Thomas E. McHugh

¹ Besides Ms. McIntire, the individual defendants are the individual members of the Water Association's board: William D. Tobrey, Sherry McDonald, and Lyle Swiger.