

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

**Allen V. Davis,
Defendant Below, Petitioner**

vs.) No. 11-0569 (Putnam County 10-CAP-03)

**Eric Harrison,
Plaintiff Below, Respondent**

FILED

October 19, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Allen V. Davis, pro se, appeals the circuit court's February 28, 2011, order entering final judgment in respondent's favor in the amount of \$595.71 with post-judgment interest at the legal rate, plus court costs. The circuit court also ordered that petitioner reimburse his witnesses for their time and mileage if they filed a sworn statement of costs with the Circuit Clerk. Respondent Eric Harrison, pro se, filed a timely response, to which petitioner filed a reply.

The Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

Respondent had an account to order materials from LifeTite Metal Products, LLC ("LifeTite"). According to respondent, he offered to let petitioner order sheet metal through his account for ease and efficiency. Petitioner asserts that he made his own order of the sheet metal but that LifeTite has never billed him or provided him with a warranty.

Respondent paid the bill for the sheet metal and sued petitioner in the magistrate court after petitioner would not reimburse him for the cost. The magistrate court found in favor of respondent and awarded him the amount of the bill, \$595.71, plus \$80 in court costs. Petitioner appealed to the circuit court, which conducted a trial de novo.

After hearing the parties' evidence, the circuit court made its ruling from the bench:

All right, I believe I understand the facts of the case. The Court would render judgment in favor of the plaintiff. Mr. Davis, I can listen to your statement. You made his case in your statement.

Here's the bottom line. You wanted sheet metal cut to your specifications. Under the law that's a specialized order. It's unique. It's certain sizes. You acknowledge yourself that you ordered it. You acknowledge that you wanted it. You in fact acknowledged that they quoted you a price of \$589.70, plus the one roll. You acknowledge you got it for the price you wanted. In fact, you got it for a price less than what they quoted you.

Only thing I see this case is about is you don't like the fact it got billed through Eric Harrison's account and not directly to you. To me that's immaterial to this case. You've got the product, you got what you wanted. He delivered it, you came down, you took it, you got it from his house, you took it to your place, you owe this man the money. I render judgment in his favor in his amount of \$595.71.

The circuit court also informed petitioner that "[y]ou will be responsible for the witness fees if they send you the bill." The circuit court also awarded respondent his court costs. The circuit court also ruled that petitioner was to call respondent before he came to pick the sheet metal up and that if petitioner did not come to get the sheet metal within a month, respondent could use it or dispose of it at his pleasure.¹ The circuit court informed both parties that petitioner was to pay respondent the \$595.71 regardless of whether he retrieved the sheet metal from respondent.

The circuit court memorialized its ruling in an order entered on February 28, 2011. The circuit court gave petitioner until March 25, 2011, to retrieve the sheet metal from respondent's property. After that date, respondent was free to either use or dispose of the sheet metal as he desired. The circuit court awarded respondent post-judgment interest at the legal rate. The circuit court also ordered that petitioner reimburse his witnesses for their time and mileage.

On appeal, petitioner argues that the circuit court's judgment in respondent's favor should be reversed when respondent entered into a transaction with LifeTite without petitioner's knowledge or consent. Respondent argues that the exact basis of petitioner's appeal is not clear. Respondent notes that the circuit court and the magistrate court each ruled in his favor, and he argues that the circuit court's judgment should be affirmed.

¹ After their dispute arose, petitioner took the sheet metal back to respondent's property.

When this Court considers appeals from a circuit court's judgment resulting from a bench trial, "[t]he final order and the ultimate disposition are reviewed under an abuse of discretion standard, and the circuit court's underlying factual findings are reviewed under a clearly erroneous standard." Syl. Pt. 1, in part, *Public Citizen, Inc. v. First National Bank in Fairmont*, 198 W.Va. 329, 480 S.E.2d 538 (1996). As reflected in its ruling from the bench, the circuit court delivered a thorough judgment explaining why the court was concluding that petitioner owed respondent \$595.71 for the sheet metal based upon petitioner's own statement. The circuit court was the trier of fact in this case and ruled accordingly. This Court concludes that petitioner has not shown that the circuit court's ruling constituted an abuse of discretion.

For the foregoing reasons, we find no error in the decision of the circuit court and its February 28, 2011, order entering final judgment in respondent's favor in the amount of \$595.71 with post-judgment interest at the legal rate, plus court costs, is affirmed.

Affirmed.

ISSUED: October 19, 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