

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

**Keith Honeycutt and Holly Honeycutt, Husband and Wife,
Plaintiffs Below, Petitioners**

vs) No. 11-1491 (Monongalia County 10-C-104)

**Duane Paugh and Elizabeth Paugh, Husband and Wife, and
Mountainland Construction Inc., a West Virginia Corporation,
Defendants Below, Respondents**

FILED

November 16, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioners, Keith and Holly Honeycutt, plaintiffs below, contracted to purchase a home from Respondents, Mountainland Construction, Inc., and its owner/operators, Duane and Elizabeth Paugh, defendants below. Petitioners later terminated the contract without purchasing the home and then sued respondents for the return of their down payment and other damages. Respondents counterclaimed for breach of contract and unjust enrichment. Petitioners, by counsel, Peter D. Dinardi, now appeal the Circuit Court of Monongalia County's "Order Granting Defendants' Motion For Summary Judgment On Plaintiffs' Claims Against Defendants" entered on September 15, 2011. Respondents, by counsel, Kelly R. Reed, filed their response.

This 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. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

In its order granting summary judgment, the circuit court made no factual findings and stated merely that "the Court hereby finds that the pleadings, depositions, answers to interrogatories and admissions on file, together, with the affidavits, if any, show there is no genuine issue as to any material fact and that Defendants are entitled to judgment as a matter of law with respect to the claims asserted against them by Plaintiffs."

In *Gentry v. Mangum*, 195 W.Va. 512, 521, 466 S.E.2d 171, 180 (1995), the Court stated, "on summary judgment, a circuit court must make factual findings sufficient to permit meaningful appellate review." "*Gentry* instructs us that an order granting summary judgment cannot merely recite and rest exclusively upon a conclusion that, 'No genuine issue of material fact is in dispute and therefore summary judgment is granted.' For meaningful appellate review, more must be included" *Fayette County National Bank v. Lilly*, 199 W.Va. 349, 353, 484 S.E.2d 232, 236 (1997). We went on to hold in *Lilly* that,

a circuit court's order granting summary judgment must set out factual findings sufficient to permit meaningful appellate review. Findings of fact, by necessity, include those facts which the circuit court finds relevant, determinative of the issues and undisputed. In other words, the circuit court's order must provide clear notice to all parties and the reviewing court as to the rationale applied in granting or denying summary judgment.

Id. at 354, 484 S.E.2d at 237. Because the circuit court failed to set out factual findings sufficient to permit meaningful appellate review, we vacate the September 15, 2011, “Order Granting Defendants’ Motion For Summary Judgment On Plaintiffs’ Claims Against Defendants” and remand the matter to the circuit court with directions to enter an order that sets out findings and rationale sufficient to permit meaningful appellate review.

Vacated and remanded.

ISSUED: November 16, 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