

No. 13-0892 *Carol Kinsinger v. Todd Pethel*

FILED

November 13, 2014

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

Justice Ketchum, concurring, in part, and dissenting, in part:

I agree that Mr. Pethel should not be held in contempt. I disagree with our holding that Ms. Kinsinger shall be granted a money judgment against Mr. Pethel in the amount of \$4,018.15, less any appropriate credits.

The doctrine of laches bars claims when a person unreasonably delays in asserting a claim and the delay works to the disadvantage or prejudice the defendant. *Grose v. Grose*, 222 W.Va. 722, 671 S.E.2d 727 (2008). In finding that Ms. Kinsinger's claim was barred by the doctrine of laches, the circuit court's order focused on her six-year delay in submitting an order granting her a share of Mr. Pethel's retirement benefits. However, the order failed to discuss whether the delay caused any disadvantage or prejudice to Mr. Pethel.

Although no finding was made by the circuit court that there was not any disadvantage or prejudice to Mr. Pethel, the majority opinion orders that a money judgment be entered against Mr. Pethel. There is no evidence in the record to support this mandate. The case should have been remanded to the circuit court for factual findings as to whether Ms. Kinsinger's delay caused any disadvantages or prejudice to Mr. Pethel.