

**IN THE CIRCUIT COURT OF PENDLETON COUNTY, WEST VIRGINIA
DIVISION I**

MARY ZERFOSS,

Plaintiff,

v.

**Civil Action No. 17-C-7
Honorable H. Charles Carl, III**

**HINKLE TRUCKING, INC., a West Virginia Corporation, and
GARY HINKLE, Individually and in his capacity as an
officer of Hinkle Trucking, Inc.,**

Defendants.

**TRIAL ORDER
DAY TWO: OCTOBER 2, 2019**

On the 2nd day of October, 2019, this matter came on before the Court for a jury trial.

The Plaintiff was present by her attorneys Lia DiTrapano Fairless, L. Tom Price, and Harley O. Staggers, Jr., and Defendants were present by their attorneys Julie A. Moore, Jared T. Moore, and Jerry D. Moore.

Prior to bringing the jury into the courtroom, the Court put findings on the record with regard to its prior rulings about the West Virginia Wage Payment and Collection Act and its applicability to this case.

The Court then inquired as to whether counsel had any objections to the Day Order from yesterday. Counsel had no objections and the Court entered the Order.

Thereafter, the jury was brought into the courtroom and, upon inquiry, the jurors reported they had no problems after they were dismissed yesterday.

The following witnesses were called by the Defendants, duly sworn, and subject to cross-examination: Travis Hinkle and Ivan E. "Sonny" O'Neil.

At this point, Defendants rested. The Court dismissed the jury to the jury room to take up matters outside the jury's presence. Defendants renewed their motion for judgment as a matter of law pursuant to Rule 50 of the West Virginia Rules of Civil Procedure. After hearing argument on the motion, the Court denied the motion, with the Court's findings more fully set forth on the record.

Defendants further made a motion for judgment as a matter of law pursuant to Rule 50 of the West Virginia Rules of Civil Procedure with regard to Travis Hinkle, and moved to dismiss him from this matter. The Plaintiff did not object to Defendants' motion with regard to Travis Hinkle. Therefore, Travis Hinkle is **DISMISSED** from this matter.

Thereafter, the Court and counsel reviewed the jury instructions/charge and counsel suggested a few changes, which the Court granted and incorporated into the jury instructions/charge. Proposed instructions submitted by counsel were either included, included as amended, or not included in the Court's jury instructions/charge, as set forth in the Court's jury instructions/charge. The Court and counsel then reviewed proposed verdict forms, which discussion is more fully set forth on the record.

Counsel agreed to reserve 20 minutes each for closing arguments, with Plaintiff's counsel splitting their time into 15 minutes and 5 minutes.

At this point, the jury returned to the courtroom and the Court advised the jury that Travis Hinkle has been dismissed as a defendant from the case. Thereafter, the Court read the *Jury Instructions and Charge* to the jury. Counsel did not have any objections or corrections to the Court's reading.

Thereafter, counsel presented their closing arguments. Upon the conclusion of closing arguments, the jury was given the *Verdict Form with Special Interrogatories* and retired to the

jury room at 11:39 a.m. Nicholas G. Rexrode and Kermit D. Arbaugh were identified as the alternate jurors and were not permitted to retire to the jury room for deliberations. The alternate jurors were dismissed with appreciation from the Court. The exhibits and *Jury Instructions and Charge* were then sent back to the jury room.

At 12:10 p.m. the jury notified the Court that they had arrived at a verdict. At 12:11 p.m. the jury was returned to the courtroom. Court resumed with the reading of the verdict, which is set forth on the *Verdict Form with Special Interrogatories* as filed with the Clerk. Counsel did not request that the jury be polled.

WHEREUPON, the jury was dismissed with the appreciation of the Court.

After dismissal of the jury, counsel indicated they may file written motions within the time allowed by law.

It is **ORDERED**:

- ❖ The Circuit Clerk shall send true copies of this Order to all counsel of record.
- ❖ The Court notes the objections and exception of the parties to any adverse findings or rulings herein.

ENTERED this 9th day of October, 2019.


H. CHARLES CARL, III, JUDGE
22ND JUDICIAL CIRCUIT