IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

NO: 22-0094

LOYD FRANKLIN RANSOM, JR.,
Plaintiff Below, Petitioner,

v.

GUARDIAN REHABILITATION SERVICES, INC., AND GUARDIAN ELDER CARE AT FAIRMONT, LLC,
Defendants Below, Respondents.

APPEAL FROM A FINAL ORDER OF THE CIRCUIT COURT OF MARION COUNTY, CASE NO. CC-24-2019-C-93

RESPONDENT'S OPENING BRIEF AND CROSS-ASSIGNMENTS OF ERROR

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I. STATEMENT OF THE CASE

1. Procedural History

Petitioner Lloyd Franklin Ransom, Jr. (hereinafter "Mr. Ransom" or "Petitioner") filed a two-count Complaint against Respondents Guardian Rehabilitation Services, Inc. and Guardian Elder Care at Fairmont, LLC (hereinafter collectively referred to as "Guardian") on or about May 23, 2019. AR-001-011. When Mr. Ransom initiated this action, he incorrectly identified himself in the case caption of his Complaint as "Franklin L. Ransom". AR-001.

Mr. Ransom asserted two causes of action against Guardian: (1) "Wrongful Discharge in Violation of the West Virginia Business Liability Protection Act", and (2) "Wrongful Discharge Under *Harless*".[1] AR-007-009. Guardian filed its Answer and Affirmative Defenses to Complaint on or about August 2, 2019 asserting therein that its decision to terminate Mr. Ransom for having a firearm in his vehicle *in open view* while on company property (such that Mr. Ransom's co-workers saw and reported the same) does not constitute a violation of West Virginia's Business Liability Protection Act ("BLPA") or *Harless*. AR-012-026.

Mr. Ransom was deposed on July 16, 2021. AR-039. Guardian thereafter moved for summary judgment on all counts on or about August 13, 2021. AR-027-048. Guardian's Motion for Summary Judgment relied in significant part upon Mr. Ransom's sworn deposition testimony. AR-030-048. Similarly, Mr. Ransom filed a Motion for Partial Summary Judgment on or about September 2, 2021 therein relying upon his sworn deposition testimony for evidentiary support. AR-049-067. The parties then filed their respective opposition papers to these cross motions for summary judgment. AR-068-078, 086-116.

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[1] The second cause of action as pled in the Complaint specifically cites to "*Harless v. First National Bank of Fairmont*, 162 W.Va. 116, 246 S.E.2d 270 (1978)".

In an attempt to avoid a grant of summary judgment in Guardian's favor, Mr. Ransom appended a sham affidavit to his Amended Opposition to Defendants' Motion for Summary Judgment, which was filed on September 16, 2021.[2] AR-086-116. Mr. Ransom's sham affidavit substantively contradicts his prior unfavorable deposition testimony in a futile attempt to create a material dispute of fact that does not exist. *Compare* AR-110 (asserting, "I believe that my rifle was completely concealed in my locked car") *with* AR-041 ("They should not have been able to see [my rifle] unless they had their face up against the window and were looking in"). Guardian noted this contradiction *inter alia* in its Reply Brief in Support of Defendants' Motion for Summary Judgment filed on September 16, 2021. AR-080-082.

Counsel appeared before the Honorable David R. Janes ("Judge Janes" or the "Trial Court") on September 17, 2021 for oral argument on the parties' cross motions for summary judgment. AR-212-235. The Trial Court granted summary judgment on all counts in Guardian's favor holding with respect to the plain language of the BLPA that :

> I can't believe that it's not permissible for an employer or a property owner to have the right to prohibit firearms on the premises ***if they are in view***. . . . I don't buy Mr. Capuder's argument that there's a continuum what would be claimed something that's concealed when something's in view. . . . And I agree with Ms. Farrell that ***this was obviously in view***.

AR-233 (emphasis added). Judge Janes issued an Order Granting Defendants' Motion for Summary Judgment and Dismissing Case from Docket dated October 8, 2021. AR-205-211.

Petitioner filed a Notice of Appeal with the West Virginia Supreme Court of Appeals ("Supreme Court") on November 8, 2021 in the name of "Lloyd Franklin Ransom, Jr.". AR-254. The Supreme Court refused to docket this appeal, because "Lloyd Franklin Ransom, Jr., is not a

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[2] Mr. Ransom's original opposition to Guardian's Motion for Summary Judgment was filed on September 15, 2021. AR-086. The amended opposition was filed to add Mr. Ransom's signature to the sham affidavit. AR-086.

party to Franklin L. Ransom v. Guardian Rehabilitation Services, and Guardian Care at Fairmont, LLC, in Marion County Case No. CC-24-2019-C-93." AR-254.

Accordingly, on December 9, 2021, Petitioner filed his Motion Under Rule 60 for Nunc Pro Tunc Order to Correct His Name. AR-236-253. This motion constitutes Petitioner's first attempt to correct his name on the record before the Circuit Court of Marion County, West Virginia even though Petitioner "brought to the attention of his undersigned counsel his correct name" approximately five months earlier in July 2021. AR-237. Guardian filed its Opposition to Petitioner's Motion Under Rule 60 for Nunc Pro Tunc Order to Correct His Name on or about December 17, 2021. AR-256-260.

Oral argument on Petitioner's motion to correct his name was heard by the Trial Court on December 20, 2021. AR-261-266. Petitioners' counsel explained to the Trial Court that he had multiple conversations with Ms. Edythe Nash Gaiser ("Ms. Gaiser") in her capacity as the Clerk of Court for the Supreme Court. AR-262. Counsel stated on the record that, "it was clear that [Ms. Gaiser] was not allowing the appeal to pend any longer, that the effect of her order was to dismiss the appeal." AR-262. " . . . [S]he told me that it was dismissed. And that reinforced the idea that the relief that I'm requesting . . . is not only an order correcting the trial court record with the name of plaintiff . . . but she wants a new summary judgment order[.]" AR-263.

Guardian's counsel argued in opposition that Rule 59(e) allows a trial court by motion to amend an order granting judgment but "that has to be made within 10 days after entry of the judgment." AR-263-264. Indeed, Petitioners' motion to correct his name would be untimely under Rule 59(e). Guardian's counsel also argued that a new summary judgment order would effectively give Petitioner a second bite of the apple in the form of a new notice of appeal period, since the first appeal was dismissed according to Mr. Ransom's counsel. AR-264.

The Trial Court ultimately granted Petitioners' motion to correct his name on or about January 3, 2022. AR-269-281. The Trial Court noted, however, in issuing its ruling that, "frankly, I'm anxious to see what the Supreme Court does with this issue. It's novel to me. But I think we ought to give [Mr. Ransom] the right to appeal." AR-265. On January 10, 2022, an Amended Order Granting Defendants' Motion for Summary Judgment and Dismissing the Case From Docket was entered by the Trial Court. AR-282-288. Petitioner filed his Second Notice of Appeal on or about February 2, 2022.

2. Statement of Undisputed Facts

Guardian operates a healthcare and rehabilitation center located in Fairmont, Marion County, West Virginia. AR-013. Mr. Ransom worked at the Fairmont facility in Marion County known as the Fairmont Healthcare and Rehabilitation Center. AR-013. On October 4, 2018, Mr. Ransom began his employment with Guardian as a certified occupational therapy assistant. AR-040. Mr. Ransom's employment was terminated on October 22, 2018 when Guardian management was informed by one of his coworkers that Mr. Ransom had a firearm in open view inside of his vehicle on company property. AR-040-42; *see also* AR-046.

On the day of the incident, Mr. Ransom drove his red Ford Focus 2012 hatchback to Guardian. AR-040. Mr. Ransom specifically testified that he went into work "early" on the date of his termination arriving around 6:30 a.m. AR-040. Arriving early afforded Mr. Ransom the opportunity to park "closer to the building than usual" in parking spots that are typically "taken up" by the time Mr. Ransom reports for work. AR-040. Mr. Ransom was, "pleased to get to park beside the smoking area. Which I don't smoke, but I just – it was closer to the building." AR-040. As alleged by Petitioner, this parking area is dedicated to Guardian employees for their daily use. AR-004.

Inside of Mr. Ransom's vehicle was a Bushmaster armorer AR-15 rifle (hereinafter "the rifle" or "the firearm"). AR-041.[3] No bullets and no magazine for the rifle were in Mr. Ransom's vehicle on October 22, 2018. AR-041. As such, Mr. Ransom characterized the rifle as a "nonworking firearm in [his] vehicle." AR-041. "You can't safely fire that weapon without – that kind of . . . a rifle, without the magazine or bullets." AR-041.

Mr. Ransom testified that the "butt of the rifle was as far forward in the floorboard of the car as I could put it, and it was leaning on the seat. It wasn't straight up, it was leaning at an angle on the seat". AR-041. The rifle remained in this position when Mr. Ransom exited his vehicle on October 22, 2018 to go into work. AR-041. When questioned whether someone standing outside his vehicle would have been able to see the rifle, Mr. Ransom responded, "They should not have been able to see [the rifle] ***unless they had their face up against the window and were looking in***." AR-041 (emphasis added).

Mr. Ransom further explained that he originally covered the "bottom" of the rifle with a jacket and covered the "top" of the rifle with a "soft-type laptop cover". AR-042. Nonetheless, Mr. Ransom acknowledged, "it's possible that that part [(i.e., the soft-type laptop cover)] might have slid off, and the barrel may have been slipping through the handle of the laptop cover. I don't know. I really – I'm just trying to be honest." AR-042.

Based upon the information provided by Mr. Ransom regarding the position of the rifle in his vehicle, the following colloquy occurred at his deposition:

> Q: Is there any reason, Mr. Ransom, why when you drove to the facility property that day with that portion of the firearm in your vehicle, you didn't put it under the seat, in a trunk or cover it completely so that it could not be seen by anybody[?]
>
> A: I was basically not really thinking about it. I was tickled to death to get there early for a change . . . , so I did not want to move my vehicle – I thought, oh, man,

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[3] Firearm is defined by West Virginia Code § 61-7-2 as "any weapon which will expel a projectile by action of an explosion..."

> I've got a close spot, you know, and I just was in a hurry to get in and not really think about – I didn't imagine all of this was going to come down like this, no, I didn't. ***So I would have probably repositioned [the rifle].***

AR-042 (emphasis added).

Mr. Ransom's efforts to cover the rifle and position it in his vehicle in a way that it would not be seen by others were ultimately unsuccessful. AR-042. It is undisputed that Guardian received a report on October 22, 2018 from an employee who saw the rifle in Mr. Ransom's vehicle. AR-042; *see also* AR-004-005, AR-046. Mr. Ransom testified as follows:

> Q: At some point during the course of your day on October 22nd, 2018, Mr. Ransom, you became aware that somebody had reported seeing a firearm in your vehicle in open view, is that correct?
>
> A: No, they didn't tell me open view. I was never told those words. ***I was told someone reported seeing a firearm in my vehicle***, but open view was not a word that was said.
>
> Q: Do you have an understanding of how somebody could report seeing a firearm in your vehicle if the firearm was not in open view?
>
> A: Yes, given it was – . . . ***I was told by the administrator if I would have parked anywhere else, it would have not been any problem.*** But because I parked in that smoking area, people commonly would, you know, maybe lean against your car or things like that. And if it's anything at all, if the barrel had slipped off, you know the thing had slipped off and the barrel was sticking up, and they were nosy and peaking in my car, they may have seen it. . . .
>
> Q: Well, Mr. Ransom, just so we're clear here, is it your understanding that the reason you were terminated was the result of somebody having seen the rifle in your vehicle and reporting that to management or administration at Guardian?
>
> A: ***Correct.***

AR-042 (emphasis added).

Mr. Ransom alleges in his operative complaint that "the director of rehabilitation services for Defendants, Kirsten Smith, told Mr. Ransom that someone . . . had seen in Mr. Ransom's car his firearm". AR-004-005. Mr. Ransom further alleges that he was instructed on October 22, 2018 by Guardian's Kirsten Smith to "drive home and to leave his firearm at his residence." AR-004-

005. Mr. Ransom asserts that he complied with this instruction when he returned to his car located in the employee parking lot, "immediately drove to his apartment . . . [and] removed his firearm from his car[.]" AR-005.

II. SUMMARY OF ARGUMENT

The plain language of the BLPA requires an employee to keep their firearm "out of view" when in their motor vehicle and while on their employer's property in order to qualify for the statute's protection. *See* W.Va. Code § 61-7-14(d)(1)(B), (d)(4). Where the firearm is *in open view*, the employee has no right under the BLPA: (1) to bring the firearm onto the employer's property, or (2) to possess the firearm on the employer's property. Instead, where the firearm is *in open view*, the employer may lawfully prevent the employee from entering the parking lot of the employer's place of business and/or prohibit the employee from maintaining possession of the firearm while on company property. As with any at-will employment relationship, the employer may discipline the employee up to and including termination for bringing a firearm onto company property *in open view* under West Virginia law.

Second, there is no material dispute of fact in this case regarding the issue of whether Petitioner's firearm was "out of view" on the date he was terminated. Petitioner's deposition testimony and the allegations in Petitioner's Complaint are clear that Petitioner's rifle was seen on October 22, 2018 *in open view* by a coworker who subsequently reported the same to Guardian. Petitioner attempts to create a material dispute of fact that does not exist through the use of a sham affidavit. The Supreme Court should not allow Petitioner to directly contradict his prior sworn deposition testimony in an attempt to thwart the Trial Court's proper grant of summary judgment in Guardian's favor.

Finally, Petitioner's *Harless* claim fails necessarily as a matter of law, because (1) no violation of the BLPA occurred, and/or (2) Guardian did not violate a substantial public policy

where it terminated Petitioner for bringing a firearm *in open view* onto Guardian's property. Petitioner was an at-will employee who could be terminated for or without cause. The BLPA created no right in Petitioner to bring a firearm *in open view* onto Guardian's property. Accordingly, Guardian's decision to terminate Petitioner for having a firearm *in open view* on Guardian's property did not constitute a violation of the BLPA.

Moreover, the evidence of record is clear that Guardian was not motivated in its termination decision to deprive Mr. Ransom of his right to defend himself through the lawful possession of a firearm. Mr. Ransom only brought his firearm to Guardian's property on the date he was terminated by mistake. Mr. Ransom testified that he meant to leave the firearm at his apartment and that he specifically communicated to Guardian he had no ammunition in his vehicle. Accordingly, the firearm was not being used by Mr. Ransom as a means of self-defense while at work or when commuting to and from work.

For all of the foregoing reasons and for the reasons that follow, the Trial Court's October 8, 2021 Final Order as amended on January 10, 2022 should be affirmed in all respects.

III. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

The legal issue in this case – i.e., whether an employer may terminate an at-will employee for bringing a firearm *in open view* onto the employer's property – is an important one. However, the facts and legal arguments are adequately presented in the parties' respective briefs and record on appeal. This Honorable Court's decisional process would not be significantly aided by oral argument. W.Va. R. App. P. 18(a). Therefore, Respondents respectfully suggest that oral argument is not necessary.

Alternatively, should this Honorable Court determine that oral argument is necessary, Respondents respectfully suggest that argument pursuant to Rule 19 is appropriate to address the narrow issue of law presented by this appeal. W.Va. R. App. P. 19(a)(4). West Virginia Code

Section 61-7-14 was last amended on or about June 8, 2018. There is scant case law addressing the effect of the amendments. Therefore, this case is appropriate for a memorandum decision.

IV. ARGUMENT

A. ARGUMENT IN OPPOSITION TO ASSIGNMENT OF ERROR 1: THE TRIAL COURT CORRECTLY DETERMINED THAT WEST VIRGINIA'S BUSINESS LIABILITY PROTECTION ACT REQUIRES AN EMPLOYEE'S FIREARM TO BE "OUT OF VIEW" FOR THE EMPLOYER TO BE STATUTORILY BARRED FROM PROHIBITING THE EMPLOYEE FROM EITHER BRINGING A FIREARM ONTO COMPANY PROPERTY OR POSSESSING THE FIREARM WHILE ON THE EMPLOYER'S PROPERTY

1. Standard of Review

The Trial Court correctly granted Guardian's Motion for Summary Judgment and properly denied Petitioner's Motion for Partial Summary Judgment. Therefore, the Trial Court's October 8, 2021 Final Order as amended on January 10, 2022 should be affirmed in all respects.

Nonetheless, the standard of review on appeal relative to the Trial Court's grant of summary judgment in Respondents' favor is *de novo*. *Fravel v. Sole's Elec. Co.*, 218 W.Va. 177, 178, 624 S.E.2d 524, 525 (2005) ("This Court's standard of review for the granting of motions for summary judgment is *de novo*") (*citing Painter v. Peavy*, 192 W.Va. 189, 451 S.E.2d 755 (1994)); *see also Thompson v. Hatfield*, 225 W.Va. 405, 407, 693 S.E.2d 479, 481 (2010).

When a matter of statutory construction is presented to this Honorable Court, the standard of review is *de novo*. *Newark Ins. Co. v. Brown*, 218 W.Va. 346, 350, 624 S.E.2d 783, 787 (2005) (*quoting Chrystal R.M. v. Charlie A.L.*, 194 W.Va. 138, 459 S.E.2d 415 (1995)).

2. West Virginia Law Does Not Bar Employers from Terminating an Employee for having a Firearm in Open View in their Vehicle on the Employer's Property

The interpretation of a statute requires West Virginia courts to look to legislative intent as the controlling factor, which is ascertained from the plain language of the statute through the application of well-established canons of construction. *Meadows v. Wal-Mart Stores, Inc.*, 207

W.Va. 203, 214, 530 S.E.2d 676, 687 (1999) (internal quotations and citations omitted). "[A] cardinal rule of statutory construction is that significance and effect must, if possible, be given to every section, clause, word or part of the statute." *Id.*

This Honorable Court previously explained that:

> We look first to the statute's language. If the text, given its plain meaning, answers the interpretive question, the language must prevail and further inquiry is foreclosed. Thus, where the language is plain, ***we do not interpret the statute, but rather apply the statute as written***. A statutory provision which is clear and unambiguous and plainly expresses the legislative intent will not be interpreted by the courts but will be given full force and effect.
>
> Neither will we construe a statute to achieve an absurd result. Rather, it is the duty of a court to construe a statute according to its true intent, and give to it such construction as will uphold the law and further justice. It is as well the duty of a court to disregard a construction, though apparently warranted by the literal sense of the words in a statute, when such construction would lead to injustice and absurdity.
>
> Therefore, where a particular construction of a statute would result in an absurdity, some other reasonable construction, which will not produce such absurdity, will be made.
>
> Finally, although a statute's language may be plain, there may arise circumstances in which ***we must nevertheless take notice of the logical inferences that may be gleaned from the statutory language at issue***. Hence, that which is necessarily implied in a statute, or must be included in it in order to make the terms actually used have effect, according to their nature and ordinary meaning, is as much a part of it as if it had been declared in express terms.

Napier v. Bd. of Educ. of Cnty. of Mingo, 214 W.Va. 548, 552–53, 591 S.E.2d 106, 110–11 (2003) (emphasis added) (*quoting and citing Conseco Fin. Serv'g Corp. v. Myers*, 211 W.Va. 631, 567 S.E.2d 641 (2002); *State v. Jarvis*, 199 W.Va. 635, 487 S.E.2d 293 (1997); *State ex rel. Roy Allen S. v. Stone*, 196 W.Va. 624, 630, 474 S.E.2d 554, 560 (1996); *Smith v. State Workmen's Comp. Comm'r*, 159 W.Va. 108, 219 S.E.2d 361 (1975); *State v. Elder*, 152 W.Va. 571, 165 S.E.2d 108 (1968); *State v. Epperly*, 135 W.Va. 877, 65 S.E.2d 488 (1951); *Newhart v. Pennybacker*, 120 W.Va. 774, 200 S.E. 350 (1938); *Ex parte Watson*, 82 W.Va. 201, 95 S.E. 648 (1918); *Click v.*

Click, 98 W.Va. 419, 127 S.E. 194 (1925); and *State v. Harden*, 62 W.Va. 313, 58 S.E. 715 (1907)) (internal quotations omitted).

At its inception, West Virginia Code Section 61-7-14 permitted property owners to ban the open or concealed carrying of a firearm on their property. *See* W.Va. Code § 61-7-14, Effective to July 6, 2017. Any person who carried a firearm on the property of another and who refused to temporarily relinquish possession of such firearm upon request or leave such premises was guilty of a misdemeanor. *Id.* The original version of the statute did not afford private litigants any civil remedy for a violation of the statute. *Id.*

On June 8, 2018, amendments to Code Section 61-7-14 went into effect. The amendments altered Section 61-7-14 by curtailing a property owner's right to ban firearms on their property *under certain circumstances* and, for the first time, created a private cause of action for an "employee . . . aggrieved under the authority of subsection (d) of this section to bring an action ***for violation of the rights*** protected under this section[.]" *See* W.Va. Code § 61-7-14(d), (f)(4) (emphasis added), Effective June 8, 2018.

Nonetheless, the statute as amended is entitled, "Right of certain persons to limit possession of firearms on premises". *Id.* Moreover, the statute still prescribes a general right for, "any owner . . . of real property [to] prohibit the carrying openly or concealing of any firearm . . . on property under his or her domain[.] *Id.* at § 61-7-14(b).[4] Accordingly, the primary purpose of the statute as amended is still to prescribe for property owners a civil right to prohibit the possession of firearms on their property – including but not limited to employers under certain conditions. *Id.* at § 61-7-14(d)(1), (d)(4).

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[4] The term "person" means "any entity which may acquire title to real property". W.Va. Code § 61-7-14(b).

Section 61-7-14(d)(1) of the BLPA as amended plainly and unambiguously states that:[5]

> (d) Prohibited acts. -- Notwithstanding the provisions of subsections (b) and (c) of this section:
>
> > (1) No ***owner*** . . . of real property may prohibit any customer, ***employee***, or invitee from possessing any legally owned firearm, when the firearm is:
> >
> > > (A) Lawfully possessed;
> >
> > > (B) ***Out of view***;
> >
> > > (C) Locked inside or locked to a motor vehicle in a parking lot; ***and***
> >
> > > (D) When the customer, employee, or invitee is lawfully allowed to be present in that area.

W.Va. Code § 61-7-14(d)(1)(A)-(D) (emphasis added).

The conjunctive "and" within subparagraph (d)(1)(C) of this statute means that each of the four (4) enumerated conditions must be satisfied in order for an employer to be statutorily barred by the BLPA from prohibiting an employee from possessing a firearm on the employer's property. *Id.* Stated differently, if one of the four (4) enumerated conditions is *not* met, this subparagraph of the BLPA no longer applies and the employer may prohibit an employee from possessing a firearm on the employer's property pursuant to the authority granted the employer under subparagraph (b) of the statute.

Subparagraph (d)(4) of the statute further provides as follows:

> No owner . . . of real property may prohibit or attempt to prevent any . . . employee, . . . from entering the parking lot of the person's place of business because the . . . employee's . . . motor vehicle contains a legal firearm being carried for lawful purposes that is ***out of view*** within the . . . employee's . . . motor vehicle.

W.Va. Code § 61-7-14(d)(4) (emphasis added).

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[5] The parties do not dispute that the amended version of Section 61-7-14 was in effect when Mr. Ransom was terminated on October 22, 2018.

Taken together, subparagraphs (d)(1) and (d)(4) of Section 61-7-14 collectively stand for the proposition that an employee's firearm must be "out of view" within the employee's motor vehicle for the employee to first enter the employer's parking lot and, second, for the employee to maintain possession of the firearm within the employee's vehicle while on company property. Therefore, where an at-will employee like Mr. Ransom fails to keep his firearm "out of view" within his locked motor vehicle while on company property, the employer (i.e., Guardian) has the right to take disciplinary action against the employee up to and including termination. The plain and unambiguous language of this statute is not susceptible to any other construction. Consequently, the plain language of Section 61-7-14(d)(1)(A)-(D), (4) controls and any further inquiry should be foreclosed.

Petitioner makes a poor attempt to convince this Honorable Court otherwise by asserting a series of misplaced arguments. Guardian addresses each of these arguments in turn.

(a) Section 61-7-14(d)(1) Clearly Applies in the Context of an Employment Relationship

First, Petitioner mistakenly asserts that Section 61-7-14(d)(1) does not apply in the context of an employment relationship or, stated differently, applies to a "different category of persons and entities" than Section 61-7-14(d)(3). *See* Petitioner's Opening Brief at pp. 12-13. Petitioner's assertion in this regard is belied by the plain language of the statute.

Section 61-7-14(d)(1) expressly states that: "No owner . . . of real property may prohibit any . . . ***employee*** . . . from possessing any legally owned firearm, when the firearm is . . . Out of view[.]" W.Va. Code § 61-7-14(d)(1)(B) (emphasis added). Petitioner's argument that the relevant provisions at issue in this appeal apply to two entirely different categories of persons and entities is nonsensical. To the contrary, all of the relevant provisions clearly apply in the context of the employment relationship between Mr. Ransom and Guardian.

(b) **Guardian Did Not Violate Section 61-7-14(d)(3)(B) of the BLPA**

Petitioner's reliance upon subparagraph (d)(3)(B) of Section 61-7-14 is also misplaced. This subparagraph states: "No employer may condition employment upon either: . . . ***An agreement*** with an employee . . . prohibiting that natural person from keeping a legal firearm locked inside or locked to a motor vehicle in a parking lot when the firearm is kept for lawful purposes." W.Va. Code § 61-7-14(d)(3)(B) (emphasis added).

Here, no such agreement has been alleged nor could such an agreement be alleged by Petitioner, because Mr. Ransom was an at-will employee. AR-001-011. Guardian did not condition Mr. Ransom's employment upon any agreement that Mr. Ransom would refrain from keeping his rifle locked inside or locked to his vehicle when parked on Guardian's parking lot. To the contrary, Mr. Ransom's at-will employment relationship with Guardian was terminated, because his rifle was *in open view* in his vehicle on Guardian's property. AR-042; *see also* AR-004-005 (Mr. Ransom alleged in his operative complaint that "the director of rehabilitation services for Defendants, Kirsten Smith, told Mr. Ransom that someone . . . had seen in Mr. Ransom's car his firearm").

Mr. Ransom was specifically questioned and answered as follows at his discovery deposition:

> Q: At some point during the course of your day on October 22nd, 2018, Mr. Ransom, you became aware that somebody had reported seeing a firearm in your vehicle in open view, is that correct?
>
> A: No, they didn't tell me open view. I was never told those words. ***I was told someone reported seeing a firearm in my vehicle***, but open view was not a word that was said.
>
> Q: Do you have an understanding of how somebody could report seeing a firearm in your vehicle if the firearm was not in open view?
>
> A: Yes, given it was – . . . ***I was told by the administrator if I would have parked anywhere else, it would have not been any problem***. But because I parked in that

> smoking area, people commonly would, you know, maybe lean against your car or things like that. And if it's anything at all, if the barrel had slipped off, you know the thing had slipped off and the barrel was sticking up, and they were nosy and peaking in my car, they may have seen it. . . .
>
> Q: Well, Mr. Ransom, just so we're clear here, is it your understanding that the reason you were terminated was the result of somebody having seen the rifle in your vehicle and reporting that to management or administration at Guardian?
>
> A: ***Correct.***

AR-042 (emphasis added).

By his own admission, Mr. Ransom was told by Guardian's "administrator" that, if he had parked his car in a different parking spot, the mere possession of his rifle in his locked car "would not have been any problem", because the rifle would not have been seen by one of Mr. Ransom's co-workers. Mr. Ransom's rifle was undisputedly in open view and, as such, Guardian was not statutorily barred from immediately taking disciplinary action against Mr. Ransom.

(c) Petitioner Mistakenly Attempts to Apply the Criminal Provisions of Section 61-7-14 to a Civil Cause of Action

Petitioner next argues that Guardian was required under the statute to "ask Mr. Ransom to either adjust the firearm so it was out of view or take his firearm to his apartment" before any disciplinary action could be taken. *See* Petitioner's Opening Brief at pg. 14. "Had Mr. Ransom refused to either place the firearm 'out of view' or take it home, [Guardian] would have arguably had the right, under a combination of § 67-7-14(d)(1) and § 61-7-14(b) & ***(c)***, to terminate Mr. Ransom because he was at that point openly refusing to either hide the firearm or remove it." *See* Petitioner's Opening Brief at pg. 14 (emphasis added). Petitioner goes onto assert that once he took the rifle home at Guardian's request he was in "full compliance" with § 67-7-14(d)(1). *See* Petitioner's Opening Brief at pg. 15.

Petitioner's tortured interpretation of the BLPA is a misguided attempt to read a procedure plainly intended for criminal matters, *see* W.Va. Code § 61-7-14(c), into subparagraph (d)(1)

applicable here to a civil cause of action. Petitioner's misleading argument is premised upon the following language of the statute:

> Any natural person carrying or possessing a firearm or other deadly weapon on the property of another who refuses to temporarily relinquish possession of the firearm or other deadly weapon, upon being requested to do so, or to leave the premises, while in possession of the firearm or other deadly weapon, ***is guilty of a misdemeanor and, upon conviction thereof***, shall be fined not more than $1,000 or confined in jail not more than six months, or both[.]

W.Va. Code § 61-7-14(c) (emphasis added).

Sections 61-7-14(d)(1) and 61-7-14(d)(4) are both silent with respect to the timing of any disciplinary action that may be taken by an employer against an employee for bringing a firearm in open view onto company property or maintaining possession of a firearm in open view on company property. However, the words "prevent" and "prohibit" as used in subparagraphs (d)(1) and (d)(4) connote an immediate right of the employer to take disciplinary action where an employee has a firearm in open view on company property.

In sum, section 61-7-14 contains no language in the employment relationship context that would require an employer to follow the procedure outlined in subparagraph (c) before disciplining an employee for keeping a firearm in open view on company property. Petitioner's argument to the contrary is incorrect.

(d) The Trial Court's Interpretation of the BLPA's Plain Language is the Only Reasonable Construction of Section 61-7-14

Petitioner argues that his construction of the statute is the only way to reconcile the provisions of subparagraphs (d)(1) and (d)(3) and that the Trial Court's decision on summary judgment somehow abrogates or modifies subparagraph (d)(3)(B). *See generally* Petitioner's Opening Brief at pp. 11-21. Petitioner is clearly mistaken.

Subparagraph (f)(4) creates a civil cause of action for an "employee . . . aggrieved under the authority of subsection (d) of this section to bring an action for ***violation of the rights protected***

under this section". W.Va. Code § 61-7-14(f)(4) (emphasis added). Nowhere within Section 61-7-14 does the BLPA create or protect a right of an employee to either: (1) bring a firearm in open view onto an employer's property, or (2) retain possession of a firearm in open view on an employer's property. Accordingly, Mr. Ransom's rights were not violated when Guardian made the decision to terminate his at-will employment relationship on October 22, 2018.

As demonstrated *supra*, subparagraphs (d)(1)(B) and (d)(4) only permit an employee to bring a firearm onto an employer parking lot and, thereafter, retain possession of the firearm on company property when the firearm is kept "out of view" in the employee's motor vehicle. W.Va. Code § 61-7-14(d)(1), (4).

The subparagraph that Petitioner relies on merely states that an employer cannot enter into an agreement with an employee that would condition employment on the employee's promise to refrain from keeping a firearm "locked inside or locked to" the employee's vehicle. W.Va. Code § 61-7-14(d)(3). Subparagraph (d)(3) does <u>not</u> prohibit an employer from entering into an agreement with an employee whereby the employee promises to refrain from keeping a firearm in open view on company property. Indeed, the words "open view" or "out of view" do not appear in subparagraph (d)(3).

> The term "locked inside or locked to a motor vehicle" means:
>
> (A) The vehicle is locked; or
>
> (B) The firearm is in a locked trunk, glove box, or other interior compartment; or
>
> (C) The firearm is in a locked container securely fixed to the vehicle; or
>
> (D) The firearm is secured and locked to the vehicle itself by the use of some form of attachment and lock."

W.Va. Code § 61-7-14(a)(6)(A)-(D).

Each of these meanings to the term "locked inside or locked to" suggest that the firearm must be kept out of view within the locked motor vehicle either within one of the vehicle's closed compartments or within a closed container or attachment of some kind. *Id.* Petitioner's argument to the contrary would completely render the requirement of subparagraphs (d)(1)(B) and (d)(4) that the employee's firearm be kept "out of view" a nullity.

"[A] cardinal rule of statutory construction is that significance and effect must, if possible, be given to every section, clause, word or part of the statute." *Meadows v. Wal-Mart Stores, Inc.*, 207 W.Va. 203, 214, 530 S.E.2d 676, 687 (1999) (internal quotations and citations omitted). Petitioner's proposed construction of the statute violates this fundamental rule of law.

The Trial Court correctly held as follows:

> I can't believe that it's not permissible for an employer or a property owner to have the right to prohibit firearms on the premises ***if they are in view***. I don't see – I don't buy Mr. Capuder's argument that there's a continuum what would be claimed something that's concealed when something's in view. I think it's one. And I agree with Ms. Farrell that this was obviously in view. Defendants' motion[] for summary judgment [is] granted.

AR-233 (emphasis added). In so holding, the Trial Court correctly applied the foregoing basic rule of statutory construction stating, "While subsection (d)(3) does not specify that the firearm must be 'out of view,' the statute cannot be read to obviate subsection (d)(1) and its requirement that the firearm be 'out of view'. To read the statute to the contrary, would lead to an absurd result." AR-284.

In conclusion, Mr. Ransom brought a firearm in open view onto Guardian's parking lot. AR-004-005; AR-040-042, 046. The firearm was seen by one of Mr. Ransom's coworkers and reported to Guardian's management. *Id.* Mr. Ransom has no right under the BLPA to either: (1) bring a firearm in open view in his motor vehicle onto his employer's property, nor (2) maintain possession of a firearm in open view in his motor vehicle while on company property. Therefore,

Guardian's decision to terminate Mr. Ransom's at-will employment relationship does not constitute a violation of West Virginia law.

The Trial Court correctly granted Guardian's Motion for Summary Judgment and properly denied Petitioner's Motion for Partial Summary Judgment. Therefore, the Trial Court's October 8, 2021 Final Order as amended on January 10, 2022 should be affirmed in all respects.

B. ARGUMENT IN OPPOSITION TO ASSIGNMENT OF ERROR 2: NO MATERIAL DISPUTE OF FACT EXISTS AS TO WHETHER PETITIONER'S FIREARM WAS "OUT OF VIEW" AND, THEREFORE, THE TRIAL COURT CORRECTLY GRANTED GUARDIAN'S MOTION FOR SUMMARY JUDGMENT

The Merriam-Webster Dictionary cannot save Petitioner from the irrefutable fact that one of his coworkers saw his rifle and reported the same to Guardian's management. AR-004-005; AR-040-042, 046. It is an illogical argument indeed for Mr. Ransom to assert that a material dispute of fact exists as to whether his rifle was "out of view", when the rifle was actually seen by another person. *Id.* Without question, if Mr. Ransom's rifle was seen from any angle, it was by definition within the view of the person who saw the rifle and reported the same to Guardian. Consequently, the Trial Court did not err in granting summary judgment in Guardian's favor on all counts.

When questioned at his discovery deposition whether someone standing outside his vehicle would have been able to see the rifle, Mr. Ransom responded, "They should not have been able to see [the rifle] ***unless they had their face up against the window and were looking in***." AR-041 (emphasis added). Mr. Ransom even acknowledged that if he had been "thinking about it" he "***would have probably repositioned***" the rifle to make sure nobody could see it. AR-042 (emphasis added).

Mr. Ransom's efforts to cover the rifle and position it in his vehicle in a way that it would not be seen by others were ultimately unsuccessful. AR-042. It is undisputed that Guardian

received a report on October 22, 2018 from an employee who saw the rifle in Mr. Ransom's vehicle. AR-042; *see also* AR-004-005, AR-046.

Mr. Ransom specifically testified that, "***I was told someone reported seeing a firearm in my vehicle*** . . . ." AR-042. Mr. Ransom also testified very clearly that it was his understanding that the reason he was terminated was the result of somebody having seen the rifle in his vehicle and reporting the same to management at Guardian. AR-042; *see also* AR-004-005.

Mr. Ransom's deposition testimony could not have been any clearer. It is Mr. Ransom's understanding that he was terminated, because a coworker of his saw the rifle in his vehicle and reported the same to management. Mr. Ransom also testified that it was possible to see the rifle from outside the vehicle, if someone was standing close enough to the vehicle to look through the window. Notwithstanding this critical portion of Mr. Ransom's sworn deposition testimony, Petitioner inappropriately attempted to create a material dispute of fact (that does not exist) at the summary judgment phase of the Trial Court proceeding by submitting a sham affidavit which states, "I believe that my rifle was completely concealed in my locked car". AR-110.

Now on appeal – Petitioner is content to double down on this error by repeatedly citing to a sham affidavit in a misleading attempt to create a material dispute of fact that does not exist. *See* Petitioner's Opening Brief at pp. 23-30. In response to this argument of Petitioner, Respondents incorporate by reference as if the same were set forth fully and at length herein the entire legal analysis set forth in their Reply Brief in Support of Defendants' Motion for Summary Judgment regarding sham affidavits. AR-080-82; *see also Tolley v. Carboline Co.*, 217 W.Va. 158, 617 S.E.2d 508 (2005); *Kiser v. Caudill*, 215 W.Va. 403, 599 S.E.2d 826 (2004); and *Williams v. Precision Coil, Inc.*, 194 W.Va. 52, 459 S.E.2d 329 (1995).

The sham affidavit rule "precludes a party from creating an issue of fact to prevent summary judgment by submitting an affidavit that directly contradicts previous deposition testimony of the affiant." *Tolley*, 217 W.Va. at 165, 617 S.E.2d at 515 (*quoting Kiser*, 215 W.Va. at 409, 599 S.E.2d at 832. The sham affidavit rule applies here, and the Supreme Court should entirely disregard the affidavit of Petitioner.

There is no material dispute of fact in this case. The Trial Court correctly granted Guardian's Motion for Summary Judgment and properly denied Petitioner's Motion for Partial Summary Judgment. Therefore, the Trial Court's October 8, 2021 Final Order as amended on January 10, 2022 should be affirmed in all respects.

C. ARGUMENT IN OPPOSITION TO ASSIGNMENT OF ERROR 3: THE TRIAL COURT CORRECTLY DETERMINED THAT GUARDIAN DID NOT VIOLATE WEST VIRGINIA'S BUSINESS LIABILITY PROTECTION ACT AND, THEREFORE, PETITIONER'S "*HARLESS*" CLAIM FAILS NECESSARILY AS A MATTER OF LAW

1. No Violation of the BLPA Occurred

In West Virginia, it is a long-established rule that an employee is presumed to be an at-will employee. *Wright v. Standard Ultramarine & Color Co.*, 141 W.Va. 368, 90 S.E.2d 459 (1955). Absent an exception to the at-will doctrine, an employee may be terminated at any time, with or without cause. *Id.* West Virginia courts have recognized a public policy exception to at-will employment beginning with the West Virginia Supreme Court's decision in *Harless v. First National Bank of Fairmont*, 162 W.Va. 116, 246 S.E.2d 270 (1978). In *Harless* the court articulated that the rule regarding at-will employment is tempered where the discharge is motivated by an intention to contravene some substantial public policy. *Id.* It is axiomatic that where a public policy has *not* been violated, *Harless* cannot apply. *See Blanda v. Martin & Seibert, L.C.*, 242 W.Va. 552, 556, 836 S.E.2d 519, 523 (2019) ("a cause of action for wrongful discharge exists

when an aggrieved employee can demonstrate that his/her employer acted contrary to a substantial public policy in effectuating the termination") (internal citations and quotations omitted).

For the reasons set forth more fully *supra* in opposition to Petitioner's Assignment of Error 1, Guardian did not violate the BLPA when it terminated Mr. Ransom – i.e., an at-will employee. As Guardian did not violate the BLPA, there is no public policy violation giving rise to a potential claim under *Harless*. Mr. Ransom's cause of action for wrongful discharge in violation of *Harless* must fail, and the Trial Court's October 8, 2021 Final Order as amended on January 10, 2022 granting summary judgment in Guardian's favor must be affirmed in all respects.

2. Guardian Did Not Act Contrary to a Substantial Public Policy

Petitioner attempts to raise on appeal the issue of whether the BLPA constitutes a "substantial public policy" such that a violation of the same could support a *Harless* claim. This issue was not addressed by the Trial Court and, therefore, it is not ripe for appeal. Nonetheless and out of an abundance of caution, Guardian briefly addresses the issue here based upon the undisputed facts testified to by Mr. Ransom at his deposition.

Petitioner asserts that the BLPA recognizes the important public interest in allowing the general public to protect themselves through lawful possession of firearms in the employment setting. *See* Petitioner's Opening Brief at pp. 31-32. Petitioner specifically asserts that, "Mr. Ransom's *Harless* cause of action fits within the category of *Harless* claims where an employee is terminated for exercising an important right, such as the right of self-defense . . ." *Id.* at pg. 32.

However, Mr. Ransom's deposition testimony conclusively establishes that Guardian was **not** motivated in its termination decision to deprive Mr. Ransom of his right to defend himself through the lawful possession of a firearm. No bullets and no magazine for the rifle were in Mr. Ransom's vehicle on October 22, 2018. AR-041. As such, Mr. Ransom characterized the

rifle as a "nonworking firearm in [his] vehicle." AR-041. "You can't safely fire that weapon without – that kind of . . . a rifle, without the magazine or bullets." AR-041.

The night before Mr. Ransom was terminated he purposefully took the bullets and the magazine for his rifle up to his apartment and left them there. AR-041. The bullets and magazine were stored in Mr. Ransom's "suitcase", and he "had taken that suitcase up to the apartment." AR-041. Mr. Ransom explained that, "I had all kinds of stuff, like clothing . . . And I took it all up, all up to the apartment, which included a bag of clothing that was covering the rifle at the time." AR-041. Mr. Ransom was "so tired" when he arrived at his apartment the night before that, "I didn't get out of – I thought I had gotten everything [out of my vehicle]." AR-041. In his opening brief, Mr. Ransom admits that he "carried multiple loads of possessions from his car upstairs to his apartment, ***but forgot in the car the collapsed rifle*** . . . ." *See* Petitioner's Opening Brief at pg. 5 (emphasis added).

Mr. Ransom's foregoing testimony is clear and irrefutable. Mr. Ransom was not using the rifle for self-defense while at work on Guardian's premises nor was he using the rifle for self-defense when traveling back and forth from his apartment to work. It was Mr. Ransom's intention to leave the rifle and ammunition in his apartment instead of taking the same to work.

It was only by mistake that Mr. Ransom forgot the rifle in his car and accidently took the same with him to work on October 22, 2018. By his own admission, the rifle without its bullets and magazine is "equivalent to a broom handle . . . a nonworking firearm in my vehicle." AR-041.

Critically, Mr. Ransom communicated to Guardian on the date of his termination that he did not have any ammunition in his vehicle – just the "nonworking" rifle. AR-005. Accordingly, Guardian could not have been motivated by a desire to deprive Mr. Ransom of any right of self-defense that he contends is afforded him through the BLPA. Guardian knew that Mr. Ransom was

not using the rifle as a means of self-defense while at work. Therefore, Guardian did not act in contravention of a substantial public policy when it terminated Mr. Ransom on October 22, 2018.

V. CROSS-ASSIGNMENTS OF ERROR

1. Assignment of Error

Petitioner's appeal should be dismissed with prejudice as the same was not perfected within four months of the Trial Court's October 8, 2021 Order Granting Defendants' Motion for Summary Judgment and Dismissing Case from Docket.

2. Statement of the Case

Guardian incorporates herein by reference its Statement of the Case *supra* as if the same were set forth fully and at length.

3. Summary of Argument

The final order appealed from in the instant appeal is dated October 8, 2021. The Trial Court's decision to grant Petitioner's Motion Under Rule 60 for Nunc Pro Tunc Order to Correct His Name did **not** toll the time Petitioner had to perfect his appeal. Consequently, the time to perfect Petitioner's appeal began to run on October 8, 2021 instead of January 10, 2022 when the Trial Court issued its Amended Order Granting [Respondents'] Motion for Summary Judgment and Dismissing Case from Docket.

Petitioner was required by rule to perfect his appeal on or before February 8, 2022. *See* W.Va. R. App. P. 5(f). Petitioner did not file his appellate brief until May 9, 2022. Consequently, Petitioner did not timely perfect his appeal, and the same should be dismissed as a matter of law. *See* W.Va. R. App. P. 5(g).

4. Statement Regarding Oral Argument and Decision

Guardian incorporates herein by reference its Statement Regarding Oral Argument and Decision *supra* as if the same were set forth fully and at length.

5. Argument

a) Petitioner Failed to Timely Perfect His Appeal and, Therefore, The Instant Appeal Should Be Dismissed

West Virginia Rules of Civil Procedure Rule 60(a) states:

> Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

W.Va. R. Civ. P. 60(a).

Federal courts interpreting Federal Rule of Civil Procedure 60(a)[6] have held that a request by counsel to amend a judgment to reflect a party's correct name is "clearly a motion under Rule 60(a)". *Hodge ex rel. Skiff v. Hodge*, 269 F.3d 155, 158 (2d Cir. 2001) (*citing Fluoro Elec. Corp. v. Branford Assocs.*, 489 F.2d 320, 325–26 (2d Cir.1973)).

Correcting clerical mistakes is not the same as altering, amending or vacating the substance of a judgment entered by the trial court. *See e.g.*, W.Va. R. Civ. P. 59(e), 60(b); *see also Rose v. Thomas Mem'l Hosp. Found., Inc.*, 208 W.Va. 406, 412, 541 S.E.2d 1, 7 (2000) (holding that, "Rule 59(e) generally requires a lower threshold of proof than does Rule 60(b), but each motion seeks to erase the finality of a judgment and to allow further proceedings").

A critical procedural distinction between the relief sought in a motion to correct a clerical mistake versus certain types of motions to amend the substance of a final judgment relates to whether the time to file an appeal is tolled by operation of the applicable rule. For example, a Rule

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[6] Federal Rule 60(a) is similar in substance to West Virginia's Rule 60(a). Given the lack of West Virginia case law on this issue, Respondents cite to federal cases interpreting the federal rules.

59(e) motion timely filed within ten (10) days of a final judgment will toll the time to perfect an appeal. *See e.g.*, *Rose*, 208 W.Va. At 411, 541 S.E.2d at 6.

By way of contrast, a Rule 60(a) motion (as interpreted by federal courts) does **not** toll the time to file a notice of appeal. *See e.g.*, *Hodge ex rel. Skiff*, 269 F.3d at 158 ("this Court (***along with every other to have considered the matter***) has held . . . that a motion under Rule 60(a) does not start anew the time for filing a notice of appeal") (emphasis added) (*citing and quoting Cody, Inc. v. Town of Woodbury*, 179 F.3d 52, 55 (2d Cir.1999) ("[W]hen a second judgment in a case does not differ from the first judgment in matters affecting the substantive rights of the parties, the time to appeal runs from the first judgment."); *Farkas v. Rumore*, 101 F.3d 20, 22 (2d Cir.1996) (holding the same)).

Similarly, this Honorable Court has held that a Rule 60 motion does not toll the time to perfect an appeal. *Rose v. Thomas Mem'l Hosp. Found., Inc.*, 208 W.Va. 406, 411, 541 S.E.2d 1, 6 (2000) ("a motion made pursuant to Rule 60(b), W.Va.R.C.P., does not toll the running of the appeal time") (internal quotations and citations omitted).

The West Virginia Rules of Appellate Procedure require a notice of appeal to be filed within thirty (30) days of "entry of the judgment being appealed". W.Va. R. App. P. 5(b). However, this Honorable Court has held that, "it is a petitioner's failure to perfect his appeal, not his failure to file a timely notice of appeal, that deprives the Court of jurisdiction to hear an appeal." *State v. Gamble*, 2020 WL 5798229, at *2 (W.Va. Sept. 29, 2020) (*quoting In re E.P.*, 2014 WL 1302458, at *3 (W.Va. Mar. 31, 2014)).

Appellate Rule 5(f) states:

> An appeal must be perfected ***within four months*** of the date the judgment being appealed was entered in the office of the circuit clerk; provided, however, that the circuit court . . . or the Supreme Court may, for good cause shown, by order entered

> of record, extend such period . . . if a complete notice of appeal was timely and properly filed by the party seeking the appeal.

W.Va. R. App. P. 5(f) (emphasis added). An appeal is perfected by "timely and properly filing" the petitioner's brief and the appendix record. W.Va. R. App. P. 5(g). "Failure by the petitioner to perfect an appeal will result in the case being dismissed from the docket of the Court". *Id.*

Here, the original judgment appealed from is dated **October 8, 2021**. AR-205-211. The Trial Court's decision to grant Petitioner's Motion Under Rule 60 for Nunc Pro Tunc Order to Correct His Name did **not** toll the time Petitioner had to perfect his appeal. AR-236-253. Consequently, the time to perfect Petitioner's appeal began to run on October 8, 2021 instead of January 10, 2022 when the Trial Court issued its Amended Order Granting [Respondents'] Motion for Summary Judgment and Dismissing Case from Docket. AR-282-288.

Petitioner was required by rule to perfect his appeal on or before February 8, 2022. *See* W.Va. R. App. P. 5(f). Petitioner did not file his appellate brief until May 9, 2022. *See* Petitioner's Opening Brief at pg. 34. Consequently, Petitioner did not timely perfect his appeal, and the same should be dismissed as a matter of law. *See* W.Va. R. App. P. 5(g).

VI. CONCLUSION

For all of the foregoing reasons, Respondents respectfully request that this Honorable Court affirm the Trial Court's October 8, 2021 Final Order as amended on January 10, 2022 in all respects.

Respectfully submitted,

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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

LOYD FRANKLIN RANSOM, JR., Plaintiff Below, Petitioner, vs. GUARDIAN REHABILITATION SERVICES, INC., AND GUARDIAN ELDER CARE AT FAIRMONT, LLC, Defendants Below, Respondents.	NO: 22-0094

CERTIFICATE OF SERVICE

I hereby certify that on June 22, 2022, I am this day serving the foregoing Opening Brief for Respondents upon the persons and in the manner indicated below:

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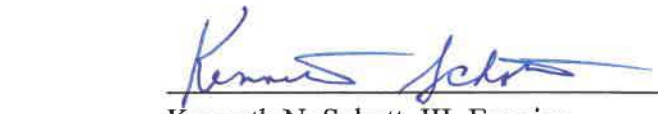

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