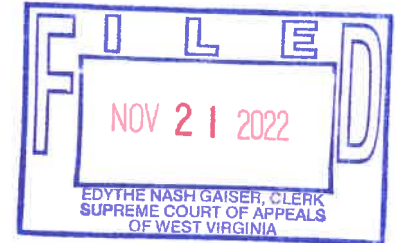


**WEST VIRGINIA  
SUPREME COURT OF APPEALS  
CHARLESTON, WEST VIRGINIA**

**EX REL. ERx LLC  
Defendant Below, Petitioner,**

**v.**

**KAYLA MCELDOWNEY  
and  
DEVANN E. DOTY  
Plaintiffs Below, Respondents.**



**CASE NO. 22-0386  
Civil Action No. 20-C-5  
(Wetzel County)**

---

**SUMMARY RESPONSE OF  
RESPONDENTS MCELDOWNEY AND DOTY**

---

Submitted by

---

WALT AUVIL (WVSB #190)  
KIRK AUVIL (WVSB #12953)  
ANTHONY BRUNICARDI (WVSB #13593)  
Counsel for Plaintiff Below/Petitioner  
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1208 Market Street  
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(304) 485-3058

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

**EX REL. ERx, LLC,**

**Petitioner,**

**vs.**

**NO. 22-0386**

**The Honorable Jeffrey Cramer, Judge of the  
Circuit Court of Wetzel County**

**KAYLA MCELDOWNEY,  
and DEVANN E. DOTY,**

**Respondents.**

**SUMMARY RESPONSE OF RESPONDENTS MCELDOWNEY AND DOTY**

The Petition for a Writ of Prohibition filed by ERx, LLC poses the question presented by as follows:

Whether the lower court abused its power, exceeded its jurisdiction, and committed clear error when it failed to grant summary judgment to Petitioner on Respondents' claims against Petitioner for alleged violations of the West Virginia Human Rights Act, West Virginia Code Section 5-11-1, *et seq.* (2021) ("WVHRA"), because Respondents were never Petitioner's employees and because Petitioner is not a statutory "employer," as set out in West Virginia Code Section 5-11-3(d), or a statutory "person," as set out in West Virginia Code Section 5-11-3(a), such that Petitioner is not subject to liability to Respondents for alleged violation of the West Virginia Human Rights Act. *Petition*, page 3.

In State Ex. Rel. Vanderra Res., LLC v. Hummel, 242 W.Va. 35, 37-38, 829 S.E.2d 35, 39 (2019) this Court reaffirmed the doctrine set forth earlier in State Ex. Rel.

Allstate v. Gaughan, 203 W.Va. 358, 508 S.E.2d 75 (1998), to wit:

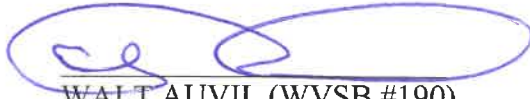
A party seeking to petition this court for an extraordinary writ based upon a non-appealable interlocutory decision of a trial court, must request the trial court set out in an order *Findings of Fact and Conclusions of Law* that support and form the basis of its decision. In making the request to the trial court, counsel must inform the trial court specifically that the request is being made because counsel intends to seek an extraordinary writ to challenge the court's ruling. When such a request is made, trial courts are obligated to enter an order containing *Findings of Fact and Conclusions of Law*. Absent a request by the complaining party, a trial court is under no duty to set out *Findings of Fact and Conclusions of Law* in non-appealable interlocutory orders. Syllabus .6, State Ex. Rel. Allstate v. Gaughan,

203 W.Va. 358, 508 S.E.2d 75 (1998), State Ex. Rel. Vanderra Res., LLC v. Hummel, 242 W.Va. 35, 37-38, 829 S.E.2d 35, 39 (2019).

Contrary to the duties of a party as plainly set out in prior rulings of this Court, Petitioner ERx not only failed to request that the trial court set out *Findings of Fact and Conclusions of Law* in its order supporting and forming the basis of its denial of summary judgment to Petitioner on Respondents' claims for alleged violations of the West Virginia Human Rights Act, Petitioner actually obstructed the Court from entering an order containing *Findings of Fact and Conclusions of Law*. Nevertheless, Petitioner now seeks relief from an order denying its motion for summary judgment based upon an order which ERx itself insisted **not** include any of *Findings of Fact or Conclusions of Law*.

Email exchanges reflect efforts by Respondents' counsel to obtain an order for entry by the court below containing substantive *Findings of Fact and Conclusions of Law*. Despite these efforts, counsel for Petitioner's insisted that the Circuit Court's order denying summary judgment ruling contain **no** *Findings of Fact or Conclusions of Law* and that this order instead recite the court's ruling in mere summary form. These email exchanges are included as the *Appendix of Respondents McEldowney and Doty*, along with the orders prepared by counsel for the parties to the underlying litigation. They were not made part of the record before the Circuit Court because Petitioner there was no apparent need to do so until Petitioner immediately filed the within Writ after entry of the Order ERx insisted upon.

This Writ accordingly should be denied because Petitioner ERx failed to request that the trial court set out in its order *Findings of Fact and Conclusions of Law* supporting and forming the basis of its decision denying summary judgment, contrary to the well settled precedent of this Court.



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(304) 485-3058

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

**EX REL. ERx, LLC,**

**Petitioner,**

**vs.**

**KAYLA MCELLOWNEY,  
and DEVANN E. DOTY,**

**NO. 22-0386**

**The Honorable Jeffrey Cramer, Judge of the  
Circuit Court of Wetzel County**

**Respondents.**

**CERTIFICATE OF SERVICE**


The undersigned counsel for Respondents hereby certifies that on the 17<sup>th</sup> day of November 2022, he served a true copy of *Summary Response* upon counsel of record and the *pro se* party by email and by depositing a true copy thereof in the United States Mail, postage prepaid, addressed as follows:

Tim Linkous  
Jennifer L. Miller  
Linkous Law, PLLC  
10 Cheat Landing, Suite 200  
Morgantown, WV 26508

Shelby A. Hicks-Merinar  
Steptoe & Johnson PLLC  
1000 Swiss Pine Way, Suite 200  
Morgantown, WV 26501

Larry Rector  
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400 White Oaks Blvd.  
Bridgeport, WV 26330

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6895 E. Camelback Rd., #2022  
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WALT AUVIL (WVSB #190)  
KIRK AUVIL (WVSB #12953)  
ANTHONY BRUNICARDI (WVSB #13593)  
Counsel for Respondents

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(304) 485-6344 (fax)

**WEST VIRGINIA  
SUPREME COURT OF APPEALS  
CHARLESTON, WEST VIRGINIA**

**EX REL. ERx LLC  
Defendant Below, Petitioner,**

**v.**

**KAYLA MCELLOWNEY  
and  
DEVANN E. DOTY  
Plaintiffs Below, Respondents.**

**CASE NO. 22-0386  
Civil Action No. 20-C-5  
(Wetzel County)**

---

**APPENDIX RECORD  
SUBMITTED ON BEHALF OF RESPONDENTS  
MCELLOWNEY AND DOTY**

---

Submitted by



WALT AUVID (WVSB #190)  
KIRK AUVID (WVSB #12953)  
ANTHONY BRUNICARDI (WVSB #13593)  
Counsel for Plaintiff Below/Petitioner  
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Wetzel County Circuit Court Case No. 20-C-5  
The Honorable Jeffrey D. Cramer Presiding

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2	May 4, 2022, Proposed Order denying Summary Judgment prepared by Walt Auvil circulated to counsel by Email	3-10
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4	May 10, 2022, Email from Larry Rector Circulating Proposed Order denying Motion for Summary Judgment to all counsel	14
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6	May 11, 2022 Email from Larry Rector Transmitting Defendants' Proposed Order to Circuit Court (Order which was entered and at issue herein)	19-20
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### **CERTIFICATION OF RECORD**

I, Walt Auvil, counsel for Kayla McEldowney and Devann Doty, the Respondents herein and the Plaintiffs in Wetzel County Circuit Court Case No. 20-C-5, do hereby certify that:

1. Some of the documents in the *Appendix* appended hereto are true and accurate copies of the items filed and of record in the Wetzel County Circuit Court.
2. Those documents which are not of record in Wetzel County Circuit Court are true and accurate copies of documents sent and received by counsel while attempting to arrive at an acceptable draft of an Order denying Defendants' Motions for Summary Judgment for submission to the Circuit Court of Wetzel County following the Court's ruling in May 2022.
3. Those documents not of record to allow this Court to have an accurate understanding the sequence of events which preceded the entry of the Order at issue herein, and specifically to establish that counsel for Defendants did not request that the Court make *Findings of Fact and Conclusions of Law* as required by the prior jurisprudence of this Court, nor did counsel inform the Court of the intention to seek an extraordinary writ at the time the Order complained of was entered.
4. The documents contained herein are sufficient to permit this Court to fairly consider the questions presented in the *Petitioner's Writ of Prohibition*.
5. Counsel has not conferred with opposing counsel concerning the contents of the *Appendix* due to the time constraints herein.



STATE OF WEST VIRGINIA,

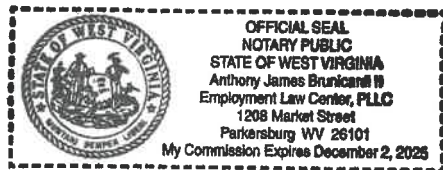
COUNTY OF WOOD, to-wit:

Walt Auvil, Counsel for the Plaintiffs below, Respondents herein hereby states and avers that in the foregoing and hereto appended Certification, the statements and allegations contained therein are true, except insofar as they are therein stated to be upon information, and insofar as they are therein stated to be upon information, counsel believes them to be true.

  
Walt Auvil

Taken, subscribed, and sworn to before me this 17<sup>th</sup> day of November 2022.

My commission expires: 12/2/2025.



  
NOTARY PUBLIC

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

**EX REL. ERx, LLC,**

**Petitioner,**

**vs.**

**NO. 22-0386**

**The Honorable Jeffrey Cramer, Judge of the  
Circuit Court of Wetzel County**

**KAYLA MCELDOWNEY,  
and DEVANN E. DOTY,**

**Respondents.**

**CERTIFICATE OF SERVICE**

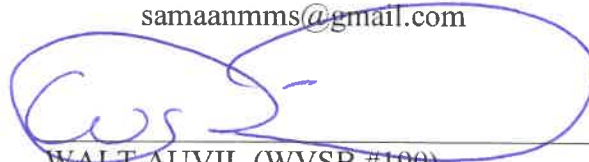
The undersigned counsel for Respondents hereby certifies that on the 17<sup>th</sup> day of November 2022, he served a true copy of *Respondents' Appendix Record* upon counsel for the parties and the *pro se* party noted below via email and by depositing a true copy thereof in the United States Mail, postage prepaid, addressed as follows:

Tim Linkous  
Jennifer L. Miller  
Linkous Law, PLLC  
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Shelby A. Hicks-Merinar  
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---

WALT AUVIL (WVSB #190)

KIRK AUVIL (WVSB #12953)

ANTHONY BRUNICARDI (WVSB #13593)

Counsel for Respondents

The Employment Law Center, PLLC  
1208 Market Street  
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## Walt Auvil

---

**From:** Jennifer L. Miller <jennifer@linkouslawpllc.com> on behalf of Jennifer L. Miller  
**Sent:** Thursday, May 5, 2022 9:50 AM  
**To:** Walt Auvil; Larry Rector; Shelby Merinar; Tim Linkous; M Samaan  
**Cc:** Toni Grogg; Melody Grogan; Kirk Auvil; Anthony Brunicardi  
**Subject:** RE: McEldowney, et al., v. ERx, LLC, et al., - Draft Proposed Order Denying Defendants' Motions for Summary Judgment

Good morning, Walt.

I cannot agree to this proposed order and honestly do not know where to even start in suggesting how to revise it to make it acceptable for agreed submission.

This proposed order presumes that the Judge is adopting Plaintiffs' perspective on all factual and legal issues, even though there is no support for that presumption since Judge Cramer did not give us any indication during the hearing about his thoughts on the Motions or any hint as to how he would rule. All we have heard after the hearing is a one-line email from Angie Cisar informing us that Judge Cramer is denying the Motions and that "[t]here are genuine issues of fact." That email does not provide any guidance as to the Judge's findings of fact and conclusions of law, only his ultimate conclusion that there are genuine issues of fact. We obviously need an order with findings of fact and conclusions of law, but I do not know where to begin without more information from the Judge.

Jennifer

Jennifer L. Miller  
**Linkous Law, PLLC**  
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Telephone: 304-554-2400  
Cell: 681-285-1286  
Facsimile: 304-554-2401  
<http://www.LinkousLawPLLC.com>

**From:** Walt Auvil <auvil@theemploymentlawcenter.com>  
**Sent:** Wednesday, May 4, 2022 4:43 PM  
**To:** Larry Rector <Larry.Rector@steptoe-johnson.com>; Shelby Merinar <Shelby.Hicks-Merinar@steptoe-johnson.com>; Tim Linkous <tim@linkouslawpllc.com>; Jennifer L. Miller <jennifer@linkouslawpllc.com>; M Samaan <samaanmms@gmail.com>  
**Cc:** Walt Auvil <auvil@theemploymentlawcenter.com>; Toni Grogg <toni@theemploymentlawcenter.com>; Melody Grogan <melody@theemploymentlawcenter.com>; Kirk Auvil <theemploymentlawcenter@gmail.com>; Anthony Brunicardi <anthony@theemploymentlawcenter.com>  
**Subject:** McEldowney, et al., v. ERx, LLC, et al., - Draft Proposed Order Denying Defendants' Motions for Summary Judgment

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Counsel and Doctor Samaan –

Pursuant to the email direction provided by the Court I have prepared the attached draft order reflecting the Court's denial of Defendants' Motions for Summary Judgment.

Please review the same and provide me your thoughts on this draft at your earliest convenience.

Thank you for your attention to this matter.

Walt Auvil  
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F: 304-485-6344  
[auvil@theemploymentlawcenter.com](mailto:auvil@theemploymentlawcenter.com)

**IN THE CIRCUIT COURT OF WETZEL COUNTY, WEST VIRGINIA**

**KAYLA MCELLOWNEY and  
DEVANN E. DOTY,**

**Plaintiffs,**

**v.**

**Civil Action No. 20-C-5  
Judge Jeffrey D. Cramer**

**ERX, LLC, a Florida Limited Liability  
Company, WETZEL COUNTY HOSPITAL  
ASSOCIATION, a West Virginia Corporation,  
WETZEL COUNTY HOSPITAL, Inc. and  
MARK SAMAN, M.D.,**

**Defendants.**

**ORDER DENYING DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT**

Pending before the Court are motions for summary judgment filed by Defendants Wetzel County Hospital Association, Wetzel County Hospital, Inc., (hereinafter WCH) and ERx, LLC (hereinafter ERx). For the reasons set forth herein Defendants' motions for summary judgment are DENIED.

- 1. Wetzel County Hospital Association and Wetzel County Hospital, Inc.**
  - A. Plaintiffs have sufficiently established claims for a hostile work environment as alleged in their Third Amended Complaint (Count I - Sexually Hostile Work Environment)**

In its recitation of facts in support of its motion WCH recounts a detailed timeline of events during Defendant Saman's tenure as a physician in the WCH Emergency Department. It also relates claims regarding its investigation of complaints by Plaintiffs and other WCH employees regarding Defendant Saman. The Court notes that WCH's contention that Saman's actions did not create a hostile work environment are in tension with its subsequent claim that it took prompt remedial action to correct his behavior and that it ultimately removed Saman from WCH due to

his conduct. Additionally, credible evidence supports Plaintiffs' position that WCH had no problem with Samaan until Carol Coleman, the family member of a WCH patient, expressed her intention to report Samaan's actions toward her directly to the WCH Board of Directors and Plaintiff Doty simultaneously reported WCH's inaction regarding Samaan directly to WVU Medicine. Contemporaneous reports by Plaintiffs and others preclude WCH's proposed conclusion that Defendant Samaan's conduct was insufficient to create a hostile environment for Plaintiffs at WCH as a matter of law.

**B. Material disputes of fact exist as to whether WCH took prompt and remedial action in response to Plaintiffs' complaints against Dr. Samaan. (Third Amended Complaint - COUNT III – Failure to Take Prompt Remedial Action/Retaliation)**

As noted above, WCH's detailed timeline of events during Defendant Samaan's tenure as a physician in the WCH Emergency Department supports an inference that WCH was aware of significant issues regarding his behavior in May of 2018, shortly after Samaan's arrival, yet it continued to allow him to work as Plaintiffs' supervisor in the WCH Emergency Department for weeks thereafter. Reports from both Plaintiffs during this period alleged that Defendant Samaan was retaliating against Plaintiffs for reporting his earlier misconduct by making it difficult for them to perform their job duties. Credible evidence supports the Plaintiffs' position that WCH had the option to request that Defendant Samaan be removed at any point but did not do so until Carol Coleman, the family member of a WCH patient, expressed her intention to report Samaan's actions toward her directly to the WCH Board of Directors and Plaintiff Doty simultaneously reported WCH's inaction regarding Samaan directly to WVU Medicine. This record does not support WCH's proposed conclusion that it took prompt remedial action as a matter of law.

**C. Plaintiffs' claims against WCH and ERx for aiding and abetting Defendant Samaan, as well as for negligent hiring and supervision of Defendant Samaan are sufficiently established.**

Plaintiffs' Third Amended Complaint alleges that WCH and ERx aided and abetted Defendant Samaan's harassment and that WCH and ERx were negligent in retaining and supervising him during Samaan's tenure at WCH (COUNT II – Aiding and Abetting, COUNT IV – Negligent Hiring and COUNT V – Negligent Supervision by ERx and WCH).

Proceedings before the West Virginia Board of Medicine establish that in the year immediately preceding Defendant Samaan's tenure at WCH via ERx, he had been terminated twice for sexual harassment. On one occasion, Samaan was fired for sexually harassing a coworker; on another, he was fired for sexually harassing a patient. Plaintiffs contend that any minimally competent background check would have revealed that Defendant Samaan was unfit to be placed in a position of trust and authority over patients and staff at WCH. Defendants produced no competent evidence of having conducted any background check regarding Defendant Samaan, much less a thorough one such as would be expected given the sensitive nature of his prospective position which Defendants were aware would afford him access to highly sensitive and private medical information and to the bodies of patients and staff at WCH as well. Issues of negligent retention and supervision cannot properly be resolved without a thorough evaluation of the actions or lack of actions of WCH and ERx before and during Defendant Samaan's tenure at WCH. This precludes summary judgment as to these claims.

**D. Plaintiff Doty has sufficiently established her retaliation claim against WCH (Third Amended Complaint, Count VI)**

Wetzel County Hospital, Inc., seeks judgment against Plaintiff Doty in part because it alleges it was not involved in the conduct that occurred at WCH when it was operated by the Wetzel County Hospital Association during May and June of 2018. Wetzel County Hospital, Inc.,

contends that it was not in existence during May and June 2018 when Defendant Samaan worked at WCH and that Wetzel County Hospital, Inc, assumed operation of WCH in August 2019.

Wetzel County Hospital Inc. argues that the events giving rise to Plaintiffs' claims occurred during May 2018 and June 2018, and that there is no connection between the 2018 events and its decision not to hire Doty for the position of WCH Emergency Department Manager in January 2020. WCH argues that the decision-makers regarding Doty's 2020 non-selection were not involved in her reports against Defendant Samaan, relying primarily upon the testimony of former WCH Director of Nursing Shannon Smith that those WCH selected to interview candidates agreed that Plaintiff Doty's interview for the Manager position caused her non-selection in 2020.

However, the record reflects the fact that Plaintiff Doty's qualifications met the posted preferred qualifications for the Emergency Department Manager position, while the applicant WCH selected to fill that position did not. Wetzel County Hospital, Inc.'s refusal to hire Plaintiff Doty despite her qualifications, combined with its decision to hire another candidate without the preferred qualifications, could reasonably lead to an inference of retaliation, particularly given the subjective criteria relied upon by Wetzel County Hospital, Inc., to justify its non-selection of Doty. On this record the possibility of an improper motive of retaliation due to Doty's participation in objecting to Defendant Samaan's behavior cannot be excluded as a matter of law.

**2. ERx, LLC**

**A. ERx owed Plaintiffs a duty because Dr. Samaan's conduct was reasonably foreseeable.**

ERx posits the following standard for foreseeability: "[d]uty, in other words, is measured by the scope of the risk which negligent conduct foreseeably entails." ERx could have reasonably anticipated that Defendant Samaan would sexually harass Plaintiffs because he had done that at both his employers preceding ERx. Thus, Defendant ERx owed Plaintiffs a duty of care: the jury



would be entitled to find that the harm suffered by Plaintiffs was foreseeable. The jury would be entitled to conclude that ERx placed a physician in the WCH Emergency Department without vetting him, resulting in harm to Plaintiffs. A jury could conclude that harm from such conduct was foreseeable. If a physician placement agency such as ERx hires doctors without investigating their backgrounds, it is reasonably foreseeable that those doctors could do harm to those in Plaintiffs' position.

As to the final contention ERx makes in this regard, negligence on the part of WCH in failing to do its own background check does not absolve ERx of its negligence. ERx is also somewhat internally contradictory on this point; on one hand praising the "rapid, professional investigation" conducted by WCH (ERx Memorandum, p. 8), but on the other hand decrying WCH for keeping ERx in the dark. (ERx Memorandum, p.7).

The record does not support summary judgment as to foreseeability of Defendant Samaan's misconduct as to either ERx or WCH.

**B. Plaintiffs' WVHRA claims against ERx may proceed because ERx is subject to the WVHRA.**

W. Va. Code § 5-11-9(7) (1994) states:

It shall be an unlawful discriminatory practice (7) For any person, employer, employment agency, labor organization, owner, real estate broker, real estate salesman or financial institution to: (A) Engage in any form of threats or reprisal, or to engage in, or hire, or conspire with others to commit acts or activities of any nature, the purpose of which is to harass, degrade, embarrass or cause physical harm or economic loss or to aid, abet, incite, compel or coerce any person to engage in any of the unlawful discriminatory practices defined in this section.

Holstein v. Norandex, Inc., 194 W. Va. 727, 729, 461 S.E.2d 473, 475 (1995).

"Person" as defined by the WVHRA means one or more individuals, partnerships, associations, organizations, corporations, labor organizations, cooperatives, legal representatives, trustees, trustees in bankruptcy, receivers and other organized groups of persons. W. Va. Code §

5-11-3(a). Even if ERx is found not to be Defendant Samaan's employer, it is a "person" as defined by the WVHRA, and therefore subject to potential liability for aiding and abetting Samaan's harassment of the Plaintiffs.

ERx admits that it could have removed Defendant Samaan from WCH at any time it chose but did not do so until over a month after Samaan's misconduct was reported to its agent, Dr. William Trusnovic, Medical Director of the WCH Emergency Department. ERx may be held liable for Dr. Samaan's conduct whether or not Defendant Samaan was an independent contractor because ERx refused to remove him from WCH when it had the power to do, thereby potentially aiding and abetting his harassment and retaliation of Plaintiffs and others.

The Court notes that the West Virginia Supreme Court recently held:

"An entity that does not meet the West Virginia Human Rights Act definition of 'employer,' as set out in West Virginia Code § 5-11-3(d), may not be potentially liable to its own employee as a 'person,' as defined in West Virginia Code § 5-11-3(a), for an alleged violation of West Virginia Code § 5-11-9(7)" Pajak v. Under Armour, Inc., No. 21-0484, 2022 W. Va. LEXIS 307, at \*2 (Apr. 22, 2022)(syllabus point 5).

However, ERx maintains that it is not the employer of any party to this litigation and, therefore, Pajak has no application to Plaintiffs' aiding and abetting claims, nor to ERx's potential liability as a "person" aiding and abetting Defendant Samaan's harassment of Plaintiffs.

**C. ERx may be held liable for Dr. Samaan's conduct because Dr. Samaan was an agent of ERx and ERx was on notice of its agent's misconduct.**

The record demonstrates sufficient facts from which a jury could conclude that ERx controlled Defendant Samaan's access to Plaintiffs' workplace via his supervisor Dr. Trusnovic, who was also an agent of ERx. ERx admitted that Trusnovic was on notice of Samaan's conduct toward Plaintiffs (and others) shortly after Samaan's arrival at WCH. Accordingly, ERx knew of Samaan's alleged misconduct, and admits that it had the authority to immediately terminate

Samaan's placement at WCH if it so chose. As ERx chose not to do so, it became potentially liable for aiding and abetting the other Defendants in sustaining the hostile work environment allegedly suffered by the Plaintiffs. Where such evidence exists, a jury could properly make a finding of liability on the part of the contractor ERx for the actions of its agent or agents. Accordingly, this issue is not appropriate for resolution at the summary judgment stage.

For the reason set forth herein, Defendants' Motions for Summary Judgment are DENIED.

The objections of the Defendants are preserved.

The Circuit Clerk is directed to deliver a copy of this Order to all counsel of record and to any unrepresented party.

ENTER this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Jeffrey D. Cramer, Judge

PREPARED BY:

\_\_\_\_\_  
Walt Auvil (WV ID #190)  
Kirk Auvil (WV ID #12953)  
Anthony Brunicardi (WV ID #13593)  
THE EMPLOYMENT LAW CENTER, PLLC  
1208 Market Street  
Parkersburg, WV 26101  
*Counsel for Plaintiffs*

APPROVED AS TO FORMS BY:

\_\_\_\_\_  
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*Counsel for Defendant Wetzel County Hospital, Inc.*

---

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Jennifer L. Miller (WV ID #11153)  
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*Counsel for Defendant ERx, LLC*

---

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6895 E. Camelback Rd, #2022  
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[samaanmms@gmail.com](mailto:samaanmms@gmail.com)  
*Pro Se Defendant*

## Walt Auvil

---

**From:** Walt Auvil <auvil@theemploymentlawcenter.com> on behalf of Walt Auvil  
**Sent:** Friday, May 6, 2022 2:40 PM  
**To:** Larry Rector; Shelby Merinar; Tim Linkous; Jennifer L. Miller; M Samaan  
**Cc:** Toni Grogg; Melody Grogan; Kirk Auvil; Anthony Brunicardi; Walt Auvil  
**Subject:** RE: McEldowney, et al., v. ERx, LLC, et al., - Draft Proposed Order Denying Defendants' Motions for Summary Judgment

Larry, Jennifer and Dr. Samaan –

Thank you for responding to the draft order.

I believe the draft fairly reflects the positions taken by the Plaintiffs in their responses to Defendants' motions.

In my view it is reasonable to incorporate those positions in the order in light of the Court's ruling in favor of the Plaintiffs on these issues.

On the other hand, if counsel or Dr. Samaan have an alternative proposed order embodying the Court's ruling denying the Defendants' motions I am happy to review any such draft.

If not, I plan to submit Plaintiffs' draft order for the Court's consideration, copying Defendants of course and noting your objection thereto.

Have a nice weekend.

Walt Auvil  
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1208 Market Street  
Parkersburg, WV 26101  
T: 304-485-3058  
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[auvil@theemploymentlawcenter.com](mailto:auvil@theemploymentlawcenter.com)

**From:** Larry Rector <Larry.Rector@Steptoe-Johnson.com>  
**Sent:** Friday, May 6, 2022 1:13 PM  
**To:** Walt Auvil <auvil@theemploymentlawcenter.com>; Shelby Merinar <Shelby.Hicks-Merinar@Steptoe-Johnson.com>; Tim Linkous <tim@linkouslawpllc.com>; Jennifer L. Miller <jennifer@linkouslawpllc.com>; M Samaan <samaanmms@gmail.com>  
**Cc:** Toni Grogg <toni@theemploymentlawcenter.com>; Melody Grogan <melody@theemploymentlawcenter.com>; Kirk Auvil <theemploymentlawcenter@gmail.com>; Anthony Brunicardi <anthony@theemploymentlawcenter.com>  
**Subject:** RE: McEldowney, et al., v. ERx, LLC, et al., - Draft Proposed Order Denying Defendants' Motions for Summary Judgment

Good afternoon, Walt:

I agree with Jennifer's comments that the scope of the proposed order is far too broad. While Ms. Cisar indicated that the Judge found genuine issues of fact, Defendants cannot agree to the sweeping nature of this order which appears to find genuine issues of *all* material facts underlying Defendants' motions and adopts Plaintiffs' positions on all legal

issues. Additionally, while we do not agree to the breadth of these findings of fact and conclusions of law, at a minimum, the positions taken in the proposed order should be supported by citations to the record so that the order can be useful for purposes of judicial review. I agree that more guidance and direction from the Court will be necessary to prepare an order accurately reflecting the Court's rulings on these issues.

Let me know your thoughts on how to proceed.

Regards,

**Larry Rector**

Member

O: 304-933-8151 C: 304-669-1813



**From:** Walt Auvil <[auvil@theemploymentlawcenter.com](mailto:auvil@theemploymentlawcenter.com)>

**Sent:** Wednesday, May 4, 2022 4:43 PM

**To:** Larry Rector <[Larry.Rector@Steptoe-Johnson.com](mailto:Larry.Rector@Steptoe-Johnson.com)>; Shelby Merinar <[Shelby.Hicks-Merinar@Steptoe-Johnson.com](mailto:Shelby.Hicks-Merinar@Steptoe-Johnson.com)>; Tim Linkous <[tim@linkouslawpllc.com](mailto:tim@linkouslawpllc.com)>; Jennifer L. Miller <[jennifer@linkouslawpllc.com](mailto:jennifer@linkouslawpllc.com)>; M Samaan <[samaanmms@gmail.com](mailto:samaanmms@gmail.com)>

**Cc:** Walt Auvil <[auvil@theemploymentlawcenter.com](mailto:auvil@theemploymentlawcenter.com)>; Toni Grogg <[toni@theemploymentlawcenter.com](mailto:toni@theemploymentlawcenter.com)>; Melody Grogan <[melody@theemploymentlawcenter.com](mailto:melody@theemploymentlawcenter.com)>; Kirk Auvil <[theemploymentlawcenter@gmail.com](mailto:theemploymentlawcenter@gmail.com)>; Anthony Brunicardi <[anthony@theemploymentlawcenter.com](mailto:anthony@theemploymentlawcenter.com)>

**Subject:** McEldowney, et al., v. ERx, LLC, et al., - Draft Proposed Order Denying Defendants' Motions for Summary Judgment

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless the sender is safe.

Counsel and Doctor Samaan –

Pursuant to the email direction provided by the Court I have prepared the attached draft order reflecting the Court's denial of Defendants' Motions for Summary Judgment.

Please review the same and provide me your thoughts on this draft at your earliest convenience.

Thank you for your attention to this matter.

**Walt Auvil**

**The Employment Law Center, PLLC**

**1208 Market Street**

**Parkersburg, WV 26101**

**T: 304-485-3058**

**F: 304-485-6344**

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## Walt Auvil

---

**From:** Larry Rector <Larry.Rector@Step toe-Johnson.com> on behalf of Larry Rector  
**Sent:** Tuesday, May 10, 2022 8:33 AM  
**To:** Walt Auvil [!]; Mark Samaan  
**Cc:** Jennifer L. Miller; tim@linkouslawpllc.com; Shelby Merinar  
**Attachments:** Draft Order Denying Defendants' Motions for Summary Judgment(14720025.1 SJDOCS).docx

Mr. Auvil and Dr. Samaan,

Attached is a proposed order that denies the motions for summary judgment. This order is pretty straight forward and counsel for ERx and WCH agree to this form of an order.

Please let me know whether this order is acceptable. If the Order is acceptable then you are authorized to sign my name to the order and forward it to the court for its consideration.

Regards,

**Larry Rector**

Member  
Step toe & Johnson PLLC  
400 White Oaks Boulevard  
Bridgeport, WV 26330  
O: 304-933-8151 F: 304-933-8753 C: 304-669-1813  
Assistant: Marcia Lantz 304-933-8341  
[Download my V-Card](#)

[larry.rector@step toe-johnson.com](mailto:larry.rector@step toe-johnson.com)  
[www.step toe-johnson.com](http://www.step toe-johnson.com)



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**IN THE CIRCUIT COURT OF WETZEL COUNTY, WEST VIRGINIA**

**KAYLA MCELDOWNEY and  
DEVANN E. DOTY,**

**Plaintiffs,**

**v.**

**Civil Action No. 20-C-5  
Judge Jeffrey D. Cramer**

**ERX, LLC, a Florida Limited Liability  
Company, WETZEL COUNTY HOSPITAL  
ASSOCIATION, a West Virginia Corporation,  
WETZEL COUNTY HOSPITAL, Inc. and  
MARK SAMAAAN, M.D.,**

**Defendants.**

**ORDER DENYING DEFENDANTS'  
MOTIONS FOR SUMMARY JUDGMENT**

Defendants Wetzel County Hospital Association, Wetzel County Hospital, Inc., and ERx, LLC (collectively, "Defendants") filed motions for summary judgment with respect to the counts enumerated in Plaintiffs' Third Amended Complaint. On April 6, 2022, the Court held oral argument on Defendants' pending motions for summary judgment.

The Court, having fully considered the arguments set forth in the parties' briefing and at oral argument, FINDS that there are genuine issues of material fact to be resolved with respect to Plaintiffs' claims. For this reason, Defendants' motions for summary judgement are DENIED.

The Circuit Clerk is directed to deliver a copy of this Order to all counsel of record.

ENTER this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Jeffrey D. Cramer, Judge

PREPARED BY:

---

Larry J. Rector (WV ID #6418)  
STEPTOE & JOHNSON PLLC  
400 White Oaks Blvd.  
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(304) 933-8151

Shelby A. Hicks-Merinar (WV ID #13081)  
STEPTOE & JOHNSON PLLC  
1000 Swiss Pine Way, Suite 200  
Morgantown, WV 26501  
*Counsel for Defendant Wetzel County Hospital, Inc.*

APPROVED BY:

---

Walt Auvil (WV ID #190)  
Kirk Auvil (WV ID #12953)  
Anthony Brunicardi (WV ID #13593)  
THE EMPLOYMENT LAW CENTER, PLLC  
1208 Market Street  
Parkersburg, WV 26101  
*Counsel for Plaintiffs*

---

Timothy R. Linkous (WV ID #8572)  
Jennifer L. Miller (WV ID #11153)  
LINKOUS LAW PLLC  
10 Cheat Landing, Suite 200  
Morgantown, WV 26508  
*Counsel for Defendant ERx, LLC*

---

Mark Samaan, M.D.  
6895 E. Camelback Rd, #2022

Scottsdale, AZ 85251  
samaanmms@gmail.com  
*Pro Se Defendant*

IN THE CIRCUIT COURT OF WETZEL COUNTY, WEST VIRGINIA

KAYLA MCELLOWNEY and  
DEVANN E. DOTY,

Plaintiffs,

v.

Civil Action No. 20-C-5  
Judge Jeffrey D. Cramer

ERX, LLC, a Florida Limited Liability  
Company, WETZEL COUNTY HOSPITAL  
ASSOCIATION, a West Virginia Corporation,  
WETZEL COUNTY HOSPITAL, Inc. and  
MARK SAMAAAN, M.D.,

Defendants.

**CERTIFICATE OF SERVICE**

I hereby certify that on the \_\_\_\_ day of May, 2022, I served the foregoing proposed "***Order Denying Defendants' Motions for Summary Judgment***" upon counsel of record and Dr. Samaan by electronic mail and by depositing true copies thereof in the United States mail, postage prepaid, in an envelope addressed as follows:

Walt Auvil  
Kirk Auvil  
Anthony Brunicardi  
The Employment Law Center, PLLC  
1208 Market Street  
Parkersburg, WV 26101  
*Counsel for Plaintiffs*

Mark Samaan, M.D.  
6895 E. Camelback Rd, #2022  
Scottsdale, AZ 85251  
[samaanmms@gmail.com](mailto:samaanmms@gmail.com)  
*Pro Se Defendant*

Timothy R. Linkous  
Jennifer L. Miller  
Linkous Law PLLC  
10 Cheat Landing, Suite 200  
Morgantown, WV 26508  
*Counsel for Defendant ERx, LLC*

---

Larry J. Rector (WV Bar #6418)  
Shelby A. Hicks-Merinar (WV Bar #13081)

## Walt Auvil

---

**From:** Larry Rector <Larry.Rector@Steptoe-Johnson.com> on behalf of Larry Rector  
**Sent:** Wednesday, May 11, 2022 10:17 AM  
**To:** Walt Auvil; Cisar, Angela  
**Cc:** M Samaan; Tim Linkous; Shelby Merinar; Jennifer L. Miller; Melody Grogan; Toni Grogg  
**Subject:** RE: McEldowney v. ERx, LLC, et al. (Wetzel County Civil Action No. 20-C-5)Plaintiffs' proposed voir dire  
**Attachments:** Clerk Letter enclosing proposed Order Denying Defendants' Motions for Summary Judgment.pdf

All,

Please find a proposed order denying ERX's and WCH's motions for summary judgment for the court's consideration.

All counsel and Dr. Samaan have agreed to the form of the proposed order and have authorized me to sign on their behalf. This proposed order is also being served to the clerk, a courtesy copy to the Judge's Chambers and to all counsel and Dr. Samaan.

Please let me know if you have any questions or concerns.

Regards,

**Larry Rector**

Member

O: 304-933-8151 C: 304-669-1813



**From:** Walt Auvil <auvil@theemploymentlawcenter.com>  
**Sent:** Monday, May 9, 2022 3:06 PM  
**To:** Cisar, Angela <Angela.Cisar@courtsww.gov>  
**Cc:** Larry Rector <Larry.Rector@Steptoe-Johnson.com>; M Samaan <samaanmms@gmail.com>; Tim Linkous <tim@linkouslawpllc.com>; Shelby Merinar <Shelby.Hicks-Merinar@Steptoe-Johnson.com>; auvil@theemploymentlawcenter.com; Jennifer L. Miller <jennifer@linkouslawpllc.com>; Melody Grogan <melody@theemploymentlawcenter.com>; Toni Grogg <toni@theemploymentlawcenter.com>  
**Subject:** McEldowney v. ERx, LLC, et al. (Wetzel County Civil Action No. 20-C-5)Plaintiffs' proposed voir dire

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless the sender is safe.

Ms Cisar –

Attached please find Plaintiffs' proposed voir dire.

Plaintiffs' have no motions in limine.

Counsel are working on an order embodying the Court's denial of the WCH and ERx motions for summary judgment and hope to have that to you soon.

Walt Auvil  
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---

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Writer's Contact Information  
**Phone:** (304) 933-8151  
**Fax:** (304) 933-8753  
**E-mail Address:**  
[larry.rector@steptoeh-johnson.com](mailto:larry.rector@steptoeh-johnson.com)

May 11, 2022

Lori Wetzel McCoy, Clerk  
Wetzel County Courthouse  
P.O. Box 263  
200 Main Street  
New Martinsville, WV 26155

**Re: *McEldowney and Doty v. Wetzel County Hospital, Inc., et al.***  
**Civil Action No. 20-C-5**  
**Circuit Court of Wetzel County, West Virginia**

Dear Ms. McCoy:

Enclosed please find a proposed "Order Denying Defendants' Motions for Summary Judgment" in regard to the above-referenced matter. I request you mark this document "filed" and place in the appropriate court file.

Thank you for your assistance in this matter. If you should have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to be 'LJ Rector', written over a horizontal line.

Larry J. Rector

LJR/mal

Enclosure

cc (w/encls.): The Honorable Jeffrey D. Cramer (*via U.S. Mail*)  
Walt Auvil, Esq./Kirk Auvil, Esq./Anthony Brunicardi, Esq.  
(*via U.S. Mail and e-mail*)  
Timothy R. Linkous, Esq./Jennifer L. Miller, Esq. (*via U.S. Mail and e-mail*)  
Dr. Mark Samaan (*via U.S. Mail and e-mail*)

**IN THE CIRCUIT COURT OF WETZEL COUNTY, WEST VIRGINIA**

**KAYLA MCELLOWNEY and  
DEVANN E. DOTY,**

**Plaintiffs,**

**v.**

**Civil Action No. 20-C-5  
Judge Jeffrey D. Cramer**

**ERX, LLC, a Florida Limited Liability  
Company, WETZEL COUNTY HOSPITAL  
ASSOCIATION, a West Virginia Corporation,  
WETZEL COUNTY HOSPITAL, Inc. and  
MARK SAMAN, M.D.,**

**Defendants.**

**ORDER DENYING DEFENDANTS'  
MOTIONS FOR SUMMARY JUDGMENT**

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The Court, having fully considered the arguments set forth in the parties' briefing and at oral argument, FINDS that there are genuine issues of material fact to be resolved with respect to Plaintiffs' claims. For this reason, Defendants' motions for summary judgment are DENIED.

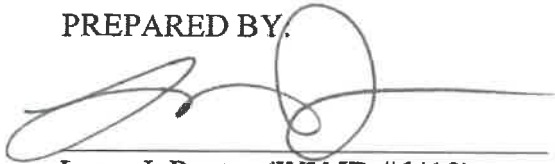
The Circuit Clerk is directed to deliver a copy of this Order to all counsel of record and to any *pro se* party.

ENTER this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Jeffrey D. Cramer, Judge



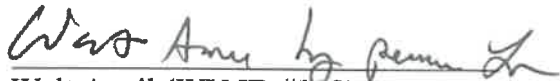
PREPARED BY:



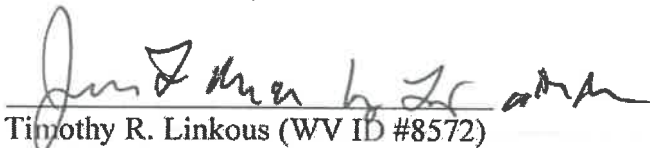
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Shelby A. Hicks-Merinar (WV ID #13081)  
STEPTOE & JOHNSON PLLC  
1000 Swiss Pine Way, Suite 200  
Morgantown, WV 26501  
*Counsel for Defendant Wetzel County Hospital, Inc.*

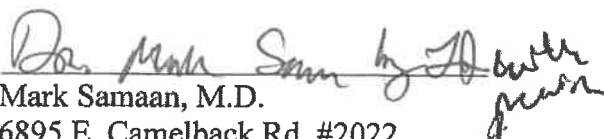
APPROVED BY:



Walt Auvil (WV ID #190)  
Kirk Auvil (WV ID #12953)  
Anthony Brunicardi (WV ID #13593)  
THE EMPLOYMENT LAW CENTER, PLLC  
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*Counsel for Plaintiffs*



Timothy R. Linkous (WV ID #8572)  
Jennifer L. Miller (WV ID #11153)  
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10 Cheat Landing, Suite 200  
Morgantown, WV 26508  
*Counsel for Defendant ERx, LLC*



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Scottsdale, AZ 85251  
[samaanmms@gmail.com](mailto:samaanmms@gmail.com)  
*Pro Se Defendant*

IN THE CIRCUIT COURT OF WETZEL COUNTY, WEST VIRGINIA

KAYLA MCELLOWNEY and  
DEVANN E. DOTY,

Plaintiffs,

v.

Civil Action No. 20-C-5  
Judge Jeffrey D. Cramer

ERX, LLC, a Florida Limited Liability  
Company, WETZEL COUNTY HOSPITAL  
ASSOCIATION, a West Virginia Corporation,  
WETZEL COUNTY HOSPITAL, Inc. and  
MARK SAMAN, M.D.,

Defendants.


CERTIFICATE OF SERVICE

I hereby certify that on the <sup>11th</sup> 10th day of May, 2022, I served the foregoing proposed "**Order Denying Defendants' Motions for Summary Judgment**" upon counsel of record and Dr. Saman by electronic mail and by depositing true copies thereof in the United States mail, postage prepaid, in an envelope addressed as follows:

Walt Auvil  
Kirk Auvil  
Anthony Brunicardi  
The Employment Law Center, PLLC  
1208 Market Street  
Parkersburg, WV 26101  
*Counsel for Plaintiffs*

Mark Saman, M.D.  
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[samaanmms@gmail.com](mailto:samaanmms@gmail.com)  
*Pro Se Defendant*

Timothy R. Linkous  
Jennifer L. Miller  
Linkous Law PLLC  
10 Cheat Landing, Suite 200  
Morgantown, WV 26508  
*Counsel for Defendant ERx, LLC*

  
Larry J. Rector (WV Bar #6418)  
Shelby A. Hicks-Merinar (WV Bar #13081)