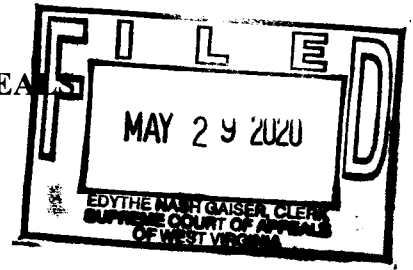


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WEST VIRGINIA SUPREME COURT OF APPEALS
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No. 20-0033
Marshall County Case No.: 13-C-163

KAREN COFFIELD,

Defendant below, Petitioner,

v.

RONALD NEIL ROBINSON,

Plaintiff below, Respondent.

**APPEAL FROM THE FINAL ORDER OF THE CIRCUIT COURT
OF MARSHALL COUNTY**

PETITIONER'S BRIEF

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ASSIGNMENTS OF ERROR

- I. Circuit Court erred in failing to grant summary judgment based upon the indisputable evidence that statute of limitations expired on Respondent's claims prior to filing of lawsuit and/or in the alternative, failing to permit evidence of statute of limitations defense before jury.
- II. Circuit Court erred in failing to permit Ms. Coffield to introduce evidence of justification defense to jury to determine and/or mitigate damages.
- III. Circuit Court erred when it prohibited Ms. Coffield from presenting evidence of counterclaim to jury.
- IV. Circuit Court erred in failing to bifurcate punitive damages until after liability was established and erred in permitting jury to award punitive damages on lesser standard than statute requires.
- V. Award of attorney fees is error as Respondent did not substantially prevail and given language of verdict form, it is unclear which theory jury adopted for liability and damages.

STATEMENT OF THE CASE

Respondent Ronald Neil Robinson (hereinafter "Respondent") filed a *pro se* complaint alleging paternity fraud against the mother of his child, Petitioner Karen Coffield (hereinafter "Ms. Coffield"). (JA_000001)

In this case, the Circuit Court failed to permit evidence of the statute of limitations defense, or instruct the jury of the same, contrary to this Court's precedent in *Dunn v. Rockwell*, 225 W.Va. 43 (2009). The Circuit Court, by Order entered February 1, 2019, found that Ms. Coffield failed to timely raise the issue of statute of limitations for the purposes of summary judgment even though Ms. Coffield previously listed the statute of limitations as the fifth affirmative defense in her answer to Respondent's complaint. The Circuit Court found that Ms. Coffield "has slumbered on

her rights.” (JA_000319) The applicable statute of limitations is two years and it is incontrovertible that the complaint in this action was filed more than two years after Respondent knew he was the father of the child. Ms. Coffield’s trial Exhibit 1 is a Facebook post by Respondent announcing to the world, on September 11, 2011, that he is the father of the child. The post reads:

I just wanted every one to know that I just found out That im the father of A ten year old little girl. Her name is S***** Coffield¹ and she is so beautiful. I lost ten years not knowing she was mine but I intend on making up for lost time. I am so happy.

(JA_000331) The complaint was filed September 27, 2013, more than two years after Respondent knew he was the father. (JA_000001)

Respondent brought a complaint *pro se* alleging that Ms. Coffield lied to him about the paternity of her daughter. The evidence at trial was that Ms. Coffield informed Respondent that she was artificially inseminated, but that she did not know who was the father of the child. (JA_000485)

A two day civil jury trial was held on Respondent’s claims for intentional misrepresentation/fraudulent concealment and intentional infliction of emotional distress. (JA_000337) After deliberations, the six-member jury panel found in favor of Respondent on the count for intentional misrepresentation/fraudulent concealment, and against Respondent on the count of intentional infliction of emotional distress. (JA_000337) The jury awarded \$2,747.50 in compensatory damages, and \$12,252.50 in punitive damages for a total award of \$15,000. (JA_000337) Later, the Court awarded the sum of \$6,000.00 in attorney fees based upon a 40% contingency fee agreement Respondent had with his lawyer. (JA_000380)

¹ The child’s first name has been redacted.

The statute of limitations issue is dispositive of this case and reversal is warranted. However, Ms. Coffield raises additional issues in the event reversal occurs.

SUMMARY OF ARGUMENT

In this case, the Circuit Court erred in permitting the civil action to proceed against Ms. Coffield when the statute of limitations had expired prior to Respondent filing the case. In the alternative, Ms. Coffield should have been permitted to present her statute of limitations defense at trial. Ms. Coffield should have been permitted to argue her justification defense by introducing evidence of Respondent's criminal and abusive past. In addition, the Circuit Court erred in dismissing Ms. Coffield's counterclaim for abuse of process, failing to bifurcate the jury's consideration of punitive damages, and awarding attorney fees.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Petitioner believes that Rule 19 oral argument is appropriate given Petitioner's assignments of error. It is Petitioner's position that the Circuit Court failed to apply settled law to the facts of the case. This case is appropriate for a Rule 19 argument and disposition by memorandum decision.

ARGUMENT

I. Standard of Review

The appellate standard of review for an order granting or denying a renewed motion for a judgment as a matter of law after trial pursuant to Rule 50(b) of the West Virginia Rules of Civil Procedure [1998] is *de novo*. Syl. Pt. 1, *Fredeking v. Tyler*, 680 S.E.2d 16, 224 W.Va. 1 (2009). Standard of review for summary judgment is *de novo*. Syl. Pt. 1, *Thompson v. Hatfield*, 225 W.Va. 405, 693 S.E.2d 479 (W. Va. 2010) *citing* Syl. Pt. 3, *Fayette County National Bank v. Lilly*, 199 W.Va. 349, 484 S.E.2d 232 (1997).

II. Circuit Court erred in failing to grant summary judgment based upon indisputable evidence that statute of limitations expired on Respondent's claims prior to filing of lawsuit and/or in the alternative, failing to permit evidence of statute of limitations defense before jury.

The Circuit Court, by Order entered February 1, 2019, found that Ms. Coffield failed to timely raise the issue of statute of limitations for the purposes of summary judgment even though Ms. Coffield previously listed the statute of limitations as the fifth affirmative defense in her answer to Respondent's complaint. (JA_000041) At the jury trial of this matter, Ms. Coffield was prohibited from arguing the statute of limitations defense, nor was an instruction regarding the defense given to the jury per *Dunn v. Rockwell*, 225 W.Va. 43 (2009).

This Court provided a discussion as to when a statute of limitations begins to toll, and when it can be expanded:

‘The statute of limitations ordinarily begins to run when the right to bring an action for personal injuries accrues which is when the injury is inflicted.’ Syl. pt. 1, *Jones v. Trustees of Bethany College*, 177 W.Va. 168, 351 S.E.2d 183 (1986). However, ‘[j]ustice is not done when an injured person loses his right to sue before he discovers if he was injured or who to sue.’ *Hickman v. Grover*, 178 W.Va. 249, 252, 358 S.E.2d 810, 813 (1987). In an attempt to mitigate the harshness of the statute of limitations, the "discovery rule" has been created by courts across the nation, including this Court. Under the "discovery rule," the statute of limitations is tolled until the plaintiff knows or by reasonable diligence should know that he has been injured and who is responsible.

Cart v. Marcum, 188 W.Va. 241, 243-44 (1992). Here, Respondent knew he was the father of Ms. Coffield's daughter more than two years prior to his filing of the complaint. The Circuit Court, in its post-trial Order awarding attorney fees, makes reference to Respondent's failure to file the complaint within the two years statute of limitation:

The Court is mindful of the fact that the [Respondent's] prevailing fraud claim could have easily been dismissed. The statute of limitations for claims of fraud is two (2) years. The statute in this case began to run on September 11, 2011, when the [Respondent] discovered that he was the father of the [Ms. Coffield's] child. The

[Respondent] did not file his complaint until September 27, 2013, over two (2) weeks too late. However, [Ms. Coffield] failed to raise the statute of limitations for nearly five (5) years. By Order dated February 1, 2019, the Court denied [Ms. Coffield's] Motion for Summary Judgment on the statute of limitations issue due to [Ms. Coffield] slumbering on her right to raise the same. But for [Ms. Coffield's] neglect, the fraud claim may have been barred completely.

(JA_000427)

This Order shows the Circuit Court's understandable frustration with the failure to timely raise the statute of limitations issue. Shortly after service of the Complaint, Ms. Coffield's first lawyer filed a motion to dismiss but failed to raise the statute of limitations issue. (JA_000005) Years passed and Ms. Coffield's first lawyer filed a motion for summary judgment but again failed to raise the statute of limitations issue. (JA_000047) After the Circuit Court denied the motion for summary judgment, Ms. Coffield's first lawyer withdrew from the case. (JA_000148) Ms. Coffield's second lawyer took the deposition of Respondent and then filed a renewed motion for summary judgment raising the statute of limitations issue. (JA_000155) The Circuit Court denied that motion reasoning that Ms. Coffield "slumbered" on her rights. (JA_000319)

The applicable statute of limitations is two years and it is incontrovertible that the complaint in this action was filed more than two years after Respondent knew, or should have known, he was the father of the child. Ms. Coffield's trial Exhibit 1 is Respondent's Facebook post announcing to the world, on September 11, 2011, that he is the father of the child. The post reads:

I just wanted every one to know that I just found out That im the father of A ten year old little girl. Her name is S***** Coffield and she is so beautiful. I lost ten years not knowing she was mine but I intend on making up for lost time. I am so happy.

The complaint was filed September 27, 2013, more than two years after Respondent knew he was the father.

As such, the jury should have been given an instruction regarding Ms. Coffield's statute of limitation defense. Had an instruction been given to the jury, the jury would have found in Ms. Coffield's favor as the statute of limitations prohibits Respondent's cause of action in its entirety.

The statute of limitations issue is dispositive of this case and reversal is warranted. However, Petitioner raises additional issues in the event reversal occurs.

III. Circuit Court erred in failing to permit Ms. Coffield to introduce evidence of justification defense to jury to determine and/or mitigate damages.

Respondent's *pro se* complaint sets forth claims for intentional misrepresentation/fraudulent concealment and intentional infliction of emotional distress. (JA_000337)

Ms. Coffield and Respondent were in a tumultuous romantic relationship. There were allegations of physical abuse, protective orders, and extensive Family Court proceedings between the parties. One of Ms. Coffield's defenses was that she was justified in telling Respondent that she was artificially inseminated in order to protect her daughter from abuse. The Circuit Court originally agreed that the justification defense could be a part of the case. (JA_000190 p. 5).

The Circuit Court later changed course and ruled the justification defense was not applicable in this case. (JA_000328) The justification defense explains why Ms. Coffield said what she said to Respondent. It helps explain why she told Respondent she was artificially inseminated. The jury should have heard this evidence, particularly with regard to the punitive damage issue.

IV. Circuit Court erred when it prohibited Ms. Coffield from presenting evidence of counterclaim to jury.

Ms. Coffield's first lawyer filed a pleading titled "Answer, Affirmative Defenses, and Counterclaim" on or about October 23, 2015. (JA_000190). The pleading did not, in fact, include a counterclaim. Ms. Coffield's first lawyer then filed a counterclaim years later, but failed to seek

leave of Court. (JA_000107). The Circuit Court dismissed the counterclaim by order entered December 5, 2019. (JA_000328)

The counterclaim alleged abuse of process. Ms. Coffield's claim for abuse of process was not spurious, as Respondent filed the *pro se* complaint after the statute of limitations had expired and for the collateral purpose of retaliating against Ms. Coffield for her obtaining safety protection orders against Respondent. The Circuit Court was well within its discretion to dismiss the counterclaim under the circumstances. However, if this case is remanded, Ms. Coffield requests she be permitted to present her counterclaim to the jury.

V. Circuit Court erred in failing to bifurcate punitive damages until after liability was established and erred in permitting jury to award punitive damages on lesser standard than statute requires.

West Virginia Code §55-7-29(b) permits the bifurcation of punitive damages until after a jury determines liability. In this case, the jury was presented with the option of awarding punitive damages at the same time it was required to determine whether or not Ms. Coffield was liable, despite Ms. Coffield's request for bifurcation. Ms. Coffield was cross examined about her tax returns, and those of the company she owns, before liability was established.

The Circuit Court permitted the jury to award punitive damages against Ms. Coffield on a lesser standard than the statute requires. *See* W.Va. Code §55-7-29(a) wherein it sets forth when punitive damages are available:

(a) An award of punitive damages may only occur in a civil action against a defendant if a plaintiff establishes by clear and convincing evidence that the damages suffered were the result of the conduct that was carried out by the defendant with actual malice toward the plaintiff or a conscious, reckless and outrageous indifference to the health, safety and welfare of others.

There was no evidence that Ms. Coffield had actual malice toward Respondent, nor was there any indifference to the health, safety and welfare of others. Ms. Coffield's story of being artificially

inseminated was not malicious. She was uncertain who the father was of her child and she was afraid of Respondent. If this case is remanded, Ms. Coffield requests that the issue of punitive damages be bifurcated.

VI. Award of attorney fees is error as Respondent did not substantially prevail and given language of verdict form, it is unclear which theory jury adopted for liability and damages.

Respondent attempted to recover in excess of \$100,000.00 in attorney fees by arguing that attorney fees are warranted because he proved fraud by clear and convincing evidence. (JA_000357).² However, the verdict form (drafted by Respondent) does not state the term “fraud” and only states that the jury is to determine “Intentional Misrepresentation/Fraudulent Concealment”. Page 2 of the verdict form provides, in part,

**DAMAGES FOR INTENTIONAL
MISREPRESENTATION/FRAUDULENT CONCEALMENT**

Having answered “Yes,” to all of the proceeding interrogatories under Count I, what amount would fully compensate Plaintiff, Ronald Neil Robinson, II, for the intentional misrepresentations and fraudulent concealment of facts by the Defendant, Karen Coffield?

As such, the jury did not determine damages for “fraud” but rather, for intentional misrepresentation and/or fraudulent concealment. Because of the way that the verdict form was worded, it is impossible to tell which theory prevailed.

Respondent did not substantially prevail at trial. The jury, after hearing the evidence and deliberating for many hours, only awarded Respondent the total amount of \$15,000.00. The evidence presented at trial was that Ms. Coffield informed Respondent that she was artificially inseminated, which was untrue. (JA_000485) However, evidence was also presented that Ms.

² The Circuit Court awarded 40% of the verdict, or \$6,000.00, in attorney fees to Respondent (JA_000380) after the parties briefed the issue. (JA_000368, JA_000371 and JA_000382)

Coffield did not know who the father was. (JA_000485) Ms. Coffield also testified that she had been with 5 or 6 men at the time of conception. (JA_000485) Without knowing the true identity of the father, Ms. Coffield could not have acted in “bad faith, vexatiously, wantonly or for oppressive reasons” to permit the award of attorney fees.

In addition, Ms. Coffield had no choice but to go to trial. Respondent, during settlement negotiations, demanded millions of dollars from Ms. Coffield. (JA_000382). Given Respondent’s unreasonable approach, Ms. Coffield had no choice but to engage in lengthy litigation and proceed to trial.

Any award of attorney fees is error.

CONCLUSION

Ms. Coffield prays the Circuit Court's judgment entered against her be reversed, and the case against her be dismissed on the basis that Respondent’s claims are time-barred by the statute of limitations. In the alternative, Ms. Coffield seeks a reversal of the matter and remand with instructions to permit a new trial wherein Ms. Coffield may offer evidence and argument regarding her defenses, as well as present evidence of her counterclaim against Respondent.

Petitioner,
by counsel,




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CERTIFICATE OF SERVICE

I hereby certify that on this 28th of May, 2020, a true and accurate copy of the foregoing

Petitioner's Brief was delivered via facsimile and electronic mail as follows:

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