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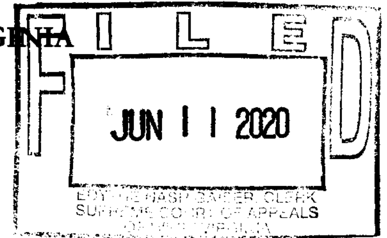
IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA



DOCKET NO. 20-0065

Mutual Benefit Group,
a/s/o Renee Dillow,
Plaintiff,
v.
Eric Parks,
Defendant.

Appeal from an Order from the Circuit Court of Monongalia County, West Virginia (19-CAP-31) granting directed verdict and judgment against Defendant, Eric Parks.

Petitioner's Brief

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TABLE OF CONTENTS

Table of Contents 2

Table of Authorities 3

Assignment of Error 4

Statement of the Case 5-6

Summary of Argument 7

Statement Regarding Oral Argument and Decision 8

Argument ....

1. THE TRIAL COURT COMMITTED PLAIN ERROR BY GRANTING DIRECTED VERDICT TO PLAINTIFF ON GROUNDS THAT DEFENDANT HAD NOT ANSWERED DISCOVERY DURING THE MAGISTRATE COURT PROCEEDINGS 9-11

Conclusion 12

Certificate of Service

APPENDIX

TABLE OF AUTHORITIES

W.Va. Supreme Court Cases

Brannon v. Riffle, 197 W.Va. 97, 475 S.E.2d 97 (1996) 9

Bryan v. City of Fairmont, No. 12-1291 (W.Va. 2013) 9

Statutes and Rules

Rule 13 of the *West Virginia Rules of Civil Procedure* 9-11

Rule 36 of the *West Virginia Rules of Civil Procedure* 11

Rule 50 of the *West Virginia Rules of Civil Procedure* 11

ASSIGNMENTS OF ERROR

1. The circuit court committed plain, prejudicial error by enforcing a rule of civil procedure that does not exist in magistrate court proceedings. More specifically, this matter originated as a civil action in magistrate court. Judgment was entered against the Defendant in magistrate court and the matter was timely appealed. After the Plaintiff's case-in-chief in the trial *de novo* in circuit court, the Plaintiff moved for directed verdict on the grounds that the Defendant never answered Defendant's requests for admissions at the magistrate court level. The circuit court deemed the requests admitted and granted a directed verdict against the Defendant despite the fact that requests for admissions are not permitted discovery in magistrate court matters. Given such, the circuit court effectively enforced a rule that didn't exist and, thus, committed plain, prejudicial error.

STATEMENT OF THE CASE

This matter originated as a simple "fender bender" civil action in magistrate court wherein the Plaintiff, Mutual Benefit Group, filed a claim against the Defendant, Eric Parks, for subrogation. (A.R. 2-3) Defendant filed his Answer, *pro se*, on or about June 25, 2018. (A.R. 4) On or about December 11, 2018, prior to the Defendant hiring counsel in the magistrate court matter, Plaintiff contends that she served written discovery upon the Defendant including a number of requests for admissions. (A.R 25-29) However, a close review of the court file shows that no certificate of service was filed with the Court, so there actually is no proof in the court file that these discovery requests were ever sent to the Defendant. Regardless, the Defendant never answered the discovery, specifically the request for admissions. Notably, the Plaintiff never filed a motion to compel the Defendant's responses, either in magistrate or circuit court.

Regardless, Defendant retained undersigned counsel and a bench trial was held in magistrate court on May 17, 2019. The Plaintiff moved for directed verdict in magistrate court on the grounds that Plaintiff never responded to her requests for admissions and same were deemed admitted. However, the motion was summarily denied by the magistrate because such discovery is not a permitted form of discovery under the magistrate court rules of civil procedure. After a full evidentiary trial, the magistrate court found in favor of the Plaintiff and granted judgment against him. (A.R. 5)

The Defendant timely filed his appeal to circuit court requesting a trial *de novo*. (A.R. 6-10)

On December 18, 2019, a trial *de novo* was held in circuit court. Notably, Plaintiff never filed any motions relative to her requests for admissions. At trial, the Plaintiff called two witnesses in her case-in-chief. After resting her case, the Plaintiff moved the circuit court for directed verdict, asking the circuit court to deem the unanswered requests for admissions admitted. Despite arguments by

the Plaintiff that such discovery is not permitted in a magistrate court case and that this was why the Defendant never answered the requests, the circuit court granted directed verdict for the Plaintiff and issued judgment against the Defendant. (A.R. 14-17) Prior to the Order being entered, Defendant did object to the order, in writing, on the grounds that dismissal wasn't proper, but the lower court entered the order and judgment over said objections. (A.R. 18-21).

This appeal follows.

SUMMARY OF ARGUMENT

Appellant argues that the trial court committed plain error by enforcing a rule of civil procedure that was completely inapplicable in the case.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

The Appellant believes this appeal is suitable for Rule 19 argument insofar as it involves assignments of error in the application of settled law and claims an unsustainable exercise of discretion where the law governing that discretion is settled. Moreover, this case involves a narrow issue of law.

ARGUMENT

A. THE CIRCUIT COURT COMMITTED PLAIN ERROR BY ENFORCING A RULE OF CIVIL PROCEDURE THAT WAS INAPPLICABLE IN THE CASE AND GRANTING DIRECTED VERDICT ON SUCH BASIS.

(1) Standard of Review

"The appellate standard of review for the granting of a motion for a directed verdict pursuant to Rule 50 of the West Virginia Rules of Civil Procedure is *de novo.* On appeal, this court, after considering the evidence in the light most favorable to the nonmoving party, will sustain the granting of a directed verdict when only one reasonable conclusion as to the verdict can be reached. But if reasonable minds could differ as to the importance and sufficiency of the evidence, a circuit court's ruling granting a directed verdict will be reversed." *Bryan v. City of Fairmont*, No. 12-1291 (W.Va. 2013); citing Syl. Pt. 3, *Brannon v. Riffle*, 197 W.Va. 97, 475 S.E.2d 97 (1996).

(2) Argument

As stated herein, this matter began as a civil action in magistrate court filed on or about May 31, 2018. The Plaintiff, Mutual Benefit Group, was represented by counsel. On or about December 11, 2018, the Plaintiff claims to have served written discovery upon the Defendant, who was *pro se* at the time, which included a number of requests for admissions. It is undisputed that the Defendant did not answer or respond to said requests. However, upon review of the magistrate court file, the Plaintiff never filed a certificate of service indicating that the Defendant was ever served a copy of the discovery requests.

Rule 13 of the *Rules of Civil Procedure for Magistrate Courts* is as follows, in its entirety:

> Discovery **shall be limited to the following methods**:
>
> 1. **Production of documents and entry upon land.** — If the parties are otherwise unable to agree, upon motion of any party showing good cause and upon notice of all parties, the magistrate may order another party to the action to:

1. Produce and permit the inspection and photocopying by the moving party of any designated documents or records or tangible items which contain relevant evidence which are not privileged, and which are in the possession, custody or control of the party from whom production is sought; or

2. Permit entry upon designated land or other property in the possession or control of a party for the purpose of inspecting, measuring, surveying or photographing the property if the subject matter is relevant to the pending action.

The court order shall specify the time, place, and manner of making the inspection and making the copies and may prescribe such terms and conditions as are just.

2. **Physical examination.** — If the parties are otherwise unable to agree, upon motion showing good cause and upon notice to all parties, the magistrate may order another party to submit to a physical examination by a physician, under the following circumstances:

a. A plaintiff claiming relief for physical injury caused by the defendant's actions may be ordered to submit to an examination upon motion of the defendant.

b. A defendant placing the defendant's physical condition in issue by way of defense or otherwise may similarly be ordered to submit to an examination, upon motion of the plaintiff.

c. Notice shall be given to the party to be examined and to all other parties and shall specify the time, place, manner, conditions and scope of any such examination and the person or persons by whom it is to be made.

d. If requested by the person examined, the party causing any such examination to be made shall deliver to the person examined a copy of a detailed written report of the examining physician setting out the physician's findings and conclusions.

e. After such request and delivery, the party causing the examination to be made shall be entitled upon request to receive from the party examined a like report of any examination, previously or thereafter made, of the same physical condition.

f. If the party examined refuses to deliver such report, the court on motion and hearing may order delivery on such terms as are just,

and if a physician fails or refuses to make such a report the court may exclude the physician's testimony if offered at the trial.

3. **Failure to comply.** — If any party refuses to obey an order made under subdivision (a) or (b) of this rule, the magistrate may:

 a. Order that the matters regarding the character or description of the property or the contents of the paper, or the physical condition of the party, or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

 b. Refuse to allow the disobedient party to support or oppose designated claims or defenses, or prohibit such party from introducing in evidence designated documents or items of testimony, or from introducing evidence of physical conditions; or

 c. Stay further proceedings until the order is obeyed.

(emphasis added)

Obviously, the Rules dictate that discovery **shall be limited** to production of documents, inspection of lands and physical examinations; hence, requests for admissions are not even permissible in magistrate court proceedings. Given such, assuming, *arguendo*, that they were ever actually served upon the Defendant, he was under absolutely no obligation to respond to them.[1] Thus, by deeming the requests "admitted" and directing a verdict on those grounds, the Court enforced a rule that doesn't even exist in magistrate court proceedings. Moreover, Rule 36 of the *West Virginia Rules of Civil Procedure* doesn't "kick in" just because the matter was appealed to circuit court. Nothing in the Rule says so. Likewise, nothing in Rule 18 of the *Rules of Civil Procedure for the Magistrate Courts of West Virginia* says so. Simply put, there is no authority whatsoever that says so. Given such, the circuit court committed clear and plain error by enforcing a rule that did not exist or pertain to the magistrate court case.

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[1] This very point was argued to the circuit court after Plaintiff moved for a directed verdict. Counsel for Defendant even suggested taking a brief recess so that the Court could review the Rules. However, the circuit court refused and summarily granted the motion for directed verdict. See *Transcript of Trial De Novo*, pp. 41-43

CONCLUSION

For all the reasons and arguments set forth herein, the Appellant asks that the circuit court's order granting directed verdict to the Plaintiff in this matter be reversed and remanded; and for such other relief as this Court deems just and proper.

Signed:________________________

Kevin T. Tipton (WV Bar #8610)
Counsel of Record for Petitioner/Appellant

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of June, 2020, true and accurate copies of the foregoing **Petitioner's Brief and Appendix** were deposited in the U.S. Mail contained in postage-paid envelope addressed to counsel for all other parties to this appeal as follows:

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