



## DECISIONS, NOTICES, AND ORDERS

Monday, May 6, 2024

The Intermediate Court of Appeals of West Virginia has taken action in the following cases in the month of April 2024. This list contains only the actions of note taken by the Intermediate Court, not the content or actual date of orders or decisions.

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### SIGNED OPINIONS

In accordance with Rule 22, signed opinions were entered in the following cases:

*Mission Coal Wind Down Co., LLC, and Gilbert Nathan, as Plan Administrator v. Director, Division of Mining and Reclamation, West Virginia Department of Environmental Protection, 23-ICA-72* (West Virginia Surface Mine Board No. 22-08-SMB)

Vacated and Remanded (3-0)

*Hank Heckman and Loren Garcia v. Betsy Jividen, Jeff Sandy, and Patrick Morrissey, 22-ICA-163* (Cir. Ct. Kanawha Cnty. Nos. 21-C-903 and 21-C-904)

Affirmed (3-0)

*WV National Auto Insurance Company v. Danny J. Dobbins and Jackie L. Dobbins, 23-ICA-101* (Cir. Ct. Logan Cnty. No. CC-23-2020-C-98)

Reversed and Remanded (3-0)

### MEMORANDUM DECISIONS

In accordance with Rule 21, memorandum decisions were entered in the following cases:

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Jared M. v. Molly A., 23-ICA-271 (Fam. Ct. Monongalia Cnty. No. 13-D-528)  
Affirmed (3-0)

CONSOL of Kentucky, Inc. v. Terry M. Bentley, 23-ICA-321 (Workers' Compensation Board of Review)  
Affirmed (3-0) (Chief Judge Scarr not participating) (Judge Michael Olejasz, sitting by temporary assignment)

Charlene Sotak v. South Charleston Housing Authority, 23-ICA-68 (Cir. Ct. Kanawha Cnty. No. 23-C-AP-21)  
Affirmed (3-0)

In Re: E.J.M., a protected person, 23-ICA-92 (Cir. Ct. Cabell Cnty. No. 21-G-23)  
Affirmed (3-0)

Tyrell E. Louk v. WorkForce West Virginia and Industrial Powder Coatings, LLC, 23-ICA-160 (WorkForce West Virginia Board of Review No. X-2022-0353)  
Affirmed (3-0)

Rebecca Williamson v. West Virginia Board of Registered Nurses, 23-ICA-172 (West Virginia Board of Registered Nurses No. 63874)  
Affirmed (3-0)

New China Restaurant, Inc., and Philip Dy Chin v. City of Charleston, 23-ICA-175 (Cir. Ct. Kanawha Cnty. No. 21-C-161)  
Affirmed (2-0) (Judge Greear, not participating)

Bryan S. Henry v. BGSE Group, Inc., and WorkForce West Virginia, 23-ICA-191 (WorkForce West Virginia Board of Review No. R-2023-0133)  
Affirmed (3-0)

Gary Hatfield and Kathy Hatfield v. Larry Hatfield, as heir to Geneva Hatfield, and Hubert Hatfield, Deceased, 23-ICA-198 (Cir. Ct. Wyoming Cnty. Nos. 06-C-231 and 07-C-187)  
Vacated and Remanded (3-0)

James W. v. Ciara R., 23-ICA-237, 23-ICA-238, and 23-ICA-239 (Fam. Ct. Mason Cnty. No. FC-26-2015-D-171)  
Affirmed (3-0)

Jennifer Jordan v. West Virginia Department of Health and Human Resources, Bureau for Social Services, 23-ICA-263 (Department of Health and Human Resources Board of Review No. 22-BOR-2409)  
Vacated and Remanded (3-0)

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In Re: J.K., 23-ICA-272 (Cir. Ct. Boone Cnty. No. CC-03-2022-AF-1)  
Affirmed (3-0)

Steven Douglas Dye v. West Virginia Board of Architects, 23-ICA-273 (West Virginia Board of Architects Nos. 07-07-2022, 07-28-2022, and 09-07-2022)  
Dismissed (3-0)

Robert F. v. Korrie H., 23-ICA-278 (Fam. Ct. Mason Cnty. No. FC-26-2022-D-110)  
Affirmed, in part, Vacated, in part, and Remanded, with instructions (3-0)

Tracie R.S. v. WorkForce West Virginia, 23-ICA-297 (WorkForce West Virginia Board of Review No. R-2023-0536)  
Affirmed (3-0)

Laurie Tinsman v. Brian Tinsman, 23-ICA-358 (Fam. Ct. Berkeley Cnty. No. FC-02-2021-D-171)  
Vacated and Remanded (3-0)

Mingo County Board of Education v. Mark Blackburn, 23-ICA-151 (West Virginia Public Employees Grievance Board No. 2021-2450-CONS)  
Reversed (3-0)

Tyler E. v. Christina E., 23-ICA-355 (Fam. Ct. Kanawha Cnty. No. 21-D-489)  
Affirmed (3-0)

Elizabeth F. v. Melvin F., 23-ICA-395 (Fam. Ct. Marshall Cnty. No. FC-25-2021-D-167)  
Affirmed, in part, Reversed, in part, and Remanded (3-0)

SWN Production Company, LLC v. City of Weirton Board of Zoning Appeals and City of Weirton, 23-ICA-405 (Cir. Ct. Brooke Cnty. No. CC-05-2021-P-35)  
Dismissed (3-0)

Toni McKinney v. Gary McKinney, 23-ICA-408 (Fam. Ct. Raleigh Cnty. No. FC-41-2008-D-294)  
Reversed and Remanded (3-0)

Christopher I. v. Veronica I., 23-ICA-460 (Fam. Ct. Randolph Cnty. No. FC-42-2020-D-99)  
Affirmed (3-0)

James D. v. Randi D., 23-ICA-469 (Fam. Ct. Putnam Cnty. No. FC-40-2016-D-205)  
Affirmed (3-0)

Quanta Services, Inc. v. Zachary Bolling, 23-ICA-449 (Workers' Compensation Board of Review)  
Affirmed (3-0)

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Carol L. Hoosier, Dependent of Ronnie G. Hoosier (Deceased) v. Apogee Coal Company and Offices of the Insurance Commissioner of West Virginia, in its official capacity as the Administrator of the Old Fund, 23-ICA-495 (Workers' Compensation Board of Review)

Reversed, in part, and Vacated and Remanded, in part (2-0) (Chief Judge Scarr, not participating)

Dustin Lemaster v. Walmart, Inc., 23-ICA-496 (Workers' Compensation Board of Review)

Affirmed (3-0)

Ramaco Resources, Inc. v. Nicholas Grimmett, 23-ICA-513 (Workers' Compensation Board of Review)

Affirmed (3-0)

City of Charleston v. Isaac Z. Brunetti, 23-ICA-514 (Workers' Compensation Board of Review)

Affirmed (2-0) (Chief Judge Scarr, not participating)

Offices of the Insurance Commissioner of West Virginia, in its official capacity as the Administrator of the Uninsured Employer Fund v. Terry Howell and Southeastern Land, LLC, 23-ICA-515 (Workers' Compensation Board of Review)

Affirmed (2-0) (Chief Judge Scarr, not participating)

ArcelorMittal USA Holdings, LLC v. Charles McKinney, 23-ICA-520 (Workers' Compensation Board of Review)

Affirmed (3-0)

Hilltop Auto Repair v. Cecil Riner, 23-ICA-529 (Workers' Compensation Board of Review)

Affirmed (3-0)

David L. Elmore v. LBE Holdings, LLC, 23-ICA-534 (Workers' Compensation Board of Review)

Affirmed (3-0)

Clifford White v. McElroy Coal / Murray American Energy, Inc., 23-ICA-543 (Workers' Compensation Board of Review)

Affirmed (3-0)

Cabell County Commission v. Danielle McCoy, 23-ICA-546 (Workers' Compensation Board of Review)

Affirmed (3-0)

Diversified Gas & Oil, PLC v. James M. Kodak, 23-ICA-549 (Workers' Compensation Board of Review)

Affirmed (3-0)

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ACNR Resources, Inc. v. Ryan Hill, 23-ICA-552 (Workers' Compensation Board of Review)  
Affirmed (3-0)

Caitlyn H. v. Christopher H. and Rebecca B. and William B., 23-ICA-399 (Fam. Ct. McDowell Cnty.  
No. FC-27-2019-D-183)  
Vacated and Remanded, with Directions (3-0)

Jessica Longerbeam v. Joshua Longerbeam, 23-ICA-285 (Fam. Ct. Kanawha Cnty. No. 23-D-267)  
Vacated (3-0)

**RULE 20 ARGUMENT GRANTED**

The following case will be scheduled for Rule 20 oral argument:

Wheeling Jesuit University, Inc. v. Kathryn A. Voorhees, et al., Nos. 23-ICA-324 and 23-ICA-383  
(Cir. Ct. Ohio Cnty. No. CC-35-2019-C-218) (3-0)

**RULE 19 ARGUMENT GRANTED**

The following cases will be scheduled for Rule 19 oral argument:

Shenandoah Personal Communications, LLC v. Matthew Irby, State Tax Commissioner of West Virginia,  
23-ICA-235 (Cir. Ct. Kanawha Cnty. No. 21-AA-38) (3-0)

Megan McKnight and Luke McKnight v. Board of Governors of Glenville State University, Gary Z. Morris,  
and Jason P. Barr, 23-ICA-345 (Cir. Ct. Gilmer Cnty. No. CC-11-2022-C-17) (3-0)

J.F. Allen Company v. Matthew Irby, State Tax Commissioner of West Virginia, 23-ICA-327 (West  
Virginia Office of Tax Appeals No. 21-169) (3-0)

Shaun and Jennifer Lopez, individually, and as Next Friends and Legal Guardians of S.L., G.L., and J.L.,  
minors, and Keith and Melissa Chapman, individually, and as Next Friends and Legal Guardians of H.C.,  
a minor v. Erie Insurance, 23-ICA-338 (Cir. Ct. Kanawha Cnty. Nos. 21-C-827, 21-C-977 and 21-  
C-978) (3-0)

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**ORDERS**

Orders of note were entered in the following cases:

*D & D Used Autos v. Everett Frazier, Commissioner, West Virginia Division of Motor Vehicles*, No. 23-ICA-487 (West Virginia Commissioner of Motor Vehicles No. 23-008-CP)  
Motion to Take Judicial Notice of U.S. Postal Service Tracking Refused (3-0)

*Xerxes R. v. Richard and Nancy P.*, No. 24-ICA-76 (Cir. Ct. Putnam Cnty. No. FC-40-2023-D-97)  
Motion for Stay Refused (3-0)

*William J. Thornton v. Sara Poorman*, No. 24-ICA-4 (Cir. Ct. Mercer Cnty. No. CC-28-2023-C-AP-9)  
Motion to Dismiss Refused (3-0)

*Rebecca M. v. Nathaniel M.*, No. 24-ICA-113 (Fam. Ct. Berkeley Cnty. No. FC-02-2016-D-313)  
Motion for Stay Refused (3-0)

*Rebecca M. v. Nathaniel M.*, No. 24-ICA-137 (Fam. Ct. Berkeley Cnty. No. FC-02-2016-D-313)  
Motion to Dismiss and Motion for Attorney's Fees Refused (3-0)

*Travis Blankenship, Next Friend and Guardian of Minor Child Z.D.C., et al. v. McKesson Corporation, et al.*, No. 23-ICA-287 (Cir. Ct. Kanawha Cnty. Mass Litigation Panel No. 22-C-9000 NAS)  
Amended Scheduling Order Granting Motion to Sever, Severing Claims Involving Bankrupt Parties to New Appeal, and Lifting Stay (3-0)

*Mohamed A. v. Marva A.*, No. 24-ICA-75 (Fam. Ct. Kanawha Cnty. No. 15-D-1431)  
Motion to Expedite Refused (3-0)

*Amy Rhoe v. West Virginia Department of Health and Human Resources, Bureau for Social Services*, No. 23-ICA-100 (Board of Review No. 22-BOR-2512)  
Petition for Rehearing Refused (3-0)