

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

LARRY BRADFORD,

Plaintiff,

v.

WEST VIRGINIA SOLID WASTE
MANAGEMENT BOARD

Defendant.



FILED
2021 MAR 18 PM 1:48
CATHY S. EITSON, CLERK
KANAWHA COUNTY CIRCUIT COURT
Civil Action No.: 15-C-1543
Judge Jennifer F. Bailey

ORDER CERTIFYING QUESTIONS TO THE SUPREME
COURT OF APPEALS OF WEST VIRGINIA

On January 8, 2018, the parties presented a Joint Motion to Certify Questions to the Supreme Court. In this joint motion, the parties represented that the following questions of law should be certified to the Supreme Court of Appeals of West Virginia:

- a. Whether a fixed-term employment contract between a non-civil service employee and a government entity is enforceable as a matter of law?
- b. Whether a fixed-term employment contract between a non-civil service employee and government entity that contains liquidated damages provisions applicable to both contracting parties is enforceable as a matter of law?
- c. Whether the defenses of estoppel and/or waiver can be asserted against a government entity that enters into an employment contract that is later challenged as void and/or voidable?
- d. Whether an implied contract may exist between a non-civil service employee and a government entity?

Pursuant to W. Va. Code § 58-5-2 and Rule 17 of the Rules of Appellate Procedure, this Court hereby exercises its discretion and certifies the questions of law discussed herein to the Supreme Court of Appeals of West Virginia. The Court further states as follows:

This case centers on issues of law regarding the enforceability of various provisions contained in the fixed-term employment contract between Mr. Bradford and the Nicholas County

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Solid Waste Authority (the "NCSWA"). Defendant West Virginia Solid Waste Management Board ("WVSWMB") exercised its statutory authority and superseded the NCSWA's operations in June 2014. On June 19, 2014, the NCSWA terminated the employment of Mr. Bradford. Mr. Bradford alleges he had a valid and binding contract that was in effect and in force at the time of his termination. WVSWMB asserts that Mr. Bradford was an at-will employee at the time of his termination and, for purposes of this certification, that the employment contract was invalid and void as a matter of law.

West Virginia Code Section 58-5-2 permits any question of law to be certified to the Supreme Court of Appeals. W. Va. Code § 58-5-2 provides, in relevant part as follows: "Any question of law . . . may, in the discretion of the circuit court in which it arises, be certified by it to the supreme court of appeals for its decision, and further proceedings in the case stayed until such question shall have been decided and the decision thereof certified back. The procedure for processing questions certified pursuant to this section shall be governed by rules of appellate procedure promulgated by the supreme court of appeals."

In this instance, the certified questions deal solely with questions of law and, thus, are proper for certification. *See Zelenka v. City of Weirton*, 208 W.Va. 243, 245, 539 S.E.2d 750, 752 (2000); *see also, Charter Communications v. Community Antenna Serv., Inc.*, 211 W. Va. 71, 561 S.E.2d 793 (2002); *Willis v. Wal-Mart Stores, Inc.*, 202 W. Va. 413, 504 S.E.2d 648 (1998).

The Court agrees that the outcome of this case is largely dependent upon solely questions of law that have not yet been decided by the Supreme Court. Because the answers to these questions are determinative of important issues in this litigation and there is no controlling precedent, resolution of the forgoing questions of law will significantly reduce the issues to be presented at trial, thereby conserving the resources of the parties and the courts.

Accordingly, the Court agrees that the questions presented are proper for certification and hereby GRANTS the parties joint motion to certify. In accordance with Rule 17 of the Rules of Appellate Procedure, the Court hereby answers these questions as follows:

- a. Is a fixed-term employment contract between a non-civil service employee and a government entity is enforceable as a matter of law?

The Court's Answer: Yes _____ No

- b. Is a fixed-term employment contract between a non-civil service employee and government entity that contains liquidated damages provisions applicable to both contracting parties is enforceable as a matter of law?

The Court's Answer: Yes _____ No

- c. May the defenses of estoppel and/or waiver be asserted against a government entity that enters into an employment contract that is later challenged as void and/or voidable?

The Court's Answer: Yes _____ No

- d. May an implied contract exist between a non-civil service employee and a government entity?

The Court's Answer: Yes _____ No

The parties agree that the resolution of the issues sought to be certified in no way impacts Mr. Bradford's claims that do not draw their essence from the validity of the employment contract.

In accordance with W. Va. Code § 58-5-2 and Rule 17 of the Rules of Appellate Procedure, this action is hereby stayed pending resolution of the certified question. The parties are hereby directed to prepare a joint appendix of the record sufficient to permit review of the certified questions.

Entered this 11th day of March, 2021.

Date: 3/19/21
Certified copies sent to:
 counsel of record
 parties
 other _____
(please indicate)
By: certified/1st class mail
 fax
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Other direct _____
Deputy Court Clerk

K. Brown
K. Carr

Jennifer F. Bailey
Honorable Jennifer F. Bailey
Kanawha County Circuit Court
STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT.
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 19
DAY OF March, 2021
Cathy S. Gatson CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA et