WEST VIRGINIA
SUPREME COURT OF APPEALS
CHARLESTON, WEST VIRGINIA

KATHERINE ASBURY and
WANDA KEENER,

Plaintiffs Below, Petitioners,

v.

CLAY COUNTY DEVELOPMENT CORPORATION,

Defendant Below, Respondent.

CASE NO. 21-0267
Civil Action No. CC-08-2018-C-6
(Clay County)

PETITIONERS' REPLY BRIEF

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Table of Contents

Table of Authorities

West Virginia Cases

Other Authority

I. Evidence in the record indicates Respondents fired Petitioners for being related to Pamela Taylor

Demonstrating its tenuous grasp on the concept of truth, Respondent writes the following on page 9 of its brief: "Petitioners have failed to point to a single piece of evidence in the record that supports that they were discharged for being related to Pam Taylor." Of course, the record is rife with evidence Petitioners were terminated for being the sisters of Pamela Taylor, as Petitioners demonstrated in their first brief. The following are portions of the facts section from Plaintiff's initial brief on this matter, reproduced here to demonstrate the falsehood of this dubious claim by Respondent:

> On or about the week of December 19, 2016, Robert Roswall, the Commissioner of Senior Services, brought approximately twelve of his staff members to the CCDC office where Petitioners worked. APPENDIX 000294, 000300-000301. At this time, Mr. Roswall and his staff each took CCDC employees to different rooms where he questioned them regarding the Petitioners' connections to their sister, Pamela Taylor. APPENDIX 000301-000302. One of Roswall's staff members questioned Petitioner Asbury during this visit to the CCDC office, asking if she was related to Pamela Taylor and if Asbury knew what Taylor had posted to Facebook. APPENDIX 000302. The staff member questioned Petitioner Asbury about Taylor's involvement with the florist business renting space in the same building as the CCDC, asking if Taylor had been giving flowers to Asbury or the CCDC. APPENDIX 000302. Asbury answered that no such activity had taken place and that any transactions between the florist business and employees of the CCDC were personal in nature. APPENDIX 000302. Petitioner Asbury told the staff member that she did have a Facebook account, and that she did not agree with what Taylor had posted to Facebook. APPENDIX 000302.
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> The staff member then questioned Petitioner Asbury about "senior trips" wherein CCDC staff members would take Clay County senior citizens on trips to various places. Petitioner Asbury told the staff member that she had been on a few of those trips during her 46 years of employment with the CDC, the last one being about eight years prior. APPENDIX 000302. The staff member asked Petitioner Asbury how the CCDC raised money for the senior trips, which occurred sporadically based on the amount of funds that the CCDC was able to raise. Petitioner Asbury asked the staff member why she was being questioned, and the staff member replied that she did not know why, but that she was given that set of questions to ask Asbury. APPENDIX 000302. On or about December 21, 2016, the CCDC Board President, Eunice Thomas, met with Petitioner Asbury at the CCDC office in Clay. APPENDIX 000297. Mrs. Thomas arrived upset and

advised Asbury that a board meeting had been held on December 20, 2016, wherein Thomas was advised by Robert Roswall and Romana Stanley to fire Petitioners Katherine Asbury and Wanda Keener as well as Pamela Taylor. APPENDIX 000297-000299. Mrs. Thomas asked Petitioner Asbury if she and Petitioner Keener wanted to resign or be fired. APPENDIX 000297. Petitioner Keener was not present at this meeting. APPENDIX 000297. During the meeting, Petitioner Asbury refused to resign. APPENDIX 000297. Thomas then informed Petitioner Asbury she would be terminated along with Petitioner Keener. APPENDIX 000297-000299

During the meeting between Eunice Thomas and Petitioner Asbury, Robert Roswall called the CCDC, was put through to the phone line in the room where Thomas and Petitioner Asbury were meeting and yelled at Thomas to get out of the meeting immediately because she had no business speaking with Petitioner Asbury. APPENDIX 000297-000299. Thomas replied that she had spoken with the attorney for the Board of Directors for the CCDC, Andrew Brison. APPENDIX 000297. Thomas said that Brison had told her she could speak with Asbury to offer this arrangement. APPENDIX 000297. Thomas began crying. APPENDIX 000297. Petitioner Asbury heard the aforementioned portions of this phone call due to the volume with which Roswall was shouting over the phone. APPENDIX 000297-000299. After taking a few moments to think, Petitioner Asbury told Thomas that she was not quitting, and they would have to fire her. APPENDIX 000298-000300. Petitioner Asbury gathered some of her belongings and left the premises immediately following her meeting with Thomas. APPENDIX 000300. The Petitioners each received a termination letter from Respondent on December 22, 2016. APPENDIX 000303.

Petitioners' Brief, p. 4-6.

Plaintiff Asbury's statements about the nature of her termination meeting with head of the Board of Directors Eunice Thomas are as follows:

Q. All right. So - and she - did she hold the phone out for you to hear what was being said, or did she keep it to her ear?
A. I - yeah, she - she kind of held it out. I heard her.
Q. Okay. Does she have problems hearing?
A. No.
Q. She doesn't wear hearing aids of any type?
A. No.
Q. Okay. What did you hear?
A. I heard Robert [Roswall] tell her to get out of there, that she had no business coming in there and telling me anything. And that's when she told him she had talked to you.
Q. Okay.

A. I don't know if she said that morning or the night - the next- the day before. I don't know. She said she had talked to you, and you told her that she could come in there and tell us that. But Wanda Lou was off sick. So I was the only one that she was there telling. And she was crying.
Q. Eunice was crying?
A. Yes.
Q. Before she picked up the phone or after?
A. She was crying when she come in, and then she quit; and then after that, she started crying again -
Q. All right.
A. - and was telling me how sorry she was. And I told her that- to - that was okay; don't be sorry; I - she did what she had to do. So...
Q. Okay. How did -- what did she say to you that conveyed that you were being fired? Do you recall the words she used?
A. She just - she was - she started crying and said, "Faye, they fired you and Wanda too." And I said, "Why?" I mean, I-- I asked her. I said, "Why did she - **why did they fire Wanda and me? We didn't write that post. We didn't do nothing." And she said that we were sisters and Pam wrote the post; so they was just going to fire all three of us.** [emphasis added]

Deposition of Katherine Asbury, APPENDIX 000299.

This Court may find that ancestry does not protect sisters from being fired due to their relation to one another, and it may find that there is no implied contract created by the handbook in this case. But this Court certainly will find that Petitioners have pointed to ample pieces of evidence in the record to support their position that they were fired for being related to Taylor, and that Respondent is clearly dissembling when it writes that "Petitioners have failed to point to a single piece of evidence in the record that supports that they were discharged for being related to Pam Taylor."

Finally, and perhaps importantly, the Circuit Court order granting Respondent's Motion for Summary Judgment did not do so for lack of evidence; it was done on solely legal bases as identified by Petitioners' assignments of error and discussed in Petitioners' initial brief. APPENDIX 000463-000475. There is no question of sufficiency of evidence before this Court.

II. Financial necessity for termination is an affirmative defense which has no bearing on whether or not Petitioners met their burden to defeat a motion for summary judgment

Picking right up where we left off, Petitioner again qualifies the following section with the disclaimer that this matter was not dismissed due to a question of the sufficiency of Petitioners' evidence, but rather on legal grounds. Regardless, if Respondent wished to move for summary judgment on its affirmative defense of financial necessity, it was entitled to do so.[1] Respondent did not do so, instead choosing to attempt to wedge this affirmative defense into its standard motion for summary judgment against Petitioners as Respondent has wedged it again into its brief before this Court despite its irrelevance.

The bar an employer must meet to carry a motion for summary judgment against an employee alleging discrimination is elevated, as issues of discrimination are essentially always questions of motive or inference suitable for a finder of fact. [2] Respondent errs by bringing arguments pertaining to its alleged financial necessity into this briefing at all; the Circuit Court made no indication in its order granting summary judgment that financial necessity had any bearing on its decision to dismiss Petitioners' case. APPENDIX 000463-000475.

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[1] "Because Eastern Electric has the burden of proof on this issue, it is entitled to summary judgment on this affirmative defense only if the evidence is so strong that it would be entitled to a directed verdict at trial. Williams, 194 W.Va. at 52 n.17, 459 S.E.2d at 329 n.17 (1995). 'This burden is very heavy and summary judgment rarely is granted in favor of the party having the burden of proof.' Id."

Grim v. E. Elec., Inc., 234 W. Va. 557, 567, 767 S.E.2d 267, 277 (2014)

[2] A motion for summary judgment should be granted only when it is clear that there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to clarify the application of the law. Courts considering motions for summary judgment must draw any permissible inference from the underlying facts in the light most favorable to the party opposing the motion. Summary judgment should be denied even where there is no dispute as to the evidentiary facts in the case but only as to the conclusions to be drawn therefrom. The issue of discriminatory animus in an employment discrimination case is generally a question of fact for the trier of fact, especially where a prima facie case exists. The issue does not become a question of law unless only one conclusion could be drawn from the record in the case. In an employment discrimination context, the employer must persuade the court that even if all of the inferences that could reasonably be drawn from the evidentiary materials of the record were viewed in the light most favorable to the employee, no reasonable jury could find for the plaintiff.

Tiernan v. Charleston Area Med. *Ctr.*, 212 W. Va. 859, 861, 575 S.E.2d 618, 620 (2002).

Respondent's continued misapprehension of the nature of summary judgment and its relationship to affirmative defenses is demonstrated when it writes the following in its brief:

> Petitioners failed to take any depositions of any fact witness other than the Respondent's corporate representative, who only confirmed that Petitioners' involuntary separation from employment was the direct result of the financial condition of the non-profit organization. Petitioners also failed to submit any countervailing affidavit(s) or even challenge the affidavit of Leslie McGlothlin, the acting Executive Director of the CCDC at the time of the discharge, in an effort to create a genuine issue of material fact. Accordingly, this Court should affirm the decision of the lower court.
> Respondent's Brief, p. 11-12.

The existence of evidence which could be used to support an affirmative defense does not erase the existence of evidence which supports Petitioners' claims. As has already been established, both in this reply brief and in Petitioners' initial brief, ample evidence existed to support a finding in their favor at trial. Depositions were taken of both Petitioners, Respondent's corporate representative, and Eunice Thomas. Who noticed these depositions is irrelevant, as the testimony elicited therein is evidence for both parties. Respondent confuses not only what is at issue before this Court, but also the manner in which affirmative defenses work in general, as plaintiffs are not required to produce evidence to challenge affirmative defenses raised by defendants to create genuine issues of material fact.

III. Robert Roswall's actions may be imputed to Clay County Development Center

At this late hour, Respondent asserts for the first time that Robert Roswall was the true bad actor and that it should not be held accountable for Roswall's actions. At no time prior to this briefing did Respondent intimate this. Roswall's actions, and Respondent's eager compliance with them, are clearly set forth as the impetus for this action as the Court may see in Plaintiffs' complaint. APPENDIX 0002-0007. At no point did Respondent claim Petitioners had failed to join a necessary party or argue that its actions were actually attributable to Roswall. If Respondent

planned to argue that it was actually Roswall's fault the Petitioners were fired, Respondent was required to move to join him as a co-defendant under Rule 19 of the West Virginia Rules of Civil Procedure. As the Court is aware, pursuant to WVRCP 12(b), a defendant may move to dismiss a claim against it based on a plaintiff's failure to join a necessary party pursuant to Rule 19. However, after responsive pleadings have been filed, this defense is waived. As such, it is inappropriate for Respondent to attempt to reassert this defense here.

Furthermore, Respondent states in its brief that it "complied with the directives" of Roswall. Respondent's Brief, p. 2. However, parties who choose to act in accordance with discriminatory motives are also liable for discrimination under the West Virginia Human Rights Act (hereinafter "WVHRA") for aiding and abetting discriminatory acts. W. Va. Code §5-11-9. Nothing in the WVHRA states that this clause fails to apply where a party is simply doing what it was told. This makes sense, as otherwise the WVHRA's proscription against aiding and abetting would be rendered effectively meaningless as a party could merely shunt responsibility for its actions onto another actor not involved in the case at a later date to dodge liability.

It is clear from Plaintiff Asbury's testimony that Respondent was aware of the discriminatory motive for their termination. Plaintiff Asbury testified that Thomas told her the Petitioners were being fired due to being Pam Taylor's sisters. APPENDIX 000299.At the time Thomas made this statement, she was the head of the CCDC's Board of Directors. Accordingly, Respondent is liable for its conduct in complying with directives it knew to be improper and discriminatory.

IV. Respondent misleads the Court with its claim that Petitioners' counsel were somehow concealing their role in the Billiter case

Respondent claims that Petitioners "failed to inform this court that they had made this very argument in the United States District Court of Southern West Virginia" in reference to Petitioners' counsel's previous case, Billiter v. Jones, No. 3:19-0288, 2020 U.S. Dist. LEXIS 3678, at *1 (S.D. W. Va. Jan. 9, 2020). In their response to Respondent's Motion for Summary Judgment, one of the primary documents to this matter, Petitioners wrote the following before a lengthy discussion of Billiter:

> Defendant claims that Plaintiffs may not bring an action alleging discrimination based on their ancestry or familial status, neither being suitable for redress under the West Virginia Human Rights Act based on their relationship with their sister. This is a developing area of law, but there has been a recent decision grappling with this subject matter. In support of this assertion, Defendant points to a recent decision in another case based on familial status and/or ancestry discrimination, Billiter v. Jones, No. CV 3:19-0288, 2020 WL 118595, (S.D.W. Va. Jan. 9, 2020). **Plaintiffs' counsel is quite familiar with that case, as they are counsel in that ongoing matter as well.** [emphasis added]

Plaintiffs' Response to Defendant's Motion for Summary Judgment, APPENDIX 000394.

Not only is the fact that Petitioners' counsel was also counsel in Billiter a matter of public record, it was disclosed by Petitioners' counsel themselves in the appendix to this matter. Petitioners are perfectly secure in their knowledge that this Court reads the materials put before it, and as a result is aware of the role Petitioners' counsel played in the Billiter matter.

Meanwhile, Respondent's counsel remained as counsel for Respondent despite being a fact witness in this case. Respondent's counsel advised the CCDC Petitioners' terminations, including the specific method and manner thereof. The following are excerpts from Respondent's counsel's examination of Petitioner Asbury:

Q. All right. Who fired you?

A. Well, I guess it was Robert Roswell, Ramona, and Keith Ray and Steve Hubbard. Because Eunice - well, Eunice was there. **But she called you that morning. Do you remember?**
Q. I'm not answering questions. Sorry.
A. Oh, okay. I forget what the last question was now.
Q. I asked you who terminated you.
A. Oh. Them.
...
Q. How were you notified of your termination?
A. Eunice came in the next morning, and she was crying. And she told me that they had fired Wanda and me and Pam. And then Robert called and told her to get out of the - that office and that she had no business telling me anything.
And she said she had called you and that you said that Wanda and me could either be fired or we could quit, whichever we wanted. And that - she came in and told me that. And I said, "Well, I've actually never really been fired. So I guess I'll just quit." Then the more I thought about it, I said, "No, I'll just - they can fire me."

Deposition of Katherine Asbury, APPENDIX 000297.

Q. Okay. What did you hear?
A. I heard Robert [Roswall] tell her to get out of there, that she had no business coming in there and telling me anything**. And that's when she told him she had talked to you.**
Q. Okay.
A. I don't know if she said that morning or the night - the next- the day before. I don't know. **She said she had talked to you, and you told her that she could come in there and tell us that.** But Wanda Lou was off sick. So I was the only one that she was there telling. And she was crying.

Deposition of Katherine Asbury, APPENDIX 000299

Astoundingly, Respondent's counsel continued to litigate on behalf of Respondent despite being a fact witness regarding the decision to terminate Petitioners, an action which Petitioners themselves found quite confusing during their depositions.

V. Petitioners did not appeal to this Court pursuant to any assignment of error about the familial status provisions of the WVHRA

Petitioners appealed to this Court based on three assignments of error, which were as follows:

1. The Circuit Court erred in its finding that ancestral discrimination is duplicative with the WVHRA's protections against national origin and ethnic discrimination. As a corollary to this error, the Circuit Court further erred in its finding that ancestral discrimination does not include discrimination based on familial relation.
2. The Circuit Court erred in its finding that the handbook did not form a contract between Plaintiffs and Defendant. The Circuit Court further erred in this finding by holding that Defendant was within its rights to terminate Plaintiffs pursuant to other terms of the handbook even if it had formed a contract.
3. The Circuit Court erred in its finding that Plaintiffs were at-will employees who could be terminated for any nondiscriminatory reason.

Petitioners' Notice of Appeal, APPENDIX 000485.

Petitioners did not appeal any issue of familial status discrimination to this Court, as the WVHRA's strictures on that cause of action limit it to "discrimination in the sale, purchase, lease, rental and financing of housing accommodations or real property." W. Va. Code §5-11-8(c).

For these reasons, it is confusing why Respondent chose to write in its brief that "Petitioners argue that this Court should add familial status to the equal opportunity for employment and public accommodations under a theory that the West Virginia Legislature simply meant to include it but did not." Respondent's Brief, p 15. As the Court may see in Petitioners' previous brief, Petitioners argued that ancestry has a more expansive definition than one's race or national origin, and that while ancestry often overlaps with other protected categories of the WVHRA, it is not erased by them, just as the category of race is not erased by the existence of the category of color.

Respondent harps on about familial status in its analysis of the Billiter case, again arguing a point Petitioners did not bring before this Court as it decries the prospect of creating a new claim

for familial status discrimination. Of course, Petitioners are not making such an argument. Petitioners ask this Court to read the plain language of the WVHRA and determine the meaning of ancestry for the purposes of the WVHRA's proscriptions against discrimination.

Strangely, Respondent goes on to argue that discrimination based on the definition of ancestry would not include sisters as they are not lineal descendants of one another:

> The more current Black's Law Dictionary defines ancestry as "[a] line of descent; collectively, a person's forebears; lineage." Ancestry, Black's Law Dictionary (11th ed. 2019). The Merriam-Webster Unabridged Dictionary's definition includes "persons initiating or comprising a line of descent." "Ancestry." Merriam-Webster's Unabridged Dictionary, Merriam-Webster, https://unabridged.merriam-webster.com/unabridged/ancestry. Accessed 2 Oct. 2021. Regardless of which source is used, it is clear that siblings are not forbears of one another nor do they initiate a line of descent between each other
>
> Respondent's Brief, p. 16.

Respondent is correct in its statement that siblings are not forbears of one another nor do they initiate a line of descent between each other. Petitioners are, however, descendants of the same lineage. They are in the same line of descent, as their parents were the same people. Ergo, Petitioners are "persons comprising a line of descent." Petitioners are contending that discrimination against persons based on their line of descent is ancestry discrimination.

VI. Respondent fails to adequately address the rule against surplusage

One of the main thrusts of Petitioners' initial brief was that by interpreting the WVHRA to make ancestry duplicative with race and / or national origin, the Circuit Court was effectively concluding that the drafters of the WVHRA included the protected category of ancestry as a redundancy with other protected categories. Petitioners' brief indicated that this conclusion contradicts the longstanding canon of interpretation known as the rule against surplusage, which concludes that legislators mean for each word of legislative enactments to have meaning, not to be read by courts as redundant with one another.

Respondent's only reference to this concept is found on page 17 of its brief, where Respondent writes:

> "Petitioners argue in the current case that the lower court treated ancestral discrimination and ethnic discrimination as duplicitous in violation of the "rule against surplusage." However, that is not what the court said or intended. In fact, the lower court in this case adopted the rationale stated in the Billiter case. Judge Chambers addressed Petitioner's current argument by stating that "the Court did not believe that the including of "ancestry" in the Human Rights Act is merely redundant or meaningless."

Respondent begins its analysis by making the conclusive statement that the Circuit Court did not intend to violate the rule against surplusage, or outright state that it was ignoring the canon. Respondent cites to the order granting its motion for summary judgment, wherein the Circuit Court reasoned that, "[d]iscrimination based on ancestry means discrimination based on some type of characteristic like race, ethnicity, or national origin that is passed down by lineal descendants." Paragraph 40 of Order Granting Defendant's Motion to Dismiss, APPENDIX 000471. Even in this passage selected by Respondent, the Circuit Court's reasoning clearly demonstrates that it is interpreting the category ancestry as redundant with race, ethnicity, and national origin. There is no effort by the Circuit Court nor by Respondent to reconcile these statements with the rule against surplusage. That is because it is they cannot be reconciled with the rule. The Circuit Court's statements plainly flout the rule against surplusage, and the Respondent makes little effort to put a positive spin on that obvious legal defect.

VII. Petitioners have produced evidence that that the CCDC Employment Guide created a contract between the parties

Again, Respondent gravely overstates its case, claiming that "Petitioners have produced absolutely no evidence that the Guide created an employment contract between the parties." Respondent's Brief, p. 20.

> Page 11 of the CCDC handbook guarantees stronger equal employment protections than those set forth by the WVHRA, reading "[i]t is the policy of Clay County Development Corporation, Inc. (CCDC) to provide equal employment for all people irrespective of race, sex, religion, age, national origin, political affiliation, disability, citizenship, or **any other non-job related factors** [emphasis added]." APPENDIX 000171. There is also the matter of the discipline policies Petitioners identified in their brief opposing summary judgment. Essentially that entire section of the handbook, Section 3 titled "Conditions of Continued Employment," is evidence that the handbook is creating an implied employment contract. Of particular import to this topic are headings A through C of that section, detailing how CCDC executives are to deal with employees on probation for the various reasons set forth therein. APPENDIX 000181-000182. These policies make no mention of discretionary enforcement; they are written in clear language indicating that they will be followed.
>
> But both of those sections are minor examples of limitations on Respondent's discretion to terminate its employees compared to the next two sections. Heading J of this same "Conditions of Continued Employment" section of the handbook sets forth an entire progressive discipline system, again without any language indicating the employer may disregard this section as it wishes. APPENDIX 000187-000190. The progressive discipline steps also purport to limit the Respondent's ability to dismiss employees. Page 19 of the handbook (APPENDIX 190) states that dismissal will occur "[w]hen an employee under corrective disciplinary action does not make the necessary corrections during the allotted time period to justify his/her retention."
>
> The next relevant portion of the CCDC handbook, Section 7, governs when and how Respondent can terminate its employees. APPENDIX 000There are only two possible purposes for Respondent to have included this section governing termination. First, Respondent included this section intending for its procedures to be followed in dealing with its employees. Second, Respondent included this section intending for its guarantee of procedures governing termination to entice or retain good workers without really intending to cleave to the policies. In practice, the effect is the same. The combined effect of these four policies governing when and how Respondent can terminate its employees serve as the type of implied promises of job security that are enforceable, particularly when set alongside the single stealthy disclaimer contained in a tiny footnote which contradicts the very text to which it is appended. See Williams v. Precision Coil.

Petitioners' Brief, p. 13-14.

Respondent is certainly entitled to present its own interpretation of the CCDC handbook, and it does so at length in its reply brief. The Court can plainly see that Petitioners have indicated multiple sections of the handbook which can be viewed as

evidence of the formation of a contract. While the Court is not required to accept that interpretation, it is patently false to state that the Petitioners produced "absolutely no evidence that the Guide created an employment contract between the parties."

Respondent makes much of the fact that Petitioners themselves were not able to identify and articulate which provisions of the CCDC handbook triggered contractual obligations. Fortunately, plaintiffs are not required to be able to fully articulate the legal basis for their claims in order for those claims to be valid. Were plaintiffs required to do so, there would be little need for attorneys. It seems equally likely that there are many employees of Respondent who would not be able to explain the legal theories for their defenses in this matter.

Respondent also contends that the existence of a probationary period of employment somehow prevents the document from functioning as a contract. That is an odd contention, as many routine contracts for employment and services bear similar provisions.

Setting aside Respondent's argumentation not relevant to the Circuit Court's holding, the Circuit Court held that the disclaimer in the CCDC handbook was sufficient as a matter of law. The Circuit Court held that the handbook did not contain promises of job security, and that it stated bases for involuntary termination. Again, many contracts state bases for involuntary unilateral termination. The question of whether the handbook's provisions constituted promises of job security is addressed extensively in Petitioners' initial brief on the matter.

Respondent echoes the same odd holding by the Circuit Court that the handbook should not be enforced as a contract since it stated that it was to "be used as a guide in

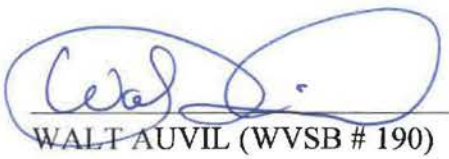
dealing with agency personnel matters." That phrase is not a disclaimer. That phrase is an indicator of the fact that employees of the CCDC were put on notice that this handbook was going to govern their employment. Furthermore, the term "personnel matters" is used by employers to refer to disciplinary policies, hiring, and firing. As such, the existence of this tagline does not indicate much about the existence of a contract beyond the fact that Respondent intended the provisions of this handbook to govern the terms and conditions of its employees' employment.

VIII. Conclusion

Petitioners are not asking this Court to conjure some exotic new remedy out of thin air, nor are they asking this Court to expand the WVHRA. Petitioners are merely asking this Court to recognize an existing remedy which, for whatever reason, has not been enforced against employers to this point. Petitioners are asking the Supreme Court of Appeals of West Virginia to be the one to clarify and interpret West Virginia's own laws, so that citizens of West Virginia need not cast about to fill the gaps in our own jurisprudence with the dribs and drabs of other jurisdictions which have trickled down to form the mud puddle that is this state's law on this subject. And lastly, Petitioners are asking this Court to state that when employers act to limit their own ability to discharge employees, seemingly to entice employees to regard positions subject to those limitations as more desirable and secure, that employers cannot draw back those protections for their own benefit later, particularly in a case such as this when the withdrawal is done for an illegitimate motive. For the reasons set forth above, this Court should reverse the dismissal of Petitioners' claims and remand the matter back to circuit court.

Respectfully submitted,

KATHERINE ASBURY and
WANDA KEENER,
Petitioners by Counsel,



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v. **No. 21-0267**

CLAY COUNTY DEVELOPMENT CORPORATION,

Respondent.

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of October, 2021, I filed the foregoing **Petitioners' Reply Brief** with the Clerk of Court for the Supreme Court of Appeals of West Virginia by hand delivery to the office of its Clerk of Court and with counsel for the Respondent by depositing a true copy thereof in the United States Mail, postage prepaid. This **Certificate of Service** for the same was included therewith. The documents were addressed as follows:

Hand-delivered to

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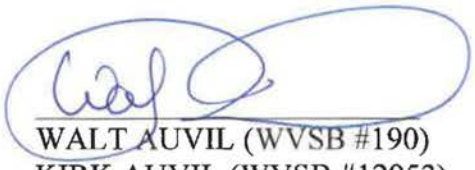

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