



IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

DOCKET NUMBER: 21-0578

**ADAM GOODMAN and
PAUL UNDERWOOD,**

Petitioners,

v.

BLAKE AUTON,

Respondent.

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**Appeal from a final order
of the Circuit Court of
Mercer County (20-C-75)**

Petitioners' Joint Reply Brief

Counsel for Petitioner, Adam Goodman

Kermit J. Moore – WWSB # 2611
Patrick D. McCune – WWSB # 14023
Brewster Morhous, PLLC
418 Bland Street
Post Office Box 529
Bluefield, West Virginia 24701
(304) 324-0311

Counsel for Petitioner, Paul Underwood

Chip E. Williams – WWSB # 8116
Jared C. Underwood – WWSB # 12141
Pullin, Fowler, Flanagan, Brown, & Poe
252 George Street
Beckley, WV 25801
(304) 254-9300

Counsel for Respondent, Blake Auton

Ryan J. Flanigan – WWSBN # 9059
The Flanigan Law Office
1407 East Main Street
Princeton, WV 24740
(304) 487-2338

TABLE OF CONTENTS

ASSIGNMENTS OF ERROR.....1

SUPPLEMENTAL RESTATEMENT OF THE CASE.....1

STATEMENT REGARDING ORAL ARGUMENT.....4

STANDARD OF REVIEW.....4

ARGUMENT.....5

1. THE CIRCUIT COURT ERRED IN DENYING PETITIONERS’ MOTIONS FOR SUMMARY JUDGMENT.....6

A. There is sufficient evidence to conclude that there is no genuine issue of material fact; thus, Petitioner Goodman should be afforded immunity, particularly pursuant to West Virginia Code § 23-26a.....6

(1) Respondent’s attempted distinction of *Eisnaugle v. Booth* incorrectly restates both the law and the facts.....8

(2) Respondent misinterprets Petitioners’ rationale in citing Respondent’s successful workers’ compensation claim.....10

(3) Petitioners’ intent when stating that ‘the circuit court did not take into account the very purpose of the immunity’ was simply to illustrate that the circuit court was misplaced in its interpretation of the immunity statutes when applying the facts at hand.....11

B. The amount of discovery conducted thus far contains sufficient evidence to conclude that there is no genuine issue of material fact; thus, Petitioner Underwood should be afforded immunity pursuant to West Virginia Code §§ 23-2-6a and 29-12A-5 et seq.....12

CONCLUSION.....13

TABLE OF AUTHORITIES

CASES:

<i>Brady v. Deals on Wheels, Inc.</i> , 208 W. Va. 636, 542 S.E.2d 457 (2000).....	5
<i>Brewer v. Appalachian Constructors, Inc.</i> , 135 W. Va. 739, 65 S.E.2d 87 (1951).....	9
<i>Crouch v. Gillispie</i> , 240 W. Va. 229, 809 S.E.2d 699 (2018).....	4
<i>Eisnaugle v. Booth</i> , 159 W. Va. 779, 226 S.E.2d 259 (1976).....	7, 8, 9
<i>Findley v. State Farm Mut. Auto Ins. Co.</i> , 213 W. Va. 80, 576 S.E.2d 807 (2002).....	5
<i>Hutchison v. City of Huntington</i> , 198 W. Va. 139, 479 S.E.2d 649 (1996).....	5, 8, 11
<i>Redden v. McClung</i> , 192 W. Va. 102, 450 S.E.2d 799 (1994).....	7, 9
<i>Redden v. Comer</i> , 200 W. Va. 209, 488 S.E.2d 484 (1997).....	5
<i>Robinson v. Pack</i> , 223 W. Va. 828, 679 S.E.2d 660 (2009).....	5
<i>Smith v. State Workmen's Comp. Comm'r</i> , 159 W.Va. 108, 219 S.E.2d 361 (1975).....	7
<i>State v. Elder</i> , 152 W.Va. 571, 165 S.E.2d 108 (1968).....	7
<i>State ex rel. City of Bridgeport v. Marks</i> , 233 W. Va. 449, 759 S.E.2d 192 (2014).....	11
<i>Swint v. Chambers County Commission</i> , 514 U.S. 35, 115 S.Ct. 1203 (1995).....	5
<i>Tribeca Lending Corp. v. McCormick</i> , 745 S.E.2d 493, 231 W. Va. 455 (2013).....	7
<i>Webb v. Raleigh County Sheriff's Dep't</i> , 761 F. Supp.2d 378 (S.D. W. Va. 2010).....	7, 8
<i>Williams v. Precision Coil, Inc.</i> , 194 W. Va. 52, 459 S.E.2d 329 (1995).....	5
<i>W. Va. Reg'l Jail & Corr. Facility Auth. v. A. B.</i> , 234 W. Va. 492, 766 S.E.2d 751 (2014).....	7, 8
<i>Young v. Apogee Coal Co., LLC</i> , 232 W. Va. 554, 753 S.E.2d 52, (2013).....	10

STATUTES:

West Virginia Code § 23-2-6.....1, 4, 6, 10, 11

West Virginia Code § 23-2-6a.....1, 4, 6, 7, 8, 10, 12, 13

West Virginia Code § 23-4-2(d)(2).....9, 10

West Virginia Code § 29-12A-5(a)(11).....1, 4, 6, 12, 13

West Virginia Code § 29-12A-5(b).....1, 4, 6, 12, 13

ASSIGNMENTS OF ERROR

- 1. THE CIRCUIT COURT ERRED IN DENYING PETITIONERS' MOTIONS FOR SUMMARY JUDGMENT, BECAUSE THE PETITIONERS ARE ENTITLED TO IMMUNITY PURSUANT TO WEST VIRGINIA CODE §§ 23-2-6 and 23-2-6a.**
- 2. THE CIRCUIT COURT ERRED IN DENYING PETITIONERS' MOTIONS FOR SUMMARY JUDGMENT, BECAUSE THE PETITIONERS ARE ENTITLED TO IMMUNITY PURSUANT TO WEST VIRGINIA CODE §§ 29-12A-5(b) and 29-12A-5(a)(11).**

SUPPLEMENTAL RESTATEMENT OF THE CASE

On March 28, 2018, Petitioner Adam Goodman (hereinafter "Petitioner Goodman"), Co-Petitioner Paul Underwood (hereinafter "Petitioner Underwood"), and Respondent Blake Auton (hereinafter "Respondent") were performing their duties as trash collectors for the City of Bluefield.¹ On that day, Petitioner Goodman, in his official capacity as an employee of the City of Bluefield, was operating a garbage truck owned by the City of Bluefield;² Petitioner Underwood and Respondent, in their official capacities as employees of the City of Bluefield, were riding as passengers on the back of said garbage truck: Petitioner Underwood was standing on the driver's side rear and Respondent was standing on the passenger's side rear.³

In the midst of their route that day, the three men arrived at the intersection of Wyoming Street and Glendale Avenue; at that intersection, there is a wide curve and a hill that regularly requires special maneuvering by Petitioner Goodman so to effectively collect the trash on Glendale Avenue.⁴ Said special maneuvering necessitates Petitioner Goodman to reverse the truck around the wide curve and down the hill on Glendale Avenue, which creates a blind

¹ Adam Goodman's Interrogatory Response #8, Plaintiff's Responses to Defendant Adam Goodman's Requests for Admissions #1, and *See* Plaintiff's Complaint ¶4.

² Adam Goodman's Interrogatory Response #6.

³ Goodman's Interrogatory Response #8; *see also* Accident Report.

⁴ *Id.*

vantage point for him.⁵ Petitioner Goodman, thus, relies on his co-employees to observe oncoming traffic that might be driving up Glendale Avenue.⁶

So, as Petitioner Goodman began reversing the garbage truck at a speed of approximately five miles per hour, with the assistance of Petitioner Underwood and Respondent, he supposedly struck a curb, which caused Respondent to fall off the truck (it was noted in the accident report that Respondent was facing the other way—to help Petitioner Goodman navigate—and that his handle was wet).⁷

Unfortunately, due to the size of the truck, Petitioner Goodman was unaware that Respondent had fallen off, so he continued to back up, which caused Respondent to become trapped underneath the truck.⁸ Eventually, after traveling approximately 30 feet, Petitioner Underwood was able to flag down Petitioner Goodman who, now, became aware of the situation and moved the garbage truck forward to release Respondent.⁹ Ultimately, as a result of the incident, Respondent sustained several injuries, including the amputation of his right leg, for which he filed for and was granted workers' compensation.¹⁰

Police arrived on scene and conducted an investigation of the incident. The accident report noted Petitioner Goodman's condition at the time of the crash as 'normal.'¹¹ Also, the accident report indicated that no suspected alcohol or drug use was present and/or contributed to the accident.¹² Immediately following, however, Petitioner Goodman was sent to Bluefield

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* Also, see Goodman's Interrogatory Response #7.

⁸ See Plaintiff's Complaint ¶ 9. *Also See*, Accident Report.

⁹ See Plaintiff's Complaint ¶ 10. *Also See*, Accident Report.

¹⁰ See Plaintiff's Complaint ¶ 11. *Also See*, Plaintiff's Responses to Defendant Adam Goodman's Requests for Admissions ¶ 3 and ¶ 4.

¹¹ See Accident Report pg. 6.

¹² *Id.*

Regional Medical Center to undergo a mandatory drug screen, which is common practice in the event of a work related accident. Reportedly, a urine sample was taken from Petitioner Goodman with the purpose of conducting a controlled substance test; said test concluded that Petitioner Goodman was positive for Opiates, Oxycodone, and Hydrocodone/Hydromorphone.¹³

Subsequently, a criminal complaint was filed against Petitioner Goodman alleging DUI causing bodily injury. On October 10, 2018, Petitioner Goodman was indicted by a grand jury in Mercer County, West Virginia.¹⁴ However, on March 28, 2019, Judge William J. Sadler granted the State's motion to dismiss the charges against Petitioner Goodman.¹⁵

Nearly a year later, Respondent initiated a civil action in Mercer County Circuit Court on March 17, 2020, alleging that Petitioners Goodman and Underwood negligently caused Respondent's injuries.¹⁶ Notwithstanding the granting of Respondent's workers' compensation claim as a result of his injuries, Respondent's Complaint seeks damages including, but not limited to, past and future medical expenses, lost income, compensatory damages, and attorney's fees.¹⁷ In furtherance of the underlying litigation, each party has conducted some form of discovery.

On October 13, 2020, Petitioner Underwood filed his Motion for Summary Judgment and Memorandum of Law in Support thereof with the circuit court.¹⁸ On January 11, 2021, Petitioner Goodman filed his corresponding Motion for Summary Judgment and Memorandum of Law in Support thereof.¹⁹ Petitioners' arguments in both motions were rooted in the theory of

¹³ See Accident Report pg. 2; see also, Controlled Substance Test Report.

¹⁴ Indictment for: Driving in an Impaired State Proximately Causing Serious Bodily Injury.

¹⁵ See Order by Judge William J. Sadler.

¹⁶ See Plaintiff's Responses to Defendant Adam Goodman's Requests for Admissions ¶ 3 and ¶. Also See, Respondent's Complaint.

¹⁷ See Respondent's Complaint.

¹⁸ See Defendant Paul Underwood's Motion for Summary Judgment.

¹⁹ See Defendant Adam Goodman's Motion for Summary Judgment.

immunity from suit pursuant to West Virginia Codes §§§ 23-2-6, 23-2-6a, and 29-12A-5 *et seq.* On February 17, 2021, Respondent filed his Joint Response in Opposition to Petitioners' Motions for Summary Judgment.²⁰

On June 22, 2021, the circuit court entered its Order denying Petitioners' Motions for Summary Judgment.²¹ In doing so, the circuit court based its ruling on the notion that varying factual accounts on the day of the accident necessitate a jury determination.²² Further, as it pertains to Petitioner Underwood, the circuit court believed that the lack of discovery completed thus far meant more evidence may come to light against him, which required he continue as a defendant in the matter.²³

Finally, on July 22, 2021, Petitioners filed this Joint Appeal of the circuit court's June 22 Order.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Petitioners believe that the facts and legal arguments are adequately presented in the briefs and record on appeal, and oral argument is not necessary pursuant to Rule 18(a)(3-4) of the West Virginia Rules of Appellate Procedure.

STANDARD OF REVIEW

"This Court reviews *de novo* the denial of a motion for summary judgment, where such a ruling is properly reviewable by this Court." Syl. Pt. 2, *Crouch v. Gillispie*, 240 W. Va. 229, 809 S.E.2d 699 (2018) (quoting Syl. Pt. 1, *Findley v. State Farm Mut. Auto Ins. Co.*, 213 W. Va. 80, 576 S.E.2d 807 (2002)).

²⁰ See Plaintiff's Response to Defendant Paul Underwood's Motion for Summary Judgment & Defendant Adam Goodman's Motion for Summary Judgment.

²¹ See Order Denying Motion for Summary Judgment by Judge Mark Wills.

²² *Id.*

²³ *Id.*

A motion for summary judgment should be granted where the pleadings, exhibits, and discovery forming the basis for the motion reveal that the case contains no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Redden v. Comer*, 200 W. Va. 209, 211, 488 S.E.2d 484, 486 (1997). “Summary judgment is appropriate if, from the totality of the evidence presented, the record could not lead a rational trier of fact to find for the nonmoving party, such as where the nonmoving party has failed to make a sufficient showing on an essential element of the case that it has the burden to prove.” Syl. Pt. 3, *Brady v. Deals on Wheels, Inc.*, 208 W. Va. 636, 542 S.E.2d 457, 462 (W. Va. 2000) (quoting Syl. Pt. 2, *Williams v. Precision Coil, Inc.*, 194 W. Va. 52, 459 S.E.2d 329 (1995)).

This Honorable Court has held that “claims of immunities, where ripe for disposition, should be summarily decided before trial.” *Robinson v. Pack*, 223 W. Va. 828, 831, 679 S.E.2d 660 (2009); see also *Hutchison v. City of Huntington*, 198 W. Va. 139, 147, 479 S.E.2d 649 (1996). This is so because, “[i]mmunities under West Virginia law are more than a defense to a suit in that they grant governmental bodies and public officials the right not to be subject to the burden of trial at all. The very heart of the immunity defense is that it spares the defendant from having to go forward with an inquiry into the merits of the case.” *Hutchison*, 198 W. Va. at 148, 479 S.E.2d 649 (citing *Swint v. Chambers County Commission*, 514 U.S. 35, 115 S.Ct. 1203 (1995)).

ARGUMENT

In Respondent’s Brief, he argues that there exists a genuine issue of fact regarding whether or not Petitioner Goodman was acting “within the scope of employment”. Further, he also argues that there has been too little discovery conducted thus far in order to determine if

there exists a genuine issue of fact regarding whether or not Petitioner Underwood was acting “within the scope of employment” at the time of the incident.

However, as explained in Petitioners’ first Brief, the rationale used by Respondent, as well as the circuit court, in asserting that each Petitioner should be denied summary judgment is misplaced. Moreover, there is certainly sufficient evidence to conclude that no genuine issue of material fact exists and both Petitioners should be granted summary judgment in accordance with the immunity protections provided by West Virginia Code §§ 23-2-6a and/or 29-12A-5 *et seq.*

1. THE CIRCUIT COURT ERRED IN DENYING PETITIONERS’ MOTIONS FOR SUMMARY JUDGMENT.

A. There is sufficient evidence to conclude that there is no genuine issue of material fact; thus, Petitioner Goodman should be afforded immunity, particularly pursuant to West Virginia Code § 23-2-6a.

As this Court well-knows by now, West Virginia Code § 23-2-6a stipulates that, “[t]he immunity from liability set out in the preceding section [§ 23-2-6] shall extend to every . . . employee of such employer when he is acting in furtherance of the employer's business and does not inflict an injury with deliberate intention.” W. Va. Code § 23-2-6a (emphasis added).

In his Brief, Respondent admits to the applicability of the above-mentioned two requirements set forth in West Virginia Code § 23-2-6a. Respondent’s Brief pg. 6. Nevertheless, Respondent argues that the language “acting in furtherance of employer’s business” and “within the scope of employment” are one and the same (Respondent’s Brief pg. 6); however, they are not. In fact, “within the scope of employment” is not mentioned within West Virginia Code §

23-2 *et seq.* nor is it mentioned in supporting case law.²⁵ Moreover, this West Virginia Supreme Court of Appeals in *Tribeca Lending Corp. v. McCormick* stated,

When interpreting a statute, we look first to the language of the enactment to ascertain the Legislature's intent in promulgating the legislation and to determine the meaning of the provision. "The primary object in construing a statute is to ascertain and give effect to the intent of the legislature." Syllabus Point 1, *Smith v. State Workmen's Comp. Comm'r*, 159 W.Va. 108, 219 S.E.2d 361 (1975). In ascertaining legislative intent, we also look to the language of the statute. If the statutory language is plain and does not lend itself to multiple constructions, the statute's plain language must be applied as it is written. Plain statutory language does not need to be construed. In other words, "[w]here the language of a statute is clear and without ambiguity the plain meaning is to be accepted without resorting to the rules of interpretation." Syllabus Point 2, *State v. Elder*, 152 W.Va. 571, 165 S.E.2d 108 (1968).

Tribeca Lending Corp. v. McCormick, 745 S.E.2d 493, 498, 231 W. Va. 455, 460 (2013).

Accordingly, if the Legislature intended to mean "within the scope of employment" when drafting W. Va. Code § 23-2-6a, it surely would have said so.²⁶

Moreover, in furtherance of his "within the scope of employment" argument, Respondent reiterates the same case law cited within his Motion to Dismiss Appeal to additionally argue that the "varying factual accounts" referenced in the June 22 Order necessitate a jury determination. Respondent's Brief pg. 7-11. However, as outlined in Petitioners' Joint Response to Respondent's Motion to Dismiss Appeal, the case law provided by Respondent seldom addresses the need for a jury determination in the context of immunity. In fact, Respondent only cites two cases wherein the courts discuss the need for a jury determination when dealing with immunity protection: (1) *Webb v. Raleigh County Sheriff's Dep't* and (2) *W. Va. Reg'l Jail & Corr. Facility*

²⁵ See *Eisnaugle v. Booth*, 159 W. Va. 779, 226 S.E.2d 259 (1976). See also, *Redden v. McClung*, 192 W. Va. 102, 450 S.E.2d 799 (1994).

²⁶ Too, the above-mentioned case law does not analyze, or even mention, "within the scope of employment" when expressing its opinion.

Auth. v. A. B—and neither address West Virginia Code § 23-2-6a.²⁷ Contrarily, then, Petitioners rely on this Court’s finding in *Hutchison v. City of Huntington*, which states,

The ultimate determination of whether qualified or statutory immunity bars a civil action is one of law for the court to determine. Therefore, unless there is a **bona fide dispute as to the foundational or historical facts that underlie the immunity determination**, the ultimate questions of statutory or qualified immunity are ripe for summary disposition.

Syl. Pt. 1, *Hutchison v. City of Huntington*, 198 W.Va. at 144, 479 S.E.2d at 654 (emphasis added.)

Accordingly, regardless of Respondent’s assertions—or even the circuit court’s ruling—Petitioners contend that there exists no “bona fide dispute as to the foundational or historical facts that underlie the immunity determination.” *Id* at 144. As this Court will see below, the precedent laid out in *Eisnaugle* and *Redden* prove that the supposed “varying factual accounts” pertaining to Petitioner Goodman’s state of sobriety, which are relied upon by Respondent and the circuit court, are irrelevant in determining the applicability of the immunity protection provided by West Virginia Code § 23-2-6a.

(1) Respondent’s attempted distinction of *Eisnaugle v. Booth* incorrectly restates both the law and the facts.

The *Eisnaugle* Court determined that summary judgment was appropriate due to the applicability of W. Va. Code § 23-2-6a. The Court found that W. Va. Code § 23-2-6a was satisfied, because the defendant’s intoxication did not (1) negate his ability to act “in furtherance of the employer’s business” nor did it (2) give rise to conduct that amounted to “deliberate intent”.²⁸ In fact, contrary to what Respondent would have this Court believe, the *Eisnaugle* Court did not even examine the level or **source** of intoxication; rather, it stated,

²⁷ See *Webb v. Raleigh County Sheriff’s Dep’t*, 761 F. Supp.2d 378 (S.D. W. Va. 2010). See also, *W. Va. Reg’l Jail & Corr. Facility Auth. v. A. B*, 234 W. Va. 492, 766 S.E.2d 751 (2014).

²⁸ See *Eisnaugle v. Booth*, 159 W. Va. 779, 226 S.E.2d 259 (1976).

Further, the appellants' petition for appeal from the Common Pleas Court to the Circuit Court of Hancock County specifically states that "the accident was not inflicted upon the plaintiff with deliberate intention by the defendant." Nevertheless, the appellants seek to bring the present circumstances within the exception by arguing that the **alleged intoxication** of the appellee should **nullify the immunity** afforded a fellow employee under the provisions of the statute. **We find no merit in this contention.**

Eisnaugle v. Booth, 159 W. Va. 779, 783, 226 S.E.2d 259, 261 (1976) (emphasis added).

The Court continued,

Neither gross negligence nor wanton misconduct are such as to constitute injury by deliberate intention as contemplated by the immunizing statute. So, even if we were to **assume that the defendant was intoxicated and that his condition was responsible for his actions in injuring the plaintiff**, we must nevertheless conclude that the requisite 'deliberate intention' is **absent.**"

Eisnaugle v. Booth, 159 W. Va. 779, 783, 226 S.E.2d 259, 261 (1976) (quoting *Brewer v. Appalachian Constructors, Inc.*, 135 W. Va. 739, 65 S.E.2d 87 (1951)) (emphasis added).²⁹

Furthermore, in *Redden v. McClung*, this Court concluded that, "[i]t appears to this Court that two provisions of the Workers' Compensation Act, acting in tandem, grant an employee, acting in furtherance of his employer's business, immunity from actions for **non-intentional torts** inflicted on co-employees who are also acting in the course of the employer's business." *Redden v. McClung*, 192 W. Va. 102, 104, 450 S.E.2d 799, 801 (1994) (emphasis added).³⁰

Accordingly, contrary to Respondent's assertions, Petitioner Goodman's alleged intoxication has nothing to do with his ability to act "in furtherance of" the City's business and cannot give rise to a finding of "deliberate intent". Too, since Respondent

²⁹ See *West Virginia Code* § 23-4-2(d)(2).

³⁰ See *Redden v. McClung*, 192 W. Va. 102, 450 S.E.2d 799 (1994), wherein this Court determined that summary judgment was appropriate in a negligence action by one employee against a co-employee, wherein said co-employee injured the plaintiff while driving back to work in his own vehicle.

has not alleged any intentional torts—only negligence and recklessness—no amount of , additional discovery will uncover anything to show that Petitioner Goodman acted with “deliberate intent”.³¹

Therefore, Respondent’s citing of the City’s firing of Petitioner Goodman and/or his arrest/criminal charges, are irrelevant. Respondent’s Brief pg. 11. Instead, it has been admitted that Petitioner Goodman was an employee of the City of Bluefield on the day of the subject accident; he was authorized to act on the City’s behalf by driving the City’s garbage truck during working hours on his normal route to collect trash. Thus, Petitioner Goodman was clearly “acting in furtherance of” the City’s business and did “not inflict an injury with deliberate intention”, which satisfies West Virginia Code § 23-2-6a.

(2) Respondent misinterprets Petitioners’ rationale in citing Respondent’s successful workers’ compensation claim.

West Virginia Code § 23-2-6 states,

Any employer subject to this chapter who subscribes and pays into the workers’ compensation fund the premiums provided by this chapter or who elects to make direct payments of compensation as provided in this section is not liable to respond in damages at common law or by statute for the injury or death of any employee, however occurring, after so subscribing or electing, and during any period in which the employer is not in default in the payment of the premiums or direct payments and has complied fully with all other provisions of this chapter.

W. Va. Code § 23-2-6.

Here, Respondent erroneously interprets Petitioners’ mentioning of Respondent’s successful workers’ compensation claim as a way of supporting the argument that Petitioner Goodman was acting “within the scope of employment”. Respondent’s Brief pg. 12-13.

³¹ See Respondent’s Complaint. See also *Young v. Apogee Coal Co., LLC*, 232 W. Va. 554, 753 S.E.2d 52, (2013), which analyzes “deliberate intent” in the context of § 23-4-2(d) in an attempt to determine if an individual can be sued under said statute after already enjoying immunity under § 23-2-6a—it concludes one cannot be sued.

However, Petitioners never made such an argument. Rather, Petitioners simply mentioned Respondent's successful workers' compensation claim for the purpose of proving that the City of Bluefield "subscribes and pays into the workers' compensation fund" and "elects to make direct payments of compensation" in accordance with the West Virginia Workers' Compensation Act (W. Va. Code § 23-2-6), which gives rise to immunity protection for both Petitioners.

(3) Petitioners' intent when stating that 'the circuit court did not take into account the very purpose of the immunity' was simply to illustrate that the circuit court was misplaced in its interpretation of the immunity statutes when applying the facts at hand.

In *State ex rel. City of Bridgeport v. Marks*, this Court found,

Immunities under West Virginia law are **more than a defense to a suit** in that they grant governmental bodies and public officials the right **not to be subject to the burden of trial at all**. The **very heart of the immunity defense** is that it **s pares the defendant from having to go forward with an inquiry into the merits of the case**.

State ex rel. City of Bridgeport v. Marks, 233 W. Va. 449, 456, 759 S.E.2d 192, 199 (2014) (citing to *Hutchison v. City of Huntington*, 198 W. Va. at 148, 479 S.E.2d at 658) (emphasis added). Further, as previously mentioned, in *Hutchison*, this Court concluded that

The ultimate determination of whether qualified or statutory immunity bars a civil action is one of **law** for the **court** to determine. Therefore, unless there is a **bona fide dispute** as to the **foundational or historical facts that underlie the immunity determination**, the ultimate questions of statutory or qualified immunity are ripe for summary disposition.

Syl. Pt. 1, *Hutchison v. City of Huntington*, 198 W.Va. at 144, 479 S.E.2d at 654 (emphasis added).

Given the applicability of the above-mentioned cases, Petitioners were surprised to notice that the circuit court made no mention of *Marks* or *Hutchison* within its June 22 Order. So, when stating that "the circuit court failed to take into consideration the very purpose of the immunity statutes" (Petitioners' Brief pg. 16), Petitioners simply intended to emphasize the significance of

the precedent laid out in those cases and suggest that they should have been given a greater weight in determining summary judgment, especially in light of the facts as applied to West Virginia Code § 23-2-6a.

Therefore, Petitioners ask that they be granted “the right not to be subject to the burden of trial at all”, because there is no “bona fide dispute as to the foundational or historical facts that underlie the immunity determination”.

B. The amount of discovery conducted thus far contains sufficient evidence to conclude that there is no genuine issue of material fact; thus, Petitioner Underwood should be afforded immunity pursuant to West Virginia Code §§ 23-2-6a and 29-12A-5 *et seq.*

Here, regardless of the amount of additional discovery, it has surely been established that Petitioner Underwood acted in furtherance of the City’s business as any reasonable person would have acted in the same or similar circumstances. It is undisputed that Petitioner Underwood was riding on the City of Bluefield’s garbage disposal truck immediately before and during the subject incident. He was working in the middle of a shift, on a regular route, performing his trash collection duties on behalf of the City. In addition, Petitioner Underwood, along with Respondent, was assisting Petitioner Goodman with safely maneuvering the wide curve and hill at the intersection of Wyoming Street and Glendale Avenue by watching out for potential oncoming traffic.

Further, from the time of the impact with the curb and Petitioner Underwood’s supposed failure “to act in a way to stop the garbage truck from running over the Plaintiff,” it took roughly four (4) seconds to wave down Petitioner Goodman so to stop the garbage truck and release

Respondent.³⁵ As unfortunate as Respondent's injuries are, Petitioner Underwood could not have acted much quicker "in a way to stop the garbage truck from running over the Plaintiff."

It is also clear that the City of Bluefield, a municipality, is a political subdivision as defined in West Virginia Code § § 29-12A-3(c). Additionally, it is also undisputed that Respondent was compensated for his injuries resulting from the subject incident by the City of Bluefield's Workers' Compensation coverage. As a result, West Virginia Code § 29-12A-5(a)(11) bars Respondent's claims against Petitioner Underwood.

Petitioner Underwood clearly "acted in furtherance of" the City's business and did "not inflict an injury with deliberate intention." Moreover, the Respondent does not alleged Petitioner Underwood acted with deliberate intent. Therefore, Petitioner Underwood is afforded immunity pursuant to West Virginia Code § 23-2-6a. Too, Petitioner Underwood's actions were neither "manifestly outside the scope of employment or official responsibilities" nor done "with malicious purpose, in bad faith, or in a wanton or reckless manner", which affords him immunity provided by West Virginia Code § 29-12A-5 *et seq.* Furthermore, no amount of additional discovery will provide evidence in the alternative.

Therefore, Petitioner Underwood asks that he be granted "the right not to be subject to the burden of trial at all" and be spared "from having to go forward with an inquiry into the merits of the case".

CONCLUSION

Ultimately, for the aforementioned reasons, Petitioners respectfully ask that this Court

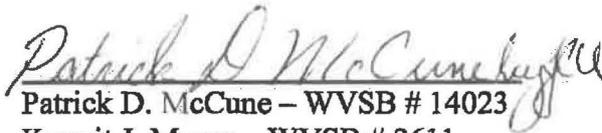
³⁵ 1 mph = 1.4667 ft/s. So, 5 mph = 7.3333 ft/s x 4 sec. = 29.3332 ft.; Taking into account Petitioner Goodman's reported speed of 5 miles an hour, the aforementioned math shows it only took four (4) seconds to release Respondent. See also, Respondent's Complaint, wherein he alleges that he was dragged "some 30 feet in the road" and that Petitioner Underwood "failed to act in a way to stop the garbage truck from running over the Plaintiff".

reverses the circuit court's June 22 Order and grants Petitioners' Motions for Summary Judgment.

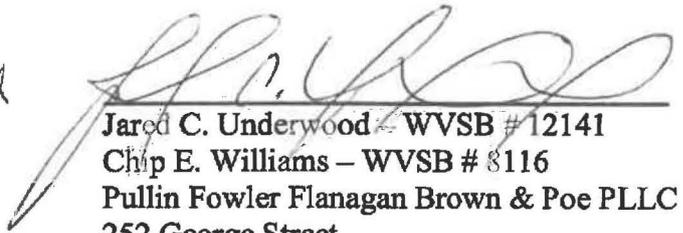
Respectfully submitted,

Petitioner Adam Goodman
By Counsel.

Petitioner Paul Underwood
By Counsel.



Patrick D. McCune – WVSB # 14023
Kermit J. Moore – WVSB # 2611
Brewster Morhous, PLLC
418 Bland Street
Post Office Box 529
Bluefield, West Virginia 24701-0529
(304) 324-0348

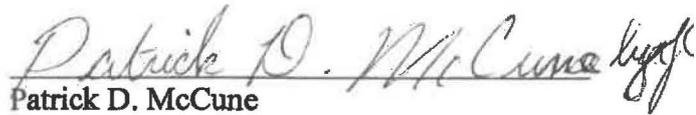


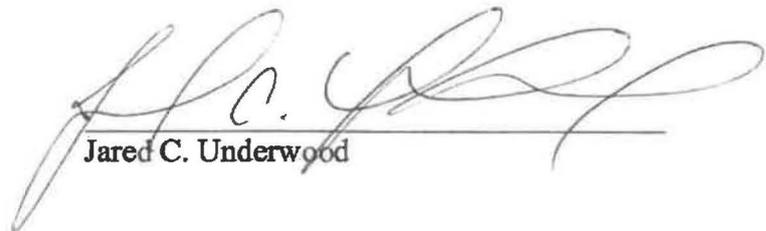
Jared C. Underwood – WVSB # 12141
Chip E. Williams – WVSB # 8116
Pullin Fowler Flanagan Brown & Poe PLLC
252 George Street
Beckley, WV 25801
(304) 254-9300

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of December, 2021, true and accurate copies of the foregoing *Petitioners' Joint Reply Brief* were sent by mail to Ryan J. Flanigan, counsel for Respondent to this appeal, as follows:

Ryan J. Flanigan
FANIGAN LAW OFFICE
1407 E. Main Street
Princeton, WV 24740
Counsel for Respondent


Patrick D. McCune


Jared C. Underwood