IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

DOCKET NO. 22-0341

ELLIOTT GRISELL AND LORRI GRISELL
Plaintiffs Below, Petitioners

vs.

Appeal from a Final Order of the Circuit Court of Marshall County (19-C-187)

SHELLY & SANDS, INC.,
Defendant Below, Respondent

PETITIONERS' BRIEF

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I. ASSIGNMENTS OF ERROR

1. The Honorable Judge of the Circuit Court of Marshall County, West Virginia, David W. Hummel, Jr., committed error when he determined Defendant, hereinafter Respondent Shelly & Sands, Inc., owed no duty of care to Plaintiffs, hereinafter Petitioners and was, therefore, entitled to summary judgment on Petitioners' negligence claim.

In rendering this decision, the Circuit Court failed to properly apply this Court's ruling in *Sewell v. Gregory, 179 W.Va. 585; 571 S.E. 2d 82 (1988)*. In Syllabus Pt. 3 of *Sewell*, this Court ruled "The ultimate test of the existence of a duty to use care is found in the foreseeability that harm may result if it is not exercised. The test is, would the ordinary man in the Defendant's position knowing what he knew or should have known, anticipate that harm of the general nature of that suffered was likely to result?"

The Honorable Judge of the Circuit Court of Marshall County determined in error this Court's ruling in *Sewell*, was not applicable to the facts in this case.

2. The Honorable Judge of the Circuit Court of Marshall County, West Virginia committed error when he determined even if Respondent owed a duty of care to Petitioners, the evidentiary record failed to create a genuine issue of material fact Respondent engaged in any conduct that breached a duty of care owed Petitioners. The Court found, in error, to the extent Respondent owed any duty to Petitioners, this did not include a duty to construct drainage, a toe key or bench when leveling the site and grading the slope. The Court further determined, in error, there was no competent witness to testify as alleged in Petitioners' pleadings, that Respondent's activities on the property covered a spring, blocked drains, or blocked culverts.

The Honorable Circuit Court mis-applied *Rule 56(c)of the West Virginia Rules of Civil Procedure* which provides in relevant part "The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." In assessing the record to determine whether there is a genuine issue as to any material facts, the Circuit Court is required to resolve all ambiguities and draw all factual inferences in favor of the party against whom summary judgment is sought. *Hanlon v. Chambers, 195 W.Va. 99; 461 S.E. 2d. 741, 747 (1995).*

The evidence in this matter was sufficient for a trier of fact to determine each element necessary to prevail in a negligence case. It substantiated Respondent owed a duty to Petitioners to level the fill material site and to properly grade the slope. Respondent breached this duty by placing fill material over a spring, culvert or drain and failing to properly drain water emanating from the toe of the slope it constructed; and this breach was a proximate cause of the slip of the fill material and the slip resulted in damage.

II. STATEMENT OF THE CASE

Petitioners own real property situate at 215 Julie Court, Glen Dale, Marshall County, West Virginia. They acquired the property which consists of four parcels totaling approximately 6.669 acres by deed dated September 27, 2016, from Alfred N. Renzella and Susan M. Renzella, his wife, and of record in the Office of the Clerk of the Marshall County Commission in Deed Book 903, at page 357.

Petitioners were aware prior to acquiring the property fill material had been placed on it during the Renzella's ownership. At some point, they became aware Respondent was involved in the fill material being placed on the property. Respondent is a construction business with extensive

experience in construction and paving. It worked on the West Virginia Division of Highways project in the portion of Marshall County known as the "narrows" in 2012.

Beginning in June 2017, Petitioners noticed pencil wide cracks extending 5 to 25 feet long in the area where the fill material was placed. On or about July 28, 2017, during a heavy rain event, the area where the fill material had been placed slipped downhill, some of the material moving onto a neighboring property.

On July 22, 2019, Petitioners filed their complaint alleging negligence on the part of Respondent. (Appendix Pg. 1) The allegation being Respondent spread the fill material in a negligent and improper manner, not up to the reasonable and customary standards of a contractor and in a manner not fit for the purpose for which it was placed on the property. It was further alleged Respondent spread the material over a natural freshwater spring, not properly redirecting the same, and blocked previously installed drains and/or culverts that captured water runoff, allowing the area encompassing the fill material to become saturated. Petitioners complained Respondent owed a duty in placing the material on the property to do so as a reasonable and prudent contractor and in a manner that would not cause damage to the property or adjacent properties. An Amended Complaint was filed by Petitioners adding as a Defendant the West Virginia Department of Transportation, Division of Highways. (Appendix Pg. 4) The West Virginia Department of Transportation, Division of Highways was subsequently dismissed from the suit.

After suit was filed, a document was disclosed by Respondent titled "Waste Agreement." (Appendix Pg. 15) The Waste Agreement dated April 16, 2012, was between Alfred Renzella and Respondent. The agreement granted Respondent a right of way, easement and license to go upon and deposit materials upon the Renzella's property. The term of the agreement was from the date of execution to November 21, 2012. According to the agreement Respondent had the ability to

deposit material of any form, content or nature encountered in the performance of its project excavation and demolition operations except hazardous material. The "material" ultimately deposited consisted of dirt, concrete, and rock according to Terry LePage, foreman on the project and the person executing the "Waste Agreement" on behalf of Respondent. (Appendix Pg. 16)

Respondent had a right of way on and over the property at such place or places it deemed desirable in its judgment, to facilitate depositing material. Mr. LePage interpreted the waste agreement as giving Respondent authority to direct where the material was to be placed on the property, though according to Mr. LePage, Mr. Renzella directed where he wanted it. (Appendix Pg. 367)

Respondent's use of the premises to deposit material was to be exclusive during the term of the agreement. Despite this, Mr. LePage stated other entities were depositing material during the term of the agreement though Respondent solely performed all leveling and grading of the material. (Appendix Pg. 36) Mr. LePage, as foreman, approved how the material was leveled and sloped. At the end of the project, Mr. LePage for want of a better term concluded Respondent had complied with the agreement. (Appendix Pg. 375)

The Waste Agreement provided Respondent would have no liability for damages or diminution in value to the premises resulting from either its normal operations on the premises or the consequences of placement of the materials upon the property.

At the bottom of the Waste Agreement was a paragraph entitled Additional Provisions. Handwritten into this paragraph by Mr. LePage was the following: "I will level up waste site & grade slope". It has not been disputed "I" was referring to Respondent.

Petitioners were unaware of the existence of the Waste Agreement prior to receiving it from Respondent after suit was filed. A review of the records of the Office of the Clerk of the Marshall County Commission show the Waste Agreement was not public record. [1]

On or about October 21, 2021, Respondent filed a Motion for Summary Judgment (Appendix Pg. 22) as well as a Memorandum of Law in Support. (Appendix Pg. 25) In their motion Respondent argued the evidentiary record failed to contain material evidence sufficient to create a genuine issue of material fact supporting Petitioners' negligence claim. Petitioners filed their response to Respondent's Motion for Summary Judgment on November 4, 2021. (Appendix Pg. 109) Subsequent thereto, Respondent filed a Reply in Support on November 9, 2021. (Appendix Pg. 134)

A hearing was held on the summary judgment motion on December 13, 2021. The Court did not rule on Respondent's Motion for Summary Judgment at that time but directed the parties to file supplemental briefs regarding whether Petitioners' tort claim was truly a contract claim. The parties timely filed their respective supplemental briefs. (Appendix Pg. 146 for Respondent's and Appendix Pg. 184 for Petitioners')

By Order entered on the 5th day of April 2022, the Circuit Court of Marshall County awarded summary judgment to Respondent. (Appendix Pg. 184) The Court determined Respondent did not owe any duty of care to Petitioners. The Court ruled to the extent Respondent owed a duty at all to Petitioners it owed no duty to construct drainage, a toe key or bench when leveling the site and grading the slope. The Court further determined there was no competent

[1] Petitioners believe the waiver of liability contained within the Waste Agreement in unenforceable as to their claim against Respondent as it was not of record, and they were not informed of the same prior to their purchase of the property. They hold this belief pursuant to the provisions of W.V. Code §40-1-8 and §40-1-9.

witness to testify Respondent's activities on the property covered a spring, blocked drains, or blocked culverts.

III. SUMMARY OF ARGUMENT

"The ultimate test of the existence of a duty to use care is found in the foreseeability that harm may result if it is not exercised. The test is, would the ordinary man in the Defendant's position, knowing what he knew or should have known, anticipate that harm of the general nature of that suffered was likely to result?" Syllabus Pt. 3 *Sewell v. Gregory, 179 W.Va. 585; 371 S.E. 2d 82 (1988).* The Honorable Circuit Court of Marshall County failed to properly apply the law set forth in *Sewell* when it confined the holding to situations involving negligent construction of residential buildings, thereby, determining Respondent owed no duty of care to Petitioners in depositing fill material, leveling the waste site, and grading the slope of the property in question.

Respondent is a business with extensive experience in construction and paving. It entered into a Waste Agreement with Alfred Renzella predecessor in title to Petitioners and deposited fill material on the property during the Renzellas' ownership. The fill material consisted of dirt, concrete and rock. (Appendix Pg.360) Respondent agreed to "level up" the waste material and to grade the slope upon which it was put. Respondent's foreman Terry LePage noticed water emanating from the toe of the slope during grading of the slope. (Appendix Pg. 369) He was asked to address it by Mr. Renzella. (Appendix Pg. 370) After being asked, he placed stone right at the edge of it so the water would run through the rock down into a ditch constructed, but did nothing else to capture and divert the water. (Appendix Pg. 370) Mr. LePage acknowledged he had on the job training with earth movement, landscaping and slip repair, (Appendix Pg. 352) that slips are often caused by water (Appendix Pg. 376) and that the water emanating from the toe of the slip on the Renzella property would be a problem over time. (Appendix Pg.369)

Respondent deposited fill material on the property and agreed to level the waste site and grade the slope after the fill was deposited. It owed a duty of care in doing so. It knew or should have known as a reasonably prudent contractor a breach of its duty was likely to cause harm of the type that subsequently occurred.

Rule 56 (c) of the West Virginia Rules of Civil Procedure provides in relevant part "The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." The Honorable Circuit Court of Marshall County failed to properly consider the material evidence presented by Petitioners when it determined the evidentiary record failed to create a genuine issue of material fact Respondent caused materials to cover a natural freshwater spring and/or block drains and culverts creating a condition proximately causing the July 28, 2017, slip. Evidence sufficient for this issue to be determined by a jury was presented to the Court and it was error for the Honorable Court to rule otherwise.

V. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Petitioners respectfully submit this case is suitable for oral argument under Rule 19 of the Rules of Appellate Procedure West Virginia Supreme Court of Appeals as the Circuit Court's rulings involve assignments of error in settled law, to-wit: the Honorable Circuit Court of Marshall County failed to properly apply this Courts' holding in *Sewell v. Gregory, 179 W.Va. 585; 371 S.E. 2d 82 (1988);* and further improperly granted summary judgment in the underlying proceeding in contravention of the requirements of Rule 56 (c) of the West Virginia Rules of Civil Procedure.

VI. ARGUMENT

WHEN GRANTING SUMMARY JUDGMENT IS APPROPRIATE AND THIS COURT'S STANDARD OF REVIEW

Rule 56 (c) of the West Virginia Rules of Civil Procedure provides in relevant part "The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." The party moving for summary judgment has the burden of demonstrating that there is no genuine issue of fact and any doubt as to the existence of such an issue is resolved against the moving party. Syllabus Pt. 6 *Aetna Casualty & Surety Co. v. Federal Ins. Co., 148 W.Va. 160; 133 S.E. 2d 770 (1963).*

For summary judgment purposes, a "material fact" is one that has the capacity to sway the outcome of the litigation under the applicable law. Syllabus Pt. 5 *Gray v. Boyd, 233 W.Va. 243; 757 S.E.2d 773* (2014). "The Circuit Court's function at the summary judgment stage is not to weigh the evidence and determine the truth of the matter but is to determine whether there is a genuine issue for trial. Syllabus Pt. 4 *Merrill v. West Virginia Dept. of Health and Human Resources, 219 W.Va. 151; 632 S.E.2d 307 (2006).* In assessing the record to determine whether there is a genuine issue as to any material facts, a circuit court is required to resolve all ambiguities and draw all factual inferences in favor of party against whom summary judgment is sought. *Hanlon v. Chambers, 195 W.Va. 99; 461 S.E.2d 741 (1995).*

A Circuit Court's entry of summary judgment is reviewed *de novo.* Syllabus Pt. 1 *Painter v. Peavy, 192 W.Va. 189; 451 S.E. 2d 755; (1994)*

RESPONDENT OWED A DUTY TO USE REASONABLE CARE AND SKILL WHEN PERFORMING WORK ON THE PROPERTY NOW OWNED BY PETITIONERS

Petitioners argue Respondent owed a duty to perform work on the property, then owned by Alfred and Susan Renzella, with reasonable care and skill pursuant to *Sewell v. Gregory, 179 W.Va. 585; 371 S.E. 2d 82 (1988).* In 1975, Appellee, Paul Gregory, built a residence in the Forest Hills

Subdivision, located near Martinsburg, West Virginia. After building the residence, he sold it to a married couple by the name of Toup. Three and a half years later the Toups sold the residence to the Appellants, Arthur L. and Irma J. Sewell.

In June of 1979, heavy rains resulted in flooding throughout the house causing damage. In December of 1983, the Sewell's filed suit alleging among other things that Defendant Gregory negligently designed and constructed the house. The Circuit Court dismissed those counts noting a lack of privity.

In overturning the Circuit Court's dismissal, the Supreme Court in Syllabus Pt. 2 of *Sewell,* held liability attaches to a wrongdoer not as a result of a contractual relationship, but because of a breach of duty that results in an injury to others. The Court further found in Syllabus Pt. 3 of *Sewell* that, "The ultimate test of the existence of a duty to use care is found in the foreseeability that harm may result if it is not exercised. The test is, would the ordinary man in the Defendant's position, knowing what he knew or should have known, anticipate that harm of the general nature of that suffered was likely to result?".

Respondent agreed to and did deposit fill material on the Renzella property. It specifically agreed to level up the waste site and to grade the slope. It did so as a contractor with experience in earthwork. While working on the property, Respondent's foreman Terry LePage noticed water emanating from the toe of the slope while on site. (Appendix Pg. 369) He was asked to address it by Mr. Renzella. (Appendix Pg. 370) After being asked, he placed stone right at the edge of it so the water would run through the rock down into the ditch, but did nothing else to capture and divert it. (Appendix Pg. 370) Mr. LePage acknowledged he had on the job training with earth movement, landscaping and slip repair (Appendix Pg. 352), that slips are often caused by water (Appendix Pg. 376), and that the water emanating from the toe of the slip on the Renzella property would be a problem over time. (Appendix Pg.369) Despite this knowledge, Respondent did not properly

address the water issue nor is there evidence it warned Mr. Renzella of the potential for a problem. Under these facts, Respondent cannot reasonably argue harm of the type that eventually occurred was not foreseeable and likely to result from its failure to properly deposit, level and slope the material on the property.

Respondent previously argued and the Circuit Court agreed the holding in *Sewell* was limited to construction of a building or residence. No such limitation exists, and this Court should not apply one. While it is true Syllabus Pt. 4 of *Sewell* speaks specifically of a builder of buildings it does not serve to limit the remaining rulings of the court therein. Syllabus Pt. 3 of *Sewell,* has been cited in numerous cases thereafter. In *Gable v. Gable, 245 W.Va. 213; 858 S.E. 2d 838 (2021)* it was cited by the Supreme Court in its ruling overturning a Circuit Court's dismissal of a complaint involving trespass liability wherein the Appellant was injured after a fall on the front steps of the Appellee's home. In *Wal-Mart Stores East, L.P. v. Ankrom, 244 W.Va. 437; 854 S. E. 2d 257 (2020)*, it was cited in support of the Court upholding the results of a trial wherein it was determined Wal-Mart was partially liable for Appellee's injuries that occurred while a shop lifter was fleeing the store and its employees attempted to apprehend him. A final example is *Eastern Steel Constructors, Inc. v. City of Salem, 209 W.Va. 392; 549 S.E, 2d 266 (2001),* wherein the Court cited Syllabus Pt. 3 of *Sewell,* in holding the Appellant contractor could maintain a negligence action against Appellee engineer who performed engineering and architectural services for design of a new sewage treatment plant and two new sewage lines.

The Honorable Judge of the Circuit Court of Marshall County committed error when he determined this Court's ruling in *Sewell*, was applicable only in the context of negligent construction of a residential dwelling and was not applicable to the facts in this case.

MATERIAL EVIDENCE EXISTS RESPONDENT BREACHED A DUTY OF CARE OWED PETITIONERS

In support of its Motion for Summary Judgment, Respondent argued Petitioners failed to produce evidence its operations breached a duty of care it owed Petitioners causing the July 28, 2017, slip. In granting summary judgment to Respondent, the Circuit Court determined Respondent did not owe any duty of care to Petitioners as previously discussed. The Court went on to rule to the extent Respondent owed any duty to Petitioners it was not to construct drainage, a toe key or bench when leveling the waste site and grading the slope. The Court further opined there was no competent witness to testify Respondent's activities on the property covered a spring, blocked drains, or blocked culverts while leveling the site or grading the slope. For the reasons set forth, herein Respondent's position and the Circuit Court's ruling are in error.

Pursuant to the Waste Agreement, Respondent assumed the obligation to "level up" the waste site and to grade the slope after the fill material was deposited. Respondent had a duty to exercise reasonable care and skill as a contractor in doing so. Respondent placed "material" consisting of dirt, rock and concrete on the property. Per Terry LePage, Respondent's foreman, the Waste Agreement provided Respondent had authority to direct where the material was to be placed on the property though according to Mr. LePage, he permitted Mr. Renzella to direct where he wanted it. (Appendix Pg. 367). There is no evidence Mr. Renzella had education or experience in earth movement, the grading of slopes or how to manage or capture water flowing from the same. The fill material was transported to the property and once placed upon the property it along with any other waste material deposited was "leveled up" and the slope graded solely by Respondent under the supervision of Mr. LePage. (Appendix Pg. 368) Respondent never advised

Mr. Renzella the location he chose to deposit the material was not an appropriate site. (Appendix Pg. 376)

Petitioners made a general allegation of negligence in their Complaint and Amended Complaint wherein they asserted Respondent spread fill material on the former Renzella property in a negligent and improper manner, not up to the reasonable and customary standards of a contractor, and in a manner not fit for the purpose for which it was placed on the property. The purpose being to fill in a hollow on the property and/or to create additional yard. (Appendix Pgs. 75 and 82) Petitioners went on to allege Respondent spread the fill material over a natural freshwater spring not redirecting the same, and by blocking previously installed drains and/or culverts that previously captured water runoff, allowing the area encompassing the material to become saturated.

From the beginning of this matter, Respondent's failure to capture and remove water in the fill area was alleged as the event that precipitated the slip. Petitioners' expert witness disclosure sets forth the opinion of Stephen Rogers on the cause of the slip. (Appendix Pg. 104) [2] Mr. Rogers designated as an expert in land slip mitigation and repair stated the proximate cause of the slip was no drainage or insufficient drainage was put in place to carry water from the area where the fill was deposited on the property. Furthermore, the culverts present appeared to have been blocked by the fill placed on the property resulting in the ground eventually becoming saturated with the weight of the material causing the ground to become unstable thereby resulting in it moving. The blocking of the culverts and installation of no or insufficient drainage in the fill area being improper

[2] Petitioners acknowledge Mr. Rogers testified at his deposition he was not testifying at trial regarding what caused the slip to happen or why Respondent may be responsible. This was clarified in Petitioners Expert Witness Disclosure, which was timely filed two days after his deposition as well as in the affidavit of Mr. Rogers after his review of the Deposition Transcript of Terry LePage.

in his opinion. Confirmation Mr. Rogers was correct in his opinions was obtained from Mr. LePage during his deposition.

Mr. LePage confirmed while Respondent was operating on the Renzella property water was flowing from the toe of the slope. (Appendix Pg. 369) He confirmed no effort was made to capture and divert the water. (Appendix Pg. 370) Respondent after being asked to address the water flowing from the slope merely placed rock in the area functioning as a filter for the water and dug a ditch.

Mr. LePage acknowledged he had on the job training with earth movement, landscaping and slip repair; (Appendix Pg. 352) that slips are often caused by water; (Appendix Pg. 376) and that the water emanating from the toe of the slip on the Renzella property would be a problem over time. (Appendix Pg.369)

Mr. Rogers, after reviewing Mr. LePage's deposition, stated the deposition confirmed his opinions set forth in the expert report filed by Petitioner that Respondent failed to properly drain water from the toe of where the material was deposited. This being the primary cause of the slip and further Respondent failed to install a proper toe key or benching to provide a stable foundation for the slope they graded. (Appendix Pg. 129) Respondent merely pushed off the fill material to level and grade it. (Appendix Pg. 374)

The Court based its ruling in part on Respondent having no duty to drain the slope, or to install a proper toe key or benching. Respondent agreed to level up the waste site and grade the slope. Respectfully, there was no need for Respondent to be told to properly drain water from the toe of the slope or to install a proper toe key or benching in grading the slope. As Mr. Rogers opined, to properly grade the slope, a contractor should have done these things. Respondent graded the slope, it had a duty of care to do it correctly. Petitioners provided evidence sufficient for a trier of fact to determine it did not.

The Court further opined there was no competent witness to testify Respondent's activities on the property covered a spring, blocked drains, or blocked culverts. Water was present at the toe of the slope during Respondent's operations. There was no evidence the water came from a broken water line, or, as in the bible, springing from a rock. Mr. LePage acknowledged a spring was present above the area where fill material was placed and ran along it. (Appendix Pg. 364) The spring then ran into a culvert. Mr. LePage did not see where the water came out. (Appendix Pg. 370) Water was then present downhill at the toe of the slope. The toe of the slope being the point where the slope of the fill material met the slope of the previously existing ground. This water was either from a natural spring or from a drain or culvert covered by fill material as it appeared from under the fill material. This is evidence sufficient to overcome a motion for summary judgment.

Finally, reference has been made Respondent performed the depositing of the fill material, the leveling of the waste site, the grading of the slope, and addressed the water at the toe of the slope all to the satisfaction of Mr. Renzella. This is irrelevant to Petitioners' negligence action. There is no evidence Mr. Renzella had any expertise or experience in earth movement, grading of slopes, or how to capture and remove water from the toe of a slope. Respondent alone took on the task and assumed the duty to perform this work and to do so as a reasonable and prudent contractor.

Sufficient evidence to meet all requirements for a negligence action was presented to the Circuit Court. Respondent conducted operations on the property in question consisting of depositing, spreading, leveling and grading a slope of fill material. They owed a common law duty to exercise reasonable care and skill in conducting these operations on the property. They breached this duty when they spread fill material over or on top of a spring, drain or culvert, and when they failed to properly capture and divert water their foreman observed flowing from the toe of the fill material. They further failed to provide a stable foundation upon which the fill material would sit. Finally, because of the breaches, a slip occurred resulting in damage to Petitioners' property

including, but not limited to, a diminution in value of their property, a loss of use of the property, and resulted in damage to a neighboring owners property resulting in Petitioners paying to remove fill from their property.

A genuine issue of material fact existed as to whether Respondent breached the duty it owed to exercise reasonable and customary care in performing its operations on the property in question and that a breach of that duty caused the damages suffered by Petitioners in this case. As such, Respondent's Motion for Summary Judgment should have been denied.

VIII. CONCLUSION

WHEREFORE, Petitioners, Elliott Grisell and Lorri Grisell, for the reasons set forth herein request this Honorable Court reverse the Order of the Circuit Court of Marshall County awarding summary judgment to Respondent Shelly & Sands Inc. and remand the matter for further proceedings consistent therewith.

Elliott Grisell and Lorri Grisell

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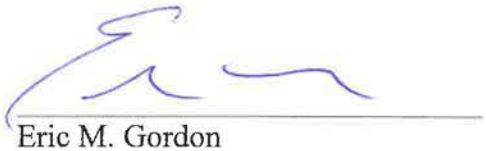
CERTIFICATE OF SERVICE

I hereby certify that on August 3, 2022, I caused the foregoing **"PETITIONERS' BRIEF"** to be served on Adam Barnes, Esquire of Walsh, Barnes & Zumpella, P.C., Counsel for Respondent by placing a true copy of the same in the United States mail, postage prepaid, to his address at 2100 Corporate Drive, Suite 300, Wexford, PA. 15090.



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