INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

Charleston, West Virginia

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LISA R. DANIELS,

Plaintiff Below, Petitioner

v.

No. 23-ICA-212
(Civil Action #21-C-650)

DAL Global Services, LLC,

Defendant Below, Respondent

PETITIONER'S REPLY BRIEF

Kurt E. Entsminger, Esq. (WVSB #1130)
Addair Entsminger PLLC
1018 Kanawha Blvd., East, Suite 409
Charleston, WV 25301
304.881.0411
kee@employmentlawyerswv.com
Counsel for Petitioner

W. Scott Evans (WVSB # 5850)
Scott Evans Law PLLC
112 Capitol Street, 4th Floor
Charleston, WV. 25301
304.552.1315
scott@scottevanslaw.com
Counsel for Petitioner

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REPLY ARGUMENT

I. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Consistent with Petitioner's Appeal brief and pursuant to Rule 18(a) of the West Virginia Rules of Appellate Procedure, the Petitioner advises the Court that she believes that the decisional process would be significantly aided by oral argument and therefore requested that the ICA set this case for a Rule 20 argument. The Respondent's Response Brief does not oppose Petitioner's request for an oral argument.

II. REPLY ARGUMENT

A. Standard Of Review

"A circuit court's entry of summary judgment is reviewed de novo." Syl. Pt. 1, *Painter v. Peavy*, 192 W.Va. 189, 451 S.E.2d 755 (1994). "A party who moves for summary judgment has the burden of showing that there is no genuine issue of fact and any doubt as to the existence of such issue is resolved against the movant for such judgment." Syl. Pt. 6, *Aetna Cas. & Sur. Co. v. Fed. Ins. Co. of N.Y.* 148 160, 133 S.E.2d 770 (1963). "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." Syl. Pt. 3, *Painter v. Peavy*, 192 W.Va. 189, 451 S.E.2d 755 (1994). 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.' Syl. Pt. 3, *Aetna Casualty Surety Co. Federal Insurance Co. of New York*, 148 W.Va. 160, 133 S.E.2d 770 (1963).

B. WEST VIRGINIA HUMAN RIGHTS ACT

1. PETITIONER DID NOT ENGAGE IN ANY ILLEGAL DRUG USE SO AS TO DISQUALIFY HER CLAIMS UNDER THE WVHRA.

Lisa Daniels has no need or reason "to shield her use of marijuana" in this case as Respondent asserts she does. Ms. Daniels legally used medical marijuana in the State of Ohio in accordance with a lawfully issued Ohio medical marijuana certificate. Her right to remain employed in West Virginia while using marijuana under Ohio medical certification was expressly protected under West Virginia law. *W.Va. Code* §16A-15-4, which was in full effect at the time Respondent fired Ms. Daniels, stated:

> "[n]o employer may discharge, threaten, refuse to hire or otherwise discriminate or retaliates against an employee regarding an employee's compensation, terms, conditions, location or privileges solely on the basis of such employee's status as an individual who is certified to use medical marijuana." W.Va. Code §16A-15-4(b)(1).

Respondents' arguments in this appeal are based upon the persistent and unsubstantiated innuendo that Lisa Daniels was guilty of using illegal drugs. Respondent greatly contorts the facts and law to arrive at a conclusion that Lisa Daniel's **legal** use of medical marijuana in Ohio somehow translated into her **illegal** use of marijuana in West Virginia. Respondent cleverly phrases the headings within its brief to make it sound as if Petitioner engaged in illegal activity. For example, Respondent asserts that "Petitioner was not certified under West Virginia Law to use marijuana." [Respondent's Brief p. 2]. Respondent also asserts that "Petitioner's drug test was positive for a drug illegal under West Virginia law." [Respondent's Brief p. 3]. These assertions, while technically true, ignore the blaring and uncontroverted evidence that Plaintiff never illegally used or possessed marijuana in West Virginia.

Respondent erroneously represents to this Court that its drug policy "provided that anyone who tests positive for drugs and violates the drug and alcohol policy be terminated." [Respondent's Response Brief p. 4]. However, what Respondent's drug policy actually said was:

> Possession, use, sale, exchange, or manufacture of any illegal drug will result in termination.

(App. at. p. 000307). Respondent is unable to point to any evidence in the record below to support a finding that Lisa Daniels possessed, used, sold, exchanged, or manufactured any illegal drugs. Rather it is uncontroverted that the conduct that caused Petitioner to be fired was her **legal** possession and use of medical marijuana in the State of Ohio.

Respondent glosses over the factual chain of events that led to its unlawful decision to terminate Lisa Daniels. Kevin Ingham's direction that Ms. Daniels be fired was based upon a clear misunderstanding of the facts. In explaining his rationale to Michael James for terminating Ms. Daniels, Mr. Ingham stated:

> Happy to talk about this if we need to, but a medical card permits the employee to legally use marijuana, but it does not permit an employee to be under the influence are work…..

(App. at p. 00079).

Mr. Ingham did not conclude that Ms. Daniels' use of medical marijuana in Ohio justified her termination. Rather, he stated the very opposite. Mr. Ingham based his rationale for firing Lisa Daniels upon his unfounded belief that she had been guilty of reporting to work under the influence of marijuana. This same erroneous rationale for firing Ms. Daniels was again articulated by Michael James six (6) months later in preparing to defend against Ms. Daniels unemployment compensation claim. (App. at p. 000391). There is, however, not a shred of credible evidence in this case that Ms. Daniels ever reported to work under the influence of drugs, and Respondent does not now rely upon any such assertion to justify her termination.

At its core, Respondent seeks to shield its unlawful firing of Lisa Daniels upon the baseless argument that Ms. Daniels in some way engaged in "illegal drug use" solely because her West Virginia return to work drug test detected her prior **legal** use and possession of medical marijuana in the State of Ohio. Lisa Daniels' citation to cases in West Virginia and other jurisdictions relating to illegal drug possession is not a mere distraction in this case. Rather, these citations are the direct antidote to Respondent's ill-founded argument that the traces of marijuana detected in her blood system during a drug test performed in West Virginia rendered her guilty of illegal drug use in West Virginia. These cases uniformly reject Respondent's ultimate argument that a positive drug test automatically proves illegal drug use or possession at the situs and time that the drug test is administered. [1]

Respondent weakly argues that whether Plaintiff was guilty of "illegal drug use" in this case can o be determined solely by reference to WVHRA legislative rules and without reference

[1] The cases cited by Ms. Daniels relating to this issue and their holdings are summarized again: *State v. Dudick*, 158 W.Va. 629, 213 S.E.2d 458, 467 (W. Va. 1975) (offense of possession of controlled substance require that the controlled substance was and was subject to defendant's dominion and control); *Benton v. Commonwealth*, No. 2019-CA-1901-MR (Ky. Ct. App. 2021) (once a controlled substance is within a person's system the substance is beyond the scope of regulation contemplated in the possession statute); *State v. Thronsen*, 809 P.2d 941, 943 (Alaska Ct.App.1991) (positive drug test could not sustain conviction for cocaine possession because defendant ceased having control of it once it entered his body); *State v. Vorm*, 570 N.E.2d 109, 111 (Ind.Ct.App.1991) (positive drug test alone fails to prove defendant knowingly and voluntarily possessed cocaine); *State v. Downes* 572 P.2d 1328, 1330 (Or. Ct. App. 1977), superseded by statute as stated in *Employment Div. v. Smith* 485 U.S. 660, 108 S.Ct. 1444, 99 L.Ed.2d 753 (1988) (the exercise of dominion or control over the property was necessary and that after a drug is ingested or injected into the body, the host body can no longer exercise dominion or control over it); *State v. Flinchpaugh*, 232 Kan. 831, 659 P.2d 208, 211 (1983) (once drug is in a person's blood, he no longer controls it, and positive drug test alone is insufficient to establish knowledge); *State v. Lewis*, 394 N.W.2d 212, 217 (Minn. Ct. App. 1986) ("evidence of a controlled substance in a person's urine specimen does not establish possession ... absent probative corroborating evidence of actual physical possession"); *In re R.L.H.*, 327 Mont. 520, 116 P.3d 791, 795-96 (2005) (presence of drug in body insufficient evidence that such drug was knowingly and voluntarily ingested); *Jackson v. State,* 833 S.W.2d 220, 223 (Tex.App.1992) ("[t]he results of a test for drugs in bodily fluids does not satisfy the elements of the offense of possession of cocaine"); *State v. Sorenson,* 758 P.2d 466, 468 (Utah Ct. App.1988) ("the mere presence of alcohol in the bloodstream does not constitute possession"); *State v. Griffin*, 220 Wis.2d 371, 584 N.W.2d 127, 131 (1998) ("mere presence of drugs in a person's system is insufficient to prove that the drugs are knowingly possessed by the person or that the drugs are within the person's control"); *Franklin v. State*, 258 A.2d 767, 769 (Md. Ct. Spec. App. 1969) (once a narcotic drug is injected into the vein, or swallowed orally, it is no longer in the individual's control for purposes of unlawful possession); *Nethercutt v. Commonwealth* 241 Ky. 47, 43 S.W. 2d 330 (1931) (the presence of alcohol in one's stomach does not constitute possession within the meaning of the law).

to any criminal laws. By definition, engaging in "illegal" conduct requires that one violate some applicable law that prohibits such conduct. Respondent's defenses in this case are squarely based upon the premise that Lisa Daniels engaged in conduct sanctioned by West Virginia's criminal drug laws. Just as one example, Respondent argues that Respondent had no legal duty to offer Ms. Daniels any accommodations under the *West Virginia Human Rights Act* §5-11-1, *et seq.* because her marijuana use "was illegal in West Virginia at the time." [Respondent's Brief p. 7]. In turn, Respondent specifically cites to and relies upon *Foster v. Nash*, 2020 U.S. Dist. LEXIS 106998 (S.D. W.Va.) which held that "terminating an employee for 'current illegal drug use" does not constitute discrimination based upon disability discrimination under anti-discrimination laws." (Respondent's Brief p. 9). To prevail upon its summary judgment theory in this case, Respondent must demonstrate there is no genuine issue of material fact and that Lisa Daniels, as a matter of law, engaged in some "current illegal drug use." However, the uncontroverted facts in this case prove exactly the opposite -- Lisa Daniels did not engage in any illegal drug use.

The Circuit Court clearly erred in rejecting Lisa Daniels' disability discrimination claim. Contrary to Respondent's argument, Ms. Daniels' asserted disability in this case was not her marijuana use. Her cited disability was the carpal tunnel condition for which she was required to undergo surgery and for with Respondent specifically approved two months of disability leave. Respondent cannot seriously argue that Ms. Daniels suffered from no protected legal disability when Respondent granted her an "ADA" leave of absence so she could seek medical treatment for this medical condition (App at p. 51-52).

Respondent's arguments that it had no obligation to afford reasonable accommodation to Lisa Daniels also fails upon multiple grounds. Most notably, Respondent once again relies upon its unfounded assertion that Ms. Daniels engaged in illegal drug use as the basis for denying any

legal duty to accommodate her. Interestingly, Respondent cites to *Skaggs v. Elk Run Coal Co.* 198 W.Va. 51, 479 S.E. 2d 561 (W.Va. 1996) as supporting the proposition that it had no legal duty to respond to Lisa Daniel's requests for accommodations. However, the holding in *Skaggs* most applicable to this case relates to the duty an employer has to engage in an interactive process when a request for reasonable accommodations is made. In defining the process that an employer must engage, Justice Cleckley explained in *Skaggs* as follows:

> The process by which accommodations are adopted ordinarily should engage both management and the affected employee in a cooperative, problem solving exchange…..

198 W.Va. at 67, 479 S.E. at 577. Justice Cleckley reiterated this obligation by citing to applicable federal regulations:

> "The employer must make a reasonable effort to determine the appropriate accommodation. The appropriate reasonable accommodation is best determined through a flexible, interactive process, that involves both the employer and the [employee] with a disability."

Id.

In this case, Lisa Daniels triggered a duty by Respondent to engage in an interactive process when she requested and then implored that her lawful use of medical marijuana to treat her underlying disability condition not form the basis of a decision to terminate her employment. Respondent's Human Resources Manager, Michael James, candidly admitted that Respondent made no effort to initiate an interactive process in response to Ms. Daniels' request. (App. at pp. 00168-00169).

Ultimately, Ms. Daniels' request for accommodation in this case turned out to be nothing more than a request that Respondent uphold her legal rights and properly apply its own drug policies. The Medical Review Officer, Terry Hellings, who reviewed Ms. Daniels' drug test

specifically alerted Respondent that her lawful use of medical marijuana might trigger laws or company policies that would justify excusing her "non-negative" result. (App at. p. 80). In sum, all Ms. Daniels really needed to retain her job in this case was for Respondent to follow the law and to abide by its own policies.[2]

C. WEST VIRGINIA MEDICAL CANNABIS ACT

1. MS. DANIELS LAWFUL USE OF MEDICAL MARIJUANA TO TREAT HER CARPEL TUNNEL CONDITION WAS LEGALLY PROTECTED UNDER THE WEST VIRGINIA MEDICAL CANNABIS ACT.

The trial court granted DAL Global's motion for summary judgment and dismissed Ms. Daniels' *West Virginia Medical Cannabis Act* ("WVMCA") claim upon two erroneous grounds: (1) that the Act did not give rise to a private cause of action; and (2) that WVMCA only applies individuals certified to use medical cannabis under West Virginia law. App. 00483-00485. As addressed in the Petitioner's original Petition and as argued below, neither position has legal merit and DAL Global's Response brief does not successfully argue the contrary.

Specifically, Respondent erroneously asserts that the absence in the WVMCA of any specific provision detailing a cause of action is evidence that the Legislature intended that no private cause of action to exist. Secondly, the Petitioner argues that no private cause of action exists as Ms. Daniels does not meet the first factor in the *Hurley v. Allied Chemical Corp.* 262 S.E.2d 757, 762 (W.Va. 1980)

[2] With respect to Ms. Daniels' claim that she was retaliated by DAL Global for requesting a reasonable accommodation in violation of the WVHRA the Respondent essentially recycles all of its prior arguments, including that Ms. Daniels never engaged in any protected activity despite the fact that she repeated begged for an accommodation, Respondent does not cite any legal authority supporting such a narrow reading of the WVHRA. App. 00053-00054, 00079, 00165-00167. Further Respondent goes on to argue even if she did engage in protected activity by requesting a reasonable accommodation, she has still failed to establish that "but for" her request she would have been terminated. However, Respondent fails to recognize that Ms. Daniels has produced sufficient evidence to the contrary and thus as a question of fact this issue, at the very least, should be decided by a jury not the trial court. Lastly, DAL Global still argues that Ms. Daniels failed to initially challenge DAL Global's response to this claim, despite the fact that the same rationale raised by DAL Global to challenge the failure to accommodate claim is used by DAL Global to challenge the retaliation claim which was expressly addressed by Ms. Daniels' in her original response in opposition to DAL Global's motion for summary judgment.

decision because she was not part of a "special class" intended to benefit by the WVMCA. As will be demonstrated below, neither of these claims have merit.

While the WVMCA does not expressly provide for a private cause of action for the violation of the Act's anti-discrimination employment protections, Article 15, Section 4(b)(1) of the WVMCA was obviously designed by our Legislature to provide and implement broad employment-related protections to employees. These protections are specifically designed to protect employees like Ms. Daniels, who have a "serious medical condition" that requires the use of medical cannabis. *See W.Va. Code* §16A-15-l(a)(31), Without recognizing a private cause of action to remedy a clear act of employment related discrimination in violation of *W.Va. Code* §16A-15-4(b)(l), these statutory protections would be void of any meaning, which would be in direct conflict with the well-established rule of statutory construction which requires that legislative acts are to be interpreted as meaningful pronouncements of state law. Given the strong language prohibiting discrimination under this Act, it cannot be reasonably concluded that our Legislature intended to impose such limitations without affording some civil recourse. The acceptance of implied causes of actions for statutory violations is well-settled law under West Virginia jurisprudence. See *Jenkins v. J.C. Penney Cas. Ins. Co.,* 167 W. Va. 597,280 S.E.2d 252 (1981), *overruled on other grounds by State ex rel. State Farm Fire Cas. Co. v. Madden,* 192 W. Va. 155,451 S.E.2d 721 (1994). "When the remedy is necessary or at least helpful in the accomplishment of the statutory purpose, the Court is decidedly receptive to its implication under the statute." *Hurley v. Allied Chemical Corp.* 262 S.E. 2d. 757 762 (W.Va. 1980) [quoting from *Cannon v. University of Chicago,* 441 U.S. 677, 703].

In the Hurley decision, our State Supreme Court established the following test for determining whether a private cause of actions exists:

> The following is the appropriate test to determine when a State statute gives rise by implication to a private cause of action: (1) the plaintiff must be a member of the class for whose benefit the statute was

> enacted; (2) consideration must be given to legislative intent, express or implied, to determine whether a private cause of action was intended; (3) an analysis must be made of whether a private cause of action is consistent with the underlying purposes of the legislative scheme; and (4) such private cause of action must not intrude into an area delegated exclusively to the federal government.

Hurley v. Allied Chemical Corp. 262 S.E.2d 757, 762 (W.Va. 1980). Lisa Daniels satisfies each of these four elements under *Hurley* for establishing a private cause of action. The Respondent's Response brief only challenges the first element of the *Hurley* test and argues that Ms. Daniels is not a member of a "special class" for which the WVMCA was enacted. However, as a person employed within West Virginia with a "serious medical condition" for which she was lawfully certified to use medical cannabis, Ms. Daniels falls squarely within the special class of persons the Act is designed to protect. Respondent asks this Court to accept an extremely narrow interpretation of the WVMCA that Ms. Daniels is not entitled to these statutory protections because she was not certified under West Virginia law to use medical cannabis. However, to reach such a conclusion, the Court must read into the Act's employment protection provisions that can't be gleaned therein.

The text of Article 15, Section 4 of the WVMCA contains very broad employment-related protections and is not restricted by any state boundaries to where medical certification was procured:

> "[n]o employer may discharge, threaten, refuse to hire or otherwise discriminate or retaliates against an employee regarding an employee's compensation, terms, conditions, location or privileges solely on the basis of such employee's status as an individual who is certified to use medical marijuana." W.Va. Code §16A-15-4(b)(1).

A simple reading of the employment-related anti-discrimination provision leads to only one conclusion---the one provision of the Act that addresses employment-related discrimination was drafted broadly to protect all West Virginia employees legally using medical cannabis due to a

serious health condition. Respondent's linguistic gymnastics cannot change that fact. If our Legislature had intended to limit the anti-discrimination protections as DAL Global contends, it could have easily provided that its prohibitions applied only to those certified under the Act by adding to the phrase "under the Act" thus making the provision at issue read as follows: "an individual who is certified ***under the Act*** to use medical marijuana." There is no language in W.Va. Code §16A-15-4(b)(1) to suggest that this law's anti-discrimination protections were less applicable to West Virginia employees who obtained their medical cannabis certifications in some other state. In short, there is no basis as DAL Global insists to read into this statute limitations that our state Legislature simply did not include nor intend.

Further, in seeking to rebut o Ms. Daniel's claim that her discharge for lawful use of medical cannabis was a violation of West Virginia public policy under *Harless v. First Nat. Bank in Fairmont*, 162 W.Va. 116, 246 S.E.2d 270 (1978), Respondent repeats the hollow argument that she has no "connection to any public policy" set forth in the WVMCA. However, the fact remains that the WVMCA contains very broad anti-discrimination language that does not exclude West Virginia employees who commute to work from other states. The relevant public policy is to protect all West Virginia employees who legally use medical cannabis due to serious health conditions.

Finally, DAL Global argues that Ms. Daniels "equal protection"/Dormant Commerce Clause argument fails because Ms. Daniels' Petition fails to cite any legal authority. However, the contrary, Ms. Daniel's Petition specifically cites *Matkovich v. CSX Transportation*, 238 W.Va. 238, 244, 793 S.E. 2d 888, 894 (2015), in support of this "equal protection" argument—a decision where our Supreme Court recognized the application of the dormant Commerce Clause precludes States from "discriminat[ing] between transactions on the basis of some interstate element." [citing to *Boston*

Stock Exch. v. State Tax Comm'n, 429 U.S. 318, 332, n. 12, 97 S. Ct. 599, [608, n. 12,] 50 L. Ed. 2d 514 (1977)]., The trial court's order granting summary judgment must be set aside as it effectively results in the discrimination between citizens of different states engaged in commerce, i.e. employment, thus expressly violating the Dormant Commerce Clause.

D. INVASION OF PRIVACY CLAIM

1. DAL GLOBAL'S RELIANCE ON THE *BAUGHMAN* DECISION IS MISPLACED AS PETITIONER WAS AN EMPLOYEE AND NOT AN APPLICANT FOR EMPLOYMENT THUS WAS ENTITLED TO A HIGHER EXPECTATION OF PRIVACY UNDER *TWIGG*.

DAL Global asserts that the *Baughman v. Wal-Mart, Inc*., 215 W.Va. 45, 592 S.E.2d 824 (2003) decision excludes privacy protections for employees returning to work from a leave of absence. DAL Global fails to cite any legal authority supporting this claim. Rather, a simple review of the *Baughman* decision clearly reveals that it contains no such holding or anything remotely suggesting such an interpretation. The Supreme Court in *Baughman* found that plaintiff's right to privacy was not violated by Wal-Mart "requiring her ***prior to starting work*** to give a urine sample for drug testing purposes." [Emphasis added.] *Id.* at 828. Significantly, *Baughman* focused on the fact that an applicant for employment "clearly has a lower expectation of privacy" in the pre-employment context. There is no logical basis to read into the *Baughman* decision a conclusion that exempts any current employees from the privacy protections under Twigg v. *Hercules Corp.,* 185 W.Va. 155, 406 S.E. 2d 52 (W.Va. 1990). A current employee returning from an approved medical leave of absence has every reason, if not more, to expect that her privacy will be protected.

The Respondent further argues that Ms. Daniels case is distinguished from the *Twigg* decision because her test was not "random" like the drug test at issue in *Twigg*. Significantly, *Twigg's* holding did not link the validity of an individual's privacy claim to the random nature of the test. Rather, the privacy interests recognized in the *Twigg* decision are based upon the existence of an

employee/employer relationship. Specifically, the Supreme Court in *Twigg* held: "[I]t is contrary to public policy in West Virginia for an ***employer*** to require an ***employee*** to submit to a drug testing, since such testing portends an invasion of an individual's right to privacy." *Twigg v. Hercules Corp*. 185 W.Va. 155, 406 S.E.2d 52, 56 (W.Va. 1990) (Emphasis added.) The fact that the drug test was random in the *Twigg* case is not a relevant factor to consider in the Court's analysis of the privacy rights at issue.

2. PETITIONER PRODUCED EVIDENCE SUFFICIENT TO REFUTE DAL GLOBAL'S CLAIM THAT SHE HELD AN "SAFETY SENSITIVE" POSITION.

DAL Global continues to rehash the argument that Ms. Daniels possessed a "safety-sensitive" position that justified under the *Twigg* decision mandatory drug testing., The claim that Ms. Daniels held a "safety sensitive" position is clearly refuted by the provisions of the Federal Aviation Administration's ("FAA") "*Safety-Sensitive Job Categories for FAA-Mandated Drug and Alcohol Testing*" bulletin. This publication provides that neither "ticketing" nor "baggage handling or loading", such as performed by Ms. Daniels as a Passenger Service Agent ("PSA"), are considered by the FAA as "safety-sensitive" job functions and therefore are not subject to drug and alcohol testing mandates under FAA regulations. (App.00182).[3] Further, the uncontroverted evidence in this case is that neither Ms. Daniels nor other employees performing the same PSA duties were treated by DAL Global as holding "safety-sensitive" positions that warranted mandatory drug testing. App 00386-00387, 00435. In fact, Ms. Daniel's supervisor during her deposition admitted that ordinary ticket agents like Ms. Daniels, who did not have special ground security duties, were not subject to random drug testing for safety-sensitive reasons. App. 00386-00387. In short, there is no credible evidence that Ms. Daniels' job as a Passenger Service Agency was a "safety-sensitive" position as contemplated by our Supreme

[3] By contrast, the FAA guidance identifies as "safety-sensitive" and subject to mandatory FAA drug and alcohol testing such obvious positions, for example, as flight crewmembers, flight attendants, flight instructors, aircraft maintenance, ground security coordinators, and air traffic control. App. 00173-174.

Court in *Twigg*. Furthermore, to the extent that there is an issue, Ms. Daniels' invasion of privacy claim raises questions of fact that should have been submitted to the jury for a proper determination and not left to the trial court's judgment to resolve per DAL Global's motion for summary judgment.

IV. CONCLUSION

For the above stated reasons, Ms. Daniels respectfully that this Court vacate the trial court's 02/10/23 Final Order Granting Defendant's Motion for Summary Judgment and remand this case back to the trial court for further proceedings consistent with its rulings.

Respectfully submitted,

LISA R. DANIELS

/s/Kurt E. Entsminger
Kurt E. Entsminger, Esq. (WVSB #1130)
Addair Entsminger PLLC
1018 Kanawha Blvd., East, Suite 409
Charleston, WV 25301
304.881.0411
kee@employmentlawyerswv.com
Counsel for Petitioner

/s/W. Scott Evans
W. Scott Evans (WVSB # 5850)
Scott Evans Law PLLC
112 Capitol Street, 4th Floor
Charleston, WV. 25301
304.552.1315
scott@scottevanslaw.com
Counsel for Petitioner

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LISA R. DANIELS,

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v. **No. 23-ICA-212**
(Civil Action #21-C-650)

DAL Global Services, LLC,

Defendant Below, Respondent

CERTIFICATE OF SERVICE

I, W. Scott Evans, Counsel for the Petitioner, Lisa R. Daniels, certify that on 6th day of November, 2023, I served a true and correct electronic copy of the foregoing "***Petitioner's Reply Brief***" with the Clerk of the Intermediate Court of Appeals using the File & ServeXpress electronic filing system, which will send an electronic notification of such filing to the following:

Marla N. Presley, Esq. (WVSB #9771)
Laura C. Bunting, Esq. (WVSB #13740)
Andrew F. Maunz (WVSB #14012)
JACKSON LEWIS P.C.
1001 Liberty Avenue, Suite 1000
Pittsburgh, PA 15222
412.232.0404
Marla.presely@jacksonlewis.com
Laura.bunting@jacksonlewis.com
Andrew.maunz@jacksonlewis.com

/s/W. Scott Evans
Scott Evans (WVSB #5850)
Scott Evans Law PLLC
112 Capitol Street, 4th Floor
Charleston, WV 25301
(p) 304.552.1315
scott@scottevanslaw.com