
IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

**Stafford Glenn Poff,
Sheria Maynard,
Travis Williamson,
Chris Booton,
Sean Johnson,
Chester Maynard,
James Ward,
Paul Baker,
Aaron Farley,
Wade R. Wellman, and
Nathan Triplett,
Plaintiffs Below, Petitioners,**

vs.

**Wayne County Commission,
Defendant Below, Respondent.**

**THE PETITIONERS SHERIA MAYNARD, STAFFORD GLEN POFF AND CHESTER
MAYNARD REPLY BRIEF**

Dwight J. Staples, Esq. (# 3566)
Gail Henderson-Staples, Esq. (#1676)
711 Fifth Avenue
Huntington, WV 25701
Telephone: (304) 523-5732
Facsimile: (304) 523-5169
Email: hhstaples@aol.com

Counsel for the Plaintiffs Below, Petitioners,
Sheria Maynard, Stafford Glen Poff and
Chester Maynard

TABLE OF CONTENTS

	PAGE
<u>TABLE OF AUTHORITIES</u>	ii
I. <u>SUMMARY OF FACTS</u>	1
a. Respondent's Health Insurance Policy Was In Effect In 1998	
b. The Petitioners Sheria Maynard And Chester Maynard Were Only One (1) Year Away And The Petitioner Stafford Glen Poff Five (5) Years Away From Receiving Their Retirement Health Benefits When The 2017 Policy Changes Were Made	
II. <u>ARGUMENT</u>	3
a. Common Law Immunity Does Not Apply To Political Subdivisions	
b. The Circuit Court Correctly Answered The Second Certified Question As A Yes: The Petitioners May Proceed With Claims Sounding In Detrimental Reliance, False And Misleading Statements, Unjust Enrichment, Quantum Meruit And Breach Of Contract To Enforce The Commission Former Health Insurance Premiums For Deputy Sheriffs Who Work 20-24 Years And Retire At the Age of 50	
c. Respondent Erroneously Interprets The Plain Reading Of W.Va. Code §7-5-20	
d. Petitioners Had Earned And Vested Rights That Constituted Property Interests In Their Retiree Health Insurance Benefits	
e. Petitioners Had Contractual Rights In The Retiree Health Insurance Benefits	
III. <u>CONCLUSION</u>	8
IV. <u>CERTIFICATE OF SERVICE</u>	9

TABLE OF AUTHORITIES

CASES

PAGE

Copley v. Mingo County Bd. of Educ.
195 W.Va. 480, 466 S.E.2d 139(W.Va. 1995)

5

Kent vs. Sullivan
2024 WL 2097528, (W. Va. 5/9/2024)

3,4

Warden v. Bank of Mingo
341 S.E.2d 679 (W.Va. 1985)

7

W.Va. Regional Jail & Corr. Facility Auth. v. A.B.
234 W.Va. 492, 766 S.E.2d 751 (2014)

3

STATUTES

PAGE

W. Va. Code, §7-5-20

6

W. Va. Code, §8-12-8

6

W. Va. Code §29-12A-1

3

W. Va. Code §29-12A-3(c)

4

W. Va. Code §29-12A-18(a)(b)(c)

4

I.

SUMMARY OF FACTS

A. *RESPONDENT'S HEALTH INSURANCE POLICY WAS IN EFFECT IN 1998*

Throughout Respondent's Brief, they erroneously imply that the retiree health insurance policy relied upon by the Petitioners began with the **2011 health insurance policy**.

A review of all the pleadings, motions, memorandums, depositions and arguments have been premised on the Wayne County Commission's policy in effect in 1998 (JA-Vol. 7, p. 961) David Pennington served as Wayne County Sheriff from 2001 to 2008. He provided sworn testimony that the Petitioners had a retiree health insurance benefit plan during that time:

- q. Do you know, sir, whether health insurance benefits were offered to retirees while you were sheriff?
- a. While I was sheriff?
- q. Yes.
- a. Well, I'm sure there was, but I can't tell you what they was. I just don't remember.
- q. Okay.
- a. That's been a long time ago.
- q. You were not on the county commission when the policy changed on July 1, 2011. Correct?
- a. That is correct.
(JA-Vol. 6, p. 847)

All seven (7) of the Plaintiffs below received the written policy (JA-Vol. 7, pgs. 919-923).

In **2010**, prior to the 2011 policy change and numerous times thereafter, the Petitioners were advised by the Commissioners that their low wages were offset by their retiree health insurance benefits. (JA-Vol. 7, p. 920).

The changes made in 2011 to the initial policy (JA-Vol. 4, p. 408) were that no employees hired after July 1, 2011 would be eligible for health insurance and that a retiree health account would be established for those employees. The 2011 policy changes did not apply to the Petitioners.

B. THE PETITIONERS SHERIA MAYNARD AND CHESTER MAYNARD WERE ONLY ONE (1) YEAR AWAY AND THE PETITIONER STAFFORD GLEN POFF FIVE (5) YEARS AWAY FROM RECEIVING THEIR RETIREMENT HEALTH BENEFITS WHEN THE 2017 POLICY CHANGES WERE MADE

The Petitioners, Lieutenant Sheria Maynard and Captain Chester Maynard, worked tirelessly as Deputy Sheriffs for nineteen (19) years and had every intention of retiring after twenty (20) years of service with the promised retiree health benefits. The Petitioner Lieutenant Stafford Glen Poff worked tirelessly as a Deputy Sheriff for fifteen (15) years and had every intention of retiring after twenty (20) years of service with the promised retiree health benefits.

After 2017, Lieutenant Sheria Maynard worked another four (4) years vs. one (1) year, then retired in 2021:

- q. Okay. What led you to retire on August 31st, 2021?
- a. Age-wise for me. I was getting -- I felt I was getting old. I was not physically able to do the job any longer. I had pulled myself off the road and started serving civil process, thinking that it would be easier, not as stressful. After a year and a half of it, I realized it was harder than me working the road, more stressful than it was for me to work the road. I had all the civil process, which on average, I'd have 50 to 60 papers in my hand at all times to serve.

So just the stress and being in the car six and seven hours a day nonstop just put a toll on my body. And physically, I just wasn't able to continue to do the job, and I definitely wasn't able to go back out on the road and fight our criminals and protect my co-workers.
(JA-Vol. 4, p. 378)

At the time of her retirement, she had served for twenty-three (23) years. Captain Chester Maynard is still working. Lieutenant Stafford Glen Poff retired in July, 2023 with twenty-three (23) years of service.

II.

ARGUMENT

Since the *W.Va. Regional Jail & Corr. Facility Auth. v. A.B.*, 234 W.Va. 492, 766 S.E.2d 751(2014) decision, the immunity cases have been somewhat confusing regarding governmental entities. Hence, Petitioners initial brief stating that the Respondent was liable under *W.Va. Code §29-12A-1, et seq.* was INCORRECT. Fortunately, the recent case of *Kent v. Sullivan*, 2024 WL 2097528, (W. Va. 5/9/2024) outlines the appropriate analytical approach for governmental immunity.

A. COMMON LAW IMMUNITY DOES NOT APPLY TO POLITICAL SUBDIVISIONS

Respondent has argued that any claims against the Commission for its retiree health insurance policy are barred because it was a discretionary policy. This position is outlined by Respondent counsel's argument before the trial court, specifically counsel argued as follows:

Your Honor, we have raised an Immunity defense. And I will point out in *Maynard* they talked about the claims – the Tort Claims Act and the various provisions of the Tort Claims Act. I want to clarify. The code provision 29-12A-18 (c) says that the Tort Claims Act does not apply to employment. So we are not advancing any statutory immunity claims under the Tort Claims Act. **The Immunity that we're advancing here is purely a common law Immunity that predated the statute, and it has been found to apply to counties and cities.**

I think it was Wellman and Triplett argued that Immunity only applies to the state. And in our reply we've cited to two cases that say that the Immunity does apply equally. This is common law Immunity, not statutory Immunity, but that Immunity can apply equally to the Wayne County Commission. (JA-Vol. 4, p. 7)

As the court recently stated in *Kent v. Sullivan*, 2024 WL 2097528, (W. Va. 5/9/2024) there are three (3) sources of immunity in our jurisprudence:

The first step is to properly categorize the party claiming immunity. In this regard, there are three sources of immunity in our jurisprudence: constitutional or "sovereign" immunity ¹¹, common law "qualified immunity," ¹² and statutory immunity as set forth in the Tort Claims Act. ¹³ **It is well established that that claims for both constitutional and common law qualified immunity are available only for the State, its agencies, officials, and/or employees.** See W.Va. Const. art. VI, §35; See also A.B., 234 W.Va. at 502, 766 S.E.2d at 761 ("In West Virginia, however, the Governmental Tort Claims and Insurance Reform Act, West Virginia Code §29-12A-1 et seq., is limited to political subdivisions and their employees and does not cover claims made against the State or its agencies."); Estate of Grove, 244 W.Va. at 283, 852 S.E.2d at 783 ("[W]e have developed a significant body of law in order to determine whether a state agency, a state employee, or both are entitled to be protected from suit by the doctrine of qualified immunity."). ¹⁴

The application of common law immunity is well established: it does not apply to political subdivisions and their employees. Pursuant to W.Va. Code §29-12A-3(c), the Respondent Commission is a political subdivision and the only available immunity to political subdivisions is the Governmental Tort Claim and Insurance Reform Act.

Moreover, the Tort Claims Act is not applicable to the present case in light of W.Va. Code §29-12A-18 (a)(b) or (c). Those sections state as follows:

The article does not apply to, and shall not be construed to apply to, the following:

- (a) Civil action that seek to recover damages from a political subdivision or any of its employees for contractual liability;
- (b) Civil actions by an employee, or the collective bargaining representative of an employee, against his or her political subdivision relative to any matter that arises out of the employment relationship between the employee and the political subdivision;

- (c) Civil actions by an employee of a political subdivision against the political subdivision relative to wages, hours, conditions, or other terms of his or her employment;

Accordingly, the Respondent Commission is not immune from liability for discretionary acts.

B. THE CIRCUIT COURT CORRECTLY ANSWERED THE SECOND CERTIFIED QUESTION AS A YES: THE PETITIONERS MAY PROCEED WITH CLAIMS SOUNDING IN DETRIMENTAL RELIANCE, FALSE AND MISLEADING STATEMENTS, UNJUST ENRICHMENT, QUANTUM MERUIT AND BREACH OF CONTRACT TO ENFORCE THE COMMISSION FORMER WRITTEN POLICY AND PRACTICE OF PAYING A PERCENTAGE OF HEALTH INSURANCE PREMIUMS FOR DEPUTY SHERIFFS WHO WORK 20-24 YEARS AND RETIRE AT THE AGE OF 50.

Petitioners' initial brief discussed the aforementioned claims with the exception of their quantum merit claim. This court has expressly allowed quantum meruit recovery for contracts that are made in violation of statutory law. See *Copley v. Mingo County Board of Educ.*, 195 W.Va. 480, 466 S.E.2d 139 (W.Va. 1995) The Respondent knowingly received the benefits of the Petitioners' services.

The retiree health insurance benefits relied upon by the Petitioners constitutes deferred compensation. Deferred compensation is simply a term for money or remuneration an employer gives to an employee for services on the job. Herein, the Petitioners and the Respondent acknowledged that the Petitioners were receiving low wages throughout the years and, more importantly, the retiree health insurance policy would remunerate them for their services as deputy sheriffs. Deferred compensation is not limited to the form of pension.

It would be inconceivable to permit Respondent to avoid full compensation to the Petitioners for the reasonable value of the services provided. Claims of quantum meruit are based on the

principle that it is unjust for the party to receive a benefit at the expense of another party without providing fair compensation.

**C. RESPONDENT ERRONEOUSLY INTERPRETS THE PLAIN READING OF
W.VA. CODE §7-5-20**

In essence, the Respondent is hiding behind W.Va. Code §7-5-20 to excuse their performance in engaging in tendering written offers that, at the time they were made, were a violation of the statute. The Respondent erroneously interprets that W.Va. Code §7-5-20 mandatorily authorizes the Commission to require retirees to pay health insurance premiums. Contrarily, the code specifically states that the county can secure *"...any other policy or policies of group insurance which in the discretion of the county court bear a reasonable relationship to the foregoing coverages"* (health, hospital care, etc.) and *"The county court is hereby authorized and empowered to pay the entire premium cost, or any portion thereof of said group policy."*

W.Va. Code §7-5-20 is almost entirely identical to W.Va. Code §8-12-8: the difference is that the former code section applies to County Commissions while the latter code section applies to municipalities. Like W.Va. Code §7-5-20, §8-12-8 specifically authorizes the municipalities "...to negotiate for, secure and adopt health insurance policies and they have the authority to pay the entire premium cost, or any portion thereof."

Herein, the county commission negotiated for a health insurance plan whereby they would pay a certain portion of the health insurance premium if the deputy sheriffs worked a certain number of years. Pursuant to W.Va. Code §7-5-20, the retiree health insurance plan was approved in writing by the insurance commissioner. The statute does not restrict the County Commission from providing individual retiree health insurance benefits of deputies after twenty (20) years. It does however

permit an employee to pay their premiums after retirement akin to the Consolidated Omnibus Budget Reconciliation Act (COBRA) Act of 1985 (COBRA).

D. PETITIONERS HAD EARNED AND VESTED RIGHTS THAT CONSTITUTED PROPERTY INTERESTS IN THEIR RETIREE HEALTH INSURANCE BENEFITS

Respondent erroneously argues that the Petitioners do not have property interests in their retiree health insurance benefits. Their reliance for 15 and 19 years on a written policy is a property interest. A discretionary policy cannot retroactively void or diminish property rights that the deputy sheriffs have already vested in. Property interests can derive from contractual obligations or other written policies where a legitimate expectation of continued health benefits has been created.

E. PETITIONERS HAD CONTRACTUAL RIGHTS IN THE RETIREE HEALTH INSURANCE BENEFITS

Herein, Respondent made a written offer to the Petitioners (work for twenty years and they will pay 90% of the retiree health insurance premium). The Petitioners accepted the offer by continually working: consideration was clearly given. See *Warden v. Bank of Mingo*, 341 S.E.2d 679 (W.Va. 1985). To show a contract was made, an offer to contract must be made, the offer must be accepted and consideration must be given. Health insurance benefits provided by the county commission to the deputy sheriffs constitute an integral part of their compensation package. The Petitioners relied on those benefits to maintain their health and well-being.

III.

CONCLUSION

Wherefore, the Petitioners respectfully request that the Court answer the Circuit Court's first certified question in the affirmative and find that the Defendant's written policy and practice of paying ninety percent (90%) of healthcare insurance premium for deputy sheriffs who work 20-24 years and retire at the age of 50 created a property interest and contractual rights to retiree health insurance benefits. Additionally, the Petitioners respectfully request that the Court affirm the Circuit Court's affirmative answer to the Plaintiffs may proceed with claims based on negligence, detrimental reliance, false and misleading statements, unjust enrichment, quantum meruit and breach of contract to enforce Defendant's written policy and practice of paying ninety percent (90%) of healthcare premiums for deputy sheriffs who work 20-24 years and retire at the age of 50.

SHERIA MAYNARD
STAFFORD GLEN POFF &
CHESTER MAYNARD
BY COUNSEL

s/Dwight J. Staples
Dwight J. Staples, Esq. (3566)
Gail Henderson-Staples, Esq. (1676)
Co-Counsel for the Plaintiffs Below, Petitioners
Henderson, Henderson & Staples, L.C.
711 Fifth Avenue
Huntington, WV 25701
Telephone: (304) 523-5732
Facsimile: (304) 523-5169
E-mail: hhstaples@aol.com

STATE OF WEST VIRGINIA SUPREME COURT OF APPEALS

Stafford Glenn Poff,
Sheria Maynard,
Travis Williamson,
Chris Booton,
Sean Johnson,
Chester Maynard,
James Ward,
Paul Baker,
Aaron Farley,
Wade R. Wellman, and
Nathan Triplett,
Plaintiffs Below, Petitioners,

vs. (No. 24-105)

Wayne County Commission,
Defendant Below, Respondent.

CERTIFICATE OF SERVICE

I, Dwight J. Staples, Esq. Counsel for Petitioners/Plaintiffs Below Sheria Maynard, Stafford Glen Poff and Chester Maynard hereby certifies that a copy of the foregoing was served by E-filing/File & Serve Xpress, on this **13th** day of **June, 2024** upon the following:

Webster J. Arceneaux, III, Esq.
Sandra Henson Kinney, Esq.
LEWIS GLASSER, PLLC
Post Office Box 1746
Charleston, WV 25326
Telephone: (304) 345-2000
Facsimile: (304) 343-7999
Counsel for Defendant in Civil Action Nos.
19-C-56, 19-C-57, 19-C-60 and 19-C-61

Jacob D. Layne, Esq.
Pullin, Fowler, Flanagan, Brown &
Poe, PLLC
901 Quarrier Street
Charleston, WV 25301
Telephone: (304) 344-0100
Counsel for Defendant in
Civil Action No. 19-C-31

By s/Dwight J. Staples
Dwight J. Staples, Esq. (#3655)
Gail Henderson-Staples, Esq. (#1676)
HENDERSON, HENDERSON & STAPLES, L.C.
711 Fifth Avenue,
Huntington, West Virginia 25701
Telephone: (304) 523-5732
Facsimile: (304) 523-5169