FILED
September 22, 2026
C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

Mark Scafella,
Petitioner Below, Petitioner

v.) No. 24-49 (22-ICA-173)

Erie Insurance Company and
Stanley Geho,
Respondents Below, Respondents

MEMORANDUM DECISION

Petitioner, Mark Scafella, appeals the decision of the Intermediate Court of Appeals of West Virginia ("ICA"), affirming the Circuit Court of Marshall County's order granting Respondents, Erie Insurance Company ("Erie") and Stanley Geho (a property adjuster for Erie), summary judgment on the petitioner's declaratory judgment claim.[1] *See Scafella v. Erie Ins. Co.*, 249 W. Va. 79, 894 S.E.2d 556 (Ct. App. 2023). The petitioner argues that the ICA erred in affirming the circuit court's order, because: (1) the "efficient proximate cause" doctrine applies to afford coverage under the subject insurance policy ("the policy") because the petitioner's fire loss was not related to business activity; (2) a factual issue remains as to whether one or two separate structures existed; (3) a factual issue remains as to whether Erie waived application of the business pursuits exclusion; and (4) an exception within the policy's business pursuits exclusion applies. Upon our review, finding no substantial question of law and no prejudicial error, we determine that oral argument is unnecessary and that a memorandum decision summarily affirming the ICA's decision is appropriate. *See* W. Va. R. App. P. 21(c).

After his barn and its contents were destroyed by fire, the petitioner filed an insurance claim with Erie. Erie denied a portion of the claim; as a result, the petitioner filed this action asserting various claims, including a request for declaratory judgment as to coverage for the denied portion of the claim. The circuit court bifurcated the declaratory judgment portion from the remaining claims, and the respondents filed a motion for summary judgment. The respondents asserted that denial of coverage was proper under the business pursuits exclusion contained in the subject policy. More specifically, the respondents argued that only one structure was damaged by fire, which structure consisted of a barn with an addition, referred to as "the milk house." The petitioner operated a business in the milk house, known as "Olivia's," that consisted of a storefront and a butcher. In response, the petitioner asserted that there was coverage for the loss to the barn where the fire originated because the barn and milk house were two separate structures and Olivia's was being operated out of the milk house alone. The petitioner also argued that Erie provided

[1] The petitioner is represented by counsel John R. Angotti, David J. Straface, and Chad C. Groome. The respondents are represented by counsel Amy M. Smith.

coverage and payment for personal property within the barn despite the barn being utilized for other business ventures: a commercial beef farming operation and a future restaurant and venue space. Accordingly, the petitioner argued that the structure was covered under the "claw-back" language contained within the business pursuits exclusion of the policy (the "claw-back" provision). Lastly, the petitioner alleged that the respondents were aware that the petitioner was engaged in or intended to engage in business and therefore waived Erie's right to deny coverage.

By order entered January 18, 2022, the circuit court determined that the barn and the milk house comprised one structure. Thereafter, on September 12, 2022, the court entered an order granting the respondents' motion for summary judgment and elaborating on its prior determination that one structure existed. Having concluded that because one structure existed, which included the milk house where Olivia's was being operated, the court determined that the business pursuits exclusion applied and coverage was precluded for the fire damage to the structure. The court further ruled that because the covered contents of the barn were personal property and not business property the "claw-back" provision did not apply. Finally, the court concluded that the petitioner did not establish waiver.

The petitioner appealed to the ICA, which affirmed the circuit court's order granting summary judgment to the respondents. *See Scafella*, 249 W. Va. at 88, 894 S.E.2d at 565. The ICA agreed with the circuit court that: (1) one structure existed; (2) the business pursuits exclusion is unambiguous and applied to preclude coverage for the petitioner's claim; (3) the "claw-back" provision did not apply; and (4) Erie did not waive its coverage defenses. The petitioner appeals.

On appeal to this Court, the petitioner contends the lower courts erred in granting and affirming summary judgment in favor of the respondents because the loss to the barn was not related to business activity and factual issues remain as to whether one structure existed, whether Erie waived application of the business pursuits exclusion, and whether the "claw-back" provision is applicable. Upon our review, finding no substantial question of law and no prejudicial error, we determine that oral argument is unnecessary and that a memorandum decision summarily affirming the ICA's decision is appropriate. We apply a de novo standard of review to an ICA decision from a circuit court's entry of summary judgment. Syl. Pt. 1, *Moorhead v. W. Va. Army Nat'l Guard*, 251 W. Va. 600, 915 S.E.2d 378 (2025). Here, upon consideration of the record and briefs, we conclude there is no reversible error based on the assignments of error presented to this Court, and we agree that the respondents were entitled to summary judgment as to their request for declaratory judgment. Accordingly, we summarily affirm.

Affirmed.

ISSUED: September 22, 2026

CONCURRED IN BY:

Chief Justice C. Haley Bunn
Justice William R. Wooton
Justice Charles S. Trump IV
Justice H. L. Kirkpatrick
Justice James W. Flanigan