

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

FILED

September 25, 2026

**TIM S. HAREN,
Defendant Below, Petitioner**

ASHLEY N. DEEM, CHIEF DEPUTY CLERK
INTERMEDIATE COURT OF APPEALS
OF WEST VIRGINIA

v.) No. 26-ICA-138 (Cir. Ct. of Cabell Cnty. Case No. CC-06-2022-C-356)

**AMERICAN PROSTHETIC & ORTHOTIC CARE, LLC,
by Shanshad Ahmed,
Plaintiff Below, Respondent**

MEMORANDUM DECISION

Petitioner Tim Haren appeals the Final Judgment Order entered by the Circuit Court of Cabell County on March 25, 2026, containing the court's findings following a bench trial. In its order, the court entered judgment against Mr. Haren, among others,¹ and in favor of Respondent American Prosthetic & Orthotic Care, LLC by Shanshad Ahmed.² No reply was filed.

This Court has jurisdiction over this appeal pursuant to West Virginia Code § 51-11-4 (2026). After considering the parties' arguments, the record on appeal, and the applicable law, this Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision affirming the circuit court's order is appropriate under Rule 21 of the West Virginia Rules of Appellate Procedure.

The record on appeal is limited, which constrains the recitation of facts. On February 11, 2019, respondent contracted with petitioner, the owner and operator of Tim's Handyman Service, to complete various construction and renovation projects at respondent's place of business and an adjoining apartment. The contract price was \$15,500.

On October 12, 2022, respondent filed a complaint alleging that petitioner breached the contract by accepting payment without completing all contemplated work; that the

¹ The court's ruling entered a joint judgment against three co-defendants: Tim S. Haren, Jamie Savage, and Tim's Handyman Service. Mr. Haren is the only party to timely appeal the circuit court's order. The Court notes that it previously refused Jamie Savage's motion for leave to file an amended notice of appeal and participate in this matter on June 2, 2026. Tim's Handyman Service did not appeal the underlying ruling.

² Petitioner is self-represented. Respondent is represented by Jason P. Goad, Esq.

work performed was defective, not of workmanlike quality, and unfit for its intended use; and that petitioner fraudulently misrepresented both that he would return to complete the work and that the work already performed complied with the contract. In the record below, petitioner's last name is misspelled as "Harn" instead of "Haren."

Petitioner filed an answer and responded to the allegations in the complaint on February 21, 2023, identifying himself as "Defendant Tim Haren." Notably, he did not raise any issue regarding the misspelling of his last name or challenge service of process. According to the record, petitioner made no further appearance in the case. The court held a scheduling conference on January 8, 2026, and entered a corresponding order on February 27, 2026, noting petitioner's failure to appear and setting a bench trial for March 24, 2026. The clerk mailed a copy of this order to petitioner. On January 28, 2026, respondent served petitioner by regular mail with requests for admissions and filed a certificate of service the same day. Petitioner did not respond. On March 19, 2026, respondent filed a motion to have the requests for admissions deemed admitted and served a copy on petitioner by regular mail. At all times, petitioner's mailing address remained the same.

The bench trial was held as scheduled, and the court memorialized the proceeding in the order now on appeal. That order reflects that petitioner did not appear. The court granted respondent's motion to deem the requests for admissions admitted. The court then heard the testimony of Shanshad Ahmed and considered an expert report concerning a structural assessment of respondent's premises conducted on January 25, 2025, which identified deficiencies in the work performed by petitioner and provided repair options and cost estimates.

Based on the evidence, the court found that an enforceable contract existed; that petitioner failed to complete the contracted work, constituting a breach; that the work performed was not of workmanlike quality, also constituting a breach; and that the work was unfit for its intended use, likewise constituting a breach. The court further found that respondent relied on materially false and misleading statements by petitioner, and that those statements amounted to fraud. The court noted uncontroverted evidence of a conscious conspiracy between all defendants.

The court determined that respondent was entitled to special damages in the amount of \$45,000 for remediation of the property and \$7,000 in attorney's fees based on the finding of fraud. The court also awarded prejudgment interest from the date of the contract, totaling \$20,013.38. In sum, the court entered judgment jointly and severally against petitioner and the other defendants in the amount of \$72,013.38. The order additionally noted the prior misspelling of petitioner's last name but found the clerical error to be harmless.

Petitioner's appeal followed. In this appeal, we apply the following standard of review:

In reviewing challenges to the findings and conclusions of the circuit court made after a bench trial, a two-pronged deferential standard of review is applied. The final order and the ultimate disposition are reviewed under an abuse of discretion standard, and the circuit court's underlying factual findings are reviewed under a clearly erroneous standard. Questions of law are subject to a *de novo* review.

Syl. Pt. 1, *Pub. Citizen, Inc. v. First Nat'l Bank in Fairmont*, 198 W. Va. 329, 480 S.E.2d 538 (1996).

Petitioner argues on appeal that the misspelling of his surname in earlier filings rendered all prior service of process defective and, as a result, deprived the circuit court of personal jurisdiction over him. He extends this rationale to claim that he did not receive proper notice of respondent's requests for admissions or the court's order setting the bench trial and therefore asserts that the court's subsequent rulings and judgment order are void. Petitioner also challenges the damages award as excessive. We find no merit in these contentions as the record does not support petitioner's jurisdictional or notice arguments and his remaining challenges were not preserved for appellate review.

Regarding the initial misspelling of petitioner's name, we find no error in the circuit court's application of harmless error. *See* W. Va. R. Civ. P. 61. Precedent views the misspelling of a party's name as a misnomer and not an invalidating defect. "A misnomer means nothing more than a party is styled in other than his correct name. The law has never regarded this as a serious procedural problem. . . . Ordinarily, a misnomer is cured by the judgment in that the objection is deemed waived." *Johnson v. Huntington Moving & Storage, Inc.*, 160 W. Va. 796, 800, 239 S.E.2d 128, 131 (1977). "After judgment is obtained, a misnomer is cured by virtue of Rule 61 of the West Virginia Rules of Civil Procedure[.]" *Id.* at 797, 239 S.E.2d at 129, syl. pt. 5 (citation modified).

This principle is not new; in fact, over ninety years ago it was observed:

Where the right party is sued, and process is served on him, though both the writ and the return run in a wrong name, the error may be cured by correcting the name. In such situation the error is in name merely and not in identity of person; the right party being before the court there can be no possible prejudice to him by inserting his correct name in the writ and return.

Hayhurst v. J. Kenny Transfer Co., 110 W. Va. 395, 397, 158 S.E. 506, 507 (1931) (citations omitted). Furthermore, an objection to a misnomer must be raised either by answer or by affidavit pursuant to West Virginia Code § 56-4-29 (1882). *Johnson* at 796, 239 S.E.2d at 129, syl. pt. 4, in part.

In this case, the record demonstrates that petitioner's answer did not raise an objection to the misnomer; instead, he responded to each paragraph of the complaint as "Defendant Tim Haren." The record further shows that, after filing his answer, petitioner ceased participating in the litigation altogether. Accordingly, petitioner's answer demonstrates that he understood that he was the defendant identified in the complaint. Because he failed to raise a proper objection to the misnomer or service in that pleading, he waived any challenge related to the misnomer and the court's personal jurisdiction over him.^{3 4}

Petitioner's challenge to service of process is likewise waived. Rule 12(h)(1) of the West Virginia Rules of Civil Procedure provides that the defense of insufficient service of process, set forth in Rule 12(b)(5), is waived if not raised in a pre-answer motion or in the responsive pleading itself. As explained in the *Litigation Handbook on West Virginia Rules of Civil Procedure*, an objection to the sufficiency of service must be made timely either in such a motion or, if no motion is filed, in the answer; failure to do so constitutes a waiver. Franklin D. Cleckley, Robin J. Davis, & Louis J. Palmer, Jr., *Litigation Handbook on West Virginia Rules of Civil Procedure*, § 12(h)(1), at 417 (4th ed. 2012). The *Handbook* further notes that a defendant may also waive the defense through conduct inconsistent with asserting it. *Id.* In this case, petitioner received actual notice of the action when he was served with the summons and complaint and subsequently filed an answer. Rather than objecting to the sufficiency of service, he simply responded to the allegations of the complaint and then abandoned the litigation. Under these circumstances, petitioner has waived any challenge to service of process.

Petitioner's contention that he was not properly given notice of respondent's requests for admissions and the circuit court's order setting the case for trial is also without merit. "It is a well-established principle of law that a letter properly addressed, stamped and mailed is presumed to have been duly delivered to the addressee." *Dunn v. Watson*, 211 W. Va. 418, 421, 566 S.E.2d 305, 308 (2002) (citation modified). Here, petitioner failed to appear below and offer any evidence to the circuit court to rebut this legal presumption. Therefore, we conclude that he received both the requests for admissions and the order setting the bench trial. Accordingly, we cannot discern that the circuit court erred

³ Petitioner did not assert an assignment of error alleging that the circuit court lacked subject matter jurisdiction over the complaint. However, we find nothing in the record that would support such a challenge on appeal.

⁴ We further note that even if petitioner did not receive proper service of process, his argument would still fail because he filed an answer without contesting jurisdiction. By doing so, he made a general appearance and waived any challenge to service. *See* Syl. Pt. 5, *Lemley v. Barr*, 176 W. Va. 378, 343 S.E.2d 101 (1986); Syl. Pt. 1, *Manypenny v. Graham*, 149 W. Va. 56, 138 S.E.2d 724 (1964).

in proceeding with the bench trial or in deeming the requests for admissions admitted under Rule 36 of the West Virginia Rules of Civil Procedure.

Lastly, petitioner argues that the damages and attorney's fees awarded by the circuit court were excessive. However, our review of this issue is foreclosed due to petitioner's failure to appear at the bench trial. *See Shaffer v. Acme Limestone Co., Inc.*, 206 W. Va. 333, 349 n.20, 524 S.E.2d 688, 704 n.20 (1999) ("Our general rule is that nonjurisdictional questions . . . raised for the first time on appeal, will not be considered."). Moreover, "objections must be made in the lower court to preserve such issues for appeal." *In re R.T.*, No. 23-ICA-115, 2023 WL 6290594, at *2 (W. Va. Ct. App. Sept. 26, 2023) (memorandum decision) (citation modified). On this issue, petitioner's argument directly challenges the evidence below and the merits of the circuit court's application of law to the facts; these are purely nonjurisdictional issues. Consequently, because petitioner did not appear below to challenge respondent's evidence, present his own case, and place objections to the court's rulings on the record, his arguments have been waived. Therefore, petitioner cannot establish error below, and as a result, we affirm the decision of the circuit court.

Accordingly, we affirm.

Affirmed.

ISSUED: September 25, 2026

CONCURRED IN BY:

Chief Judge Daniel W. Greear
Judge Charles O. Lorensen
Judge S. Ryan White