STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

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C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

New China Restaurant, Inc. and Philip Dy Chin, Petitioners,

v.) **No. 24-403** (ICA No. 23-ICA-175)

City of Charleston, Respondent.

MEMORANDUM DECISION

Petitioners New China Restaurant, Inc. and Philip Dy Chin appeal the decision of the Intermediate Court of Appeals of West Virginia ("ICA"), affirming the Circuit Court of Kanawha County's order that granted Respondent City of Charleston's motion for summary judgment.[1] *See New China Rest., Inc. v. City of Charleston*, No. 23-ICA-175, 2024 WL 1733727 (W. Va. Ct. App. Apr. 22, 2024) (memorandum decision). On appeal, Petitioners' primary argument is that the City's motion for summary judgment should have been denied due to the existence of disputed issues of material fact. Upon our review, finding no substantial question of law and no prejudicial error, we determine that a memorandum decision summarily affirming the ICA's decision is appropriate. *See* W. Va. R. App. P. 21(c).

On February 17, 2020, several hundred bricks fell from a two-story brick building located in Charleston, West Virginia. Mr. Chin owned the building and the former New China Restaurant which was located therein. The City immediately took corrective safety measures to protect the public from the potential dangers caused by the falling bricks. Additionally, the City's code enforcement agency inspected the property and concluded that the building was likely to partially or fully collapse if remedial measures were not taken. The City informed Mr. Chin that the building posed a public safety hazard that required corrective measures. Petitioners retained legal counsel and hired a professional engineer who performed an independent structural evaluation of the building on February 19, 2020. This independent evaluation concluded that (1) the building was dilapidated and that *immediate* and extensive repairs were necessary to ensure the safety of the public and to prevent further collapse of the building's structural system; and (2) the cost of fixing these problems would exceed the building's value. On February 21, 2020, the City's Building Commissioner provided Petitioners with a final written notice to take the

[1] Petitioners appear by counsel Richard J. Lindroth. Respondent appears by counsel Joseph J. Baldwin and Jason A. Neal.

corrective actions recommended in the independent evaluation by February 24, 2020. The notice stated that if the work was "not completed in that time period and an immediate threat to public safety remains, the City will be forced to demolish the building at your ultimate expense." Petitioners hired a mason to remove fallen and loose bricks from the building's exterior but did not take any further corrective action by the February 24, 2020, deadline. Because Petitioners failed to take sufficient corrective action by the deadline, the City notified Petitioners of its intent to demolish the building.[2] On February 25, 2020, Petitioners sought to halt the demolition by filing a motion seeking a temporary restraining order and a preliminary injunction in the Circuit Court of Kanawha County. The circuit court denied this motion, noting that both the City's inspection and the expert report provided by Petitioners' engineer concluded that the building posed an immediate threat to the public. Petitioners did not appeal this ruling. The City demolished the building shortly thereafter and placed a demolition lien on the real property where the building was located.

Approximately one year later, on February 23, 2021, Petitioners filed the underlying complaint against the City, seeking damages related to the City's demolition of the building.[3] The City filed its answer and a counterclaim, seeking a judgment against Petitioners for the outstanding balance of the demolition lien. Following discovery, the City filed its motion for summary judgment on Petitioners' claims and on its counterclaim.

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[2] Petitioners contend that on the morning of February 24, 2020, a City official informed Petitioners' legal counsel that the brick removal was sufficient corrective action to temporarily halt the building's demolition. However, according to Petitioners, on the evening of February 24, the City informed Petitioners that the demolition of the building would begin the following day, February 25, 2020. Petitioners argue that the foregoing created "a question of fact [as to] whether the City acted reasonably in destroying the building." The ICA rejected this argument, finding that Petitioners' argument was cursory. *New China Rest., Inc.*, 2024 WL 1733727, at *4. We agree with the ICA. Petitioners' skeletal argument failed to address how the foregoing created an issue of *material* fact that could potentially entitle Petitioners to relief on a specific cause of action. *See State, Dep't of Health and Human Res. v. Robert Morris N.*, 195 W. Va. 759, 765, 466 S.E.2d 827, 833 (1995) ("A skeletal 'argument,' really nothing more than an assertion, does not preserve a claim[.]" (internal citations omitted)).

[3] The complaint did not set forth specific causes of action. Instead, the complaint includes thirteen paragraphs reciting the facts Petitioners rely upon, followed by seven paragraphs advancing general claims including that the City "breached its duty to use the least restrictive alternative;" "effectively condemned the structure without due process of law and just compensation;" that the demolition "was an ultra vires act;" that the City "slandered the title" of Petitioners; and that the City did not comply with certain city and municipal code sections. The complaint does not identify the specific elements of any of these general claims.

On March 31, 2023, the circuit court granted summary judgment in favor of the City, finding, in relevant part, that (1) the City's preliminary investigation and the independent evaluation obtained by Petitioners demonstrated that the building was unsafe, dangerous, and detrimental to public safety; and (2) the City complied with applicable state and municipal codes before demolishing the building.[4] Additionally, the circuit court ruled in the City's favor on the demolition lien and entered judgment for the City for $58,539.54 plus costs and interest.

Petitioners appealed the circuit court's ruling to the ICA, asserting two assignments of error. First, Petitioners argued that summary judgment was not appropriate because genuine issues of material fact remained as to whether the City acted reasonably in its demolition of the building. The ICA rejected this argument, describing it as cursory and finding that Petitioners failed "to cite to any specific authority or to the appellate record" to demonstrate that genuine issues of material fact remained. *New China Rest., Inc.*, 2024 WL 1733727, at *4. Further, the ICA concluded that the circuit court properly found that the City acted within its authority when it demolished the building; that "two separate evaluations of Petitioners' building revealed it to be in an advanced stage of structural deterioration and on the verge of whole or partial collapse, which required immediate and extensive repairs to abate the risk that the building posed to the safety of the public[;]" and that Petitioners were provided with proper notice of the building's unsafe conditions, informed of the necessary corrective measures to undertake, and failed to address the building's unsafe conditions in a timely manner. *Id.* Therefore, the ICA rejected the first assignment of error. Next, Petitioners argued that the circuit court erred "by finding its February 25, 2020, order denying [Petitioners'] request for a temporary injunction was res judicata for the purposes of summary judgment." *Id.*, at *5. The ICA rejected this argument, explaining that

> [l]ike their first assignment of error, this argument is also without supporting authority or citation to the record. Aside from mentioning the temporary injunction as part of the procedural history of this case, we find that nothing within the circuit court's summary judgment order suggests that it attributed any preclusive effect to that prior ruling to grant summary judgment. Moreover, substantively, [Petitioners] attempt to reargue the merits of its temporary injunction motion. However, the circuit court's denial of the temporary injunction was not appealed, has become a final order, and is outside the scope of this appeal

[4] *See generally* W. Va. Code § 8-12-16 (2017); Charleston, W. Va., Code ch. 14, art. vi, §§ 14-251 - 260 (2017). We note that that West Virginia Code § 8-12-16 was amended in June of 2020. Because the relevant events in this case occurred prior to the amendment, the 2017 version of the statute applied.

Id.

Following entry of the ICA's decision, Petitioners appealed to this Court.

Our standard of review is de novo. *See* Syl. Pt. 1, *Moorhead v. W. Va. Army Nat'l Guard*, 251 W. Va. 600, 915 S.E.2d 378 (2025) ("On appeal of a decision from the Intermediate Court of Appeals of West Virginia, the Supreme Court of Appeals of West Virginia applies a de novo standard of appellate review to a circuit court's entry of summary judgment."). On appeal, Petitioners assert the same assignments of error that they raised before the ICA: (1) summary judgment was not appropriate due to the existence of genuine issues of material fact; and (2) the circuit court erred by finding that its order denying Petitioners' request for a temporary restraining order/preliminary injunction was res judicata for the purposes of considering the City's summary judgment motion. Upon consideration of the record and briefs, we conclude that there is no reversible error based on the two assignments of error presented to this Court. We agree with the ICA's analysis rejecting Petitioners' arguments. Accordingly, we summarily affirm.

For the foregoing reasons, we affirm the ICA's April 22, 2024, decision.

Affirmed.

ISSUED: November 5, 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