FILED
November 13, 2026
released at 3:00 p.m.
C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

HP, Inc.,
Petitioner Below, Petitioner

v.) No. 24-449 (ICA No. 23-ICA-203; Putnam County No. CC-40-2021-C-142)

Judith Thomas,
Respondent Below, Respondent

MEMORANDUM DECISION

Petitioner, HP, Inc. ("HP"), appeals the June 13, 2024, memorandum decision of the Intermediate Court of Appeals of West Virginia ("ICA"), which affirmed, in part, the Circuit Court of Putnum County's default judgment award to Respondent, Judith Thomas, reversed, in part, and set aside its award of attorney fees, and vacated its punitive damages award, remanding for further proceeding on that issue.[1] *See HP, Inc. v. Thomas*, No. 23-ICA-203, 2024 WL 2977174 (W. Va. Ct. App. 2024) (memorandum decision). In this appeal, HP contends that the ICA erred by (1) affirming the circuit court's finding that the jurisdictional threshold was met, (2) affirming the circuit court's denial of HP's Rule 60(b) motion to set aside the default judgment, and (3) not reversing the award of punitive damages and only vacating and remanding for further consideration.[2] Upon review, we find no substantial question of law and no prejudicial error. Therefore, a memorandum decision affirming the ICA's decision is appropriate. *See* W. Va. R. App. P. 21(c).

Facts and Procedural History

Ms. Thomas purchased a HP laptop on July 15, 2019, for $1,527.98. She later purchased a three-year extended warranty providing coverage from June 26, 2020, to June 26, 2023, and enrolled in a subscription-based printer ink program ("Instant Ink"). Ms. Thomas began to have issues with her laptop and contacted HP through the warranty process. Because technicians were unable to repair her laptop, HP replaced the original laptop under warranty. However, the replacement failed after approximately six months, resulting in the loss of Ms. Thomas's stored data. As with the original laptop, technicians were unable to repair the replacement laptop. She again contacted HP through the warranty process. Ms. Thomas claimed the warranty afforded her, at her election, three remedies—repair, replacement, or a purchase-price refund. Ms. Thomas requested a refund; HP refused, offering only repair or a depreciated gift card.

[1] HP is represented by counsel Gabriele Wohl, Patrick C. Timony, and Grayson N. O'Saile. Judith Thomas is self-represented.

[2] For organization purposes, these assignments of error have been reordered.

Thereafter, on September 2, 2021, Ms. Thomas, a licensed but inactive attorney, filed the underlying action in the Circuit Court of Putnam County to enforce the extended warranty provisions regarding her replacement laptop, obtain a refund for alleged overcharges for her Instant Ink subscription, and recover other damages and costs. She sought an award of $10,000, plus costs, attorney fees, and such other relief as the Court or jury deemed proper. Ms. Thomas served HP through the Secretary of State on September 13, 2021. HP concedes it was served, but it did not file an answer. On February 8, 2022, Ms. Thomas moved for default judgment. In her motion she stated:

> WHEREFORE, for the forgoing reasons, those later assigned, and for those this [c]ourt may deem appropriate, Plaintiff Judith P. Thomas respectfully requests this [c]ourt enter default judgment against Defendant HP Inc., and award her $15,000 for compensatory, consequential, and incidental damages, including loss of use, annoyance and inconvenience, attorney fees and costs, and $25,000 in punitive damages for HP's material misrepresentations, willful and reckless conduct.

After an evidentiary hearing regarding Ms. Thomas's damages, at which HP failed to appear, the circuit court entered default judgment against HP. In an amended final order for default judgment, entered on November 27, 2022, the circuit court awarded Ms. Thomas $15,507.92 in compensatory damages, $20,000 in punitive damages, $9,130.33 in costs and attorney fees, with 4% post-judgment interest.[3] The compensatory damages award included sums for the defective laptop's purchase price; the cost of purchasing another laptop; unauthorized and excessive charges for the Instant Ink subscription; and annoyance and inconvenience. The costs included Ms. Thomas's out-of-pocket costs as well as attorney fees in the amount of $8,800.00.[4]

HP first appeared in the case on January 19, 2023, filing a motion pursuant to Rules 60(b)(1) and (4) of the West Virginia Rules of Civil Procedure,[5] seeking to vacate the default judgment. HP admitted it received service of the original complaint, did not file an answer, and failed to appear in the case for roughly eighteen months due to an internal misrouting of the complaint to an employee who was on a medical leave of absence. However, HP did not allege

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[3] The circuit court's order lists compensatory damages as "$15,507.92" in the paragraph detailing the sums included in that award but reflects compensatory damages of "$14,507.92" in the order's next paragraph ordering such award. We do not address this clerical error as it does not impact the decision in the case.

[4] During the hearing on damages, Ms. Thomas testified that she had spent 29.4 hours working on the case and that the rate she last charged when she was in private practice was $300 per hour.

[5] The 1998 version of Rule 60(b) of the West Virginia Rules of Civil Procedure, which was in effect at time of the underlying events, provided, in pertinent part: "On motion and upon such terms as are just, the court may relieve a party or party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) Mistake, inadvertence, surprise, excusable neglect, or unavoidable cause; . . . (4) the judgment is void[.]"

"excusable neglect" in the failure to answer the complaint. Instead, HP stated two grounds for the relief requested. First, HP argued that the judgment was void because the circuit court did not have subject matter jurisdiction. In that regard, HP claimed that clauses within the warranty contracts limited Ms. Thomas's recovery to the purchase price of her laptop which was under the $7,500 jurisdictional threshold.[6] Second, HP argued that the amended default judgment order contained mistakes in that it awarded Ms. Thomas damages prohibited by either contract or law and allowed Ms. Thomas to proceed on claims that she waived. Following a hearing, the circuit court denied HP's motion to set aside the default judgment, finding that HP failed to show good cause or any ground for vacating the judgment under Rules 55(c) and 60(b). Specifically, the court noted that "HP does not contend the faulty routing was unavoidable or excusable," and found that West Virginia Code § 46A-6-107(a)[7] prohibits HP's attempt to limit Ms. Thomas's remedies based on warranty limitations.

HP appealed the circuit court's order denying its motion to set aside the default judgment to the ICA. By memorandum decision entered on June 13, 2024, the ICA found that the circuit court had subject matter jurisdiction because the complaint alleged $10,000 in damages; and that HP had failed to establish "excusable neglect" to warrant setting aside the default judgment pursuant to Rule 60(b)(1). The ICA reversed and set aside the attorney fee award on the basis that self-represented litigants are not permitted to recover fees. *See Smith v. Bradley*, 223 W. Va. 286, 673 S.E.2d 500 (2007) (explaining that self-represented litigants cannot recover attorney fees because they have not paid them).[8] Finally, the ICA vacated the punitive damages award for lack of an analysis as required by *Garnes v. Fleming Landfill, Inc.*, 186 W. Va. 656, 413 S.E.2d 897 (1991), and *Perrine v. E.I. du Pont de Nemours & Co.*, 225 W. Va. 482, 694 S.E.2d 815 (2010), and remanded for further proceedings in that regard. Following entry of the ICA's decision, HP filed this appeal.

Standard of Review

At the outset, we note this is an appeal from the West Virginia Intermediate Court of Appeals. Prior to the creation of the ICA, subject-matter jurisdiction and whether a judgment is void under Rule 60(b)(4) were questions of law reviewed *de novo*. "Where the issue on an appeal from the circuit court is clearly a question of law or involving an interpretation of a statute, we apply a *de novo* standard of review." Syl. Pt. 1, *Chrystal R.M. v. Charlie A.L.*, 194 W. Va. 138, 459

[6] West Virginia Code § 51-2-2(b) provides: "[T]he circuit court shall have original and general jurisdiction of all matters at law where the amount in controversy, excluding interests, exceeds $7,500[.]"

[7] West Virginia Code § 46A-6-107(a) provides: "Except as otherwise provided in subsection (b) of this section, with respect to goods which are the subject of or are intended to become the subject of a consumer transaction, no merchant may: (1) Exclude, modify, or otherwise attempt to limit any warranty, express, or implied, including the warranties of merchantability and fitness for a particular purpose; or (2) Exclude, modify or attempt to limit any remedy provided by law, including the measure of damages available, for a breach of warranty, express, or implied."

[8] Ms. Thomas does not cross appeal the reversal of attorney fees.

S.E.2d 415 (1995). A judgment is void only where the court lacks subject-matter or personal jurisdiction or acted inconsistently with due process, and an erroneous application of law does not render a judgment void. *See Amoruso v. Com. & Indus. Ins. Co.*, 241 W. Va. 517, 523, 826 S.E.2d 642, 648 (2019). By contrast, "[i]n reviewing an order denying a motion [to set aside a judgment] under Rule 60(b), W.Va.R.C.P., the function of the appellate court is limited to deciding whether the trial court abused its discretion in ruling that sufficient grounds for disturbing the finality of the judgment were not shown in a timely manner." Syl. Pt. 4, *Toler v. Shelton*, 157 W. Va. 778, 204 S.E.2d 85 (1974). "'A motion to vacate a default judgment is addressed to the sound discretion of the court and the court's ruling on such motion will not be disturbed on appeal unless there is a showing of an abuse of discretion.' Syl. Pt. 3, *Intercity Realty Co. v. Gibson,* 154 W. Va. 369, 175 S.E.2d 452 (1970)[*overruled on other grounds by*, *Cales v. Wills*, 212 W. Va. 232, 569 S.E.2d 479 (2002)]." Syl. Pt. 6, *Games-Neely ex rel. West Virginia State Police v. Real Property,* 211 W. Va. 236, 565 S.E.2d 358 (2002).

As to the punitive damages issue, this Court has stated, "[w]hen reviewing an award of punitive damages in accordance with Syllabus point 5 of *Garnes v. Fleming Landfill, Inc.*, 185 W. Va. 656, 413 S.E.2d 897 (1991) and Syllabus point 5 of *Alkire v. First National Bank of Parsons*, 197 W.Va. 122, 475 S.E.2d 122 (1996), this Court will review *de novo* the jury's award of punitive damages and the circuit court's ruling approving, rejecting, or reducing such award." Syl. Pt. 16, *Peters v. Rivers Edge Mining*, *Inc.*, 224 W. Va. 160, 680 S.E.2d 791 (2009), *superseded by statute on other grounds as stated in*, *Martinez v. Asplundh Tree Expert Co.*, 239 W. Va. 612, 803 S.E.2d 582 (2017).

Since the creation of the ICA, we have endeavored to explain our standards of review as they pertain to ICA decisions. "Indeed, we have recognized that, generally, we utilize our established standards of review in reviewing decisions appealed from the ICA." *In re D.K.*, 252 W. Va. 495, 500 n.8, 923 S.E.2d 425, 430 n.8 (2025) (citations omitted). Therefore, we will consider this matter under those well-settled standards of review stated above.

Discussion

HP first assigns error to the ICA's finding that the minimum $7,500 jurisdictional threshold was met. HP contends its agreements with Ms. Thomas limited her recovery to an amount less than $7,500 and that the ICA erred in not considering the agreements' limitations in determining whether the jurisdictional threshold was met. Construing Ms. Thomas's complaint in her favor, the ICA found that jurisdictional amount in controversy was met because Ms. Thomas alleged $10,000 in damages arising from the cost of the laptop and ink cartridges as well as her alleged loss of use, loss of data, business interruption, annoyance, and inconvenience.

West Virginia is a general pleading state and the complaint is viewed in the light most favorable to the plaintiff. *John W. Lodge Distrib. Co. v. Texaco, Inc.*, 161 W. Va. 603, 605, 245 S.E.2d 157, 158 (1978) ("For purposes of a motion to dismiss, the complaint is construed in the light most favorable to the plaintiff, and its allegations are taken as true."). "As a general rule, the amount claimed by the summons tests the question of jurisdiction. This court has so held repeatedly. We must ordinarily look to the pleadings to determine this matter." *Oppenheimer v. Triple-State Nat. Gas & Oil Co.*, 62 W. Va. 112, 112, 57 S.E. 271, 271 (1907) (citing *Case Mfg.*

Co. v. Sweeny, 47 W. Va. 638, 35 S. E. 853 (1900); *Stewart v. B. & O. R. Co.*, 33 W. Va. 88, 10 S. E. 26 (1889); *State v. Lambert*, 24 W. Va. 399 (1884); *Richmond v. Henderson*, 48 W. Va. 389, 37 S.E. 653 (1900)). Reading the complaint in the light most favorable to the plaintiff, Ms. Thomas alleged damages in the amount of $10,000; therefore, jurisdictional amount in controversy was satisfied, and the circuit court had jurisdiction in this matter.

HP next contends that the ICA committed error in not setting aside the default judgment. To set aside a default judgment, the movant must make showings under both Rules 55(c) and 60(b) of the West Virginia Rules of Civil Procedure. The 1998 version of Rule 55(c) states "[f]or good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b)." When considering "good cause" we have held:

> In addressing a motion to set aside a default judgment, "good cause" requires not only considering the factors set out in Syllabus point 3 of *Parsons v. Consolidated Gas Supply Corp.*, 163 W.Va. 464, 256 S.E.2d 758 (1979), but also requires a showing that a ground set out under Rule 60(b) of the West Virginia Rules of Civil Procedure has been satisfied.

Syl. Pt. 5, *Hardwood Grp. v. Larocco*, 219 W. Va. 56, 631 S.E.2d 614 (2006). The *Parsons* factors are as follows:

> In determining whether a default judgment should be entered in the face of a Rule 60(b) motion or vacated upon a Rule 60(b) motion, the trial court should consider: (1) The degree of prejudice suffered by the plaintiff from the delay in answering; (2) the presence of material issues of fact and meritorious defenses; (3) the significance of the interests at stake; and (4) the degree of intransigence on the part of the defaulting party.

Syl. Pt. 3, *Parsons v. Consol. Gas Supply Corp*., 163 W. Va. 464, 256 S.E.2d 758 (1979).

The Rule 60(b) ground is required: without it, the *Parsons* factors become immaterial. *Coury v. Tsapis*, 172 W. Va. 103, 109, 304 S.E.2d 7, 13 (1983) ("An inquiry as to whether relief from a default judgment should be granted begins with a consideration of whether the Rule 60(b) standard has been met. Rule 60(b) permits relief if it can be shown that the default arose from "[m]istake, inadvertence, surprise, excusable neglect, or unavoidable cause.""); *Dotson v. Sears, Roebuck & Co.*, 176 W. Va. 86, 88, 341 S.E.2d 832, 835 (1985) ("[i]nasmuch as [the movant] had failed to make an initial showing of "excusable neglect" for relief from the default judgment, the above four considerations of *Parsons v. Consolidated Gas Supply Corp.* (relating to whether a default judgment should be entered or vacated) were immaterial.").

The ICA found the *Parsons* factors weighed in favor of HP but ultimately concluded that HP had failed to show "excusable neglect" under one of the reasons contained in Rule 60(b). In this appeal HP maintains that it established "mistake" or "excusable neglect" to set aside the

default judgment under Rule 60(b)(1).[9] In that regard, HP explains the complaint was mistakenly routed to the Executive Consumer Relations department and that the employee who would have recognized the error was on medical leave. Due to the error being overlooked, the complaint never made it to the legal department. HP did not argue excusable neglect as a basis to set aside the default judgment under Rule 60(b)(1) before the circuit court instead focusing its attention on proving the judgment void under 60(b)(4). To the extent HP *explained* its failure to respond to the complaint by blaming internal routing issues occasioned by the absence of an employee, the circuit court did not abuse its discretion in refusing to set aside the default judgment on that basis. As the ICA recognized, the delay was within HP's reasonable control and we find no cause to disturb the conclusion that the proffered explanation for HP's failure to respond to the complaint does not rise to the level of "excusable neglect." Finding no abuse of discretion, we affirm the circuit court's order in refusing to set aside the default judgment on the basis of "excusable neglect" under Rule 60(b)(1), or Rule 60(b)(4) for the reasons set forth above. Therefore, the circuit court did not abuse its discretion in refusing to set aside the default judgment under Rule 60(b), and the ICA committed no abuse of discretion in affirming the denial.

Finally, HP argues that the ICA erred by not reversing the award of punitive damages, but by only setting aside the award of punitive damages and remanding for further consideration. HP argues that punitive damages were not recoverable because Ms. Thomas's complaint failed to seek punitive damages and failed to allege any facts satisfying the legal standard to obtain an award of punitive damages.[10]

With respect to awards of punitive damages, we have explained that:

> [w]hen this Court, or a trial court, reviews an award of punitive damages, the court must first evaluate whether the conduct of the defendant toward the plaintiff entitled the plaintiff to a punitive damage award under *Mayer v. Frobe*, 40 W.Va. 246, 22 S.E. 58 (1895), and its progeny. If a punitive damage award was justified, the court must then examine the amount of the award pursuant to the aggravating and mitigating criteria set out in *Garnes v. Fleming Landfill, Inc.*, 186 W.Va. 656, 413 S.E.2d 897 (1991), and the compensatory/punitive damage ratio established in *TXO Production Corp. v. Alliance Resources Corp.*, 187 W.Va. 457, 419 S.E.2d 870 (1992).

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[9] HP also argues that the voidness of the default judgment implicates Rule 60(b)(4). As we found, *supra*, that the default judgment was not void for lack of subject matter jurisdiction, we do not address that argument, here.

[10] HP did not argue before the circuit court, the ICA, or this Court that Rule 54(c) of the West Virginia Rules of Civil Procedure prohibits Ms. Thomas's award of punitive damages. Consequently, we find that HP waived this argument. "Assignments of error that are not argued in the briefs on appeal may be deemed by this Court to be waived." Syl. Pt. 6, *Addair v. Bryant*, 168 W. Va. 306, 284 S.E.2d 374 (1981).

Perrine, 225 W. Va. at 494, 694 S.E.2d at 827, Syl. Pt. 6. The aggravating and mitigating *Garnes* factors are as follows:

> (1) Punitive damages should bear a reasonable relationship to the harm that is likely to occur from the defendant's conduct as well as to the harm that actually has occurred. If the defendant's actions caused or would likely cause in a similar situation only slight harm, the damages should be relatively small. If the harm is grievous, the damages should be greater.
>
> (2) The jury may consider (although the court need not specifically instruct on each element if doing so would be unfairly prejudicial to the defendant), the reprehensibility of the defendant's conduct. The jury should take into account how long the defendant continued in his actions, whether he was aware his actions were causing or were likely to cause harm, whether he attempted to conceal or cover up his actions or the harm caused by them, whether/how often the defendant engaged in similar conduct in the past, and whether the defendant made reasonable efforts to make amends by offering a fair and prompt settlement for the actual harm caused once his liability became clear to him.
>
> (3) If the defendant profited from his wrongful conduct, the punitive damages should remove the profit and should be in excess of the profit, so that the award discourages future bad acts by the defendant.
>
> (4) As a matter of fundamental fairness, punitive damages should bear a reasonable relationship to compensatory damages.
>
> (5) The financial position of the defendant is relevant.

Garnes, 186 W. Va. at 658-659, 413 S.E.2d at 899-900, Syl. Pt. 3, in part, *holding modified by Perrine*, 225 W. Va. 482, 694 S.E.2d 815. The circuit court's order clearly failed to take these factors into account. Therefore, because the circuit court failed to conduct the required analysis, the ICA did not err in vacating the award of punitive damages and remanding for consideration of the *Garnes/Perrine* factors. Accordingly, we affirm the ICA's vacation of the punitive damage award and remand for the circuit court to analyze the factors contained in Syllabus Points Three and Four in *Garnes* and Syllabus Point Seven of *Perrine* in determining punitive damages.

Conclusion

For the reasons set forth above, the June 13, 2024, decision of the ICA is affirmed and this matter is remanded to the circuit court for further proceedings consistent with the decision of the ICA.

Affirmed.

ISSUED: November 13, 2026

CONCURRED IN BY:

Justice William R. Wooton
Justice H.L. Kirkpatrick
Justice James W. Flanigan

CONCURRING, IN PART, DISSENTING, IN PART:

Chief Justice C. Haley Bunn
Justice Charles S. Trump IV

TRUMP, Justice, concurring, in part, and dissenting, in part, and joined by Chief Justice Bunn:

I concur with the memorandum decision affirming the Intermediate Court of Appeals' decision that the circuit court did not abuse its discretion in refusing to set aside the default judgment against HP. However, I respectfully dissent to the majority's decision concerning the amount and kind of damages to which Ms. Thomas is entitled because of HP's default.

The amount and kind of damages that a circuit court can award in a default judgment case is limited by West Virginia Rule of Civil Procedure 54(c) which provided on November 27, 2022 (the date that the circuit court entered its amended default judgment order), "[a] judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment."[1] "Court rules are interpreted using the same principles and canons of construction that govern the interpretation of statutes." Syl. Pt. 2, *Casaccio v. Curtiss*, 228 W. Va. 156, 718 S.E.2d 506 (2011). "As with a statute, our inquiry is complete if we find the text of the Rule to be clear and unambiguous." *Bus. Guides, Inc. v. Chromatic Communications Enterprises, Inc*., 498 U.S. 533, 540-41 (1991); *accord State v. Mason*, 157 W. Va. 923, 928–29, 205 S.E.2d 819, 823 (1974). "By its plain meaning, . . . Rule 54(c) restricts the scope of relief that may be granted by default judgment to that specifically prayed for." *Matsushima v. Rego*, 696 P.2d 843, 846 (Haw. 1985). In so doing, Rule 54(c) effectuates the due process rights guaranteed to defendants. "Rule 54(c) serves to protect the rights of defendants to due process by limiting the relief granted against a defaulting defendant to the relief that the defendant was properly notified would be at issue." *In re Jacuinde*,

[1] The 2025 version of West Virginia Rule of Civil Procedure 54(c) provides, "[a] default judgment shall not differ in kind from, or exceed in amount, what is demanded in the pleadings." The differences in language between the pre- and post-2025 versions are stylistic only. *See* Fed. R. Civ. P. 54, adv. comm. note (2007 amendments) ("The language of Rule 54 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.").

No. 08-15509-B-7, 2009 WL 9083939, at *4 (Bankr. E.D. Cal. Apr. 16, 2009). While the memorandum decision refuses to address Rule of Civil Procedure 54(c) because HP did not raise it, HP's failure to make an argument under Rule 54(c) in the lower court proceedings or before this Court is not fatal to applying the Rule because awarding damages in violation of Rule 54(c)'s default judgment language is so fundamentally wrong as to constitute plain error. *See Eddins v. Medlar*, 881 F.2d 1069 (4th Cir. July 21, 1989) (per curiam) (Table) (text available at 1989 WL 87630, at *3) (finding plain error from a Rule 54(c) violation when a trial court approved a compensatory damage award twice the size of that pleaded).[2]

The ad damnum clause to Ms. Thomas's complaint provided, "WHEREFORE, Plaintiff prays for judgment against the Defendant in the amount of $10,000, plus costs, attorneys fees, and such other relief as the Court or jury deems proper." The circuit court awarded $15,507.92 in compensatory damages[3] plus an award of $330.33 in costs.[4] The circuit court also awarded $20,000 in punitive damages. Thus, Rule 54(c) was violated in two ways in this case: first, by awarding compensatory damages exceeding the specified amount sought by Ms. Thomas' complaint and, second, by awarding punitive damages that Ms. Thomas' complaint never sought at all.[5] I address each violation in turn.

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[2] While Ms. Thomas's motion for default judgment sought punitive damages in the amount of $25,000, "at the default judgment stage, the scope of Plaintiff's available remedies are controlled by the Complaint, not the Motion for Default Judgment." *CMH Mfg v. Neil*, No. CV JKB-21-0674, 2021 WL 4290634, at *6 (D. Md. Sept. 21, 2021); *Blake v. PSI*, No. 1:22-CV-312 PTG/IDD, 2023 WL 9103092, at *4 (E.D. Va. Nov. 30, 2023), *report and recommendation adopted*, No. 122CV312PTGIDD, 2024 WL 55479 (E.D. Va. Jan. 4, 2024) ("Since Plaintiff failed to demand any relief in her Complaint, the Court cannot award damages subsequently demanded in a Motion for Default Judgment.").

[3] The circuit court awarded $1,597.28 for the cost of the defective laptop, $1,309.92 for the purchase of another laptop, $425 for HP's unauthorized and excessive charges, and $12,175.72 for Ms. Thomas' annoyance and inconvenience, for a total of $15,507.92. The circuit court's order reflected these amounts in its calculation discussion but only awarded $14,507.92 in its judgment clause. I take this lower amount in the judgment clause to be no more than a typographical error. In any event, the issue is moot as the circuit court erred in awarding any damages exceeding the demanded $10,000.00.

[4] The circuit court also awarded Ms. Thomas $8,800.00 in attorney's fees. This award was voided by the Intermediate Court of Appeals, *HP, Inc. v. Thomas*, No. 23-ICA-203, 2024 WL 2977174, at *6 (W. Va. Ct. App. June 13, 2024) (memorandum decision), and Ms. Thomas did not cross-appeal this portion of the ICA's decision and, thus, left it beyond our power to address.

[5] We have recognized in a pre-rules of civil procedure case that a complaint can seek punitive damages by using the words "punitive" or "exemplary" damages in the complaint, or when the complaint characterizes the defendant's conduct as having been done willfully, maliciously, wantonly, or in some other like aggravated manner, or where the facts pled in the complaint establish that a jury may legally conclude therefrom that the tort was so committed. Syl. Pt. 2, *O'Brien v. Snodgrass*, 123 W. Va. 483, 16 S.E.2d 621 (1941), *criticized on other grounds by*

First, Ms. Thomas' complaint sought "$10,000, plus costs, attorneys fees, and such other relief as the Court or jury deems proper." "When a complaint demands a specific amount of damages, courts have generally held that a default judgment cannot award additional damages." *In re Genesys Data Techs., Inc*., 204 F.3d 124, 132 (4th Cir. 2000).[6] In the present case, the most that the circuit court could have awarded to Ms. Thomas in a default judgment under Rule 54(c)[7] was $10,330.33, the $10,000 explicitly sought in the complaint and the $330.33 in the amount of costs as found by the circuit court. Thus, I respectfully dissent from the majority awarding any amount beyond $10,3330.33.

Second, the circuit court awarded punitive damages even though such damages were not sought in Ms. Thomas' complaint and the memorandum decision also stated that punitive damages may be available to Ms. Thomas. Again, this is incorrect under Rule 54(c). Punitive damages are different in kind from compensatory damages and are precluded under Rule 54(c) given the facts of this case:

> Although compensatory damages and punitive damages are typically awarded at the same time by the same decisionmaker, they serve distinct purposes. The former are intended to redress the concrete loss that the plaintiff has suffered by reason of the defendant's wrongful conduct. The latter, which have been described as "quasi-criminal," operate as "private fines" intended to punish the defendant and to deter future wrongdoing. A jury's assessment of the extent of a plaintiff's injury is essentially a factual determination, whereas its imposition of punitive damages is an expression of its moral condemnation.

Ennis v. Brawley, 129 W. Va. 621, 41 S.E.2d 680 (1946). Assuming *O'Brien* applies to default judgment under Rule 54(c), this does not aid Ms. Thomas as her complaint satisfies none of the *O'Brien* criteria.

[6] Rule 54(c) does not require the pleading of a sum certain. *See, e.g.*, *Ames v. STAT Fire Suppression, Inc*., 227 F.R.D. 361, 362 (E.D.N.Y. 2005) ("Although Rule 54(c) limits the damages recoverable by a plaintiff following a default judgment to the type and quantity of damages demanded in the complaint, it does not require plaintiff to have demanded a sum certain in order to recover on default."). However once the plaintiff elects to ask for a sum certain in the complaint, Rule 54(c) limits the amount awardable in a default judgment to no more than the specified amount. *See Foglia v. Clapper*, No. 1:12CV104 JCC/JFA, 2012 WL 777492, at *5 (E.D. Va. Mar. 7, 2012) ("Although . . . 54(c) might limit default judgments to the maximum amount pled, it does not necessarily follow that all plaintiffs must plead a maximum amount of monetary damages.").

[7] Because Rule 54(c) sets a ceiling on damages in a default judgment, a court in a default judgment can award less than any sum certain sought in the complaint. *Health & Welfare Fund of the United Food & Com. Workers Loc. 2013, AFL-CIO by Carotenuto v. Senior Home Care, Inc*., No. 21-CV-673 (ENV), 2021 WL 7906557, at *4 n.3 (E.D.N.Y. Sept. 20, 2021) (quoting 10 *Moore's Federal Practice* § 55.34 (2021)) ("[T]he court 'may award less than requested in the pleadings, but Rule 54(c) establishes a ceiling on the amount that may be awarded[.]'").

Cooper Indus., Inc. v. Leatherman Tool Grp., Inc., 532 U.S. 424, 432 (2001) (citations omitted).

"As a general rule, the common law recognizes that damages intended to compensate the plaintiff are different in kind from 'punitive damages.'" *Molzof v. United States*, 502 U.S. 301, 307 (1992). Courts applying Rule 54(c) have also concluded that punitive damages differ in kind from compensatory damages under that Rule. "A judgment for compensatory damages is different in kind from a judgment for punitive damages, since, at a minimum, they involve different standards of liability and require unrelated types of evidence for proof." *Eddins,* 1989 WL 87630, at *3; *see also Jordan v. Murin*, No. 1:18-CV-228-SPB, 2023 WL 5759181, at *8 (W.D. Pa. Sept. 6, 2023) (citations omitted) ("Punitive damages differ from compensatory damages in that the latter are intended to make a plaintiff whole, whereas punitive damages serve 'deterrence and retribution' functions. Because Plaintiff did not include a request for punitive damages in his complaint, the Court cannot award them now."). Because Ms. Thomas's complaint did not seek punitive damages,[8] I respectfully dissent to awarding punitive damages to Ms. Thomas.

For the foregoing reasons, I respectfully concur, in part, and dissent, in part, to the memorandum decision. I am authorized to state that Chief Justice Bunn joins in this separate opinion.

[8] While Ms. Thomas' complaint did seek "such other relief as the Court or jury deems proper[,]" this language is insufficient under Rule 54(c) to permit a court to grant relief not otherwise sought in the complaint. *See, e.g.*, *Berholtz v. P4 Meditech Analytics, LLC*, 600 F. Supp. 3d 1128, 1136 (S.D. Cal. 2022) ("Plaintiff's generic request for '[s]uch other relief as may be appropriate,' . . . is insufficient to satisfy Rule 54(c)."). Such boilerplate language as contained in Ms. Thomas' complaint is insufficient to alert a defendant that punitive damages are sought. *See Newell v. Wisconsin Teamsters Joint Council No. 39*, No. 05-C-552, 2007 WL 2874938, at *4 (E.D. Wis. Sept. 28, 2007) ("[T]he court finds that a boilerplate request for '[s]uch additional amounts and relief as this Honorable Court shall deem proper under the circumstances' is insufficient to put the defendants on notice of a request for punitive damages.").