IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

FILED
November 10, 2026
ASHLEY N. DEEM, CHIEF DEPUTY CLERK
INTERMEDIATE COURT OF APPEALS
OF WEST VIRGINIA

ELEANOR POINDEXTER,
Plaintiff Below, Petitioner

v.) No. 26-ICA-46 (Cir. Ct. Kanawha Cnty. Case No. CC-20-2025-C-955)

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION, DIVISION OF HIGHWAYS,
Defendant Below, Respondent

MEMORANDUM DECISION

Petitioner Eleanor Poindexter appeals the Circuit Court of Kanawha County's December 29, 2025, order dismissing her employment discrimination action against Respondent West Virginia Department of Transportation, Division of Highways ("WVDOT") with prejudice. WVDOT filed a response.[1] Ms. Poindexter did not file a reply.

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.

Ms. Poindexter filed her complaint on August 14, 2025, asserting various discrimination and other claims arising from her employment with WVDOT, where she has worked since 2009. Ms. Poindexter alleges that starting in 2016, she was subjected to ongoing discrimination and a hostile work environment. According to Ms. Poindexter, WVDOT repeatedly failed to promote or train her and did not adequately address her reports of unfair treatment. Further, Ms. Poindexter claims she applied for hundreds of positions within the agency but never received a promotion.

Ms. Poindexter asserted eleven claims, including multiple counts under Title VII of the Civil Rights Act of 1964 (race, color, gender, religion, national origin, and retaliation), claims under the Age Discrimination in Employment Act and other federal statutes, and a claim of intentional infliction of emotional distress. WVDOT moved to dismiss the

[1] Ms. Poindexter is self-represented. WVDOT is represented by Wendy E. Greve, Esq., Christopher T. Ferro, Esq., and Benjamin B. Vanston, Esq.

complaint under Rule 12(b)(6) of the West Virginia Rules of Civil Procedure, arguing that Ms. Poindexter failed to sufficiently state a claim under any legal theory.

A hearing on WVDOT's motion was held on October 31, 2025, and on December 29, 2025, the circuit court entered an order granting the motion and dismissing the complaint with prejudice. The circuit court determined that Ms. Poindexter's discrimination claims were either filed outside the applicable statute of limitations or the claims lacked sufficient detail to state a claim entitling her to relief. The circuit court further concluded that the additional claims attempted in the complaint failed to satisfy Rule 8(a)(1) of the West Virginia Rules of Civil Procedure, which requires a short and plain statement showing the pleader is entitled to relief. This appeal of the circuit court's order followed.[2]

"Appellate review of a circuit court's order granting a motion to dismiss a complaint is *de novo*." Syl. Pt. 2, *State ex rel. McGraw v. Scott Runyan Pontiac-Buick, Inc*., 194 W. Va. 770, 461 S.E.2d 516 (1995).

We note at the outset that our review of this case is substantially hindered by Ms. Poindexter's failure to comply with Rule 7 and Rule 10 of the West Virginia Rules of Appellate Procedure. Rule 7(d) requires that a petitioner "shall prepare and file an appendix containing," among other items, "[t]he judgment or order appealed from, and all other orders applicable to the assignments of error on appeal," "[m]aterial excerpts from official transcripts of testimony or from documents in connection with a motion," and "[o]ther parts of the record necessary for consideration of the appeal." W. Va. R. App. P. 7(d). This requirement is expounded upon in Rule 10(c)(7) which provides that "[t]he argument must contain appropriate and specific citations to the record on appeal, including citations that

[2] Before entry of the December 29, 2025, dismissal order, Ms. Poindexter filed a motion seeking additional time to file an amended complaint and, on December 22, 2025, filed an amended complaint. She attached to her notice of appeal a proposed order denying her motion and striking the amended complaint as moot, which was filed with the circuit court on January 5, 2026, by counsel for respondent, but not entered by the circuit court. However, that document is not properly before this Court. Rule 5(b) of the West Virginia Rules of Appellate Procedure requires a petitioner to attach all orders being appealed within thirty days of the orders' entry. The docket sheet is absent from the appendix, and nothing in the record indicates that the January 5, 2026, proposed order was ever entered. We therefore decline to consider it. Even assuming a substantially similar order was entered and properly attached, we would affirm. The case was already dismissed before Ms. Poindexter filed her motion to extend or her amended complaint, and no Rule 59 or Rule 60 motion was pending. Any issues arising from the belated motion or the improperly filed amended complaint are therefore moot.

pinpoint when and how the issues in the assignments of error were presented to the lower tribunal." W. Va. R. App. P. 10(c)(7). Under Rule 10(c)(7), "[t]he Intermediate Court ... may disregard errors that are not adequately supported by specific references to the record on appeal."

In its Rule 12(b)(6) motion to dismiss, WVDOT challenged the sufficiency, substance, and form of Ms. Poindexter's complaint. On appeal, Ms. Poindexter contests the circuit court's order granting that motion. However, she failed to include in the appendix the complaint itself, WVDOT's motion to dismiss, or the transcript of the hearing on the motion. In the absence of these essential materials, we cannot conduct a meaningful review of her assignments of error, assess the sufficiency of her claims, or evaluate the propriety of the circuit court's dismissal order.

It is well established that an appellant bears the burden of showing error in the judgment appealed from and an appellate court will not reverse a circuit court's decision unless error affirmatively appears from the record. *See* Syl. Pt. 5, *Morgan v. Price*, 151 W. Va. 158, 150 S.E.2d 897 (1966). We conclude that Ms. Poindexter failed to provide a record affirmatively establishing error in the judgment below.

Accordingly, we affirm the circuit court's December 29, 2025, order.

Affirmed.

ISSUED: November 10, 2026

CONCURRED IN BY:

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