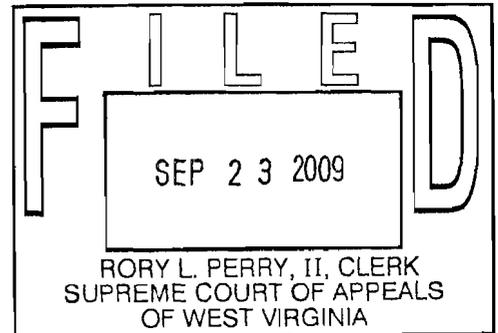


**In the  
Supreme Court of Appeals  
Of  
West Virginia**

**PERRY D. DAVIDSON**

**Respondent,**



**v.**

**No: 34737**

**STATE OF WEST VIRGINIA BY  
RONALD E. RADCLIFF COMMISSIONER,  
WORKFORCE WEST VIRGINIA**

**Petitioner,**

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**BRIEF**

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**Both lower Magistrate and Circuit Court of Cabell County did not abuse is discretion, and followed WVC §50-6-1, §56-7-6.**

**Furthermore the Petitioner seeks to set a precedent and not allow Due Process afforded to West Virginian Citizens when collecting monies the Agency feel It is due. They intend to do away with the current checks and balances put in place by previous Honorable Lawmakers. Thus have the ability to declare Judgments, the agency see's fit to declare, and then enforce said judgments thorough wage garnishments and any other tool available to them to collect debts without due**

**process currently available to Citizens of West Virginia.**

**In addition the Respondent was never afforded the EIGHT DAY APPEAL PERIOD as stated in §21A-7-A but instead has sent several letters stating a debt that had to be paid to the agency in the amount of \$1962.00 by the Respondent.**

**Magistrate Court afforded both the Agency and the Respondent Due Process as reflected in the WVC Magistrate Rules Section VII Judgment Rule 55 subsection (a) and (c) and Rule 60 subsection (b)**

**Moreover when Magistrate Rice Ordered that an appeal be afforded to the respondent several years later, the Agency verbally told the Respondent when he arrived at the Agencies location at Huntington, WV to file the appeal, that he was “wasting his time and that the Agency would probably not allow the appeal due to the length of time that has passed”. Thus leaving the Respondent distressed causing the Respondent to leave the premises without filing the Appeal. Finally the Circuit Court, in the interest of justice allowed the Respondent due process under WVC §50-6-1, §56-7-6 when the only proof of debt submitted by the Agency were computer generated documents, created by the Agency.**

**Moreover, it is in this Respondents opinion that the Circuit Court was shocked as the Respondent was, to learn from Mr. Osborne’s testimony that as of the time of the hearing there were over 10,000 active cases of fraud with a value of over a million dollars being pursued by the Agency against claimants of the West Virginia Workman’s Compensation Fund. This testimony indicates that a system is in place within the Agency to review each claim, and to aggressively seek a way to recover part or all monies paid to a claimant. This results in thousands of**

**West Virginian Citizens and Business's to be intimidated by the Agency in various ways, and hardships brought to many West Virginian Families victimized by the Agencies tactics.**

**This Respondent could have satisfied the Agency claim of \$1962.00 many years ago simply by filing another claim during unemployment. But because of the previous intimidation by the Agency, was too afraid to file said claim. This is in this Respondents opinion one of the goals of the Agency.**

**Finally the Respondents record speaks for itself. The Respondent filed for Unemployment, and in just a little over three months secured employment that had a pay scale and benefits to the Respondents previous Job.**

**That the Agency has a system in place to review claims and seek a way to collect part or all of monies that a claimant has received from the Agency.**

**That this system has resulted in the debt collections of thousands of West Virginia Citizens, intimidated by the threat of bad credit reports etc, making this Respondent afraid to ever file another Workers Unemployment Claim.**

**L**

**KIND OF PROCEEDING  
AND NATURE OF THE RULING  
OF THE LOWER TRIBUNAL**

**The instant action arose from a Cabell County Circuit Court ruling holding that the judgment of the Magistrate Court in the amount of \$1,962.00 plus court costs was to be SET ASIDE (due inability to appear due to illness) and the case DISMISSED, with prejudice.**

**The Court realized that this case is frivolous in nature, and that the Agency failed to prove that Respondent was indebted to the agency for any amount of monies. The Agency provided computer generated printouts from within the Agency as evidence. In addition Testimony was given by Mr. Osborne which enlightened the Court of Thousands of West Virginia Citizens being pursued for bad debt to the Agency.**

## **II.**

### **STATEMENT OF FACTS**

**The Respondent worked for Data Solutions International and lost employment on March 15, 2000. After unsuccessfully seeking for employment with like compensation the Respondent filed an initial unemployment compensation claim and began receiving unemployment compensation benefits starting July 9, 2000 through and ending October 28, 2000 for a little over three months.**

**On or about September 15, 2000 the Respondent received a telephone referral from the Agency for an employment position as a computer technician at Client logic.**

**After the Respondent was given a tour of the Client Logic facility, and after going through the policy and procedure manual and filling out paperwork, the Respondent discovered that the job being offered was a telemarketer position, at a much lower rate than the phone referral given by the agency. At that point the Respondent declined the job offer and continued to seek employment, and found**

**such employment that was comparable to the rate of pay previously received from Data Solutions.**

**Although the Agency alleges Fraud, there was never no intent by the Respondent to Defraud the Agency, and the Respondent always felt he was following workers unemployment compensation rules. Fraud has never been proven, and is used as a tool, to try to collect an amount of money eight years later.**

**Furthermore Wikipedia defines Employment as;**

**Employment** is a contract between two parties, one being the **employer** and the other being the **employee**. In a commercial setting, the employer conceives of a productive activity, generally with the intention of creating profits, and the employee contributes labour to the enterprise, usually in return for payment of wages.

**No contract was ever achieved between Client Logic and the Respondent, no labor was performed by the Respondent for Client Logic. No service was performed on any of their equipment per the referral given from the Agency to the Respondent. Moreover although Client Logic states the position was for a telemarketing position at a lower rate of wage. The Respondent never touched a telephone while on the premises.**

**In addition no wages were paid to the Respondent during their regular pay period.**

**A check was sent to the Respondent for a little over One Hundred dollars, only after the Agency, intimidated Client Logic for a copy of**

**wages alleged due to the Respondent by the Agency that was unpaid.**

**A hearing was heard without the Respondent's knowledge and was found by default. In addition, no chance for an Appeal for such decision (EIGHT DAY WINDOW) was given to the Respondent until so ordered by Magistrate Court.**

**The Agency alleges that the Respondent concealed his employment with Client Logic. The Agency gave the Job Referral from Client Logic to the Respondent.**

**Surely that fact alone shows that there was no intent to defraud the Agency.**

**The Respondent never appealed either the separation or fraud decision, simply because he was not notified. The Agency maintains that notice of the decision was mailed to the address given by the Respondent. This address is the same address that unemployment compensation checks arrived successfully as well as countless debt notices over the years.**

**The Respondent would have vigorously defended himself within EIGHT DAYS from which notice of the decision, if the Respondent would have gotten said notice.**

**On April 5, 2007, a civil complaint was filed in the Magistrate Court of County. The purpose of this Magistrate Court filing was to get a Judgment to get the Respondent to repay benefits to the Agency.**

**On June 26, 2007 a hearing was held where the Agency won a judgment by default in the amount of \$1962.00 together with court costs by default. The Respondent did not appear at the hearing due to illness but later filed a Motion to Set Aside the**

**Judgment of the Magistrate.**

**The Magistrate who set aside the judgment and was to hold the hearing on Plaintiffs motion continued the hearing for 30 days so that the Respondent could file a late appeal. The Agency asked during the hearing if the Respondent could come down prior to the weekend to file the appeal, for she was going on vacation.**

**The Respondent complied, but when he arrived to the Agency, was told by the Agency that filing for an Appeal did not mean that he would get one. In fact the Agency stated it was sure no Appeal would be granted due to the amount of time that had transpired and that the Respondent was wasting his time. This left the Respondent distressed, intimidated and leaving the Agency in despair without filing for said appeal.**

**After the Motion To Set Aside the Judgment was denied by Magistrate Court, The Respondent used his right under due process and appealed to Circuit Court of Cabell County.**

**The Circuit Court after hearing all the evidence reversed the Agency's Motion for Summary Judgment by reversing the Magistrate Court's decision. The Agency now feels that it is necessary to continue its collections efforts and now brings this case before the West Virginia Supreme Court of Appeals, to have the most Honorable Justices decide on this case.**

### III.

#### **DUE PROCESS**

- A. THE CIRCUIT COURT WAS IN ITS RIGHT IN ITS DECISION UNDER DUE PROCESS.**
- B. THE AGENCY BEING A CREDITOR, MUST FOLLOW DUE PROCESS STATUTES AS ANY OTHER CREDITOR OR DEBT COLLECTOR.**
- C. THE AGENCY WISHES TO EXPAND ITS POWER BY USING THIS APPEAL TO SET A PRECEDENT TO ALLOW COLLECTIONS BASED UPON THE AGENCY RECORDS, AND TO DO AWAY WITH DUE PROCESS CURRENTLY AFFORDED CITIZENS.**

### IV

#### **AUTHORITIES RELIED UPON AND DISCUSSION OF LAW**

**In the instant case, the Agency filed a Complaint in Magistrate Court after years of harassment, intimidation, numerous letters and the placing of negative credit reports prior to any judgments. In addition The Agency on several occasions threatened garnishment, all which is in violation of §46A-2-124. Threats or coercion. The Agency, which acts as its own debt collection Agency, now seeks broader powers by not affording due process in its collection efforts by seeking and enforcing judgments through the court systems. It seeks total power in declaring who needs to pay back their claims. WV Code §46A-2-118. States, No garnishment before judgment. The Agency who is trying to say that I am trying to change WV Code, have the contrary did his best to follow such code in this unfortunate misunderstanding.**

**Currently under WV Code the same Agency, which disperses Unemployment claims decides if a claimant needs to pay back monies dispersed to them.**

**It now seeks to avoid any third party interruptions in debt collection by removing itself from the jurisdiction and provisions contained in WV Code 46A-2-123 through -2-129a. It seeks to be a debt collector under its own rules.**

**The Agency, under its own testimony, where thousands of WV Citizens owe said agency an overpayment or debt, could be subjected to an automatic garnishment without due process.**

## **V**

### **SUMMARY AND CONCLUSION**

**This whole affair has come from an error or misunderstanding from a referral from the agency. When I arrived at the site it took a day and a half to find out that the referral was in error.**

**At no time did the respondent do any work during that day and a half, that only Company rules and Procedures were reviewed, and paperwork completed.**

**The respondent worked diligently to find employment and that the record shows that the respondent was not receiving unemployment compensation for an excessive amount of time.**

**The respondent at a later date was eligible to file for another Unemployment Claim but did not do so because of on going debt collection efforts, intimidation, and the fear of having to pay future claims back.**

**The Agency, when acting as a debt collector should follow WV Code 46A-2-123 through -2-129a. as any other debt collector operating in the State of West Virginia.**

**The Agency already having broad powers within itself, decides if a claimant should pay claims back, then using various techniques including intimidation, collects said debt. The Agency now, wants to do away with due process under WV Code 46A-2-123 through -2-129a. so that the Agencies power can be expanded by having the ability to garnish wages without due process**

**The Respondent prays that the most Honorable Justices dismiss this whole affair.**

**So that The Respondent, over ten thousand of West Virginian Citizens currently owing repayments to Workforce, and future West Virginian Citizens are not exposed to an automatic garnishment, without due process.**



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**Perry Davidson**  
**Pro Se**