

35644

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

GARNET LOUISE GODBEY,

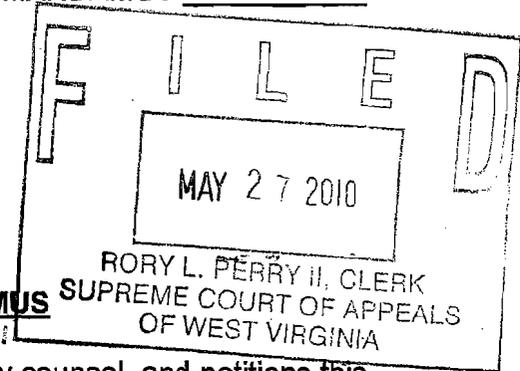
Petitioner,

v.

UPON ORIGINAL JURISDICTION
IN MANDAMUS

THE HONORABLE JENNIFER F. BAILEY,
Kanawha County Circuit Court Judge,

Respondent.



PETITION FOR WRIT OF MANDAMUS

Comes now the Petitioner, Garnet Louise Godbey, by counsel, and petitions this Honorable Court for a Writ of Mandamus to compel the Honorable Jennifer F. Bailey, Judge of the Circuit Court of Kanawha County, to perform her mandatory duty to rule on Petitioner's "Motion for New Trial on Damages" in Civil Action No. 05-C-27. In support thereof, Petitioner states as follows:

1. In January of 2005, Petitioner Garnet Louise Godbey filed Civil Action No. 05-C-27 against Jackie Long, Robert Brown, and the West Virginia School Service Personnel Association (hereinafter "Defendants below") alleging defamation and false light invasion of privacy.
2. The case was assigned to the Honorable Judge Jennifer F. Bailey.
3. On March 14, 2008, a jury returned a verdict in Petitioner's favor for the amount of \$400,000. See Exhibit A.

4. Judgment in the amount of \$400,000 on the jury verdict was entered by the Circuit Court of Kanawha County, West Virginia on March 31, 2008, plus statutory interest thereon. See Exhibit B.

5. Thereafter, on April 8, 2008, the Defendants below filed a motion asking for a new trial or, in the alternative, a remittitur of damages.

6. By a "final" Order dated September 9, 2008, Judge Bailey denied the Defendants' motion for a new trial but granted a remittitur reducing Petitioner's damage award from \$400,000 to \$40,000. See Exhibit C.

7. Both Petitioner and the Defendants below filed petitions for appeal with this Court (Nos. 090170 and 090171), and by Order dated May 12, 2009, this Court denied both petitions for appeal. See Exhibit D.

8. This Court has observed that if, after liability has been established, a court orders a remittitur of the damages awarded to the plaintiff, then the plaintiff has the choice of accepting the remittitur or a new trial on the issue of damages. See Wilt v. Buracker, 191 W.Va. 39, 52, 443 S.E.2d 196, 209 (1993)("If the plaintiff declines to accept the remittitur, then a new trial will be ordered solely on the issue of damages."). Indeed, Judge Bailey recognized this principle on page 6 of her Order dated September 9, 2008.

9. In the present case, Petitioner declined to accept Judge Bailey's remittitur, and instead elected to have a new trial on the issue of damages.

10. On June 12, 2009, Petitioner filed a Motion for Trial Date and Status Conference. Exhibit E. On June 22, 2009 Defendants below filed a response, asserting that the case had "been entirely adjudicated," and that "there is nothing further to be done or accomplished" in the case. Exhibit F.

11. On or about August 6, 2009, Petitioner filed a "Motion for New Trial on Damages." Exhibit G.

12. Judge Bailey conducted a hearing on the motion on October 29, 2009.

13. Judge Bailey did not rule on Petitioner's "Motion for New Trial on Damages" at the conclusion of the hearing, and has not ruled or otherwise acted with regard to that motion since.

14. By letter dated January 26, 2010, counsel for Petitioner requested that Judge Bailey promptly rule on the pending motion for new trial due to Petitioner's advanced age and fading health.

15. As of the date of this Petition, Judge Bailey has not ruled on Petitioner's "Motion for New Trial on Damages."

16. Ms. Godbey currently is over 85 years of age.

17. This Court has observed that "mandamus will lie to compel a lower court to act in a case if it neglects or refuses to do so." State ex rel. Rahman v. Canady, 205 W.Va. 84, 86, 516 S.E.2d 488, 490 (W.Va. 1999)(*citing* State ex rel. Cackowska v. Knapp, 147 W.Va. 699, 130 S.E.2d 204 (1963)); *see also* State ex rel. Patterson v. Aldredge, 173 W.Va. 446, 448, 317 S.E.2d 805, 807-08 (1984).

18. This Court will issue a writ of mandamus when the following three elements coexist: "(1) a clear legal right in the petitioner to the relief sought; (2) a legal duty on the part of respondent to do the thing which the petitioner seeks to compel; and (3) the absence of another adequate remedy." State ex rel. Burdette v. Zakaib, 224 W.Va. 325, 685 S.E.2d 903, 909 (2009)(*citing* Syl. Pt. 2, State ex rel. Kucera v. City of Wheeling, 153 W.Va. 538, 170 S.E.2d 367 (1969)).

19. This Court has recognized that litigants have a right to an "expeditious disposition of all civil matters," and that "judges have an affirmative duty to render timely decisions on matters properly submitted within a reasonable time following their submission." See Patterson, 173 W.Va at 448, 317 S.E.2d at 807. Petitioner respectfully and reluctantly brings this Petition, but does so because she has no remedy other than mandamus to compel the circuit court to rule on her motion for a new trial on damages.

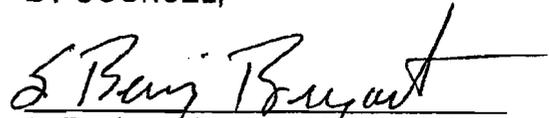
20. The need for a reasonably timely decision is especially great in this case due to the fact that Petitioner is now over 85 years old and suffering from a declining state of health.

WHEREFORE, the Petitioner, Garnet Louise Godbey, respectfully requests that this Court issue a Writ of Mandamus compelling the Honorable Jennifer F. Bailey to promptly rule on Petitioner's "Motion for New Trial on Damages," and to award the Petitioner all other relief this Court deems appropriate. Furthermore, to the extent that a rule to show cause is required by law, the Petitioner respectfully moves this Court to issue such rule.

RESPECTFULLY SUBMITTED,

GARNET LOUISE GODBEY

BY COUNSEL,



S. Benjamin Bryant, WVSB #520
John A. Kessler, WVSB #2027
David R. Pogue, WVSB No. 10806
Carey, Scott, Douglas & Kessler, PLLC
901 Bank One Center
707 Virginia Street, East
P.O. Box 913
Charleston, WV 25323

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

GARNETT LOUISE GODBEY,

Petitioner,

UPON ORIGINAL JURISDICTION
IN MANDAMUS _____

JACKEE LONG, ROBERT BROWN,
and WEST VIRGINIA SCHOOL
SERVICE PERSONNEL ASSOCIATION,

Respondents.

CERTIFICATE OF SERVICE

I, S. Benjamin Bryant, counsel for the Petitioner, do hereby certify that on this the 25th day of May 2010, I served the attached "Petition for Writ of Mandamus" upon all counsel and parties of record by depositing true copies in the United States mail, postage fully paid, addressed as follows:

James M. Cagle, Esquire
1018 Kanawha Blvd., East
Suite 1200
Charleston, WV 25301-2827
Counsel for Respondents/Defendants

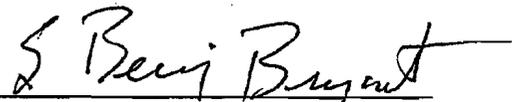

S. Benjamin Bryant (WVSB #520)

EXHIBIT A

False Light (Count 2)

Select One

Upon the question of whether the Defendants are liable to Plaintiff Garnett Louise Godbey for False Light (Count 2), we find for the Plaintiff Godbey and against the Defendants.

Eleanor Young
Foreperson

Date: 3-14-08

Upon the question of whether the Defendants are liable to Plaintiff Garnett Louise Godbey for False Light (Count 2), we find for the Defendants and against Plaintiff Godbey.

Foreperson

Date: _____

The jury is instructed that if your verdict as to Counts 1 and 2 have been for the Defendants and against Plaintiff Godbey, your work is completed as to Plaintiff Godbey's case.

If you have found for Plaintiff Godbey and against these Defendants as to either Count 1 or Count 2 or both, proceed to the damage portion of this Verdict Form.

Damages

Having found for the Plaintiff Godbey, we assess the following damages:

\$ 400,000.⁰⁰

Eleanor Young
Foreperson

Date: 3-14-08

FILED

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

GARNET LOUISE GODBEY,

Plaintiff,

v.

JACKEE LONG, ROBERT BROWN and
WEST VIRGINIA SCHOOL SERVICE
PERSONNEL ASSOCIATION,

Defendants.

2008 MAR 31 PM 4:55

CATHY S. GATSON, CLERK
KANAWHA CO. CIRCUIT COURT

CIVIL ACTION NO. 05-C-27

JUDGMENT ON JURY VERDICT

This action came on for trial before the Court and a jury, the Honorable Jennifer Bailey Walker presiding, and the issues having been duly tried and the jury on March 14, 2007, having rendered a verdict for the plaintiff, Garnet Louise Godbey, to recover of the defendants, Jackee Long, Robert Brown and the West Virginia School Service Personnel Association, damages in the amount of \$400,000,

It is **ORDERED AND ADJUDGED** that the plaintiff Garnet Louise Godbey recover of the defendants, Jackee Long, Robert Brown and the West Virginia School Service Personnel Association, the sum of \$400,000 with interest thereon at the statutory rate, from the aforesaid date until paid and her costs of action.

Dated this 31st day of March 2008.

Jennifer Bailey Walker
Honorable Jennifer Bailey Walker
Judge, 13th Judicial Circuit

Prepared by:

S. Benjamin Bryant
S. Benjamin Bryant, State Bar No. 520
CAREY, SCOTT & DOUGLAS, PLLC
901 Chase Tower
707 Virginia Street, East
Charleston, WV 25301
Counsel for Plaintiff
(304) 345-1234

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF THE CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 2
DAY OF April, 2008
Cathy S. Gatson CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

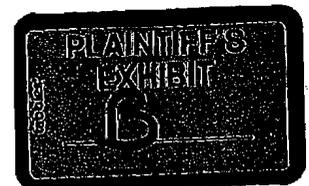


EXHIBIT C

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

SANDRA K. SHAFFER and
GARNETT LOUISE GODBEY,

2008 SEP 10 AM 11:39
CLERK OF COURT
KANAWHA CO. CIRCUIT COURT

Plaintiffs,

v.

Civil Action No.: 05-C-27 / 05-C-28
Judge Jennifer Bailey Walker

JACKEE LONG, ROBERT BROWN,
and WEST VIRGINIA SCHOOL
SERVICE PERSONNEL ASSOCIATION,

Defendants.

**ORDER GRANTING DEFENDANTS' MOTION IN THE ALTERNATIVE FOR
REMITTITUR OF COMPENSATORY DAMAGES**

This matter came before the Court on June 26, 2008, for hearing on the defendants' post trial motion. At the hearing, the defendants asked this Court to enter judgment in their favor, set the verdict aside and order a new trial, or, in the alternative, correct the verdict by remittitur.

The Court has studied the motion, the record as a whole, the memoranda of law submitted by the parties, and other pertinent legal authorities. As a result of these deliberations, for the reasons set forth in the following opinion, the Court concludes that the defendants are not entitled to judgment as a matter of law or a new trial. However, the Court does conclude that the defendants are entitled to correction of the jury verdict by remittitur.

FACTUAL AND PROCEDURAL HISTORY

Civil Action Numbers 05-C-27 and 05-C-28 were initiated in Kanawha County Circuit Court on January 5, 2005. By order dated October 1, 2007, the two civil actions were consolidated. The civil complaints in the two cases alleged defamation and false light invasion of privacy. The complaints also included a third count for punitive damages, which was not



presented to the jury. The case stemmed from a letter authored by the defendants regarding, among other things, the plaintiffs and a mailing using stolen postage.

On March 10, 2008, the consolidated case was presented for trial by jury. The jury heard three days of testimony from a total of six witnesses, including each plaintiff, each defendant, the attorney for West Virginia School Service Personnel Association, and plaintiff Godbey's daughter. On March 13, 2008, the jury was instructed on relevant law and heard closing arguments. The jury deliberated on March 14, 2008, and rendered a verdict in favor of the plaintiffs. The jury awarded each plaintiff damages in the amount of \$400,000.00 with interest thereon at the statutory rate. Final judgment on the jury verdict was entered by the Court on March 31, 2008.

On April 9, 2008, the defendants filed a renewed motion for judgment and a motion for a new trial. In its motion, the defendants alternatively requested a remittitur of damages. The plaintiffs filed a motion in opposition.

On June 26, 2008, oral arguments were held before this Court on the defendants' motion. The Court then took the matter under advisement.

DISCUSSION

The defendants assert that they are entitled to judgement as a matter of law, that the evidence presented does not support the damages which the jury awarded, and that the jury's verdict is otherwise tainted by a variety of factors. Meanwhile, the plaintiffs contend that the defendants' motion should be denied because the verdict was supported by the evidence, the jury was properly instructed in accordance with the prevailing law, and the defendants received a fair trial.

Renewed Motion for Judgment

The defendants first contend that they are entitled to judgment as a matter of law because the evidence submitted at trial does not support their liability to the plaintiffs. Rule 50(b) of the West Virginia Rules of Civil Procedure outlines the Court's authority in ruling on renewed motions for judgment. Rule 50(b) provides that, in ruling upon a renewed motion for judgment after the verdict is returned, a circuit court may: (a) allow the judgment to stand, (b) order a new trial, or (c) direct the entry of judgment as a matter of law.

In considering whether a renewed motion for judgment should be granted, the evidence should be considered in the light most favorable to the plaintiff. *Fuller v. Riffe*, 575 S.E.2d 613, 616 (W.Va. 2002). In cases where evidence is such that the jury could have properly found for either party upon the factual issues, a renewed motion for judgment should not be granted. *Sias v. W-P Coal Co.*, 408 S.E.2d 321, 330 (W.Va. 1991).

This Court concludes that the jury in this matter was properly instructed on the essential elements of defamation and false light invasion of privacy. *See The Court's Charge and Instructions*, court file line 46; *Crump v. Beckley Newspapers*, 320 S.E.2d 70, 77 (W.Va. 1983). The jury was further instructed on the defendants' qualified privilege defense and the ability to award compensatory damages. The Court further notes that there were no objections to the instructions.

With the jury being properly instructed on the prevailing law, this Court concludes that there remained conflicting issues of fact. In viewing the testimony in a light most favorable to the plaintiff, the Court concludes that a jury could have properly found for either party on the factual issues. Evidence was presented which could have lead the jury to conclude that the plaintiffs had

met their burden of proof in proving the necessary elements of defamation and false light invasion of privacy. Meanwhile, evidence was also presented which could have lead the jury to conclude that the defendants put forth an adequate defense to the alleged torts claims.

Therefore, in accord with Rule 50(b) of the West Virginia Rules of Civil Procedure, the Court allows the judgment to stand in regard to the issue of liability. After hearing opening statements, testimony from six witnesses, and closing arguments, the jury could have found for either party.

Motion for a New Trial

The defendants also seek a new trial under Rule 59 of the West Virginia Rules of Civil Procedure. The West Virginia Supreme Court of Appeals had held that a trial judge should rarely grant new trials, but nevertheless maintains broad discretion to determine whether or not a new trial should be granted. *In re State Public Bldg. Asbestos Litigation*, 454 S.E.2d 413, 420 (W.Va. 1994). The Supreme Court has further held that a new trial should not be granted unless it is reasonably clear that prejudicial error has crept into the record or that substantial justice has not been done. *State ex rel. Meadows v. Stephens*, 532 S.E.2d 59, 63 (W.Va. 2000). In considering a motion for a new trial, the Court has the authority to weigh the evidence and to consider the credibility of the witnesses. *Toler v. Hager*, 519 S.E.2d 166, 178 (W.Va. 2002).

This Court holds that the trial in this matter did not result in a miscarriage of justice. Furthermore, in regard to the issue of liability, this Court concludes that the verdicts are not against the clear weight of evidence. The jury had sufficient credible evidence to conclude that the defendants had committed the torts of defamation and false light invasion of privacy. This Court further concludes that there was sufficient evidence to substantiate a jury verdict of

damage, as evidence was presented regarding embarrassment and hurt feelings. However, as will be explained below, this Court finds there to be insufficient credible evidence to substantiate the jury's verdict in regard to the amount of compensatory damages.

In accord with Rule 59 of the West Virginia Rules of Civil Procedure, the Court denies the defendants' motion for a new trial because the jury's verdict was not against the clear weight of evidence.

Motion for Remittitur of Damages

Rule 59(e) of the West Virginia Rules of Civil Procedure indicates that a trial court may alter or amend judgments in the alternative of a new trial. Falling under Rule 59(e) of the West Virginia Rules of Civil Procedure is the Court's authority to reduce or recalculate jury damages, also known as a remittitur. *Alkire v. First National Bank of Parsons*, 475 S.E.2d 122 (W.Va. 1996).

The West Virginia Supreme Court of Appeals has held that a trial court may remit a jury verdict when it is "monstrous and enormous, at first blush beyond all measure, unreasonable and outrageous, and manifestly shows jury passion, partiality, prejudice or corruption." *Roberts v. Stephens Clinic Hospital*, 345 S.E.2d 791, 800 (W.Va. 1986). The *Roberts* court further set aside West Virginia's conformity with the minority and held that remittitur is permissible even when there is no data by which the jury's excess is ascertainable. *Id.* at 800. In *Roberts*, the jury awarded damages in the amount of \$10 million in a wrongful death claim of a toddler. The West Virginia Supreme Court of Appeals ultimately found the award excessive and remanded the case with directions to the circuit court to remit damages by \$7,000,000 and enter judgment on the verdict for \$3,000,000. *Id.* at 804.

The West Virginia Supreme Court of Appeals has also held that “[i]f the plaintiff declines to accept the remittitur, then a new trial will be ordered solely on the issue of damages.” *Wilt v. Buracker*, 443 S.E.2d 196, 209 (W.Va. 1994).

The jury in this case properly found the defendants had committed the torts of false light invasion of privacy and defamation. When a plaintiff has established liability for invasion of privacy, the plaintiff is entitled to recover damages for: (1) the harm to her interest in privacy resulting from the invasion; (2) her mental distress proved to have been suffered if it is not of a kind that normally results from such an invasion; (3) special damages of which the invasion is a legal cause; and (4) if none of the former damages is proven, nominal compensatory damages are to be awarded. *Rohrbaugh v. Wal-Mart Stores, Inc.*, 572 S.E.2d 881, 888 (W.Va. 2002). “Special damages” refers to any actual monetary loss that may have been suffered. *Id.* at 888.

Meanwhile, the theory of damages in an action for defamation is that only fair and reasonable compensation shall be awarded and the usual recovery is limited to actual or compensatory damages that are commensurate with the harm suffered. 50 *Am. Jur. 2d Libel and Slander* §358 (2008). There are two general classes of compensatory damages allowable for defamation: (1) general damages, or those which the law presumes to be the natural, proximate, and necessary result of the publication and which represent such effects of the defamation as loss of reputation, shame, mortification, and hurt feelings; and (2) special damages, which are actual and concrete damages capable of being quantified. *Id.*

In this case, the compensatory damages of \$400,000.00 to each plaintiff shocks the conscience and is not supported by the evidence adduced at trial. The Court notes that no disinterested party testified concerning damages. Both plaintiffs are retired and there was no

evidence of lost income or financial loss.

Plaintiff Godbey testified at trial that she was "in shock" after seeing the letter. *Excerpt - Testimony of Garnett Louise Godbey*, p. 22. Godbey further testified that she "was sick," "couldn't sleep," and "couldn't eat." *Id.* at p. 25. Godbey also indicated that she had, while also taking on a walking regimen, lost 48 pounds. *Id.*

Godbey's daughter, Judy Reed, also testified regarding her mother's alleged damages. Reed testified that her mother was "upset" and "concerned." *Excerpt - Testimony of Judy Reed*, p. 6. In later portions of her testimony, Reed testified that mother was "devastated," "sad," and "embarrassed." *Id.* at 10, 14, 19-20.

Plaintiff Shaffer testified regarding her damages. Shaffer indicated that she "lost a few nights sleep." *Excerpt - Testimony of Sandra K. Shaffer*, p. 38. She further testified that she was hurt and humiliated. Shaffer indicated that she wanted an apology. *Id.*

This Court notes that no evidence was submitted regarding medical injuries or related medical bills. No evidence was elicited regarding loss income or wages. No quantifiable damages of any sort were presented at trial.

While evidence of hurt feelings and humiliation was presented to the jury, there was insubstantial evidence in this matter to support a verdict of \$400,000.00 for each plaintiff. Accordingly, this Court, pursuant to the aforesaid case law and its authority of remittitur, remits compensatory damages to the amount of \$40,000.00 for each plaintiff. This Court concludes that compensatory damages in the remitted amount better reflect the damages testified to by the parties and their witness.

DECISION

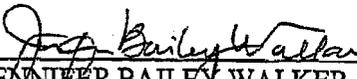
Based on the foregoing, it is hereby **ADJUDGED** and **ORDERED** that the defendants are entitled to a remittitur of damages.

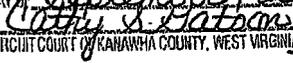
It is accordingly **ADJUDGED** and **ORDERED**:

1. That the defendants' Renewed Motion for Judgment is denied.
2. That the defendants' Motion for a New Trial is denied.
3. That compensatory damages are remitted to the amount of \$40,000.00 to each plaintiff.
4. That the costs as taxed by the Clerk of this Court shall be assessed against the defendants.

It is further **ORDERED** that the Circuit Clerk distribute certified copies of this Order to all parties or counsel of record. The Court notes the objection of the party or parties aggrieved by this Order. This is a Final Order.

Entered this 9th day of September, 2008.


JENNIFER BAILEY WALKER, Judge
Thirteenth Judicial Circuit

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF THE CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 10
DAY OF September, 2008

CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA 14 CLERK

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 12th of May, 2009, the following order was made and entered:

Sandra K. Shaffer and Garnett
Louise Godbey, Plaintiffs Below,
Respondents

vs.) No. 090170

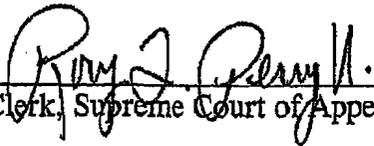
Jackee Long, Robert Brown, and West
Virginia School Service Personnel
Association, Defendants Below, Petitioners

On a former day, to-wit, February 2, 2009, came the petitioners, Jackee Long, Robert Brown and the West Virginia School Service Personnel Association, by James M. Cagle, their attorney, and presented to the Court their petition praying for an appeal from a judgment of the Circuit Court of Kanawha County, rendered on the 10th day of September, 2008, with the record accompanying the petition.

Upon consideration whereof, the Court is of opinion to and doth hereby refuse said petition. Justices Ketchum and McHugh would grant.

A True Copy

Attest:


Clerk, Supreme Court of Appeals



STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 12th of May, 2009, the following order was made and entered:

Sandra K. Shaffer and Garnett
Louise Godbey, Plaintiffs Below,
Petitioners

vs.) No. 090171

Jackee Long, Robert Brown, and West
Virginia School Service Personnel
Association, Defendants Below,
Respondents

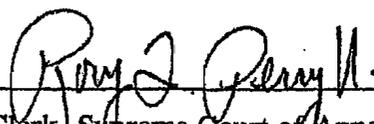
On a former day, to-wit, February 2, 2009, came the petitioners, Sandra K. Shaffer and Garnett Louise Godbey, by S. Benjamin Bryant, John A. Kessler and David R. Pogue, their attorneys, and presented to the Court their petition praying for an appeal from a judgment of the Circuit Court of Kanawha County, rendered on the 10th day of September, 2008, with the record accompanying the petition.

Thereafter, on the 6th day of February, 2009, came the respondents, Jackee Long, Robert Brown and the West Virginia School Service Personnel Association, by James M. Cagle, their attorney, and presented to the Court their response in opposition thereto.

Upon consideration whereof, the Court is of opinion to and doth hereby refuse said petition. Justices Ketchum and McHugh would grant.

A True Copy

Attest:


Clerk, Supreme Court of Appeals

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

GARNET LOUISE GODBEY,

Plaintiff,

v.

Civil Action No. 05-C-27

JACKIE LONG, ROBERT BROWN and
WEST VIRGINIA SCHOOL SERVICE
PERSONNEL ASSOCIATION,

Defendants.

MOTION FOR TRIAL DATE
AND STATUS CONFERENCE

Plaintiff, Garnet Louise Godbey, by counsel, John A. Kessler, S. Benjamin Bryant, and the firm of Carey, Scott, Douglas & Kessler, PLLC, hereby moves the Court to set this case down for trial and to schedule a status conference concerning other pre-trial matters. This motion is filed in light of this Court's Order entered September 9, 2008; and the Order of the Supreme Court of Appeals of West Virginia of May 12, 2009 denying both the plaintiff's and defendants' respective petitions for appeal.

GARNET LOUISE GODBEY

By Counsel



S. Benjamin Bryant, WVSB #520
John A. Kessler, WVSB #2027
Carey, Scott, Douglas & Kessler, PLLC
901 Bank One Center
707 Virginia Street, East
P.O. Box 913
Charleston, WV 25323
(304) 345-1234



IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

GARNET LOUISE GODBEY,

Plaintiff,

v.

CIVIL ACTION NO. 05-C-27

JACKEE LONG, ROBERT BROWN and
WEST VIRGINIA SCHOOL SERVICE
PERSONNEL ASSOCIATION,

Defendants.

CERTIFICATE OF SERVICE

I, S. Benjamin Bryant, counsel for the Plaintiff, do hereby certify that on this the 12th day of June 2009, I served the attached "Motion for Trial Date and Status Conference" upon all counsel and parties of record by depositing true copies in the United States mail, postage fully paid, addressed as follows:

James M. Cagle, Esquire
1018 Kanawha Blvd., East
Suite 1200
Charleston, WV 25301-2827
Counsel for Defendants


S. Benjamin Bryant, WVSB #520

EXHIBIT F

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

SANDRA K. SHAFFER and
GARNETT LOUISE GODBEY,

Plaintiffs,

v.

CIVIL ACTION NO. 05-C-27, 28
Judge Bailey Walker

JACKEE LONG, ROBERT BROWN
and WEST VIRGINIA SCHOOL
SERVICE PERSONNEL ASSOCIATION,

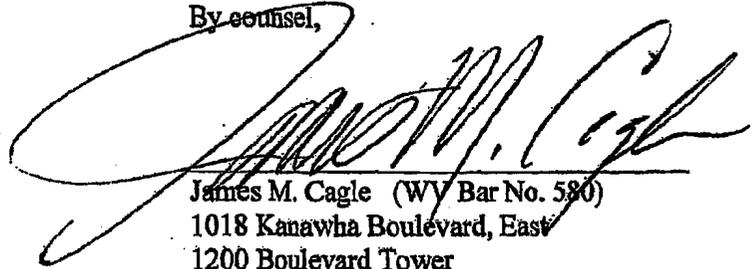
Defendants.

**DEFENDANTS' RESPONSE TO MOTION FOR
TRIAL DATE AND STATUS CONFERENCE**

The Defendants respond as follows to the Motion served on June 12, 2009:

1. The matter has been entirely adjudicated.
2. The Defendants are prepared to pay the Plaintiffs under the Judgment Order entered in the above-styled actions.
3. There is nothing further to be done or accomplished in the above-styled actions.

Defendants,
By counsel,



James M. Cagle (WV Bar No. 580)
1018 Kanawha Boulevard, East
1200 Boulevard Tower
Charleston, West Virginia 25301
(304) 342-3174



IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

SANDRA K. SHAFFER and
GARNETT LOUISE GODBEY,

Plaintiffs,

v.

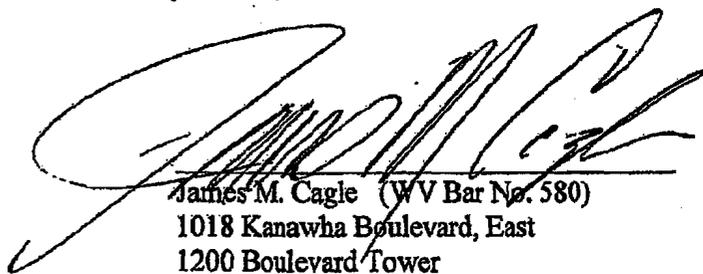
CIVIL ACTION NO. 05-C-27 / 05-C-28
Judge Bailey Walker

JACKEE LONG, ROBERT BROWN
and WEST VIRGINIA SCHOOL
SERVICE PERSONNEL ASSOCIATION,

Defendants.

CERTIFICATE OF SERVICE

The undersigned, Counsel for the Defendants does hereby certify that a true and correct copy of the Defendants' Response to Motion for Trial Date and Status Conference was served by regular United States mail, postage prepaid to S. Benjamin Bryant, Esquire, P. O. Box 3836, Charleston, West Virginia 25339, on this the 22nd day of June, 2009.



James M. Cagle (WV Bar No. 580)
1018 Kanawha Boulevard, East
1200 Boulevard Tower
Charleston, West Virginia 25301
(304) 342-3174

WEST VIRGINIA
CIRCUIT COURT
KANE COUNTY
JUN 23 2009

EXHIBIT G.

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

GARNET LOUISE GODBEY,

Plaintiff,

v.

Civil Action No. 05-C-27

JACKIE LONG, ROBERT BROWN and
WEST VIRGINIA SCHOOL SERVICE
PERSONNEL ASSOCIATION,

Defendants.

MOTION FOR NEW TRIAL ON DAMAGES

COMES NOW the plaintiff, Garnet Louise Godbey, by counsel, and hereby moves the Court for a new trial on the issue of damages. This motion is filed in light of this Court's Order entered September 9, 2008 remitting the amount of the plaintiff's damages; and the Order of the Supreme Court of Appeals of West Virginia of May 12, 2009 denying both the plaintiff's and defendants' respective petitions for appeal. This motion is filed with a memorandum of law which sets forth the grounds in greater detail.

Respectfully submitted,

GARNET LOUISE GODBEY

By Counsel



S. Benjamin Bryant, WVSB #520

John A. Kessler, WVSB #2027

David R. Pogue, WVSB No. 10806

Carey, Scott, Douglas & Kessler, PLLC

901 Bank One Center

707 Virginia Street, East

P.O. Box 913

Charleston, WV 25323

(304) 345-1234



IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

GARNET LOUISE GODBEY,

Plaintiff,

v.

Civil Action No. 05-C-27

JACKIE LONG, ROBERT BROWN and
WEST VIRGINIA SCHOOL SERVICE
PERSONNEL ASSOCIATION,

Defendants.

**MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR NEW TRIAL ON DAMAGES**

I. FACTUAL AND PROCEDURAL BACKGROUND

In January 2005, the plaintiff, Garnet Louise Godbey, filed an action against the defendants alleging defamation and false light invasion of privacy. On March 14, 2008, a jury returned a verdict in the plaintiff's favor for the amount of \$400,000 plus interest at the statutory rate. Final judgment on the jury verdict was entered by this Court on March 31, 2008. Thereafter, on April 8, 2008, the defendants filed a motion asking for a new trial or, in the alternative, a remittitur of damages. By Order dated September 9, 2008, this Court denied the defendants' motion for a new trial but granted a remittitur reducing plaintiff's damage award from \$400,000 to \$40,000. Both the plaintiff and the defendants filed petitions for appeal with the West Virginia Supreme Court of Appeals. By Order dated May 12, 2009, the West Virginia Supreme Court of Appeals denied both petitions for appeal.

II. ARGUMENT

The West Virginia Supreme Court of Appeals has held that if, after liability has been established, a court orders a remittitur of the damages awarded to the plaintiff and the plaintiff declines to accept such remittitur, "then a new trial will be ordered solely on the issue of damages." Wilt v. Buracker, 443 S.E.2d 196, 209 (W.Va.1993). Indeed, this Court recognized this principle on page 6 of its Order dated September 9, 2008.

In the present case, the jury found for the plaintiff on the issue of liability, but this Court ordered a remittitur of the damages that the jury awarded to the plaintiff. In accordance with the principles discussed in Wilt, the plaintiff may decline to accept the remittitur and is entitled a new trial on the issue of damages. The plaintiff, Garnet Louise Godbey, has declined declines the Court's remittitur and respectfully requests a new trial on the issue of damages.

III. CONCLUSION

For the reasons discussed herein, the plaintiff respectfully requests that this Court grant her motion for a new trial on the issue of damages.

Respectfully submitted,

GARNET LOUISE GODBEY

By Counsel



S. Benjamin Bryant, WVSB #520
John A. Kessler, WVSB #2027
David R. Pogue, WVSB No. 10806
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IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

GARNET LOUISE GODBEY,

Plaintiff,

v.

Civil Action No. 05-C-27

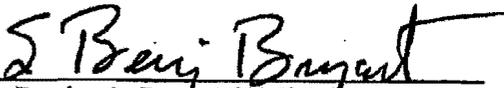
JACKIE LONG, ROBERT BROWN and
WEST VIRGINIA SCHOOL SERVICE
PERSONNEL ASSOCIATION,

Defendants.

CERTIFICATE OF SERVICE

I, S. Benjamin Bryant, counsel for the Plaintiff, do hereby certify that on this the 5th day of August 2009, I served the attached "Motion for New Trial on Damages" and "Memorandum of Law In Support of Motion for New Trial on Damages" upon all counsel and parties of record by depositing true copies in the United States mail, postage fully paid, addressed as follows:

James M. Cagle, Esquire
1018 Kanawha Blvd., East
Suite 1200
Charleston, WV 25301-2827
Counsel for Defendants


S. Benjamin Bryant, WVSB #520

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

GARNET LOUISE GODBEY,

Petitioner,

v.

UPON ORIGINAL JURISDICTION
IN MANDAMUS _____

THE HONORABLE JENNIFER F. BAILEY,
Kanawha County Circuit Court Judge,

Respondent.

MEMORANDUM OF LAW IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS

The Petitioner, Garnet Louise Godbey, respectfully requests that this Honorable Court issue a Writ of Mandamus to compel the Honorable Jennifer F. Bailey, Judge of the Circuit Court of Kanawha County, to perform her mandatory duty to rule on Petitioner's "Motion for New Trial on Damages" in Civil Action No. 05-C-27.

FACTS

This petition presents a straightforward legal issue, and the facts are not in dispute. In January of 2005, Petitioner filed a lawsuit against Jackie Long, Robert Brown, and the West Virginia School Service Personnel Association (hereinafter "Defendants below") alleging defamation and false light invasion of privacy. The case was assigned to the Honorable Judge Jennifer F. Bailey. On March 14, 2008, a jury found in favor of Petitioner, and awarded damages in the amount of \$400,000 plus interest at the statutory rate. The Circuit Court of Kanawha County, West Virginia entered judgment on the jury verdict on March 31, 2008.

Thereafter, on April 8, 2008, the Defendants below filed a motion asking for a new trial or, in the alternative, a remittitur of damages. By a "final" Order dated September 9, 2008, Judge Bailey denied the Defendants' motion for a new trial but granted a remittitur reducing Petitioner's damage award from \$400,000 to \$40,000. Both Petitioner and the Defendants below filed petitions for appeal with this Court (Nos. 090170 and 090171), and by Order dated May 12, 2009, this Court denied both petitions for appeal.

Subsequently, on or about August 6, 2009, Petitioner filed a "Motion for New Trial on Damages." The Defendants below filed responses opposing Petitioner's request for a new trial on damages, and Judge Bailey conducted a hearing on the motion on October 29, 2009. Judge Bailey did not rule on Petitioner's "Motion for New Trial on Damages" at the conclusion of the hearing, and has not ruled or otherwise acted with regard to that motion since. By letter dated January 26, 2010, counsel for Petitioner requested that Judge Bailey promptly rule on the pending motion for new trial due to Petitioner's advanced age and fading health. However, as of the date of this Petition, Judge Bailey has still not ruled on Petitioner's "Motion for New Trial on Damages."

ARGUMENT

This Court has observed that if, after liability has been established, a court orders a remittitur of the damages awarded to the plaintiff, then the plaintiff has the choice of accepting the remittitur or a new trial on the issue of damages. See Wilt v. Buracker, 191 W.Va. 39, 52, 443 S.E.2d 196, 209 (1993)("If the plaintiff declines to accept the remittitur, then a new trial will be ordered solely on the issue of damages."). Indeed, Judge Bailey recognized this principle on page 6 of her Order dated September 9, 2008.

In the present case, Petitioner declined to accept Judge Bailey's remittitur, and instead elected to have a new trial on the issue of damages. However, despite the clear mandate of the case law recognized in Judge Bailey's Order, Judge Bailey has failed to grant Petitioner a new trial on the issue of damages, or otherwise rule on Petitioner's "Motion for New Trial on Damages."

This Court has observed that "mandamus will lie to compel a lower court to act in a case if it neglects or refuses to do so." State ex rel. Rahman v. Canady, 205 W.Va. 84, 86, 516 S.E.2d 488, 490 (W.Va. 1999)(citing State ex rel. Cackowska v. Knapp, 147 W.Va. 699, 130 S.E.2d 204 (1963)); see also State ex rel. Patterson v. Aldredge, 173 W.Va. 446, 448, 317 S.E.2d 805, 807-08 (1984). Furthermore, this Court has held that it will issue a writ of mandamus when the following three elements coexist: "(1) a clear legal right in the petitioner to the relief sought; (2) a legal duty on the part of respondent to do the thing which the petitioner seeks to compel; and (3) the absence of another adequate remedy." State ex rel. Burdette v. Zakaib, 224 W.Va. 325, 685 S.E.2d 903, 909 (2009)(citing Syl. Pt. 2, State ex rel. Kucera v. City of Wheeling, 153 W.Va. 538, 170 S.E.2d 367 (1969)).

All of these elements are satisfied in the present case. This Court has recognized that litigants have a right to an "expeditious disposition of all civil matters," and that "judges have an affirmative duty to render timely decisions on matters properly submitted within a reasonable time following their submission." See Patterson, 173 W.Va at 448, 317 S.E.2d at 807. Furthermore, Petitioner has no remedy other than mandamus to compel the circuit court to rule on her motion for a new trial on damages. Moreover, the need for a reasonably timely decision is especially great in this case due to the fact that Petitioner is now over 85 years old and suffering from a declining state of health.

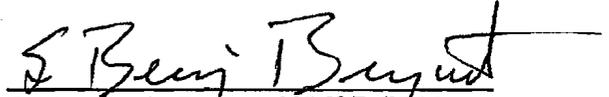
CONCLUSION

Based on the foregoing, the Petitioner, Garnet Louise Godbey, respectfully requests that this Court grant this instant Petition for Writ of Mandamus and award the Petitioner any and all other relief this Court deems appropriate. Furthermore, to the extent that a rule to show cause is required by law, the Petitioner respectfully moves this Court to issue such rule.

RESPECTFULLY SUBMITTED,

GARNET LOUISE GODBEY

BY COUNSEL,

A handwritten signature in cursive script, appearing to read "S. Benjamin Bryant", written over a horizontal line.

S. Benjamin Bryant, WVSB #520

John A. Kessler, WVSB #2027

David R. Pogue, WVSB No. 10806

Carey, Scott, Douglas & Kessler, PLLC

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707 Virginia Street, East

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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

GARNETT LOUISE GODBEY,

Petitioner,

UPON ORIGINAL JURISDICTION
IN MANDAMUS _____

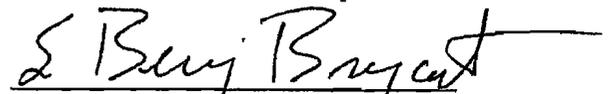
JACKEE LONG, ROBERT BROWN,
and WEST VIRGINIA SCHOOL
SERVICE PERSONNEL ASSOCIATION,

Respondents.

CERTIFICATE OF SERVICE

I, S. Benjamin Bryant, counsel for the Petitioner, do hereby certify that on this the 25th day of May 2010, I served the attached "Memorandum of Law in Support of Petition for Writ of Mandamus" upon all counsel and parties of record by depositing true copies in the United States mail, postage fully paid, addressed as follows:

James M. Cagle, Esquire
1018 Kanawha Blvd., East
Suite 1200
Charleston, WV 25301-2827
Counsel for Respondents/Defendants


S. Benjamin Bryant (WVSB #520)

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

GARNET LOUISE GODBEY,

Petitioner,

v.

UPON ORIGINAL JURISDICTION
IN MANDAMUS _____

THE HONORABLE JENNIFER F. BAILEY,
Kanawha County Circuit Court Judge,

Respondent.

**MEMORANDUM LISTING PARTIES UPON WHOM
THE RULE TO SHOW CAUSE IS TO BE SERVED, IF GRANTED**

Comes now the Petitioner, Garnet Louise Godbey, by counsel, and states that the following should be served with a copy of the Rule to Show Cause, should one be granted by this Court:

The Hon. Jennifer F. Bailey
Kanawha County Judicial Building
111 Court Street
Charleston, West Virginia 25301

Darrell McGraw, West Virginia Attorney General
State of West Virginia
State Capitol Complex
1900 Kanawha Boulevard, Room E-26
Charleston, West Virginia 25305


S. Benjamin Bryant, WWSB #520
John A. Kessler, WWSB #2027
David R. Pogue, WWSB No. 10806
Carey, Scott, Douglas & Kessler, PLLC
901 Chase Tower
707 Virginia Street, East
P.O. Box 913
Charleston, WV 25323

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

GARNETT LOUISE GODBEY,

Petitioner,

UPON ORIGINAL JURISDICTION
IN MANDAMUS _____

JACKEE LONG, ROBERT BROWN,
and WEST VIRGINIA SCHOOL
SERVICE PERSONNEL ASSOCIATION,

Respondents.

CERTIFICATE OF SERVICE

I, S. Benjamin Bryant, counsel for the Petitioner, do hereby certify that on this the 25th day of May 2010, I served the attached "Memorandum Listing Parties Upon Whom The Rule to Show Cause Is To Be Served, If Granted" upon all counsel and parties of record by depositing true copies in the United States mail, postage fully paid, addressed as follows:

James M. Cagle, Esquire
1018 Kanawha Blvd., East
Suite 1200
Charleston, WV 25301-2827
Counsel for Respondents/Defendants


S. Benjamin Bryant (WVSB #520)