



DECISIONS, NOTICES AND ORDERS

Friday, October 17, 2014

The Supreme Court of Appeals of West Virginia has taken action in the following cases. This list contains only the action taken by the Court, not the content or actual date of orders or decisions.

MEMORANDUM DECISIONS

In accordance with Rule 21, memorandum decisions were entered in the following cases:

State of West Virginia v. Shawn Pethel, No. 13-1139 (Ohio 99-F-72)
Affirmed (5-0)

Andrew J. Whittaker, Jr. v. Jewell K. Whittaker, No. 13-1307 (Raleigh 05-D-331)
Affirmed (5-0)

State of West Virginia v. Adam Scott Lytle, No. 13-1070 (Roane 12-F-41)
Affirmed (4-1) (Chief Justice Davis dissenting)

Nancy Lorraine Galford and Charles Galford v. Nancy Friend, individually, and Big Bear Lake Property Owners Association, Inc., No. 13-1134 (Preston 13-C-42)
Affirmed (5-0)

State of West Virginia v. Stephen Robert Clemens, No. 14-0170 (Ohio 13-F-101)
Affirmed (5-0)

RMLL Enterprises, Inc. v. Mark W. Matkovich, State Tax Commissioner, No. 13-1275 (Ohio 13-CAP-10)
Affirmed (5-0)

Patricia Bradley Pitrolo v. James Pitrolo, Jr., No. 13-1309 (Kanawha 10-D-2236)
Affirmed (3-1) (Chief Justice Davis dissenting) (Justice Benjamin disqualified)

Steven O. Dale, Acting Commissioner v. Richard O. Ellison, No. 13-1321 (Kanawha 11-AA-76)
Affirmed (4-1) (Justice Loughry dissenting)

State of West Virginia v. Jessica Persianni Roberts, No. 13-1049 (Mercer 12-F-105)
Affirmed (5-0)

State of West Virginia v. David W. Pitts, No. 13-1206 (Fayette 13-F-69)
Affirmed (5-0)

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Paula L. Cunningham v. Felman Production, LLC, No. 13-1276 (Mason 11-C-146)
Affirmed (5-0)

Russell C. Berry and Patricia D. Berry v. Mountain Air Property Owners Association, Inc., No. 13-1324 (Hampshire 13-C-31)
Affirmed (3-2) (Chief Justice Davis and Justice Workman dissenting)

RULE 19 ARGUMENT GRANTED

The following cases will be scheduled for Rule 19 oral argument on the date stated or on a later date to be determined:

SER Office of Disciplinary Counsel v. Donna M. Price, No. 14-0899 (Rule to Show Cause in Contempt – Lawyer Disciplinary)
Tuesday, January 13, 2015

Citynet, LLC v. Ray Toney, No. 14-0058 (Kanawha 12-C-527)

West Virginia Division of Natural Resources v. James Franklin Williams, No. 14-0130 (Kanawha 13-AA-100)

Daniel Allan Weatherholt v. Jeffrey Neal Weatherholt, No. 14-0219 (Hardy 13-C-52)

David Ballard, Warden v. Patrick J. Meckling, No. 14-0245 (Ohio 09-C-163)

Brandy Eplion v. West Virginia Division of Corrections, No. 13-1224 (Kanawha 10-C-1473)

Maninder Bedi v. June Ellen Kilgore, Executrix, No. 14-0206 (Ohio 12-C-153)

David Ragonese v. Racing Corporation of West Virginia, doing business as Mardi Gras Casino, No. 14-0258 (Kanawha 13-C-1092)

Lawyer Disciplinary Board v. April D. Conner, No. 13-0522 (Lawyer Disciplinary)
(4-1) (Justice Ketchum would concur with the recommended disposition.)

RULE 20 ARGUMENT GRANTED

The following case will be scheduled for Rule 20 oral argument on a later date to be determined:

SER Ralph A. Lorenzetti, Jr., Prosecuting Attorney v. Hon. David H. Sanders, Judge; and Elizabeth Shanton, No. 14-0904 (Original Prohibition)

Gary L. Capriotti, Edward Moore, Edward Dunleavy, and Shepherdstown Battlefield Preservation Association v. Jefferson County Planning Commission and Far Away Farm, LLC, No. 13-1243 (Jefferson 11-C-325)

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ORDERS

Orders of note were entered in the following cases:

Melissa Rotruck v. Janice Smith, doing business as The Insurance Queen, No. 14-0104
(Mineral 12-C-135)

Vacated and Remanded with instructions to enter an order with findings and conclusions that addresses all of the issues raised in the petitioner's motion for new trial. (5-0)

Rite Aid of West Virginia, Inc. v. Patrick Morrissey, Attorney General, No. 14-0934
(Certified Questions, Boone 09-C-217)

Court declined to docket the certified questions on the basis that the matter is best addressed on direct appeal after the record is fully developed and a final judgment has been entered. (5-0)

1. Does West Virginia Code § 30-5-12b(g)—requiring that “[a]ll savings in the retail price of the prescription shall be passed on to the purchaser; these savings shall be equal to the difference between the retail price of the brand name product and the customary and usual price of the generic product substituted therefor: Provided, That in no event shall such savings be less than the difference in acquisition cost of the substituted product”—exempt transactions involving pharmacy reimbursement contracts with third-party payors?
Circuit Court Answer: No.

2. Do the generic-drug pricing provisions in West Virginia Code § 30-5-12b apply to all generic prescription drug transactions in West Virginia?
Circuit Court Answer: Yes.

3. Is West Virginia Code § 30-5-12b void due to desuetude?
Circuit Court Answer: No.

SER Tygart Valley Regional Jail, West Virginia Regional Jail and Correctional Facility Authority, and Prime Care Medical of West Virginia, Inc. v. Hon. Thomas H. Keadle, Senior Status Judge; and Paul Thorne, No. 14-0821 (Original Prohibition)
Petition refused (5-0)

SER Sanford Cremeans and Toni Cremeans v. Hon. Paul T. Farrell, Judge; and Sean Hammers, Prosecuting Attorney, No. 14-0837 (Original Prohibition)
Petition refused (5-0)

SER K.C. v. Hon. Miki Thompson, Judge, No. 14-0854 (Original Prohibition)
Petition refused (5-0)

State of West Virginia v. Thomas M. White, Jr., No. 14-0935 (Post-Conviction Bail)
Petition refused (5-0)

SER Allen V. McInarnay and Arleen S. McInarnay v. Hon. Robert A. Irons, Judge; and Peggy T. Hall, No. 14-0936 (Original Prohibition)
Petition refused (5-0)

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Trina Janura v. John J. Janura, Jr. and Patricia Janura, No. 14-0911 (Hancock 12-C-229)
Motion for stay refused (5-0)

Lawyer Disciplinary Board v. Olen L. York, III, No. 12-1149 (Lawyer Disciplinary)
Respondent is prohibited from applying for admission to The West Virginia State Bar and from appearing in any West Virginia state court for one year and other sanctions. (5-0)

Lawyer Disciplinary Board v. Jeffrey S. Rodgers, No. 13-0721 (Lawyer Disciplinary)
Respondent is reprimanded with other sanctions imposed. (5-0)

CashCall, Inc. and J. Paul Reddam v. Patrick Morrissey, Attorney General, No. 12-1274
(Kanawha 08-C-1964)
Motion to stay mandate refused (5-0)

Paul Jacoby and James Lockhart v. Power Ridge, LLC, No. 14-0553 (Greenbrier 12-C-179)
Motion to dismiss granted (5-0)