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Elections—County Court May Validate An Invalid Election Committee List

Preceding the 1970 general election, two lists of election officials were presented for acceptance to the Mingo County Court; one list was selected by a purported “majority” of the Republican Executive Committee, and the second list by a minority of the committee. The court accepted the election officials chosen by the minority. Relators, chairman and other members of the committee, in an original proceeding in mandamus, sought to compel the respondents, the Mingo County Court, to accept the “majority” list. The respondent’s claimed there was no quorum present when the list of election officials was chosen by relators, basing their allegation on the presence at the meeting of an ex-committee woman, Jean Jewell, who constituted part of the quorum. Respondents referred to the minutes of a previous legally constituted committee meeting whereby Jean Jewell offered her resignation and her replacement was named. However, the respondents admitted the list submitted by the minority and accepted by the court was also invalid because it was not signed by a majority of the members. Thus, respondents claimed that its selection of the second group was in accordance with West Virginia case law which allows the county court to name qualified persons of its own selection as election officials. The court upheld respondents’ action and denied the writ. State ex rel. Taylor v. County Court of Mingo County, 177 S.E.2d 349 (W. Va. 1970).

In West Virginia five principles directly relate to the instant case:

(1) There must be a quorum present before any action by a political executive committee is lawful; (2) The county court has a mandatory duty to accept a list of election officials properly approved by the executive committee; (3) The county court cannot be compelled to accept a list not lawfully submitted; (4) If a writ of mandamus is sought, the party seeking the writ must clearly establish a legal right to the relief sought; and, (5) if the lists submitted are not valid, the county court has the authority to appoint qualified persons of its own selection to serve as election officials. State ex rel. Bell v. Clay County Court, 141 W. Va. 685, 92 S.E.2d 449 (1956); State ex rel. Bullard v. Clay County Court, 141 W. Va. 675, 92 S.E.2d 452 (1956); State ex rel. Robertson v. Kanawha County Court, 131 W. Va. 521, 48 S.E.2d 345 (1948);
In the instant case, the court simply defined more distinctly the county court's powers in selecting its own election officials once it decided those lists submitted were invalid, i.e., that the county court can legitimize an invalid group by adopting it as the county court's choice for election officials.

Pleading—Attorney Negotiations Do Not Constitute An Appearance

Plaintiff contracted to renovate defendant's house, and after partial completion of the contract a dispute arose between the parties. Both parties employed attorneys who engaged in unsuccessful negotiations. Plaintiff then instituted suit and defendant failed to answer within the twenty days required by Rule 12(a) of the West Virginia Rules of Civil Procedure. Plaintiff's attorney orally agreed with the defendant's attorney to an extension of time. However, once this time extension had expired, the plaintiff moved for and received a default judgment. The defendant contended the trial court erred in refusing to set aside the judgment. Held, affirmed. Intercity Realty Co. v. Gibson, 175 S.E.2d 452 (W. Va. 1970). Because the defendant's and plaintiff's attorneys had been negotiating, the defendant contended these negotiations constituted an appearance entitling her to three days written notice in accordance with rule 55(b), West Virginia Rules of Civil Procedure. The Supreme Court of Appeals sustained the trial court's finding that these negotiations did not constitute an appearance. The court distinguished Dalminter, Inc. v. Jessie Edwards, Inc. 27 F.R.D. 491 (S.D. Tex. 1961), in which a layman's timely written answer mailed directly to the plaintiff's attorney was held to constitute an appearance.

The defendant also contended the judgment should have been set aside for "excusable neglect" or "any other reason, justifying relief from the operation of the judgment" under rule 60(b)(1), (6), West Virginia Rules of Civil Procedure. In refusing to set aside the default judgment under rule 60(b), the court held the trial court did not abuse its discretion in finding that the defendant failed to show cause for his failure to answer timely.

Perhaps the significance of this case is found in the concurring opinion of Judge Berry. His opinion warned attorneys to adhere strictly to the Rules of Civil Procedure. Noting that time extensions are secured through compliance with rule 6(b), West Virginia