

**V. Documentation:**

List the documents or other items that you have attached to help support your claim that the judicial officer has engaged in misconduct. Please keep attachments to a minimum and only submit those documents or items which actually support your contentions. **DO NOT** attach the entire file. **Note: DO NOT** send original documents. These documents cannot be returned to you. You should retain a copy for your records.

1. Case Docket Sheet.
  2. Civil Judgement Order by Magistrate Broce-Kelley.
  3. Letter from DeCourcy to Magistrate Court sent from stolen FAX machine.
  4. Circuit Court Dismissal Order.
  5. Circuit Court Order Denying Renewed Motion To Dismiss.
  6. First (of three) ex parte letter from DeCourcy to Judge Dent (file on thumb drive).
- OTHER: 7. Receipt for HP Computer. 8. Receipt for Telephone System.

#### IV. Statement Of Facts and Cannons Violated:

In his criminal case complaint against Judge Dent Complainant Williams has provided several examples of violations by her of **Rules 2.2, 2.3, 2.4, 2.6 and 2.9 of Cannon 2 of WV Judicial Code of Conduct**, in addition to violations by her of his Constitutional rights as a Defendant. Williams also provides evidence in that complaint that his counsel Laura Finch had begun working for the Court at some point and against the interests of her client who was paying her to provide a vigorous defense.

Judge Dent did not violate **Rule 2.9** in this civil case as to how she sealed the illegal *ex parte* letters from Garland DeCourcy since they were sent to Judge Dent in connection with the criminal case against Complainant. However, among DeCourcy's numerous outrageous claims made against Williams and others in the first long *ex parte* letter to Dent, #6, she made multiple mentions of this civil case that she later lost in Magistrate Court. The accusations against Williams in DeCourcy's *ex parte* letters to Dent were so alarming that Dent actually called for a “special hearing with extra security for safety reasons.” Williams was not present for that special hearing, held ostensibly for “safety reasons.”

That DeCourcy badmouths nearly every Officer of the Court who displeased her in her illegal *ex parte* letters likely caused serious trepidation to Dent that she would also be attacked and smeared by DeCourcy if her demands were not met by the Court, a violation of **Rule 2.4(A)**.

So, the civil and criminal cases with the same litigants, both heard on appeal by Dent, are very much connected. DeCourcy devoted untold effort in an obsessive coup attempt to oust Complainant as Chairman of the National Alliance. Inc. (NA). She used her co-conspirators and “witnesses” – Michael Oljaca, Bob Demarais and John McLaughlin – for that purpose in the criminal case against Williams, as well as in another criminal claim by boyfriend Oljaca, and two other civil lawsuits against Williams by both Oljaca and McLaughlin – all eventually dismissed, at great expense. The “battery” claim was necessary for DeCourcy & Co. to obtain automatic Temporary Restraining Orders (TRO), without any hearing, to keep Williams 1,000 feet off of the 400-acre NA property he was charged with managing. For several months during 2016 Williams was forbidden to step foot on the property he was responsible

for without being arrested and taken to jail. Those TROs were eventually dismissed, but during those months the TROs were in effect DeCourcy had full illegal access to NA's buildings/inventory. She stole several large ticket items which is the subject of this civil complaint of theft # **16-M38C-0109**, filed by Williams in the Magistrate Court (MC) of Pocahontas County (PC) in September 2016. The Court granted judgment in favor of Williams. **#2**. Magistrate Broce-Kelley had denied all of DeCourcy's five outrageous motions. It is too bad there is no transcript of that proceeding. Judge Kelley could see that DeCourcy is bizarre and her testimony incredible. She didn't fear her, very nearly charging her with Contempt of Court more than once for her interruptions and courtroom antics. DeCourcy was ordered either to return the stolen items in good condition or pay \$2,139.88 to Williams. She stole at least three expensive pieces: a 2012 all in one HP Computer (\$479.99); Engenius Telephone System (\$ 1,609.90) and the keys to the Dodge Dakota 2002 4x4 truck. Williams provided Finch with receipts for his purchase of each of the three stolen items. Finch failed to object to DeCourcy's bald-faced lie under oath that she owned the truck, but did not have its keys. Williams later had to hire a locksmith to get into his truck and make new keys. After DeCourcy had FAXed an outrageous letter to the MC asking about the status of her "Motion and Affidavit Disqualification of Magistrate," and demanding that "any matter in which [DeCourcy is] a party needs to be heard by Magistrates from another County," it became clear that she had stolen yet another expensive item from Williams. At the top of that FAX, **#3**, is the name of Williams's deceased mother Jean B. Williams and her phone number. Complainant had inherited that FAX machine from his mother and donated it to the NA office prior to DeCourcy's easy-to-prove theft of it, which had not yet been noticed when Finch filed the shorter than normal civil complaint. Finch could have added the stolen FAX machine/scanner/copier/printer for the appeal since the appeal was *de novo* but failed to do so. Due to Finch's failures only two stolen items, **#7**, **#8**, were discussed in the Circuit Court appeal # **17-C-AP-3**, **#1** before Judge Dent. DeCourcy has a history going back years for appealing every adverse judgement while asking the court to waive court fees. As a reminder, in DeCourcy's *ex parte* letters to Judge Dent in the criminal case against Williams,

#6, she had requested that the “corrupt, lazy and senile”, #6, 10, County Prosecutor (Simmons) be disqualified and a Special Prosecutor be brought in to prosecute Defendant Williams' appeal – both of which demands were met – and that Magistrates from another county be brought in to replace the “ignorant” Magistrates in Pocahontas County, #6, 8 – a demand that was not granted by the Court.

In the summer of 2017 counsel Finch confessed to Williams that she had “forgotten” to file a timely response in this civil case that the Court had ordered filed by 2 June, 2017 #1, 1. This blunder by Finch gave litigious DeCourcy and her attorney grounds to file a writ as Plaintiff with WVSCA ( #17-0572). Oddly enough, in that case her co-defendants were Judge Dent and Will Williams! Soon after DeCourcy's writ in that WV Supreme Court case was denied, Judge Dent dismissed Magistrate Kelley's ruling that had ordered DeCourcy to return items stolen by her from Williams. The reason Judge Dent revoked that sound Magistrate's ruling, #2 -- without objections from counsel Finch, who had easily prevailed before Magistrate Kelley “with facts in support of his [Williams'] claim which would entitle him to relief” – was bizarre and absolutely inexplicable, #4! Ms. Finch had advised Williams that he need not travel to Court for that hearing from Tennessee because "there is no way Judge Dent will reverse Kelley's Order," Williams was invited to appear telephonically at that civil hearing where Dent granted DeCourcy's second motion to dismiss Magistrate Kelly's Order, but he was not allowed to speak, and Ms. Finch's microphone was conveniently turned off so anything she may have said was not heard by him. When Williams asked over the phone if he could say a few words after hearing the alarming adverse ruling by Judge Dent, she told him, "No, you are represented," in violation of **Rule 2.6**. The fact is: Complainant was not represented at that hearing at all. Dent's bizarre ruling in favor of DeCourcy further disadvantaged Williams in his criminal appeal with the same litigants and before the seemingly biased judge. Finch glibly explained later to her client that "Judge Dent probably just wanted to get rid of that case." Dent could just as easily have gotten rid of DeCourcy's Appeal of Magistrate Kelly's Order, **17-C-AP-03**, by ordering her to, "Pay the man for the items you stole from him.” That is

what an unbiased dispassionate judge, looking at the evidence, would have ruled.

Before DeCourcy filed her writ to WVSCA Dent had denied DeCourcy's Renewed Motion to Dismiss, #5. Complainant strongly believes that after being sued in WVSCA by Plaintiff DeCourcy and from other preposterous claims by her, Judge Dent realized that DeCourcy would go over her head and stop at nothing to achieve her goal, and would punish those who stopped her from her goal. After all, in the outrageous letter to MC, # 3, after accusing Williams of multiple murders, among other crimes, she lists the following agencies that she claimed she had already reported to, complaining about Pocahontas County Magistrates, including, along with this “Judicial Investigation Commission, [the] Office of Disciplinary Counsel; WV Fraud, abuse, corruption Division; WV Attorney General's Office; WV Governor's Office; the U.S. Department of Justice; the WV FBI Office, and other Judicial Watch dog [sic] organizations, both [sic] State, Federal & International; Victims Rights organizations, [and the] U.S. Senate Judiciary Committee...and others.” DeCourcy steals Williams' property and plays the injured victim. The word around the Pocahontas County Courthouse and among law enforcement was that this woman is dangerous and will go to great lengths to get her way, no matter how much she has to abuse the judicial process. Judge Dent had to be aware by then that DeCourcy is crazy, if not from the 100-plus single-spaced, typed pages of *ex parte* letters she had been sent by the woman. At the end of 2015 Williams had also provided the MC with a one-page document showing DeCourcy had filed *pro se* in 2014 a 172-page request for TROs from three Virginia judges and a guardian, indicating her pattern of judicial system abuse by filing phony TROs. Her Virginia request for TROs was dismissed when she failed to attend a show cause hearing, and that file sealed. DeCourcy fled VA for WV soon after the dismissal without providing the Court a forwarding address. She has been a fugitive from WV since 27 October, 2018, again without leaving any forwarding address to the Court or with anyone else. DeCourcy's name has been connected to *ten* cases in Pocahontas Court in just the three years she took up residence there. Williams was also told by several PC Court officers : “Everybody can see that you and your wife are normal and that DeCourcy is “bat shit crazy.” Judge Dent knew who DeCourcy was,

not just from letters she had written and from “the buzz” about her around the courthouse, but certainly from her unhinged testimony before her, later in the criminal trial. The trial transcript shows this clearly. Dent seemed to prefer not to make DeCourcy angry with any adverse judgements against her, fearing criticism in violation of **Rule 2.4(A)**, that she might have to answer to this Judicial Investigations Commission or to the U.S. Senate Judiciary Committee.

Returning to the *ex parte* letters from DeCourcy to Judge Dent that were sent in October of 2016 - before she appealed Kelley's judgement: even though those letters were connected to the criminal case, DeCourcy demands in her *ex parte* letter to Dent that the civil case of her theft in MC # **16-M38C-0109** must “be removed/quashed.” #6, 5. DeCourcy's demand in the illegal *ex parte* letter to Dent “that this fraudulent petition with the Magistrate Court be removed” was repeated, highlighted in bold in the final paragraph number 9 on the last page, #6, 14. The fact is, Dent *did* in effect quash Magistrate Kelley's judgment in favor of Williams by granting DeCourcy's motion to dismiss Kelley's Order in her Court. Dent might have done better by recusing herself from DeCourcy's drama due to the outlandishly uncommon manner by which DeCourcy had been influencing her to punish Williams. When DeCourcy was ordered by Judge Dent to not send the Court any more *ex parte* letters after the first two, DeCourcy defied Dent's Order and sent her a third one, and, incredibly, was not held in Contempt of Court.

All three *ex parte* communications, though exculpatory, were sealed by Dent to protect the guilty, and Williams was not allowed to object to their sealing or to question the wild claims made therein.

There is no doubt that in both the civil and criminal cases Judge Dent was obviously biased against Complainant Williams in violation of the **Rules 2.2. and 2.3**, most likely due to her fear of criticism, in violation of the **Rule 2.4(A)**. She likely never expected that Williams would be able to successfully appeal her misdemeanor guilty verdict against him to the WVSCA – but he has, *pro se*, no less – or that it would be Williams, not DeCourcy, filing two complaints against her to the Judicial Investigation Commission for her violations of the WV Judicial Code of Conduct, and Chapter 61 of the WV Code and Defendant's Constitutional rights in his criminal case.



WILLIAM WHITE WILLIAMS

VS. GARLAND DECOURCY

LINE DATE ACTION

1 01/24/17 GARLAND DECOURCY'S APPEAL OF MAGISTRATE CIVIL CASE #16-M38C-0109  
2 RCVD ALONG W/CASH APPEAL BOND IN THE AMT OF \$230 BY MAGISTRATE  
3 CK #006044 & FILING FEE IN THE AMT OF \$200 BY MAGISTRATE CK  
4 #006040.  
5 03/10/17 FWD TO JUDGE DENT THIS DTE WITH TENTATIVE DATE OF 4-12-17 AT  
6 10:00 AM FOR INITIAL PRE-TRIAL CONFERENCE.  
7 03/22/17 NOTICE OF HEARING ON 4/12/17 AT 10:00 A.M. FILED BY KRISTOPHER  
8 FAERBER ESQ.  
9 04/12/17 INITIAL PRE-TRIAL CONFERENCE: PRESENT: WILLIAM WILLIAMS  
10 APPEARING BY TELEPHONE, LAURA FINCH, GARLAND DECOURCY PRESENT  
11 WITH COUNSEL KRISTOPHER FAERBER. "PRE-TRIAL CONFERENCE/MOTIONS"  
12 SET FOR 5-24-17 AT 2:00 PM.  
13 05/08/17 MOTION TO DISMISS FILED BY RESP'S COUNSEL, KRISTOPHER FAERBER  
14 ALONG WITH PROPOSED ORDER. FWD TO JUDGE'S OFFICE VIA E-MAIL  
15 05/24/17 PRE-TRIAL CONFERENCE/MOTIONS-PRESENT: LAURA FINCH, GARLAND  
16 DECOURCY, KRISTOPHER FAERBER, GARLAND DECOURCY. MR. FAERBER  
17 RELATES THAT NO WITNESSES WERE PRESENT IN MAGISTRATE COURT & SO  
18 THE SAME RELATES TO CIRCUIT COURT. MR. FAERBER ASKS FOR  
19 DISMISSAL OF MATTER. MS FINCH INDICATES THAT TESTIMONY WAS  
20 TAKEN IN MAGISTRATE COURT BUT DOES NOT KNOW IF WITNESSES WERE  
21 SWORN. THE COURT WILL ALLOW MS. FINCH TO RESPOND TO THE MOTION  
22 TO DISMISS WITH A BRIEF BY JUNE 2 AND DEFENSE MAY RESPOND BY  
23 JUNE 9. MATTER SET FOR 6-21-17 AT 1:00 PM FOR "STATUS CONF".  
24 05/24/17 PRE-TRIAL INFORMATION FORM FILED BY PLF.  
25 05/24/17 PRE-TRIAL INFORMATION FORM FILED BY DEF.  
26 06/07/17 FAXED RENEWED MOTION TO DISMISS FILED BY KRISTPHER FAERBER ESQ.  
27 ALONG WITH PROPOSED ORDER TO DISMISS. E-MAIL TO JUDGE DENT.  
28 06/12/17 ORIGINAL RENEWED MOTION TO DISMISS FILED BY KRISTOPHER FAERBER  
29 ESQ. ALONG WITH PROPOSED ORDER TO DISMISS.  
30 06/12/17 ORDER ENTERED DENYING RENEWED MOTION TO DISMISS.  
31 06/12/17 E-MAIL CONFIRMATION.  
32 06/21/17 STATUS CONFERENCE-PRESENT: WILLIAM WILLIAMS WITH COUNSEL LAURA  
33 FINCH, GARLAND DECOURCY WITH COUNSEL KRISTOPHER FAERBER. MR  
34 FAERBER HAS FILED A WRIT WITH WVSCA-ISSUE NEW WITNESSES OR NEW  
35 TRIAL DENOVO. MR. FAERBER ASKS FOR CONTINUANCE OF THIS MATTER.  
36 COURT CONTINUES MATTER GENERALLY AND ASKS THAT ONCE THE  
37 QUESTION HAS BEEN ANSWERED AT THE WVSCA MR FAERBER CALL TO  
38 RESET MATTER.  
39 09/05/17 RULE TO SHOW CAUSE RECEIVED FROM WV SUPREME COURT OF APPEALS.  
40 09/08/17 FAXED MOTION TO CONTINUE THE MATTER OF 10/11/17 FILED BY  
41 KRISTOPHER FAERBER, ESQ.  
42 11/27/17 WVSCA ORDERS WRIT DENIED BY SAME.  
43 12/01/17 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM AND MOTION TO  
44 DISMISS FOR LACK OF UNDERSTANDING FILED BY KRISTOPHER FAERBER  
45 ESQ.  
46 12/05/17 FAXED AMENDED CERTIFICATE OF SERVICE FOR MOTION TO DISMISS FOR  
47 FAILURE TO STATE A CLAIM AND MOTIN TO DISMISS FOR LACK OF  
48 UNDERSTANDING FILED BY KRISTOPHER FAERBER ESQ.  
49 12/20/17 MANDATE RCVD FROM THE SUPREME COURT OF APPEALS.  
50 01/11/18 FAXED NOTICE OF HEARING ON 2/14/18 AT 2:45 P.M. FILED BY



WILLIAM WHITE WILLIAMS

VS. GARLAND DECOURCY

LINE DATE ACTION

51 KRISTOPHER FAERBER ESQ.  
52 01/11/18 FAXED CERTIFICATE OF SERVICE FOR THE NOTICE OF HEARING FILED BY  
53 KRISTOPHER FAERBER ESQ.  
54 04/12/18 HRG ON DEF'S MOTION TO DISMISS-PRESENT: WILLIAM WILLIAMS  
55 04/15/18 APPEARING BY TELEPHONE, LAURA FINCH-COUNSEL FOR MR. WILLIAMS,  
56 GARLAND DECOURCY WITH COUNSEL KRISTOPHER FAERBER. MR. FAERBER  
57 RELATES THAT THE COMPLAINT DOES NOT CONTAIN THE FACTS NEEDED  
58 FOR A COMPLAINT BUT ASKS FOR CERTAIN ITEMS BACK. AFTER REVIEWING  
59 CASE LAW, THE COURT DISMISSES THE MATTER. \*\*ORDER ENTERED\*\*  
60 04/23/18 FINAL ORDER ENTERED  
61 07/25/18 STATEMENT OF COSTS PREPARED IN THE AMT OF \$50.00 AND FWD TO  
62 GARLAND DECOURCY.  
63 08/15/18 CLERK'S LETTER TO RELEASE CASH BOND FWD TO ROBERT A. DEMARIS  
64 ALONG WITH CLK'S CK#2137 IN THE AMT OF \$230.00.  
65 08/20/18 RECEIPT OF ACKNOWLEDGMENT FROM ROBERT DEMARIS.

# State of West Virginia

**MAGISTRATE:**

**CYNTHIA D. KELLEY**  
Pamela Carpenter, Assistant

Telephone: (304) 799-4200  
(304) 799-4245

Fax: (304) 799-6331



**Pocahontas County  
Magistrate Court**

900 Tenth Avenue  
Marlinton, WV 24954

**MAGISTRATE  
CLERK:**

**VIRGINIA L. WAGNER**

Telephone: (304) 799-6603

Fax: (304) 799-5430

Appearing today, December 7, 2016, for the Civil Hearing in the matter of William W. Williams vs. Garland DeCourcy, case no. 16-M38C-00109. The defendant, Garland DeCourcy was present, appearing Pro Se. The plaintiff, William W. Williams was present and represented by Attorney Laura Finch. Also present in the courtroom was court bailiff, Drema Sharp and Mr. Robert "Bob" Demarias.

The defendant was given the opportunity to present her motions to the court, the defendant's motions were all denied, including the Motion and Affidavit: Disqualification of Magistrate per Rule 12(a)(2) Civil Procedure for Magistrate Courts.

Counsel for the plaintiff entered "Exhibits A, B, C" into evidence.

The Court granted judgment in the above case in favor of William W. Williams against Garland DeCourcy. The defendant shall return the "IIP Computer" and "Engenius Dura Fon System" directly to the plaintiff through certified mail within 30 days of today, December 7, 2016. The defendant is required to provide proof to the court that the above property was returned in good working order to the petitioner at: 105 Raccoon Ravine, Mountain City, TN 37683. If the property is not returned within the allotted time period, judgment is for the retail value of the items totaling \$2,139.88 to be paid directly to the plaintiff.

Plaintiff is responsible for the court costs of this proceeding.

Both parties were advised that any party to a final judgment may as a matter of right appeal to circuit court. Notice of appeal shall be filed in magistrate court within 20 days after judgment is entered. The magistrate shall require the appellant to post a bond with good security in a reasonable amount not less than the sum of the judgment and the reasonable court costs of the appeal, upon the condition that such person will satisfy the judgment and any court costs which may be rendered against the appellant on the appeal.

Hereby **ORDERED** and **ADJUDGED** on this the 7<sup>th</sup> day of December, 2016

*Cynthia D. Kelley*  
Cynthia D. Brocc-Kelley, Magistrate

Magistrates Court Pocahontas County, West Virginia

Re 16-M38C-00109 Williams vs. DeCourcy

I have not heard back from nor received any documents with decisions / orders from the Court in reference to several Motions and filings with the Court in which the Court was to notify me in writing. They were filed with the Court Tuesday October 11, 2016.

On Tuesday October 11, 2016 I filed a formal notice of proper contact information and addresses with the Court, as in the past I and others had not been notified by the Court in many matters despite our continued giving it in writing & verbally.

On that date I filed many motions to which the Court has failed to respond, or follow WV Supreme Court rules for procedure. The Court must answer my requests, Motions, and acknowledge my enactments in order either grant them, or for me use those denials and the statements of reason for denial of each as is required to issue a writ of mandamus, and file any appeals on each of those with the Circuit Court.

There has been no Court ordering the Plaintiff for a more declarative statement which is my right as a Respondent to receive. That is necessary due to the grave failings of the initial filing which did not meet the requirements to move forward with the Court. If this is to go to hearing I will need those to be used to build a proper defense with enough time granted to do so as is my right. Discovery and Interrogatories as is standard then need to be served and received to build any defense upon. Then the notifications / serve any Parties which were not joined so they can be legally represented in this matter. Time must be insured to notify many out of State witnesses who are witnesses, and parties, as well as others in privacy.

I still have not heard back from the Magistrates Court in the matter of the mailed "Motion and Affidavit Disqualification of Magistrate" plural that the Clerk via telephone told me to write up in October. That was mailed to the Court in October 2016. Has the Court responded to this? Did the Court perhaps send the response to an improper address for me? Or was it ignored as not on the proper form which I have since found as was advised of this by another organization. (October was very difficult for myself and many other victim/witnesses with all the threats, blackmail, and shooting of 100s of rounds near my home, and the murder of my nursing mother cat. In the last few days another victim/witness who is in hiding has notified other victim/witnesses that he was told/warned that Williams is still actively hunting him down to murder him, and looking to hire others to do so, and reiterated Williams' intentions to murder me.). A response from the Court to know how to proceed.

The stated reasons were clear, and in the best interest of Justice any matter in which I am a party needs to be heard by Magistrates from another County, than the 2 in Pocahontas County. The citations were clear, conflict of interest, past violations, lack of impartiality, failure to follow Federal and State procedures, violations of Civil rights, and the fact that there have been reportings to the Judicial Investigation Commission; Office of Disciplinary Counsel; WV Fraud, abuse, corruption Division; WV Attorney Generals Office, WV Governors Office, US Department of Justice, and the WV FBI, other Judicial Watch dog organizations both State, Federal & International; Victims Rights organizations, US Senate Judiciary Committee (who just drafted additions to the Federal Code/Act on the rights of Victims of crime), and others.

Do I need to follow up and file again but with the Circuit Court, The WV Supreme Court, or another Judicial body or office?

Your prompt attention to this notice, request, and query is expected.

  
Garland DeCourcy

P.O. \_\_\_\_\_

Hillsboro, WV 24946



# 4

## IN THE CIRCUIT COURT OF POCAHONTAS COUNTY, WEST VIRGINIA

WILLIAM W. WILLIAMS

vs.

GARLAND DECOURCY

Circuit Court Case No. 17-C-AP-3

Magistrate Case No. 16-M38C-00109

DISMISSAL ORDER

On April 12, 2018, this matter came before the Court for a hearing on Ms. DeCourcy's Motion to Dismiss for Failure to State a Claim. Ms. DeCourcy appeared in person and by counsel, Kristopher Faerber. William W. Williams appeared telephonically, and by counsel, Laura Finch. The Court considered the filing of Ms. DeCourcy, the argument of counsel, and the applicable law.

After due consideration the Court ORDERS the following:

- 1.) Based upon the face of Plaintiff's complaint, viewed in a light most favorable to him, it appears beyond doubt that the plaintiff can prove no set of facts in support of a claim which would entitle him to relief.
- 2.) The face of the complaint fails to plead facts that state any cause of action. Further, the face of the complaint does not plead the essential elements of any recognizable legal claim.
- 3.) Ms. DeCourcy's motion to dismiss for failure to state a claim is granted.
- 4.) This matter is DISMISSED and shall be stricken from the Court's docket.
- 5.) The Clerk shall release the bond posted in this matter.
- 6.) The Clerk shall distribute a copy of this Order to the parties.

POCAHONTAS COUNTY  
CIRCUIT/FAMILY COURT

RECEIVED

By: 4/23/18  
CAC

Entered: April 23, 2018

  
Judge Dent

Prepared for entry:

/s/Kristopher Faerber

Kristopher Faerber, WVSB#9961

Post Office Box 862•Lewisburg, West Virginia 24901

telephone 304.646.5988•facsimile 844.646.5988

Counsel for Mt. DeCourcy

## IN THE CIRCUIT COURT OF POCAHONTAS COUNTY, WEST VIRGINIA

WILLIAM W. WILLIAMS,  
Plaintiff/Appellee,

v.

CIVIL ACTION NO. 17-C-AP-03

GARLAND DECOURCY,  
Defendant/Appellant.**ORDER DENYING RENEWED MOTION TO DISMISS**

On the 7<sup>th</sup> day of June 2017, came the Appellant, Garland DeCourcy, by and through counsel, Kristopher Faerber, and filed a Renewed Motion to Dismiss. In support of her Motion, Appellant relies on West Virginia Code §50-5-12(d)(1) for her argument that the matter should be dismissed, as a matter of law, because no witnesses were presented by the Appellee at the nonjury trial held in the Magistrate Court of Pocahontas County. The Appellant argues that pursuant to the statute stated hereinabove, no witnesses can be called at the trial *de novo* before this Court, and therefore the Appellee cannot meet the applicable burden of proof on the allegations contained in his Complaint.

Upon consideration of the argument of counsel, the relevant statute, case law and rules of civil procedure, the Court denies the Appellant's Motion for the reasons contained herein.

West Virginia Code §50-5-12(d)(1) is instructive as to the contents of the record for appeal. "The exhibits, together with all papers and requests filed in the proceeding, constitute the exclusive record for appeal..." State Ex Rel. Veard v. Miller, 238 W.Va. 333, 795 S.E.2d 55 (2016). "This statute is clear in prohibiting a trial court from allowing discovery in a case appealed from magistrate court." Id. However, West Virginia Code §50-5-12(d)(1) is not instructive as to whether new evidence may be offered at a trial *de novo* and, it does not preclude this Court from receiving new evidence. A trial *de novo* is a "new trial on the entire case."

RECEIVED 6-12-17  
by CMC/03




is, on both questions of fact and issues of law — conducted as if there had been no trial in the first instance.” See Black’s Law Dictionary, 10<sup>th</sup> Edition, 2014. *De novo* means “with new evidence.” In re Moore and Powell, 200 W.Va. 335, 489 S.E.2d 492 (1997). In a hearing *de novo*, the Court hears the matter as the Court of original and not appellate jurisdiction, and considers not only the complete record from the Court below, but it also may take additional evidence as it considers necessary. West Virginia Division of Environmental Protection v. Kingwood Coal Company, 200 W.Va. 734, 490 S.E. 2d 823 (1997). Furthermore, “an appeal from the judgment of a justice is a continuation of the action brought before the justice, and is tried *de novo*, and new evidence and new and amended pleadings may be allowed.” Cannady v. Chestonia, 106 W.Va. 254, 145 S.E. 390 (1928), citing Bratt v. Manum, 24 W.Va. 652 (1884).

In consideration of this applicable legal authority, in a trial *de novo*, the parties may present and the Court may consider additional evidence, which clearly includes witness testimony not previously offered in the nonjury trial held by the Magistrate of Pocahontas County.

Based on all of the above, and finding it proper so to do, the Appellant’s Renewed Motion to Dismiss is hereby **DENIED**.

The Clerk is directed to provide a copy of this Order to Kristopher Faerber, Counsel for the Appellant at PO Box 862, Lewisburg, WV 24901; and Laura Finch, Counsel for the Appellee at 820 Tenth Avenue, Marlinton, WV 24954.

Enter this 12<sup>th</sup> day of June 2017.

  
\_\_\_\_\_  
Jennifer P. Dent, Circuit Judge  
Eleventh Judicial Circuit

# 7

OFFICE DEPOT STORE # 2234  
3106 LEE HIGHWAY  
BRISTOL VA 24202  
(276)466-3711

11/23/2012 12.4 10:31 AM  
STR 2234 REG3 TRN 8669 EMP 526612

## SALE

Product ID	Description	Total
281983	DGT1, AW10	349.99SS
	Inst	-70.00
	<b>You Pay</b>	<b>279.99SS</b>
401975	CRD, MEN, SD, 8GB	26.99SS
	Instant Savings	-21.00
	<b>You Pay</b>	<b>5.99SS</b>
	ATD, PVI 23809	699.99
	Inst	-200.00
	<b>You Pay</b>	<b>479.99SS</b>
	SECTION	49.99 E
IT	EP-able	
EMP	86551	
		815.96
		38.30
	<b>Total:</b>	<b>854.26</b>
	Visa 4731-	854.26

Total Office Depot Savings:  
\$311.00

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