

SUMMARY JUDGMENT

West Virginia- Bailey & Wyant

Bailey & Wyant secures Summary Judgment in Wrongful Termination Case

In recent weeks, Managing Member Charles Bailey and Associate Adam Strider secured summary judgment on behalf of West Virginia State University in the case of Kedion Carter v. West Virginia State University. Mr. Carter, a former WVSU campus police officer, filed suit alleging disability discrimination and failure to offer a reasonable accommodation under the West Virginia Human Rights Act, as well as claims for retaliation for reporting discrimination, violations of state employee medical leave laws, and intentional infliction of emotional distress, after he was terminated from employment following a single-vehicle accident in which his police cruiser collided with the side of the University Library.

In a September 13, 2024 Order from the Hon. Tera L. Salango, the Circuit Court of Kanawha County held that Mr. Carter was not a “qualified person with a disability” due to a recent medical physical evaluation which determined he was not capable of performing all critical job functions with reasonable accommodations, and was thus not in the applicable protected class. The Court went on to hold that WVSU had identified a legitimate, non-discriminatory reason for termination, and that the Plaintiff had failed to produce evidence that this reason was pretextual. The Order also held that the Plaintiff had failed to produce evidence showing that he had made reports of discrimination for which he could be retaliated against, or that he had been denied any paid leave to which he was entitled. The Court further held that a claim for intentional infliction

of emotional distress in connection with employment action requires evidence that the employment action was carried out in an outrageous manner, and the Plaintiff produced no such evidence.

In another key ruling, the Court separately granted summary judgment on the Plaintiff’s claims for lost wages. First, Bailey & Wyant attorneys successfully argued that, as a state agency, WVSU was immune from lost wages damages in disability discrimination cases following the United States Supreme Court’s ruling in *Board of Trustees of Univ. of Ala. v. Garrett*, 531 U.S. 356, 121 S.Ct. 955 (2001), and subsequent amendment of W. Va. Code § 29-12-5(a)(4) [2004]. Because the *Garrett* Court held that Congress did not validly abrogate state sovereign immunity when it passed the Americans with Disabilities Act, and the prior Human Right Act wage damages regime under *Kerns v. Bucklew*, 178 W. Va. 68, 357 S.E.2d 750 (1987), relied on congressional abrogation of that immunity in order to impose wage damages on state agencies in the absence of insurance coverage, the absence of that abrogation left state immunity from uninsured wage damages intact in the disability discrimination context. Further, the Court held that WVSU was also entitled to summary judgment on the issue of lost wages because the Plaintiff by his own admission exercised no efforts to seek subsequent employment.

The case is of record in the Circuit Court of Kanawha County as Civil Action No. 22-C-700. The appeal deadline has now passed and this ruling is final.

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