WEST VIRGINIA CODE: §50-5-12

§50-5-12. Appeals in civil cases.

(a) Any person may appeal the judgment of a magistrate court to the circuit court as a matter of right by requesting such appeal not later than twenty days after such judgment is rendered or not later than twenty days after a decision is rendered upon a motion to set aside such judgment. Such person shall be required to post a bond with good security in a reasonable amount not less than the reasonable court costs of the appeal nor more 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 him on any such appeal. The bond and the circuit court filing fee shall be collected by the magistrate court clerk or deputy clerk at the time the appeal is filed, and be forwarded to the clerk of the circuit court along with other appropriate documents regarding the appeal. No bond shall be required of any governmental agency or authority or of a person who has been permitted to proceed without prepayment in accordance with the provisions of section one, article two, chapter fifty-nine of this code. If an appeal is not perfected within such twenty-day period, the circuit court of the county may, not later than ninety days after the date of judgment, grant an appeal upon a showing of good cause why such appeal was not perfected within such twenty-day period. The filing or granting of an appeal shall automatically stay further proceedings to enforce the judgment.

(b) In the case of an appeal of a civil action tried before a jury, the hearing on the appeal before the circuit court shall be a hearing on the record. In the case of an appeal of a civil action tried before the magistrate without a jury, the hearing on the appeal before the circuit court shall be a trial de novo, triable to the court, without a jury.

(c) In the case of an appeal of a civil action tried before a jury, the following provisions shall apply:

(1) To prepare the record for appeal, the party seeking the appeal shall file with the circuit court a petition setting forth the grounds relied upon, and designating those portions of the testimony or other matters reflected in the recording, if any, which he or she will rely upon in prosecuting the appeal. The responding party or parties may designate additional portions of the recording. Unless otherwise ordered by the circuit court, the preparation of a transcript of the designated portions of the recording and the payment of the cost thereof shall be the responsibility of the party requesting the transcript: Provided, That a party may be permitted to proceed without prepayment in accordance with the provisions of section one, article two, chapter fifty-nine of this code. The circuit court may, by general order or by order entered in a specific case, dispense with preparation of a transcript and review the designated portions of the recording aurally.

(2) The designated portions of the recording or the transcript thereof, as the case may be, and the exhibits, together with all papers and requests filed in the proceeding, constitute the

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exclusive record for appeal and shall be made available to the parties.

(3) After the record for appeal is filed in the office of the circuit clerk, the court may, in its discretion, schedule the matter for oral argument or require the parties to submit written memoranda of law. The circuit court shall consider whether the judgment or order of the magistrate is:

(A) Arbitrary, capricious, an abuse of discretion or otherwise not in conformance with the law;

(B) Contrary to Constitutional right, power, privilege or immunity;

(C) In excess of statutory jurisdiction, authority or limitations or short of statutory right;

(D) Without observance of procedure required by law;

(E) Unsupported by substantial evidence; or

(F) Unwarranted by the facts.

(4) The circuit court may take any of the following actions which may be necessary to dispose of the questions presented on appeal, with justice to the parties:

(A) Dismiss the appeal;

(B) Reverse, affirm, or modify the judgment or order being appealed;

(C) Remand the case for further proceedings, with instructions to the magistrate;

(D) Finally dispose of the action by entering judgment on appeal; or

(E) Retain the matter and retry the issues of fact, or some part or portions thereof, as may be required by the provisions of subdivision (5) of this subsection.

(5) If the circuit court finds that a record for appeal is deficient as to matters which might be affected by evidence not considered or inadequately developed, the court may proceed to take such evidence and make independent findings of fact to the extent that questions of fact and law may merge in determining whether the evidence was such, as a matter of law, as to require a particular finding. If the party appealing the judgment is also a party who elected to try the action before a jury in the magistrate court, and if the circuit court finds that the proceedings below were subject to error to the extent that the party was effectively denied a jury trial, the circuit court may, upon motion of the party, empanel a jury to reexamine the issues of fact, or some part or portions thereof.

(6) The review by the court and a decision on the appeal shall be completed within ninety days after the appeal is regularly placed upon the docket of the circuit court.

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(d) In the case of an appeal of a civil action tried without a jury, the following provisions shall apply:

(1) The party seeking the appeal shall file with the circuit court a petition for appeal and trial de novo. The exhibits, together with all papers and requests filed in the proceeding, constitute the exclusive record for appeal and shall be made available to the parties.

(2) If, after the appeal is regularly placed upon the docket of the circuit court, neither party brings the matter on to hearing before the end of the second term thereafter at which it is called for trial, unless good cause for a continuance is shown, the appeal shall be considered as abandoned and shall be dismissed at the cost of the appellant unless sufficient cause is shown for a further continuance and the judgment of the magistrate court shall stand. No appeal which shall have been so dismissed by the circuit court shall be reinstated after the close of the next regular term after such dismissal.

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