WEST VIRGINIA CODE CHAPTER 56 ARTICLE 8

WV Legislature

§56-8-1. Judgment upon death, conviction or insanity of party; termination of powers of guardian, etc.

Where a party dies, or becomes convict of felony, or insane, or the powers of a party who is a personal representative, committee, or guardian cease, if such fact occur after verdict, judgment may be entered as if it had not occurred.

WV Legislature

§56-8-2. Death of joint party; revival of pending suit or action.

Where such fact occurs in any stage of a cause, whether it be in a court of original or appellate jurisdiction, if it occur as to any of several plaintiffs or defendants, the suit or action may proceed for or against the others, if the cause of suit or action survive to or against them. If a plaintiff or defendant die pending any suit or action, whether the cause of action would survive at common law or not the same may be revived and prosecuted to judgment or decree and execution in the same manner as if it were for a cause of action arising out of contract.

WV Legislature

§56-8-3. Marriage of female party.

The marriage of a female plaintiff or defendant shall not cause a suit or action to abate, but, upon affidavit or other proof of the fact the suit or action shall proceed in the new name, but if the marriage be not suggested before judgment, the judgment shall be as valid, and may be enforced in like manner, as if no such marriage had taken place.

WV Legislature

§56-8-4. Cases on review.

If, in any case of appeal, writ of error, or supersedeas, which is now or may hereafter be pending, there be at any time in an appellate court suggested, or relied on in abatement, the death of a party, or any other fact which, if it had occurred after verdict in an action, would not have prevented judgment being entered, as if it had not occurred, the appellate court may, in its discretion, enter judgment or decree in such case as if such death or such fact had not occurred.

WV Legislature

§56-8-5. Scire facias or motion for revival; continuance.

In any stage of any case, a scire facias may be sued out for or against the committee of any party who is insane or a convict; or for or against a party before insane, a convict or an infant, the powers of whose committee or guardian have ceased; or for or against the personal representative of the decedent who, or whose committee, guardian or personal representative, was a party; or for or against the succeeding or substituted committee or guardian of a convict, insane person or infant whose committee or guardian was a party and has died or been removed; or for or against the heirs or devisees of a decedent who was a party; or for the assignee or beneficiary party; to show cause why the suit or action should not proceed in the name of him or them. Or where the party dying, or whose powers cease, or such insane person or convict, is plaintiff or appellant, the person or persons for whom such scire facias might be sued out may, without notice or scire facias, move that the suit proceed in his or their name. Likewise, the person or persons against whom a scire facias might be sued out by the plaintiff may also, without notice or scire facias, move that the suit or action proceed in his or their name. If the proceeding be by scire facias, after service of the scire facias, or if the proceeding be by motion then on such motion, if no sufficient cause be shown against it, an order shall be entered that the suit or action proceed according to such scire facias or motion. Any such new party, except in an appellate court, may have a continuance of the case at the term at which such order is entered; and the court may allow him to plead anew or amend the pleadings as far as it deems reasonable; but in other respects the case shall proceed to final judgment or decree for or against him in like manner as if the case had been pending for or against him before such scire facias or motion.

WV Legislature

§56-8-6. Time for issuance of scire facias; entering order at rules.

The clerk of the court in which the case is may issue such scire facias at any time, and an order may be entered at rules for the case to proceed in the name of the proper party, although the case be on the court docket.

WV Legislature

§56-8-7. Proceedings after revival against defendant whose powers cease.

Where the party whose powers cease is defendant, the plaintiff may continue his suit against him to final judgment or decree; but he shall not at law proceed in the same action against such defendant and his successor, nor shall he in equity proceed against both upon his previous bill, unless an order that the suit proceed against the former party be entered at the first term after service of a scire facias for or against such successor, or at the same term at which a motion to revive is made under the provisions of section five of this article in lieu of a scire facias.

WV Legislature

§56-8-8. When suit discontinued unless revived.

If the committee, personal representative, heirs, or devisees of the plaintiff or appellant who was a party, or of the decedent whose committee, guardian, or personal representative was plaintiff or appellant, or other person now or hereafter entitled to be substituted under the provisions of this article for a party plaintiff or appellant, shall not make such motion or apply for such scire facias at or before the second term of the court next after that at which there may have been a suggestion on the record of the fact making such scire facias or motion proper, the suit of such plaintiff or appellant shall be discontinued, unless good cause be shown to the contrary.

WV Legislature

§56-8-9. Discontinuance for failure to prosecute or pay court costs.

Any court in which is pending any case wherein for more than one year there has been no order or proceeding but to continue it, or wherein the plaintiff is delinquent in the payment of accrued court costs, may, in its discretion, order such case to be struck from its docket; and it shall thereby be discontinued. A court making such order may direct it to be published in such newspaper as it may name.

WV Legislature

§56-8-10. Death of one of numerous parties in equity.

When in any suit in equity the number of parties exceeds thirty, and any one of such parties jointly interested with others in any question arising therein shall die, the court may nevertheless proceed, if in its opinion all classes of interest in the case are represented and the interest of no one will be prejudiced by the trial of the cause, to render a decree in such suit as if such person were alive, decreeing to the heirs at law, distributees, or representatives of such person, as the case may require, such interest as such person would have been entitled to had such person been alive at the date of the decree. The provisions of section twenty-six, article three of this chapter shall apply to decrees entered under this section.

WV Legislature

§56-8-11. Death of trustee and appointment of substitute in pending suit.

In a suit in equity in which it appears that a trustee has died, although the heirs of such trustee be not parties to the suit, yet if his personal representative and the other persons interested be parties, the court may appoint another trustee in the place of him who has died, to act either alone or in conjunction with any surviving trustee, as the case may require.

WV Legislature

§56-8-12. Reinstatement of dismissed case or nonsuit.

Any court may, on motion, reinstate on the trial docket of the court any case dismissed, and set aside any nonsuit that may be entered by reason of the nonappearance of the plaintiff, within three terms after the order of dismissal shall have been made, or order of nonsuit entered; but any such order of reinstatement shall not be entered until the accrued costs in such case shall have been paid.

WV Legislature

§56-8-13. Further proceedings after reinstatement of case.

All causes in which orders of dismissal have been made, or orders of nonsuit entered, which orders have been set aside and causes reinstated, shall remain upon the docket and be proceeded with in the same manner as if the order had never been made. But no such cause shall be brought to trial, or proceeded in, until the defendant therein shall have had at least twenty days' personal notice in writing, or, if he be a nonresident, by publication that such cause has been reinstated on the docket as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county in which the action is pending.

WV Legislature