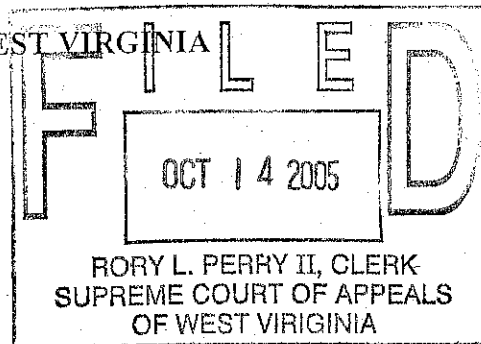


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

NO. _____



STATE EX REL. DAVID R. KYLE,

Petitioner,

vs.

EDWARD N. EAGLOSKI,

Judge of the Twenty Ninth Judicial Circuit,

DANA TRANSPORT, INC.,

a New Jersey corporation authorized
to do business in the State of West
Virginia, and RONNIE DODRILL,

Respondents.

FROM THE CIRCUIT COURT OF PUTNAM COUNTY, WEST VIRGINIA

PETITION FOR WRIT OF MANDAMUS

*TO THE HONORABLE JUSTICES OF THE
WEST VIRGINIA SUPREME COURT OF APPEALS:*

Petitioner David R. Kyle respectfully files this **PETITION FOR WRIT OF MANDAMUS**, requesting that this Court issue a ruling against Respondent Edward N. Eagloski, Judge in the Twenty-Ninth Circuit, Respondent Dana Transport, Inc. (hereinafter "Dana"), and Respondent Ronnie Dodrill, asking them to show cause why a writ of mandamus should not be issued, requiring Respondent Eagloski to render a decision within the next thirty days on Petitioner's Motion for Application of *Res Ipsa Loquitur* to the facts of his civil suit against Respondents Dana and Ronnie Dodrill, dated March 8, 2003. In support of

this **PETITION**, Petitioner states as follows:

1. On or about February 3, 2000, Petitioner arrived at Respondent Dana's premises for the purpose of performing electrical maintenance. Before Petitioner could complete the required work, he had to tighten a screw on a breaker mount. As he attempted to tighten this screw, flames shot out of the panel and severely injured his face, neck, hands and other portions of his body. As a result of the injuries he sustained, he brought suit in March of 2001 in the Circuit Court of Putnam County against Respondents Dana and Ronnie Dodrill to recover for his injuries.
2. Pursuant to Court Order, Petitioner filed a motion for application of the doctrine of *Res Ipsa Loquitur* to the facts of his case on or about March 8, 2003.
3. This motion was initially scheduled for a hearing on July 16, 2003. However, this hearing was canceled and was subsequently heard on September 4, 2003.
4. Thirty-one months have now passed since this motion was filed and Respondent Eagloski has yet to issue a ruling.
5. Petitioner respectfully requests this Court to grant this **PETITION** to compel Respondent Eagloski to issue a ruling on this motion.
6. This Court has consistently held that mandamus may lie to compel action in a case when the trial court judge unreasonably neglects or refuses to rule on a matter before the court:

"Mandamus will not lie to direct the manner in which a trial court should exercise its discretion with regard to an act either judicial or quasi-judicial, but a trial court, or other inferior tribunal, may be compelled to act in a

case if it unreasonably neglects or refuses to do so.” Syl. Pt. 2 *State ex rel. Patterson v. Aldredge*, 173 W. Va. 446, 317 S.E. 2d 805 (1984) (quoting, Syl. Pt. 1 *State ex rel. Cackowska v. Knapp*, 147 W. Va. 699, 130 S.E. 2d 204 (1963)).

7. Furthermore, under both the West Virginia Constitution, as well as the West Virginia Judicial Code of Ethics, judges have an affirmative duty to render decisions in a timely matter:

“Under article III, § 17 of the West Virginia Constitution, which provides that ‘justice shall be administered without sale, denial, or *delay*,’ and under Canon 3A(5) of the West Virginia Judicial Code of Ethics (1982 Replacement Vol.), which provides that ‘A judge should dispose *promptly* of the business of the court,’ judges have an affirmative duty to render *timely* decisions on matters properly submitted *within a reasonable time* following their submission.” Syl. Pt. 1 *State ex rel. Patterson v. Aldredge*, 173 W. Va. 446, 317 S.E. 2d 805 (emphasis added).

8. “Canon 3A(5) of the West Virginia Judicial Code of Ethics, as well as the principle contained within its admonition, is often utilized as a foundation for the imposition of judicial discipline for unreasonable delays in the disposition of court business.”

Id. at 447

9. Furthermore, this Court has recognized that in addition to the constitutional and ethical provisions that compel prompt disposition of motions before a trial court, the West Virginia Rules of Civil Procedure contemplate rulings in a timely matter. Specifically, “[the West Virginia Rules of Civil Procedure] shall be construed to secure the just, speedy, and inexpensive determination of every action.” *Id.* at 448 (quoting W. Va. R. Civ. P. 1 (1982 Replacement Vol.)).

10. Finally, this Court has taken notice of constitutional or statutory provisions enacted by other states that place requirements on judicial officers to dispose of court matters within a specified time frame. *Id.* (citing IDAHO CONST. art 5, § 17 (1980) (thirty days); ARIZ. REV. STAT. ANN. § 11-424.02 (1983 Supp.) (sixty days); KY. REV. STAT. ANN. § 454.350 (Bobbs-Merrill 1983 Supp.) (ninety days); TENN. CODE ANN. § 20-9-506 (1980) (sixty days)).
11. This Court in *Patterson* ruled that a delay of thirty-three months between an initial hearing on a summary judgment motion and the filing of a Writ of Mandamus constituted unreasonable delay on the part of the respondent Judge. Therefore, this Court ordered the Respondent to issue a final decision within thirty days. *State ex rel. Patterson v. Aldredge*, 173 W. Va. at 448, 317 S.E. 2d 805.
12. Similarly, this Court in *Cackowska*, held that a delay of seventeen months in issuing a ruling on a writ of error to an order of a county court to affirm a final report of the commissioner of accounts regarding an estate matter was unreasonable. As a result, this Court issued a writ of mandamus compelling the Respondent Judge to issue a final decision. *State ex rel. Cackowska v. Knapp*, 147 W. Va. at 700-01, 130 S.E. 2d 204.
13. Finally, this Court has ruled that a delay of approximately two years by the circuit court judge in ruling on an appeal was unreasonable. *State ex rel. Taylor v. MacQueen*, 174 W. Va. 77, 322 S.E. 2d 709 (1984). As a result, this Court ordered the Respondent judge to issue a final decision within twenty days.

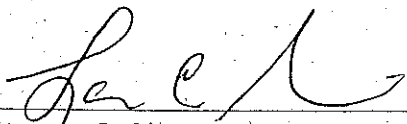
14. As noted above, thirty-one months have passed since Petitioner filed his motion for application of *Res Ipsa Loquitur*. Twenty-five months have passed since a hearing was held on that motion. The amount of time that has elapsed in this case is analogous to numerous cases decided by this Court in which a Mandamus was issued.

For the foregoing reasons, Petitioner David R. Kyle respectfully submits to this Court that the delay of Respondent Eagloski in this matter is unreasonable. As such, he requests this Court to issue a ruling against Respondent Edward N. Eagloski, Judge in the Twenty-Ninth Judicial Circuit, Respondent Dana Transport, Inc., and Respondent Ronnie Dodrill, to show cause why a writ of mandamus should not be granted requiring Respondent, Eagloski to issue a ruling on Petitioner's motion within thirty days.

Furthermore, Petitioner seeks any other relief this Court deems appropriate:

DAVID R. KYLE, Petitioner,

-By Counsel-



Lonnie C. Simmons (W. Va. Bar I.D. No. 3406)
Heather M. Langeland (W. Va. Bar I.D. No. 9938)
DITRAPANO, BARRETT, & DIPIERO, P.L.L.C.
604 Virginia Street, East
Charleston, West Virginia 25301
(304) 342-0133

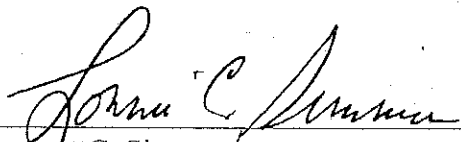
VERIFICATION

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, to wit:

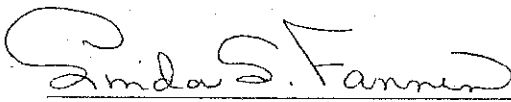
I, Lonnie C. Simmons, being first duly sworn, state as follows:

1. I am counsel for Petitioner David R. Kyle.
2. I have read the foregoing **PETITION FOR WRIT OF MANDAMUS**, and the facts stated therein are true, except insofar as they are stated to be on information and belief.
3. To the extent such facts are stated to be on information and belief, I believe them to be true.



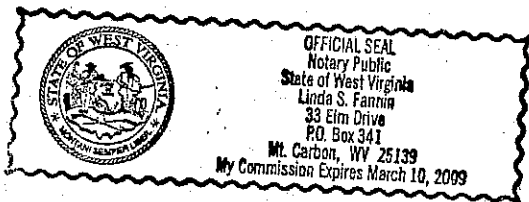
Lonnie C. Simmons

Taken, sworn, and subscribed to before me in my said State and County on the 14th day of October, 2005.



Notary Public

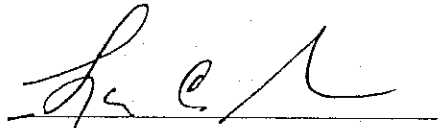
My commission expires March 10, 2009



CERTIFICATE OF SERVICE

I, Lonnie C. Simmons, do hereby certify that on the 14th day of October, 2005, I served the foregoing PETITION FOR WRIT OF MANDAMUS, upon counsel of record herein, by depositing a true copy thereof in the United States Mail, postage prepaid, addressed to said counsel as follows:

Harvey D. Peyton
Peyton, Parenti & Whittington
P.O. Box 216
2801 First Avenue
Nitro, WV 25143
(304) 755-5556
Counsel for Respondents
Dana Transport, Inc. &
Ronnie Dodrill,



Lonnie C. Simmons
W. Va. Bar I.D. No. 3406