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## Shaffer v. W. VA. Dep't of Transp., 542 S.E.2d 836 (W. Va. 2000)

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**WEST VIRGINIA**

**Shaffer v. W. VA. Dep't of Transp., 542 S.E.2d 836 (W. Va. 2000)**  
(holding a property owner seeking a writ of mandamus to compel the West Virginia Department of Transportation, Division of Highways to institute eminent domain proceedings for flood damage it allegedly caused, must show reasonable cause to believe a judge and jury should resolve questions regarding the cause and the amount of existing flood damages).

Verla Shaffer owned real property in Evans, West Virginia. In 1997, the West Virginia Department of Transportation, Division of Highways ("DOH") constructed a storm water drainage system near Shaffer's property. On June 2, 1997, one week after the drainage system's completion, Shaffer's property was flooded and damaged during a rainstorm. Prior to completion of the drainage system, Shaffer never experienced a flooding problem. Shaffer repeatedly notified DOH of the damage and attempted unsuccessfully to get DOH to repair the drainage system.

On January 22, 1999, Shaffer filed a petition with the West Virginia Circuit Court. In this petition, Shaffer alleged DOH's design and maintenance of the drainage system caused damage to her property. In addition, Shaffer sought to compel DOH to institute eminent domain proceedings to assess the damage DOH caused and to compensate her for the damage. DOH responded with a motion to dismiss, claiming that under the West Virginia Rules of Civil Procedure, Shaffer had to file her action as a complaint, not as a petition. On March 30, 1999, the court granted DOH's motion, but preserved Shaffer's right to apply for a writ of mandamus.

On April 27, 1999, Shaffer filed a complaint, in compliance with West Virginia's Rules of Civil Procedure, asserting the same allegations as in her petition. DOH responded with a motion to dismiss, claiming Shaffer's action was not cognizable in mandamus. By an order entered on August 2, 1999, the court granted DOH's motion and dismissed Shaffer's complaint, with prejudice. The court found Shaffer had failed to prove the elements necessary to compel DOH to institute eminent domain proceedings. In particular, Shaffer had not demonstrated DOH's actions had damaged her property. Shaffer appealed the circuit court's order to the Supreme Court of Appeals of West Virginia.

According to the appellate court, for the writ of mandamus to issue, three elements must exist. First, DOH must have a legal duty to institute the proceedings Shaffer sought. The court found Shaffer met this element because DOH had a statutory duty to institute adequate eminent domain proceedings under circumstances such as Shaffer's. Second, no other remedy must exist. The court found Shaffer met this element because state case law held mandamus was the only

appropriate remedy if DOH failed to institute eminent domain proceedings under circumstances such as Shaffer's. Third, Shaffer must demonstrate a clear legal right to an eminent domain proceeding. Specifically, Shaffer had to make a good faith showing of probable damage to her property. If such a showing gave reasonable cause to believe a judge and jury should resolve questions regarding the cause and amount of damages, the legal right was satisfied. By requiring Shaffer to prove DOH's actions damaged her property, the court felt the circuit court had set Shaffer's burden beyond what was required. Accordingly, the court reversed the circuit court's order and remanded Shaffer's case to determine whether she had alleged sufficient facts to satisfy the reasonable cause burden.

*Matthew J. Costinett*