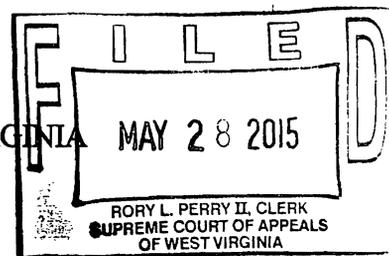


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA



No. 15-0189

ALLEGHENY COUNTRY FARMS, INC.,
Plaintiff Below, Petitioner,

v.

ETHEL HUFFMAN CARPER,
Defendant Below, Respondents.

PETITIONER'S BRIEF

(Appeal from Circuit Court of Monroe County Civil Action No. 06-C-44)

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ASSIGNMENTS OF ERROR

- I. The Circuit Court Erred in Denying Petitioner Specific Performance On the Grounds That This Matter Is Now Moot
- II. The Ruling of the Circuit Court Violates The Policy Favoring the Resolution of Controversies by Compromise or Settlement

STATEMENT OF THE CASE

The Petitioner, Allegheny Country Farms, Inc. (hereinafter "ACFarms") owns a tract of land in Wolf Creek District, Monroe County, which borders real estate that was owned by the Respondent, Ethel Huffman Carper, and three of her siblings, at the time the Complaint to Establish Boundary Line and for Declaratory Judgment was originally filed below in June, 2006. *Complaint*, ¶¶ 6-7 and 9 [3-4].¹ ACFarms had acquired its tract of land in 1994, and almost immediately the parties became embroiled in litigation when the Respondent and her siblings sued to prevent the use of a public road (the Huffman Road)² which runs generally in the (disputed) area of the boundary line between the two adjoining tracts. See generally, *Motion to Dismiss - Res Judicata* [11-15]. However, the 1994 case never addressed the precise location of the boundary line between these parcels of real estate, and consequently the 2006 case was permitted to move forward. See generally, *Order Denying Motion to Dismiss*, May 16, 2007 [22-24].

In October, 2006, a few months after the Complaint herein was filed, the Respondent and her siblings decided to partition the

¹References to the Appendix Prepared by Petitioner are set forth herein as "[___]".

²Although the issue as to whether or not the Huffman Road is a public road was somewhat disputed in the 1994 civil action, there was no doubt such fact was established conclusively in this action as based upon the Exhibits which were submitted to the Circuit Court following a hearing. See generally, *Correspondence to Court from Patrick I. Via*, May 14, 2007 [16-21].

parent tract of land such that she became the owner of a parcel which bordered ACFarms' tract. *Plaintiff's Motion to Compel Enforcement of Settlement Agreement with Defendant Ethel Huffman Carper* (verified by Greg Wittkamper, President of ACFarms), ¶ 2 [25]; See also, *Deed, Ralph D. Huffman, et al. to Ethel Huffman Carper, October 4, 2006* [51-54]. The Respondent desired to sell her newly separated tract of land, so she and ACFarms entered into a Settlement Agreement establishing a new boundary line between their respective properties, and ACFarms agreed to release a Notice of Lis Pendens which it had filed advising potential purchasers of the pendency of the boundary line litigation. *Motion to Compel* at ¶¶ 3-4 [25-26]; See also, *Settlement Agreement, Nov. 16, 2006* [33-36].

Among other things, the Settlement Agreement specifically provided that the new boundary line between the parties' adjoining properties "shall be designated along the center of W.V. Rt. 7/7-Huffman Road for the entire length of the boundary line between the subject tracts or parcels of real estate." *Id.*, ¶ 1, p. 2 [34]. This agreement finally permitted ACFarms to resolve the long-standing dispute regarding access to its property via Huffman Road. As part of the Agreement, ACFarms agreed to pay for the costs of a formal survey, and to release the Notice of Lis Pendens thereby permitting Ms. Carper to move forward with her planned sale. *Id.*, ¶¶ 3, 6 [34-35]. The parties also agreed to execute a formal boundary line agreement when the survey was completed, and ACFarms promised

to pay Ms. Carper \$1,000.00 upon the signing of that document. *Id.*, ¶¶ 2, 5 [34-35]. Since Ms. Carper had decided to have her property auctioned, she agreed to have her auctioneer "publicly announce the location of the subject boundary line prior to the commencement of the auction of her tract or parcel of real estate . . ." which such auction was scheduled to be held two days later on November 18, 2006. *Id.*, ¶ 4 [34-35].

There is no dispute that ACFarms honored its portion of the Agreement in reliance upon Ms. Carper's promises by tendering a Release of the Notice of Lis Pendens, *Release of Lis Pendens*, Nov. 16, 2006 [38]; and, that it was at all times prepared to pay \$1,000.00 upon the execution of a formal boundary line agreement. *Motion to Compel*, ¶ 7 [27]. Accordingly, the Respondent went forward with the sale of her land, and Darris and Nuetulia Huffman became the purchasers at the public auction.³ See generally, *Various Auction Documents* [46-58]. Although the Huffmans were notified prior to the auction of the new boundary line agreement reached between ACFarms and the Respondent - and signed an *Acknowledgement (sic) of Boundary Line Agreement* [44-45] which contained their own promise to execute a formal boundary line agreement once the survey was completed - they subsequently

³The Petitioner has also attempted to enforce the Settlement Agreement against Darris and Nuetulia Huffman in a companion case, and they are the Respondents in Appeal No. 14-1106 which was consolidated with this appeal for purposes of consideration and decision, but not for briefing.

refused to honor the agreement (after ACFarms had permitted the closing to go forward despite the new survey not having yet been completed). ACFarms filed a companion case against the Huffmans and first tried to enforce the Settlement Agreement against them, but the Monroe County Circuit Court refused to require them to sign off on a formal boundary line agreement.⁴ Ethel Huffman Carper subsequently ignored requests for her to execute a formal boundary line agreement as well. *Motion to Compel*, ¶ 7 [27].

ACFarms primarily contends that Darris and Nuetulia Huffman, as the current owners of the adjoining tract of land (and as signatories to the *Acknowledgement* (sic) by which they promised to execute a formal boundary line agreement once the survey was completed), are the ones who should be required to comply with the formal requirements to establish the new boundary line between the properties. Nevertheless, the fact remains that the Respondent was the original signatory to the *Settlement Agreement*, and also promised to execute a formal boundary line agreement for recording once the survey was ready as well. Also, the deed from the Respondent to Darris and Nuetulia Huffman was made expressly subject to the boundary line agreement. *Deed, Ethel Carper to Darris R. Huffman and Nuetulia Huffman, November 30, 2006, p. 2*

⁴The facts surrounding ACFarms' attempts to force Darris and Nuetulia Huffman to execute a formal boundary line agreement, and the decisions reached by the Monroe County Circuit Court below in that regard, are discussed in detail in the Petitioner's Brief filed in Appeal No. 14-1106 at pp. 6-15.

("This property is subject to a Boundary Line Agreement, between Allegheny Country Farms, Inc., Ethel Carper, and Darris Huffman, which is to be prepared and executed either prior to or simultaneously with this transaction.")⁵[42].

Since the Monroe County Circuit Court ultimately failed to enforce the Settlement Agreement against the Huffmans, ACFarms filed a *Motion to Compel Enforcement of Settlement Agreement with Defendant Ethel Huffman* in this older civil action. See generally, *Motion to Compel* [25-72]. The Respondent did not appear to defend in person or by counsel.⁶ However, the Circuit Court thereafter

⁵Although the actual formal boundary line agreement was not prepared prior to the closing of the sale since the survey was not yet completed, the *Acknowledgement* (sic) of *Boundary Line Agreement* was executed by the Huffmans immediately prior to closing on December 13, 2006.

⁶As noted by the undersigned counsel during the hearing that was held with regard to this matter, the Respondent's prior counsel (who had represented her during the land sale to the Huffmans but had never appeared in this action on her behalf) had informally advised that Ethel Huffman Carper now resides in a nursing home and her competency is questionable. *Transcript, Motion Hearing, Sept. 2, 2014, p. 5* [83]. However, he also advised that her daughter has a power of attorney to act on her behalf. *Id.* Nevertheless, the power of attorney he supplied to the undersigned was of the springing variety, and requests for confirmation from her physician(s) that she was either competent to execute a boundary line agreement or not went unanswered. *Id.* Accordingly, ACFarms had the *Motion to Compel Enforcement of the Settlement Agreement* served not only on the Respondent's former counsel who had appeared in this action, but also on her attorney who represented her during the land sale, and directly to her own mailing address as well. See *Motion to Compel, Certificate of Service, p. 7* [31]. Despite these efforts no one appeared to defend her interests. *Transcript, pp. 1, 8* [79, 86]. The Circuit Court suggested that perhaps a guardian should be appointed on

(continued...)

summarily denied the aforesaid Motion on the grounds that it was moot as a result of its ruling in the companion case involving Darris and Nuetulia Huffman. See generally, Order Denying Plaintiff's Motion to Compel Enforcement of Settlement Agreement with Defendant Ethel Huffman Carper, Dec. 17, 2014 [73].

The Respondent's three siblings were original parties to this action below since they all owned an undivided interest in the parent tract when the case was first filed. As the focus of this matter subsequently shifted to concerning only the boundary line involving that portion of the parent tract which the Respondent received, it was unclear whether the Circuit Court's ruling was final and appealable since the other siblings remained parties hereto. Therefore, ACFarms filed a motion seeking a determination in that regard pursuant to Rule 54(b) of the West Virginia Rules of Civil Procedure. *Motion Requesting Determination* [74-76]. And the Circuit Court thereafter dismissed the Respondent's siblings from the case and deemed its ruling to be final and appealable. *Amended Order*, January 27, 2015 [77-78]. It is from this Order that the Petitioner now appeals.

⁶(...continued)

the Respondent's behalf to investigate her competency, and the undersigned consented to this procedure, but the Circuit Court subsequently opted to issue a final ruling instead. *Transcript*, pp. 11, 13-14 [89, 91-92].

SUMMARY OF ARGUMENT

Petitioner seeks specific enforcement of a written Settlement Agreement calling for the execution of a new boundary line agreement establishing the boundary between its property and the adjoining tract of land which was formerly owned by the Respondent. However, the Circuit Court denied Petitioner's requested relief on the grounds that its ruling in a companion case involving the current owners of the adjoining tract had rendered this proceeding moot.

Petitioner contends that this action is not moot merely because the Circuit Court elected not to enforce the Settlement Agreement against the new owners. The Respondent herein was the original signatory to the Settlement Agreement entered into between the parties, and her deed to the current owners was made expressly subject to said Agreement. Consequently, even if the Agreement is not enforceable against the current owners, it is still potentially enforceable against Respondent as the original signatory thereto.

Furthermore, these parties have been involved in a long-running boundary line dispute which has tied up the court system with three different civil actions spanning more than twenty years now. The public policy of our state favors resolutions by compromise and settlement, and this case certainly merits enforcement of that policy.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

The Petitioner believes that although the facts and legal arguments are (or will be) adequately presented in the briefs and record on appeal, this case is appropriate for a Rule 19 argument, if so determined by the Court, because it involves: (1) Assignments of error in the application of settled law; (2) an unsustainable exercise of discretion where the law governing that discretion is settled; and/or (3) insufficient evidence or a result against the weight of the evidence. The Petitioner does not believe that a memorandum decision would be appropriate in this instance, as Petitioner is seeking reversal of a Circuit Court ruling.

ARGUMENT

A. INTRODUCTION

On January 27, 2015, the Circuit Court of Monroe County entered an Order finding that Petitioner's attempt to enforce the Settlement Agreement it entered into with the Respondent was moot as a result of its ruling in the companion case of *Allegheny Country Farms, Inc. v. Darris Huffman and Nuetulia Huffman*, 08-C-65 (Appeal No. 14-1106). Under the peculiar facts and circumstances of this case Petitioner agrees that it would be best to enforce the Settlement Agreement against the current owners of the adjoining land. However, it was clearly erroneous of the Circuit Court to summarily reject the Petitioner's case against Ethel Huffman Carper out of hand merely because it had already ruled in favor of the current owners.

B. STANDARD OF REVIEW

The Circuit Court held that Petitioner's claims against the Respondent were moot due to its ruling in the companion case. This determination was obviously a question of law under the justiciability doctrine. "Where the issue on an appeal from the circuit court is clearly a question of law . . . we apply a de novo standard of review." *Chrystal R.M. v. Charlie A.L.*, 194 W.Va. 138, 459 S.E.2d 415, Syll. Pt. 1 (1995).

C. ASSIGNMENTS OF ERROR

I. The Circuit Court Erred in Denying Petitioner Specific Performance On the Grounds That This Matter Is Now Moot

There were two primary reasons that the Circuit Court ruled against the Petitioner in the companion case involving the parties (Darris and Nuetulia Huffman) who purchased the bordering tract of land from the Respondent, Ethel Huffman Carper.⁷ First and foremost, the Court focused on a lack of privity between ACFarms and the Huffmans (as discussed in detail in the Petitioner's Brief filed in Appeal No. 14-1106 at pp. 20-24). Secondly, it noted reasons that ACFarms was not entitled to the remedy of specific performance on equitable grounds (as discussed in detail in the Petitioner's Brief, Appeal No. 14-1106 at pp. 24-30). However, one of these grounds is completely lacking in the instant case, and the other would not necessarily be analyzed in the same manner. Therefore, it is difficult to understand how that decision in the companion case rendered this action moot.

The singular striking difference between these two cases is that Ethel Huffman Carper was very much in privity with ACFarms. That one significant fact makes a huge difference when considering whether the ruling from the companion case somehow makes this civil action moot. It completely takes away the most important factor

⁷The final order entered in the companion case was never made a part of the record in this proceeding. However, it is included in full in the Appendix Record filed in Appeal No. 14-1106 at pp. 227-34.

which the Circuit Court emphasized in its ruling in the companion case, and also changes the balancing of the equities between the parties. Obviously, the Respondent, as an original party to the Settlement Agreement - who participated in the negotiation of its terms and conditions - has much less room to complain about its enforcement than a party who was subsequently added thereto.⁸

The problem with the instant appeal is that the Circuit Court provided absolutely no analysis at all as to why its ruling in the companion case rendered this one moot. If the Settlement Agreement been enforced against the Huffmans, then clearly the preceding litigation against Ethel Huffman Carper would be moot. However, it is not clear that by precluding equitable relief against the Huffmans the Petitioner's case against the original signatory is automatically voided. The Circuit Court should have made express findings of fact and conclusions of law detailing why the

⁸Petitioner acknowledges the countervailing argument that Respondent, who no longer owns an interest in the land, also has much less room to complain about the new boundary line since it will not affect her at this point. Nevertheless, as detailed herein and at various points in Petitioner's Brief filed in Appeal No. 14-1106, the Huffmans had actual knowledge of the new boundary line agreement, and accepted a deed which was made expressly subject to it. Thus Petitioner views the failure of the Monroe County Circuit Court to enforce the Settlement Agreement against the Huffmans as simply not requiring them to engage in the actual act of signing off on a formal boundary line agreement, as opposed to them being completely excused from honoring the new boundary line if Ethel Huffman Carper (or a Special Commissioner) is required to execute a formal boundary line agreement for recording consistent with the terms of the Settlement Agreement.

Settlement Agreement entered into between ACFarms and the Respondent should not be enforced between the two of them, as the analysis is simply not the same as when considering the equities between ACFarms and the Huffmans.

It is difficult to meaningfully review or comment upon the Circuit Court's decision since it failed to describe exactly how it reached the end result. Since lack of privity has no bearing in the instant case, the only remaining possibility is that the Circuit Court felt that its conclusions regarding the Petitioner's right to seek equitable relief were binding across both cases. As noted above, Petitioner already thoroughly briefed the issues surrounding the denial of equitable relief in the companion case, and hereby incorporates the same by reference to the extent necessary to preserve its rights in that regard.

Accordingly, the Petitioner contends that the Circuit Court's summary rejection of its Motion to Compel Enforcement of the Settlement Agreement was clearly wrong. There are significant differences between this case against Respondent Ethel Huffman Carper, and Petitioner's case against the Huffmans. These variations preclude a simple finding that Petitioner's Motion is moot without further elaboration. For these reasons, this Court should reverse the decision of the Circuit Court rendered herein, and uphold and specifically enforce the Settlement Agreement as entered into with the Respondent.

II. The Ruling of the Circuit Court Violates The Policy Favoring the Resolution of Controversies by Compromise or Settlement

This Court has repeatedly recognized the strong public policy in favor of upholding settlements of disputed actions by compromise: "[T]he law favors and encourages the resolution of controversies by contracts of compromise and settlement rather than litigation; and it is the policy of the law to uphold and enforce such contracts if they are fairly made and are not in contravention of some law or public policy." Sanders v. Roselawn Memorial Gardens, Inc., 152 W.Va. 91, 159 S.E.2d 784, Syll. Pt. 1 (1968); Moreland v. Suttmiller, 183 W.Va. 621, 397 S.E.2d 910, Syll. Pt. 1 (1990). "Where parties have made a settlement . . . such settlement is conclusive upon the parties thereto as to the correctness thereof in the absence of accident, mistake or fraud in making the same." Calwell v. Caperton's Adm'rs, 27 W.Va. 397, Syll. Pt. 1, in part (1886); DeVane v. Kennedy, 205 W.Va. 519, 519 S.E.2d 622, Syll. Pt. 7 (1999).

ACFarms has been fighting a long-running battle with various members of the Respondent's family since first buying its tract of land in 1994. For over twenty years now it has been denied the ability to access its parcel via the adjoining public road, and this controversy has spawned three separate civil actions. Clearly, both the litigants and the Monroe County Circuit Court would be better served by having this matter finally concluded.

ACFarms thought that resolution had finally been achieved in 2006 when Ethel Huffman Carper agreed to resolve the disputed boundary line issue. The only thing which blocked a conclusion at that time was her desire to move forward with the closing of the sale to the Huffmans before the surveyor was able to produce a new boundary line description. In fact, had ACFarms simply not cooperated with Ethel Huffman Carper - and instead chose to block her closing - then the current situation would not exist.

ACFarms justifiably relied upon the Settlement Agreement it reached with Ethel Huffman Carper when it permitted her closing to go forward; the Huffmans' assent to that Agreement and their promise to sign off on a subsequent formal boundary line agreement; and, the public policy of this state to uphold settlements of disputed actions. However, the Circuit Court failed to even acknowledge any of these factors in its ruling herein.

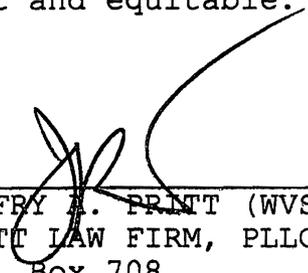
The Settlement Agreement entered into by Ethel Huffman Carper with ACFarms benefitted both parties. It allowed her sale to go forward uninhibited by the uncertainty that pending litigation has on the value of land, while permitting ACFarms to finally resolve the long outstanding boundary line issue. This is precisely the type of situation in which our public policy favoring settlements should be upheld. No party is benefitting from the continued litigation over access to a public road across a disputed boundary line, and all parties hereto will benefit from the cessation of

court activities and the enhanced marketability of their respective properties with established and undisputed boundaries.

CONCLUSION

For the foregoing reasons the Petitioner, Allegheny Country Farms, Inc., respectfully requests that this Court enter an Order overturning the decision of the Circuit Court of Monroe County to summarily deny its Motion to Compel Enforcement of Settlement Agreement; and, that the Petitioner be granted specific performance of the Settlement Agreement including the execution of a formal boundary line agreement incorporating the previously prepared metes and bounds description by either the Respondent or the undersigned acting as Special Commissioner; or, that the Circuit Court of Monroe County be directed to prepare an appropriate Order for recording in the Office of the Clerk of the County Commission of Monroe declaring and adjudging the boundary line between the parties' adjoining tracts of land to follow the metes and bounds description along the center of Huffman Road, W.Va Route 7/7; together with such other and further relief as to this Court seems just and equitable.

ALLEGHENY COUNTRY FARMS, INC.,
A West Virginia Corporation
By Counsel



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CERTIFICATE OF SERVICE

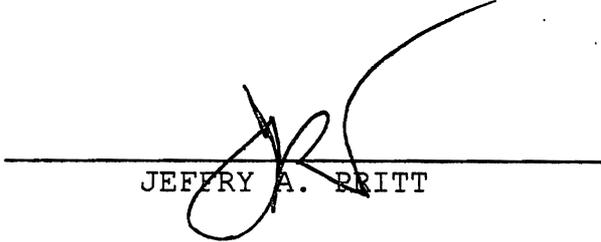
I, Jeffry A. Pritt, counsel for the Petitioner, do hereby certify that service of the attached PETITIONER'S BRIEF has been made upon the Respondent by depositing a true and accurate copy of the same in the regular U.S. mail, postage prepaid, and addressed as follows:

Ethel Huffman Carper
603 Harley Avenue
Beckley, West Virginia 25801

With a courtesy copy being hand delivered this date to counsel of record for the Respondents, Darris and Nuetulia Huffman, in Appeal No. 14-1106 (with which this case was consolidated), as follows:

John H. Bryan
Attorney At Law
P.O. Box 366
Union, West Virginia 24983

this 27th day of May, 2015.



JEFFRY A. PRITT