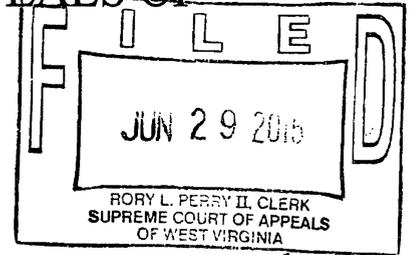


BEFORE THE SUPREME COURT OF APPEALS OF
WEST VIRGINIA



DOCKET NO. 15-0519
(Circuit Court of Hampshire County, Case No. 14-C-126)

JUDITH D. WARD,
Petitioner,

vs.

SUSAN K. WARD,
Respondent.

PETITIONER'S BRIEF

Christopher P. Stroeck, Esq. (WVSB #9387)
J. Daniel Kirkland, Esq. (WVSB #12598)
Arnold & Bailey, PLLC
208 N. George Street
Charles Town, WV 25443
304.725-2002 (t)
304.725.0282 (f)
Counsel for the Petitioner

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ASSIGNMENTS OF ERROR

- I. The Circuit Court's ruling that the Respondent was entitled to an award of unjust enrichment was clearly erroneous and an abuse of discretion because the Respondent did not make improvements to the property based upon a reasonable mistake of fact or reasonable belief that she owned the subject property.
- II. The equities of this case do not support an award of unjust enrichment and, further, the \$50,000.00 award was based upon mere speculation and conjecture.
- III. The Circuit Court's ruling permitting the Respondent, who had no possessory interest, to retain possession of the property until the Petitioner paid her the sum of Fifty Thousand Dollars (\$50,000.00) was clearly erroneous and an abuse of discretion.

STATEMENT OF THE CASE

This is an appeal from Order the Circuit Court of Hampshire County entered January 26, 2015, which granted the Petitioner's action for possession of residential rental property, but which conditioned possession of the property upon payment of Fifty Thousand Dollars (\$50,000.00) to the Respondent for unjust enrichment. *App.* at 1.

On October 6, 2014, the Petitioner filed a Complaint for Unlawful Detainer pursuant to West Virginia Code § 37-6-19, in the Circuit Court of Hampshire County, West Virginia. *App.* at 18. In her Complaint for Unlawful Detainer, the Petitioner alleged the following: (1) that she was the sole fee simple owner of a parcel of property situate in Capon District, Hampshire County, West Virginia, know and designated as Tract No. 24 of Green Meadows Estate; (2) that the parcel has two dwellings: HC 61 Box 36, a home built and occupied by the Petitioner and her husband since 193, and HC 61 Box 36A, a log cabin built in 1999 and occupied by the Respondent and her family and/or various guests; (3) that the parcel has never been subdivided and is collectively known for tax

purposes as Lot No. 24 Green Meadows Subdivision¹; (4) that around 1999 the Respondent and her husband² purchased a log home kit to build upon the Petitioner's parcel; (5) that after the log home kit was purchased, the Petitioner paid all costs associated with its construction; (6) that the Respondent and her husband resided in the log home on Petitioner's parcel rent free from approximately 1999 until February 28, 2014; (7) that the Petitioner provided the Respondent a Notice to Quit on April 28, 2014, demanding the Respondent vacate the premises know as HC 61 Box 36A; and (8) that the Respondent has resided upon the Petitioner's parcel with the knowledge and consent of he Petitioner, and at the Petitioner's pleasure, without paying rent or property taxes. *App.* at 18-20.

The Petitioner sought immediate possession of the property in order to market the property for rent or sale, but as a result of the continued possession, the property remained inalienable. The Petitioner further sought reasonable rental and tax expenses during the Respondent's continued unlawful occupation. *App.* at 20.

On October 24, 2014, Respondent filed a handwritten letter with the Circuit Court of Hampshire, West Virginia. *App.* at 14. Presumably, the handwritten letter was to serve as Respondent's *pro se* Answer to the Petitioner's Complaint for Unlawful Detainer. Her *pro se* Answer was neither verified, nor did it contain affidavits attesting to its content. In her letter, the Respondent states, inter alia, that she was in a car accident on October 1, 1996 for which she received a settlement in the amount of \$50,000.00. The Respondent

¹ However, because there two separate residences located on the parcel, two separate county tax statements are generated for Lot No. 24 Green Meadows Subdivision each years. Each tax statement is issued in the Petitioner's name and paid solely by her. *See App. Pg.'s 25-26*

² The Respondent was married to the Petitioner's son, Gary A. Ward, Jr. Mr. Ward passed away in February 2014.

further stated “this is what paid for the log house on the Lot #24 at Green Meadows Estates.” Respondent did not, however, specifically state the amount she paid for the log home kit. Additionally, the Respondent states that “we never paid rent the house was our (sic). The deal was to help with the taxes and take care of the back half of the lot.” *App.* at 14-16. No factual support for an agreement, written or otherwise, was ever presented to the Court. Moreover, no evidence was presented to the court to suggest the parties had discussed the conveyance of the property or that a “rent to own” scenario existed.

On January 6, 2015, Petitioner, by counsel, filed her Motion for Judgment on the Pleadings pursuant to Rule 12(c) of the West Virginia Rules of Civil Procedure seeking immediate possession of the property and judgment against the Respondent for reasonable rental and tax expenses, and attorneys’ fees and costs associated with obtaining the requested relief. *App.* at 7-13.

On January 26, 2015, the Circuit Court granted the Petitioner’s Motion for Judgment on the Pleadings pursuant to Rule 12(c) of the West Virginia Rules of Civil Procedure. *App.* at 1. In its Order, the Court made, inter alia, the following findings of fact: (1) that the Petitioner is the sole fee simple owner of a parcel of real property situate in Capon District, Hampshire County, West Virginia, known and designated as Tract No. 24 of Green Meadows Estates; (2) that two separate tax statements are generated for Tract No. 24 Green Meadows Subdivision each year; (3) that both tax statements are issued in the name of the Plaintiff and paid by the Plaintiff; (4) that the Respondent resided in the log home on Plaintiff’s property rent free from 1999 until 2014; (5) that the seminal issue before the Court is legal, fee simple ownership of Petitioner’s parcel; (6) that the Respondent’s *pro se* Answer presents no facts sufficient to support a claim of

legal, fee simple ownership of the subject parcel; (7) that the Respondent presented no facts as she simply has no legal claim to the Plaintiff's parcel; (8) that the Respondent raised absolutely no defense to the Petitioner's fee simple title to the subject parcel; and (9) that around 1999 the Respondent and her husband, Gary A. Ward, Jr., purchased a log home kit for \$50,000.00 which they built upon the Petitioner's parcel. *App.* at 7-13. Based upon the Petitioner's clear legal fee simple ownership the Circuit Court awarded Petitioner possession of the subject property; however, the Circuit Court made Petitioner's possession contingent on payment of \$50,000.00 to the Respondent for unjust enrichment. *App.* at 5. The Circuit Court Order, however, is void of any findings of fact or law to support such a large award in favor of the Respondent. The Respondent presented only unverified and unsupported evidence in her *pro se* Answer regarding the amount paid for the log cabin kit. Following the Court's January 26, 2015, Order, this matter was removed from the active docket of the Court on January 29, 2015.

The Petitioner now appeals the Circuit Court's award of unjust enrichment in the amount of \$50,000.00, and further, appeals the Circuit Court's ruling permitting the Respondent to retain legal possession of the property until such time that the \$50,000.00 amount was paid.

SUMMARY OF THE ARGUMENT

The sole issue before the Circuit Court was legal, fee simple ownership of the Petitioner's parcel of land. Based upon the pleadings, this was the sole issue that the Court was required to determine.

First, the Circuit Court abused its discretion when it improperly awarded the Respondent the sum of \$50,000.00 for unjust enrichment because there was no evidence

that she made improvement to the property based upon a “reasonable mistake of fact” or “a reasonable belief” that she owned the property at the time the improvements were made. Under West Virginia jurisprudence, such a finding is required prior to an award of unjust enrichment. Thus, the Circuit Court’s order of unjust enrichment was clearly erroneous.

Secondly, even assuming *arguendo* that the Respondent was entitled to an award of unjust enrichment, the Circuit Court’s *sua sponte* award of \$50,000.00 was based on “mere speculation and conjecture.” The only evidence presented to support the circuit court’s award was an unverified and unsupported statement contained in the Respondent’s *pro se* Answer. Furthermore, it is clear that the Circuit Court’s interpretation of the unsupported statement was erroneous and taken completely out of context.

Finally, the Circuit Court abused its discretion when it improperly permitted the Respondent to retain possession of the property until such time that the Petitioner paid her the sum of \$50,000.00 for improvements to the property. The Respondent had absolutely no legal claim to the property, had never paid rent or taxes in the fourteen (14) years she resided on the property, yet the Circuit Court’s Order permitted her to unlawfully retain possession of the property for an indefinite amount of time without paying rent. The Circuit Court cited no authority in support of its decision. As a result, the continued occupation hinders the Petitioner’s ability to sell or list the property, and further, she cannot collect reasonable rent for the same. Thus the circuit court’s order permitting the Respondent, who had no possessory interest, to retain the property was clearly erroneous.

STATEMENT REGARDING ORAL ARGUMENT

This case is critical to the Petitioner's rights related to her real property; however, it does not involve new or novel issues of law. A Rule 21 Memorandum Decision correcting the Circuit Court's misapplication of West Virginia law should be sufficient.

The facts and legal arguments are adequately presented in the briefs and the record on appeal; thus, the decisional process will likely not be significantly aided by oral argument. Should the Court determine, however, that oral argument would be helpful in the disposition of this case, the Petitioner respectfully requests a Rule 19 argument.

ARGUMENT OF LAW

I. Standard of Review

"This Court reviews the circuit court's final order and ultimate disposition under an abuse of discretion standard. We review challenges to findings of fact under a clearly erroneous standard; conclusions of law are reviewed *de novo*." Syl. Pt. 4, *Burgess v. Porterfield*, 196 W.Va. 178, 469 S.E.2d 114 (1996). "Appellate review of a circuit court's granting of a motion on the pleading is *de novo*." Syl. Pt. 2, *Choice Lands, LLC v. Tassen*, 685 S.E.2d 679, 224 W.Va. 285 (W.Va. 2008).

II. The Circuit Court's ruling that the Respondent was entitled to an award of unjust enrichment was clearly erroneous and an abuse of discretion because the Respondent did not make improvements to the property based upon a reasonable mistake of fact or reasonable belief that she owned the subject property.

The Respondent is not entitled to an award of unjust enrichment because she did not make improvements through a reasonable mistake of fact regarding lawful ownership of the subject parcel. This Court has consistently held that when no "reasonable mistake of fact" or "reasonable belief that such land was owned by the improver" existed, the

improver made improvements at his or her own peril and is, therefore, not entitled to an award of unjust enrichment. See *Little v. Little*, 400 S.E.2d 604, 184 W.Va. 360 (W.Va. 1990); *Kincaid v. Morgan*, 425 S.E.2d 128, 188 W.Va. 452 (W.Va. 1992).

In *Little*, the relevant issue before the Court was the appellant's contention that the trial court erred when it failed to award her adequate damages for the value of improvements she placed upon the property at issue. *Id.* at 605. The appellant in that case had no claim of fee simple ownership, but relied on a mistaken belief that her husband and his son had reached a verbal agreement regarding the transfer of the property. *Id.* The trial court found insufficient evidence that an oral agreement had been reached and declined to transfer ownership of the property to the appellant. *Id.* at 606. On appeal, this Court found that based upon the record or arguments of counsel it could not find that the trial court's finding of fact was plainly wrong and, thus, affirmed the trial court's ruling related to the ownership of the subject parcel. *Id.* at 607.

In addition, the appellant contended that she was entitled to reimbursement for expenditures on improvements to the property and entitled to receive value of the improvements to the property to prevent unjust enrichment. *Id.* This Court disagreed and upheld the trial courts denial of both claims. Based upon the evidence presented, the trial court was unable to ascertain the exact amount that the appellant expended on improving the property. In affirming the decision, this Court reasoned that an award of damages cannot be sustained when it is based on "mere speculation or conjecture." *Little*, 400 S.E.2d at 607. This Court further rejected the appellants claims of unjust enrichment because no "reasonable mistake of fact" or "reasonable belief that such land was owned by the improver existed." *Id.* The Court noted that although the appellant thought the land

might be transferred in the future, she was well aware that at the time of improvements neither her, nor her husband, had rightful ownership of the property. *Id.* Thus, the appellant was not entitled to an award of unjust enrichment for improvements made to the subject property.

In the instant case, absolutely no verified evidence was presented to the court in the pleadings that suggests the subject parcel was ever conveyed to the Respondent, or her husband Gary A. Ward, Jr. Additionally, there was no evidence presented to support that a “rent to own” or similar agreement was entered into by the parties.³ all the evidence supports that at all relevant times the Petitioner was the sole legal, fee simple owner of the property. As the circuit court correctly found, this fact is uncontroverted. At the time the log home kit was purchased and constructed, the Respondent had no, nor could she, have a “reasonable mistake of fact” or “reasonable belief” that she owned the subject parcel. Moreover, in its order granting judgment on the pleadings, the Circuit Court failed to make a finding of fact that a “reasonable mistake of fact” or that the Respondent has a “reasonable belief” that she owned the property. Without such a finding, the Circuit Court had no legal authority to support its *sua sponte* award of unjust enrichment. In the absence of evidence supporting that the Respondent had a reasonable belief that she was the rightful owner of the property any improvements made to the land were made at her own peril. Thus, an equitable award of unjust enrichment was inappropriate.

II. The equities of this case do not support and award of unjust enrichment and, further, the Fifty Thousand Dollar (\$50,000.00) award was based upon mere speculation and conjecture.

³ In the building permit application, dated May 5, 2014, submitted by the Respondent, she acknowledges that the Petitioner is the rightful property owner. *See Supp. App.* at 6.

An appropriate award of damages includes expenditures which are *specifically* proved in uncontroverted amounts; such damages, however, such an award cannot be premised on or proved by “mere speculation or conjecture.” *Little*, 400 S.E.2d at 607; *citing Sisler v. Hawkins*, 158 W.Va. 1034, 217 S.E.2d 60 (1975).

Although the Petitioner acknowledges that the Circuit Court has inherent power to fashion equitable relief when appropriate; such equitable relief cannot stand when it is wholly comprised of mere conjecture and speculation. *See Little*, 400 S.E.2d at 607. The Respondent’s *pro se* Answer simply states that she “was in a car accident on Oct. 1, 1996. wich (sic) I received 50,000 thousand. That is what paid for the log house on the Lot #24 at Green Meadows Estates.” *App.* at 14. It is clear that the Circuit Court’s *sua sponte* award was based solely on unverified and unsupported speculation and conjecture contained in an unresponsive document. There is simply no other evidence that the circuit court could have relied upon to support his award. Clearly, this is not sufficient evidence to justify such a substantial award. Thus, equitably and legally it cannot stand.

As this Court stated in *Little*, the solution of such equitable questions “depends largely upon the circumstances and the equities involved in each particular case.” *Id.* at 608; *citing Somerville v. Jacobs*, 170 S.E.2d at 813-14. Here, the equities do not support an award of unjust enrichment in favor of the Respondent. The Respondent resided in the log home for a period of fourteen years at the pleasure of the Plaintiff, completely tax and rent-free.⁴ *App.* at 2. The Petitioner paid all costs associated with the construction of the

⁴ For example, if the circuit court would have considered that a reasonable rent for the property was Six Thousand Dollars (\$6000.00) per year (\$500.00 per month) then the Respondent received the benefit of Eighty Four Thousand Dollars (\$84,000.00) in free rent for the one time down payment of approximately \$36,000.00 (this figure is based on evidence not contained in the record below, but included in the supplemental appendix,) *See Supp. App.* at 1-3.

log home, the maintenance on the log home, and all taxes associated with the log home.⁵ Without the financial assistance of the Petitioner, not to mention her land, the Respondent could have never built the log home in question. Those costs substantially outweighed the cost of the log home kit. None of these factors were taken into account by the Circuit Court because after contemplating such a substantial award, it failed to conduct an evidentiary hearing. As a result, the Circuit Court's award is factually and legally insupportable.

Thus, if the Circuit Court's *sua sponte* award is permitted to stand, the Respondent, not the Petitioner, will reap an unjust benefit of fourteen years of living rent and tax-free.⁶ There is nothing that could be more inequitable. Accordingly, this Court should reverse the Circuit Court's award of unjust enrichment in the amount of \$50,000.00 because it was unsupported by equitable facts and comprised solely of mere speculation and conjecture.

III. The Circuit Court's ruling permitting the Respondent, who had no legal claim of legal fee simple title, to retain possession of the property until the Petitioner paid her the sum of Fifty Thousand Dollars (\$50,000.00) was clearly erroneous and an abuse of discretion.

The Circuit Court correctly ruled that the Petitioner is the sole fee simple owner of the subject parcel, however, the Circuit Court's ruling permitting the Respondent to retain possession of the subject parcel until \$50,000.00 was paid to the Respondent was

⁵ Although not contained in the record below, the Petitioner filed a motion to supplement the record below to include the associated costs of construction, maintenance, and property tax on the log home. If this Court chooses, in its discretion, to review the supplemental documents, it will find that these costs substantially outweighed the costs of the log home kit purchased by the Respondent. For example, the amount of property taxes, construction costs, and maintenance for of the property between the years 2002-2007 totaled approximately \$94,420.55, all of which was paid by the Petitioner. *See Supp. App.*

⁶ The assessed tax value of the log cabin is \$39,330.00. *App.* at 26.

clearly erroneous and an abuse of discretion. Even assuming *arguendo* that the Respondent is entitled to an award of \$50,000.00 for unjust enrichment, the Circuit Court clearly erred when it made possession of the property contingent on such a substantial payment. Further, at no time in the pleadings did the Respondent seek such an award, but rather, the Circuit Court *sua sponte* ordered the amount be paid. Finally, the Circuit Court did not indicate his intention to make such an award, nor did it request additional evidence or an evidentiary hearing to justify such an award.

Although the Circuit Court undoubtedly justified its actions as equitable, it failed to offer any legal or factual support for its position. In *Francis*, this Court affirmed a trial court ruling that made possession of residential rental property contingent upon the payment of expenditures incurred for improvements to real property. *See Francis v. Bryson*, 618 S.E.2d 441, 217 W.Va. 432 (W.Va. 2005). In that case, a fundamental disagreement existed between the parties regarding whether the monthly payments made by the tenants were intended as rental payments or installment payments towards the purchase of the property. *Id.* at 446. The tenants had alleged that they had entered into an oral agreement to purchase the property, while the landlord alleged that said option was not exercised. In affirming the trial court order, this Court reasoned that the lower court heard evidence presented by both parties and was in a position to make credibility determinations that must be accorded deference. *Id.* at 445. Thus, this Court declined to find an abuse of discretion by the trial court in fashioning equitable relief.

Here, Petitioner property rights are uncontroverted. She is the sole legal, fee simple owner of the property. *App.* at 21-23. There is no evidence of a contract, written or otherwise, that the Respondent intended to purchase the property from the Petitioner. The

evidence is that the Respondent purchased a log home kit for approximately \$36,000.00⁷ and the Petitioner permitted her to erect it on her property. Further, the Petitioner paid all associated costs with the construction and maintenance of the log home and the property. As a result, the Petitioner received the benefit of living rent, tax and maintenance free in the log home for a period of fourteen years.

Moreover, the Respondent was neither ordered to pay reasonable rent for the property while she continued to reside in the home, nor was she ordered to pay the taxes on the property, ore reasonable maintenance of the property. Rather, she was permitted to retain possession of Petitioner's property for an indefinite amount without any financial burden placed upon her. Once again, the financial burden was placed solely upon the Petitioner to maintain the property. As a result of the Circuit Court order the property remains judicially inalienable, and the Petitioner is neither permitted to sell or list the property, nor can she collect a reasonable rent from the Respondent. This is an unjust result and should not be permitted to stand.

Regardless of the Circuit Court's unsupported award of unjust enrichment, the Petitioner is entitled to automatic possession of her real property because she is the sole legal, fee simple owner. To find otherwise would be patently unfair and unsupported by West Virginia jurisprudence. Accordingly, this Court should reverse the order of the judgment of the circuit court and award automatic possession of the subject property to the Petitioner.

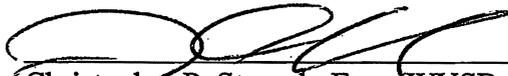
⁷ As stated herein, this amount was unknown to the circuit court at the time the order was entered. Although not contained in the record, Petitioner has submitted verification of this amount in her Supplemental Appendix of evidence not contained in the record below. *See Supp. App.* at 1-3.

CONCLUSION

For the reason discussed herein, the January 26, 2015, or of the Circuit Court of Hampshire County related to the award of unjust enrichment should be reversed because it is unsupported by West Virginia jurisprudence. In the alternative, if this Court feels that the Respondent is entitled to an award of unjust enrichment the Petitioner respectfully requests that this matter be remanded for an evidentiary hearing to determine an appropriate award, minus offsets, that the Respondent it entitled to.

Respectfully submitted by:

JUDITH D. WARD
Petitioner, By Counsel



Christopher P. Stroeck, Esq. (WVSB #9387)
J. Daniel Kirkland, Esq. (WVSB #12598)
Arnold & Bailey, PLLC
208 N. George Street
Charles Town, WV 25414
304.725.2002 (t)
304.725.0282 (f)
cstroech@arnoldandbailey.com
dkirkland@arnoldandbailey.com

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DOCKET NO. 15-0519

SUSAN K. WARD,
Respondent,

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of June 2015, a true and accurate copy of the foregoing *Petitioner's Brief* was served via U.S. mail, postage prepaid, to the following:

Susan K. Ward
HC 61, Box 361
Capon Bridge, WV 26711

3904 Old Westfalls Rd.
Mount Airy, Md 21771


J. Daniel Kirkland, Esq.