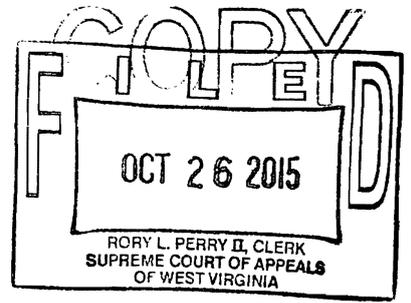


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

**Pamela Jean Hayes, Plaintiff Below,
Petitioner**

vs. No. 15-0518

**Larry Brady, and Dawna Michelle Boone Brady,
Defendants Below, Respondents**



PETITIONER'S REPLY TO RESPONDENT'S BRIEF

J. Burton Hunter, III
J. Burton Hunter, III and Associates, PLLC
Counsel for the Petitioner
One West Main Street
Buckhannon, WV 26201
304-472-7477
304-472-0641 (facsimile)
hunterjb@hunterlawfirm.net
WV State Bar ID 1827

PETITIONER'S REPLY TO RESPONDENT'S BRIEF

Petitioner will not reiterate matters set forth in the brief but simply respond to or distinguish certain matters raised or argued in Respondent's Brief.

On page 11, third paragraph, Petitioner believes that she has raised appropriate arguments to support her contention of denial of equal protection and due process. The core question is whether Petitioner's lack of legal knowledge and skill will permit the represented opponent to prevail even if that opponent knew or upon reasonable due diligence, and in this case very little additional diligence, ascertain the truth and accuracy of those facts. If the Court's findings were based upon evidence that is plainly false and inaccurate, the disadvantaged, unrepresented, party is denied equal protection and due process.

On page 11, fourth paragraph, an allegation that parties knew or reasonable diligence should have known certain facts to be true are not personal attacks or defamations, but are merely a statement of the facts and applicable law as best counsel can ascertain them. Personal animosity and *ad hominem* attacks have no place in the proper practice of law, and counsel personally regrets it if opposing counsel or parties interpreted these allegations otherwise.

On page 11, last paragraph, Petitioner believes that the same equitable principles that govern the interpretation to buy or sell a cow or to resolve the property issues in a divorce apply to legal instruments called deeds in concluding words of conveyance, description, and reservation. Thus, a right-of-way to the benefit of the Petitioner granted by the Respondents or their immediate predecessor in title, should be governed by these well-established rules of interpretation and equity.

On page 12, second full paragraph, the factual issue of whether “Ms. Hayes is not landlocked by Mr. and Mrs. Brady...” is not the issue here. The issue of “way of necessity” is whether or not the Bradys, by blocking Ms. Hayes existing and established right-of-way, ingress to and egress from her real estate and future home site, leaves her with no other reasonable access. Petitioner references the letter opinion of former Dean John W. Fisher, II, quoted in pages 21-23 of the Petitioner’s Brief. In evaluating this petition, the Court may not accept the bare assertion by Respondent that there are other reasonable routes, especially when the factual representation by counsel to the Court at trial that the Salem Ridge Road and the Wilsontown Road are separate roads on opposite ends of the larger tract, now made up of the three tracts referenced in Respondents paragraph, are demonstrated by the affidavits and public documents annexed to Petitioner’s Complaint, which was incorporated into Petitioner’s response to the Respondent’s Motion to Dismiss, so clearly reveal that the two names apply to one and the same, identical, road.

On page 12, last paragraph relative to “Statement Regarding Oral Argument”, Petitioner respectfully believes that the complex chains of title of separate adjoining tracts, the various stages of litigation, some of which Respondents’ counsel attended but which Petitioner’s counsel, who had not yet been retained did not attend, a “motion to reconsider”, and a “motion for summary judgment” and various pleadings, authority, and argument presented thereto, combine to make this case one that will benefit by the Court being able to question counsel on material differences and disagreements.

On page 13, second paragraph, Respondent asks the Court to ignore all facts supporting Petitioner’s theory of the case which Petitioner was unable to produce at trial, even as supporting

documents to show this Court the accurate facts which were represented, presumably as a result of an honest mistake, to the trial court.

Petitioner prays that the Court treat this issue as a matter of what weight to apply to the supporting documentation with a careful balance between the two principles that a person who tries a case unrepresented does so at her peril versus if a person is unrepresented because of her state of poverty, that a reasonable accommodation must be made so that justice is served, equal protection proved, and that due process is honored and followed.

The letter opinion of John W. Fisher, II is not offered as sworn testimony but as a learned statement of applicable law and should be considered by this Court as same.

On page 16, first paragraph, as to the assertion, “Ms. Hayes was not denied her day in court to address the issues of ‘prescriptive right’ and ‘way of necessity’”, in addition to matters contained in her brief, Petitioner directs the Court’s attention to the conclusion of the Honorable Kurt Hall, who heard the underlying case prior to the matter being heard on Respondents’ Motion to Dismiss in case number 15-C-123, by Circuit Court Judge Jacob E. Reger, who also was not present at the first trial. Judge Hall states, in pertinent part,

“The Court will note that this ruling does not touch upon the issues of prescriptive easement or easement by necessity. Those issues were not pled or identified in the Plaintiff’s Complaint or Amended Complaint and are not properly before the Court **at this time.**” (pg. 12, Order granting Judgment as a Matter of Law, entered September 26, 2014) (emphasis added)

A reasonable interpretation of this conclusion is that Judge Hall recognized that the Petitioner, being uneducated in the law, and perhaps selecting an incorrect legal theory upon which to proceed, specifically preserved to her as Plaintiff, if as subsequently developed she was wholly barred from access to her land, which she has been now for over four (4) years, and left this as an opening to plead this case, more accurately, on “way of necessity” or clear record

chain of title. That is how Petitioner's counsel interpreted this language, which is why Petitioner proceeded with a new suit rather than an immediate appeal.

On page 17, first full paragraph, that is speculation and, if factually developed, is simply not true. In as much as evidence on that issue will demonstrate that most of the litigation expenses expended by the Petitioner were borrowed from a loved one, and not otherwise available to the Petitioner who is, in fact, a pauper.

On page 18, second paragraph from the bottom, in defending the Motion for Summary Judgment, Petitioner believes that her representations of fact, for example, and probably most importantly the fact that the Salem Ridge Road and the Wilsontown Road are the same road, must be accepted as true, otherwise she is denied the opportunity to develop and prove these facts. The question is, if those facts are true, and if evidence that the two roads are the same was readily available, as it certainly was to Petitioner and her counsel when they researched it, can they rely on these false facts in a "gotcha position" because the Petitioner, as Plaintiff without counsel, was simply too unskilled and uneducated to uncover the falsity.

On page 21, although Petitioner and her counsel acknowledge making repeated assertions that facts represented as true by the Bradys and their counsel were not accurate, any use of words such as those in the referenced paragraph at the bottom of page 21, such as "fraudulent testimony" or as in footnote number 2, "inappropriate and dishonest statements to the tribunal" were not intended. In fact, if they were intended, counsel is certain it would have been his responsibility to report such dishonest representations to State Disciplinary Council which he has not done. It is apparent that these allegations have caused personal offense, and counsel and Petitioner had no intention to do so. Simply said, sloppy work is not dishonest work. The word "inaccurate" is a better adjective for the proffers, testimony, and argument on these issues.

On page 23, the Petitioner's position on the applicable contract law and equitable estoppel have been set out adequately in the Petitioner's Brief and will not be added to here.

On page 25, paragraph (d), "Landlocked Property" the Petitioner has not contended that she is "landlocked" because of being surrounded by "Brady property". The only reason Petitioner is "landlocked" is because there is no other ingress and egress right of way other than the one Petitioner received through the chain of title.

Finally, the Petitioner's "Conclusion" and response to the Respondents' "Conclusion" is that the Court should weigh the facts adduced at trial, the attachments, affidavits, and public documents annexed to Petitioner's pleadings, the learned opinion of John W. Fisher, II, other applicable law, and the fact that Petitioner was both uneducated and unrepresented and a pauper whose only valuable asset is the one from which she is now barred in order to provide her her day in Court and an opportunity for a just result.

Respectfully Submitted,
Pamela J. Hayes, Petitioner
By Counsel



J. Burton Hunter, III
Counsel for Petitioner
J. Burton Hunter, III & Associates, P.L.L.C.
One West Main Street
Buckhannon, West Virginia 26201
(304) 472-7477
WV State Bar ID: 1827

STATE OF WEST VIRGINIA,

COUNTY OF UPSHUR, TO-WIT:

I, Pamela J. Hayes, being first duly sworn, says that the facts and allegations set forth in said **Petitioner's Reply to Respondent's Brief** are true and correct, except insofar as they are therein stated to be upon information and belief, he believes them to be true and correct.

Pamela J. Hayes
Pamela J. Hayes

Taken, sworn to and subscribed before me this 23rd day of October, 2015 by Pamela J. Hayes.

My commission expires: March 5, 2022

Letitia J. Hawkins

Notary Public

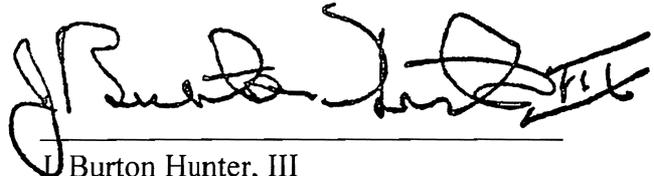


CERTIFICATE OF SERVICE

I, J. Burton Hunter, III, attorney for Pamela J. Hayes, do hereby certify that I served the foregoing *Petitioner's Reply to Respondent's Brief* upon the following counsel by depositing a true copy thereof in the United States Mail, with postage prepaid in envelopes addressed as follows:

Trena Williams
217 East 3rd Street
Weston, WV 26452

Dated this 23rd day of October, 2015.

A handwritten signature in black ink, appearing to read "J. Burton Hunter, III", written over a horizontal line.

J. Burton Hunter, III
One West Main Street
Buckhannon, WV 26201
(304) 472-7477
WV State Bar ID: 1827