

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

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No. 12-1541

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Cathy Cyfers, Joseph Cyfers, and Megan Cyfers,  
Petitioners,

vs.

Jack Cyfers, Helen Cyfers, Roger Cyfers, Dottie Cyfers,  
Wayne Cyfers, Cathy Cyfers, Philip Vallandingham,  
Sheriff of Cabell County, Sean K. Hammers, Esq.,  
Debbie Cyfers, Gertrude Cyfers, Dick Cyfers,  
Eleanor Lambert, and Delores Cyfers,  
Respondents.

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On Appeal from Honorable F. Jane Hustead, Judge  
Circuit Court of Cabell County  
Civil Action No. 10-C-744

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**BRIEF OF RESPONDENTS, CATHY CYFERS AND PHILIP VALLANDINGHAM**

Respectfully Submitted by:

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## I. SUMMARY OF ARGUMENT

In accordance with an Order from the Circuit Court of Cabell County, West Virginia, dated April 20, 2011, Respondents, Cathy Cyfers and Philip Vallandingham, are not taking a position in this appeal. See Petitioner's Appendix, Page 0520. Respondents are remaining involved only at the instruction of the Circuit Court of Cabell County, West Virginia.

## II. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Respondents, Cathy Cyfers and Philip Vallandingham, do not take a position with regards to Oral Argument under West Virginia Rules of Appellate Procedure. Respondents shall follow the direction given by the Supreme Court of Appeals of West Virginia pertaining to Oral Argument and Decision.

## III. ARGUMENT

### A. STANDARD OF REVIEW

A circuit court's entry of summary judgment is reviewed by the Supreme Court of Appeals of West Virginia using a *de novo* standard. *Estate of Helmick ex rel. Fox v. Martin*, 192 W.Va. 501, 4534 S.E.2d 335 (W.Va. 1994); *Cunningham v. West Virginia-American Water Co.*, 193 W.Va. 450, 457 S.E.2d 127 (W.Va. 1995); *Hanlon v. Chambers*, 195 W.Va. 99, 464 S.E.2d 741 (W.Va. 1995); *HN Corp. v. Cyprus Kanawha Corp.*, 195 W.Va. 289, 465 S.E.2d 391 (W.Va. 1995); *Gooch v. West Virginia Department of Public Safety*, 195 W.Va. 357, 465 S.E.2d 628 (W.Va. 1995); *Greenfield v. Schmidt Baking Co.*, 199 W.Va. 447, 485 S.E.2d 391 (W.Va. 1997).

### B. RELEVANT FACTS AND PROCEDURE

On January 27, 2009, Lois Jayne Cyfers Miller ("Decedent") died a resident of Cabell County, West Virginia. See Petitioner's Appendix, Page 007. In accordance with her Last Will and Testament, dated August 15, 2006, Philip Vallandingham and Cathy Cyfers

("Respondents") were appointed Co-Executors on May 1, 2009. See Petitioner's Appendix, Page 007. The Will contains hand-written notations and includes an Exhibit "A," which is written in different colors of ink and contains a date nearly 4 months after the date the Will was executed. See Petitioner's Appendix, Pages 013, 014, 015, 019, 022.

On August 30, 2010, several potential beneficiaries sent a letter requesting that Respondents resign as Co-Executors of the Estate of Lois Jayne Cyfers Miller and administer the estate pursuant to Exhibit A, the document giving rise to this litigation. On October 7, 2010, the same potential beneficiaries filed a Petition seeking removal of Respondents as Co-Executors of the Estate of Lois Jayne Cyfers Miller in the Cabell County Commission. On October 13, 2010, Respondents filed a Petition for Declaratory Relief in the Circuit Court of Cabell County, West Virginia, which requested that the Court enter an Order "determining whether the handwritten notations on the face of the will alter the will or have no effect on the will" and "determining whether the handwritten attachment, Exhibit A, is validly incorporated by reference." See Petitioner's Appendix, Page 010. In the hearing on the Petition seeking removal of Respondents as Co-Executors, on November 10, 2010, the Cabell County Commission removed Co-Executors and appointed the Sheriff of Cabell County to serve as Administrator C.T.A. D.B.N. Respondents appealed the Cabell County Commission's removal of Co-Executors to the Circuit Court of Cabell County, West Virginia. In this Court's April 20, 2011 Order, this Court ordered that Petitioners upheld their fiduciary duties and were removed *without cause* by the Cabell County Commission. See Petitioner's Appendix, Page 521. Specifically, this Court found "There is no evidence of wrongdoing by Cathy Cyfers or Philip Vallandingham, in their capacity as Co-Executors of the Estate of Lois

Jayne Cyfers Miller” and “Cathy Cyfers and Philip Vallandingham shall be awarded their statutory executor fees for all actions taken in their capacity as Co-Executors of the Estate of Lois Jayne Cyfers Miller.” See Petitioner’s Appendix, Page 522. While the Court requested that Respondents refrain from taking a position, in their capacities as Co-Executors and/or former Co-Executors of the Estate of Lois Jayne Cyfers Miller, Respondents were required to remain involved in the declaratory relief litigation, as it was the Respondents who sought guidance regarding distribution of the Estate from the Court with the Petition for Declaratory Relief. This Order has never been appealed.

**C. RESPONDENTS DO NOT TAKE A POSITION IN THIS APPEAL IN ACCORDANCE WITH ORDER, DATED APRIL 20, 2011, OF THE CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA.**

On April 7, 2011, Judge Husted of the Circuit Court of Cabell County, West Virginia, heard an appeal from a Cabell County Commission decision that removed Respondents as Co-Executors from the Estate of Lois Jayne Cyfers Miller. As a result of this appeal, Judge Husted entered an Order stating that Respondents were incorrectly removed by the Cabell County Commission. Further, the Order stated “[t]here is no evidence of wrongdoing by Cathy Cyfers or Philip Vallandingham, in their capacity as Co-Executors of the Estate of Lois Jayne Cyfers Miller” and “Cathy Cyfers and Philip Vallandingham shall be awarded their statutory executor fees for all actions taken in their capacity as Co-Executors of the Estate of Lois Jayne Cyfers Miller.” Despite Judge Husted’s ruling that Respondents were removed without cause, she did not reinstate Respondents as Co-Executors. Instead, she maintained the Cabell County Commission’s Order that the Sheriff of Cabell County would serve as

Administrator, CTA DBN, of the Estate of Lois Jayne Cyfers Miller in an effort to reduce fees.

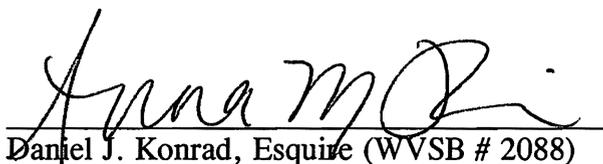
In this same hearing, Judge Husted required Respondents to stay involved in their Petition for Declaratory Judgment without taking a position. This is an appeal from the Circuit Court of Cabell County, West Virginia, which granted Summary Judgment for Jack Cyfers, Helen Cyfers, Roger Cyfers, Dottie Cyfers, and Wayne Cyfers on Respondent's Petition for Declaratory Judgment. In accordance with the Order of Judge Husted, Respondents shall not take a position with respect to this appeal.

#### IV. CONCLUSION

As a result of Judge Husted's Order, dated April 20, 2011, Respondents are remaining parties to this action; however, Respondents have not and will not take a position with regards to this appeal or the underlying Petition for Declaratory Judgment.

CATHY CYFERS AND PHILIP VALLANDINGHAM,

By Counsel,



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Eleanor Lambert, and Delores Cyfers,  
Respondents.

**CERTIFICATE OF SERVICE**

The undersigned attorney does hereby certify that on this 13<sup>th</sup> day of  
May, 2013, the foregoing "*Brief of Respondents, Cathy Cyfers and Philip  
Vallandingham*" and was served upon counsel of record by sending a true and correct copy  
thereof by United States mail, postage prepaid and properly addressed, as follows:

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A handwritten signature in black ink, appearing to read "Anna M. Di", written over a horizontal line.