

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**Linda J. Haines, Sole Beneficiary of
the Estate of Ralph W. Haines, deceased,
Petitioner Below, Petitioner**

FILED
April 29, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs) **No. 101262** (Hampshire County 09-C-135, 09-C-147)

**Pamela K. Kimble, Executrix of the
Estate of Ralph W. Haines, deceased,
Respondent Below, Respondent**

MEMORANDUM DECISION

Petitioner Linda J. Haines appeals the portion of the circuit court's May 13, 2010, order affirming the Hampshire County Commission's (1) denial of petitioner's petition to remove Respondent Pamela K. Kimble as Executrix of the Estate of Ralph W. Haines, and (2) denial of petitioner's request to remove the fiduciary commissioner appointed to the matter. Respondent filed a response brief.

This Court has considered the parties' briefs and the record on appeal. Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this case is appropriate for consideration under the Revised Rules. The facts and legal arguments are adequately presented in the parties' written briefs and the record on appeal, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules.

Ralph W. Haines died testate on May 3, 2002, leaving his entire estate to the petitioner, and appointing the respondent as executrix of his estate. In 2002, petitioner sought to have the Hampshire County Commission remove respondent as executrix. Her request was denied by the county commission and ultimately affirmed by this Court in *Haines v. Kimble*, 221 W.Va. 266, 654 S.E.2d 588 (2007) (per curiam).

Beginning in June 2009, petitioner pursued another petition to remove the executrix. This Court's 2007 opinion was limited to issues arising from the evidence presented at an

October 23, 2002, evidentiary hearing held before the special fiduciary commissioner. Petitioner explained that her new removal petition concerned post-October 23, 2002, facts. Petitioner alleged that since October 23, 2002, respondent has engaged in numerous instances of waste and maladministration of the estate. Respondent denied the allegations.

Petitioner also asked the county commission to recall the special fiduciary commissioner appointed to hear evidence and make recommended decisions for this estate matter, William H. Judy, III. Petitioner asserted that Mr. Judy did not fairly and diligently perform his duties, and she questioned the contents of his fee statements.

The Hampshire County Commission denied petitioner's 2009 removal requests, and petitioner appealed to the circuit court in two separate cases that were consolidated for purposes of decision. In the Order of May 13, 2010, the circuit court affirmed in part, reversed in part, and remanded for further proceedings. As to the request to remove the executrix, the circuit court stated, *inter alia*, as follows:

While the allegations against Mrs. Kimble are voluminous, the Court at this time believes that the executrix has relied upon professional advice, and therefore, the Court cannot find that her conduct is such that would justify her removal. However, the Court has not had the benefit of an evidentiary hearing on Respondent's supplemental fourth through seventh accountings, including information concerning expenditures of the estate such as fees paid to tax preparers, all of which may give rise to concern.

The circuit court remanded the case to the county commission and fiduciary commissioner to hold evidentiary hearings on petitioner's objections filed with regard to the estate's supplemental fourth through seventh annual accountings. Petitioner filed the instant appeal before that remand was accomplished.

As to the special fiduciary commissioner, the circuit court found that he and the parties had delayed the estate litigation pending this Court's decision in the prior appeal. While the circuit court expressed dissatisfaction with the delay, it did not find grounds for removal. Moreover, issues about the special fiduciary commissioner's fee statements were raised in the objections that will be further considered on remand to the county commission.

As explained in Syllabus Point 4 of *Burgess v. Porterfield*, 196 W.Va. 178, 469 S.E.2d 114 (1996), "[t]his 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*." Upon a careful review of all of petitioner's numerous allegations, the respondent's explanations, and the circuit court's

findings, this Court finds that the circuit court did not abuse its discretion or commit clear error in its May 13, 2010, order. Accordingly, we affirm.

Affirmed.

ISSUED: April 29, 2011

CONCURRED IN BY:

Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Menis E. Ketchum
Justice Thomas E. McHugh

DISSENTING:

Chief Justice Margaret L. Workman