

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

**State of West Virginia ex rel.
Judith G. Farley, Individually, and as
the personal representative of the Estate
of James Farley; and Katherine F. Snyder,
Petitioners**

FILED
May 9, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

v.) No. 12-0159 (Wayne County 11-C-092)

**The Honorable John Cummings, In his capacity
as Judge, Senior Status; and Gregory Keith Farley,
Respondents**

MEMORANDUM DECISION

Petitioners, Judith G. Farley, beneficiary and Executrix of the Estate of James Farley, and Katherine F. Snyder, beneficiary of the Estate of James Farley, filed a petition in this Court asking for a writ of prohibition and mandamus directed to respondents, John Cummings, Senior Status Judge, and Gregory Keith Farley. Petitioners are challenging the Circuit Court of Wayne County's denial of their motion to transfer venue in the underlying civil action.

James Farley of Wayne County, West Virginia, died on March 26, 2011. Mr. Farley had three children: Petitioners, Judith G. Farley and Katherine F. Snyder, and Respondent, Gregory Keith Farley. James Farley's Last Will and Testament named Petitioner, Judith G. Farley, as Executrix and named her and Katherine F. Snyder as his sole beneficiaries. Mr. Farley's son, Gregory Keith Farley, was excluded from the Will.

Gregory Keith Farley brought suit in the Circuit Court of Wayne County contesting his father's Will. The complaint alleges that James Farley lacked the mental capacity to execute his Will and was under the undue influence of Judith G. Farley and Katherine F. Snyder at the time of execution of the Will.

Petitioners filed a motion seeking transfer of venue from Wayne County to another county pursuant to *W.Va. Code* § 56-9-1 [1939]. They alleged that Gregory Keith Farley is the Sheriff of Wayne County, and a transfer of venue is necessary to guarantee a trial by an impartial jury and to protect against the appearance of unfairness.

Judges Darrell Pratt and James H. Young, Jr., Judges of the Twenty-Fourth Judicial Circuit, voluntarily recused themselves. This Court deemed the recusals warranted and ordered the appointment of Judge John L. Cummings, Senior Status Judge, to serve as judge on the case.

Judge Cummings held a hearing on the motion to transfer venue and denied the motion, stating, “good cause to transfer the matter to another Circuit of the State has not been demonstrated” Petitioners now seek a writ of prohibition and a writ of mandamus in this Court to obtain a change of venue.

This Court has considered the parties’ briefs and the record in this proceeding. The facts and legal arguments are adequately presented in the parties’ written briefs and the record, 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. Accordingly, a memorandum decision is appropriate under Rule 21 of the West Virginia Revised Rules of Appellate Procedure.

Upon request, a case should be transferred under *W.Va. Code* § 56-9-1 [1939], when an elected official of a county is a party to the litigation. In *Hunter v. Beckley Newspaper Corp.*, 129 W.Va. 302, 40 S.E.2d 332 (1946), this Court found that the plaintiff’s status as an elected county official rendered a fair and impartial trial in Raleigh County impossible. We noted, in *Hunter*, the assertion that the county clerk’s position made him “gracious in his relationship with the public.” Elected officials necessarily create many relationships in the county, and these relationships can create a litigation advantage in that county. The sheriff’s position carries a similar appearance of influence within the justice system. A sheriff is not only a highly visible figure of authority in the community, but also a highly visible figure of authority in the courtroom. In *Hunter*, this Court went on to adopt a strict rule concerning venue when an elected official of a county is a party to an action in his or her county. The *Hunter* opinion states:

[T]o avoid the very appearance of unfairness, we think it important that there be established a strict rule against any conduct of a public officer which may create even a suspicion that his official position is or can be used to his personal advantage.

(emphasis added) 129 W.Va. at 308, 40 S.E.2d at 336.

The holding in *Hunter, supra*, is binding precedent in this action. The writs of prohibition and mandamus filed by the petitioners herein are granted. The Clerk of this Court is directed to issue a writ prohibiting the trial of the underlying action in Wayne County, and directed to issue a writ mandating that the circuit judge transfer the venue of the case pursuant to *W.Va. Code* § 56-9-1 [1939].

We note that the Chief Justice has administratively assigned Senior Status Judge John Cummings to preside over the case subsequent to the transfer of venue. The Clerk of this Court is directed to enter the mandate forthwith.

Writs granted.

ISSUED: May 9, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Thomas E. McHugh