**FILED**
**January 12, 2022**
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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

# STATE OF WEST VIRGINIA
# SUPREME COURT OF APPEALS

**Marshall Colebank and Judy Colebank,**
**Defendants Below, Petitioners**

**vs.) No. 20-0616** (Putnam County 19-C-248)

**Kimberly M. Reneau and Kay M. Crites,**
**Plaintiffs Below, Respondents**

## MEMORANDUM DECISION

Petitioners Marshall and Judy Colebank (collectively, "the Colebanks"), by counsel Timothy J. LaFon, appeal the order of the Circuit Court of Putnam County, entered on July 21, 2020, enforcing a settlement agreement reached in open court in 2019, with Respondents Kimberly M. Reneau and Kay M. Crites. Respondents appear by counsel Christopher L. Hamb and Jonathon C. Stanley.

This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, 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 affirming the order of the circuit court is appropriate under Rule 21 of the Rules of Appellate Procedure.

Sisters Kimberly Reneau and Kay Crites filed a verified petition for a protective order in the Circuit Court of Putnam County on December 5, 2019, asserting that the Colebanks financially exploited their elderly mother, Nancy Byard. When the parties appeared in person for a preliminary injunction hearing a few weeks after the filing of the petition, the Colebanks' counsel informed the court that the parties had reached a "tentative agreement." The court invited the parties to "spread this agreement on the record." Ms. Reneau and Ms. Crites's attorney explained the terms in open court, without objection from the Colebanks' attorney. Critically, the Colebanks were to resign powers of attorney granted to them by Ms. Byard, undertake no future obligations on Ms. Byard's behalf, return Ms. Byard's personal property, initiate no contact with Ms. Byard, and swiftly end any communications initiated by Ms. Byard. Ms. Reneau and Ms. Crites's attorney volunteered to reduce the agreement to writing, and the hearing concluded.

Approximately one month after the hearing, and before a written agreement was executed, the Colebanks filed a notice of appearance of counsel, apparently as a substitution of the

Colebanks' earlier counsel. The newly-identified attorney immediately filed an answer to the verified petition on the Colebanks' behalf, despite the apparent agreement described at the preliminary injunction hearing. On January 10, 2020, Ms. Reneau and Ms. Crites filed a motion for default judgment or, in the alternative, for enforcement of their settlement agreement, on the ground that the matter was fully resolved. The Colebanks opposed the motion and supported their opposition with an affidavit by Mr. Colebank, who stated that he did not intend to enter a settlement agreement, that he did not have sufficient notice of the proposed terms prior to the injunction hearing, and that he did not give his earlier counsel authority to settle on his behalf. The circuit court granted Ms. Reneau and Ms. Crites's motion for enforcement of the settlement agreement, finding Mr. Colebank's affidavit "disingenuous at best."

On appeal, the Colebanks assert two assignments of error. They argue, first, that the circuit court erred in finding that the parties had a meeting of the minds to reach the agreement as detailed before the circuit court. They argue, second, that the circuit court erred in enforcing an agreement that is contrary to public policy. We review these arguments under the following standard:

> "In reviewing challenges to the findings and conclusions of the circuit court, we apply a two-prong deferential standard of review. We review the final order and the ultimate disposition under an abuse of discretion standard, and we review the circuit court's underlying factual findings under a clearly erroneous standard. Questions of law are subject to a *de novo* review." Syl. Pt. 2, *Walker v. West Virginia Ethics Commission*, 201 W.Va. 108, 492 S.E.2d 167 (1997).

Syl. Pt. 1, *Messer v. Huntington Anesthesia Grp., Inc*., 222 W. Va. 410, 664 S.E.2d 751 (2008).

With regard to the first assignment of error, the Colebanks argue that it is apparent that the essential terms of the agreement were not reached because the agreement was not reduced to writing. However, a "settlement agreement made in open court . . . is a valid, enforceable agreement and need not be reduced to writing[.]" *Riner v. Newbraugh*, 211 W. Va. 137, 141, 563 S.E.2d 802, 806 (2002) (citation omitted). The Colebanks further argue that Mr. Colebank's affidavit establishes that the Colebanks had not given their attorney authority to enter into an agreement on their behalf. "'When an attorney appears in court representing clients there is a strong presumption of his authority to represent such clients, and the burden is upon the party denying the authority to clearly show the want of authority.' Syllabus Point 1, *Miranosky v. Parson*, 152 W.Va. 241, 161 S.E.2d 665 (1968)." Syl. Pt. 5, *Sanson v. Brandywine Homes, Inc*., 215 W. Va. 307, 599 S.E.2d 730 (2004). The circuit court, after having received the terms of the agreement on the record in Mr. Colebank's presence, found that Mr. Colebank's affidavit was "disingenuous at best and cannot be given any credence." The Colebanks have presented no evidence that the circuit court reached that conclusion in error.

In explanation of their second assignment of error, the Colebanks argue, without citation to the appendix record on appeal or to any supporting legal authority, that "[i]t is clearly a violation of the United States Constitution and West Virginia [p]ublic [p]olicy" for a court to enforce a settlement agreement that restricts the communications of a third party as, they argue, the circuit court restricted communications between the Colebanks and Ms. Byard. In addition to offering this argument without support, the Colebanks also have provided no assurance that the circuit court

was presented with the question before it was presented to us. Rule 10(c)(7) of the West Virginia Rules of Appellate Procedure provides, in part, that a petitioner's "argument must contain appropriate and specific citations to the record on appeal, including citations that pinpoint when and how the issues in the assignments of error were presented to the lower tribunal. The Court may disregard errors that are not adequately supported by specific references to the record on appeal." This basic rule of practice serves a gatekeeping function for "[o]ur general rule . . . that nonjurisdictional questions . . . raised for the first time on appeal, will not be considered." *Shaffer v. Acme Limestone Co*., 206 W. Va. 333, 349 n.20, 524 S.E.2d 688, 704 n.20 (1999). Because the Colebanks have failed to demonstrate that this nonjurisdictional question was presented to the circuit court, we decline to address the issue further in this appeal.

For the foregoing reasons, we affirm.

Affirmed.

**ISSUED:** January 12, 2022

**CONCURRED IN BY:**

Chief Justice John A. Hutchison
Justice Elizabeth D. Walker
Justice Tim Armstead
Justice Evan H. Jenkins
Justice William R. Wooton