

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

**Frances A. Preast,
Petitioner Below, Petitioner**

vs) **No. 11-0661** (Fayette County 10-AA-1(H))

**Burl Keith Skaggs and
Gaymond G. Preast, Jr.,
Respondents Below, Respondents**

FILED

February 14, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

This appeal arises from the Circuit Court of Fayette County, wherein Petitioner Frances Preast's Motion to Allow Appeal Out of Time and to Remand Case to the County Commission of Fayette County for Further Proceedings was denied, and the matter was dismissed. The appeal was deemed timely perfected by counsel, with petitioner's appendix accompanying the petition. Respondents Burl K. Skaggs and Gaymond G. Preast have filed a summary response brief.

This Court has considered the parties' briefs and the appendix on appeal. The facts and legal arguments are adequately presented in the parties' written briefs and the appendix 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 appendix 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.

On October 25, 2005, Helen Skaggs died testate and her brother Ralph Preast served as her executor. Mr. Preast is also the petitioner's husband. Following Ms. Skagg's death, petitioner filed a claim seeking \$39,500.00 for personal care services provided to decedent. Petitioner is a licensed practical nurse and provided care on a daily basis, allowing Ms. Skaggs to avoid placement in a nursing home. Shortly thereafter, legatees Burl Skaggs and Gaymond Preast, respondents herein, filed an unverified objection to petitioner's claim. Petitioner claims the process below was confused as to when certain motions were to be heard for oral argument, and argues that the county commission unduly delayed ruling on the fiduciary commissioner's recommendation. The order in which the county commission approved the report and recommendations of the fiduciary commissioner was entered on April 22, 2009. Petitioner argues that her prior counsel was not notified of this decision until March 11, 2010. Petitioner then filed her motion to file appeal out of time with the circuit

court, but the motion to file out of time was denied. On appeal, petitioner argues that the county commission's final order was not "rendered" until such time as her prior counsel obtained a copy. As such, her filing with the circuit court should be deemed timely.

"This 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*.' Syllabus Point 4, *Burgess v. Porterfield*, 196 W.Va. 178, 469 S.E.2d 114 (1996)." Syl. Pt. 1, *State v. Spade*, 225 W.Va. 649, 695 S.E.2d 879 (2010). In this matter, the circuit court appropriately denied petitioner's motion and dismissed the matter from its docket due to the twenty month lapse from the entry of the County Commission's order and the petitioner's institution of the civil action in circuit court. While petitioner complains of a lack of notice following the entry of the County Commission's order, the circuit court's order denying petitioner's motion correctly noted that it lacked jurisdiction over the matter due to the statute governing appeals of County Commission decisions. West Virginia Code § 58-3-4 states that a petition for appeal to the circuit court from a county commission "shall be presented within four months after such judgment, order, or proceeding was rendered, had, or made."

In her appeal to this Court, petitioner argues that the definition of "rendered" as used in that statute means the announcing of a decision, not the entering, docketing, or recording of the decision. Therefore, she argues that the county commission's decision was not rendered until a copy of the same was transmitted to her prior counsel on March 11, 2010. However, as the circuit court correctly noted, this Court has held that "[a] statutory provision which is clear and unambiguous and plainly expresses the legislative intent will not be interpreted by the courts but will be given full force and effect." Syllabus Point 2, *State v. Epperly*, 135 W.Va. 877, 65 S.E.2d 488 (1951)." Syl. Pt. 3, *Guido v. Guido*, 222 W.Va. 528, 667 S.E.2d 867 (2008). The statute above is plain in its meaning of "rendered" being synonymous with both "had" or "made," and we find petitioner's argument unpersuasive. Additionally, we have held that

"[i]t is the general rule that '[a]ppellate jurisdiction is derived from the constitutional or statutory provision by which it is created, and can be acquired and exercised only in the manner prescribed.' *State v. Legg*, 151 W.Va. 401, 151 S.E.2d 215 (1966) (quoting 4 Am.Jur.2d, *Appeal and Error*, § 4). The *Legg* Court was referring to the appellate jurisdiction of this Court; however, this rule is equally applicable to the circuit courts under the authority of Article VIII, § 6 of the Constitution of West Virginia, wherein certain jurisdictional authorities are enumerated and the provision is made that the '[c]ircuit courts shall also have such other jurisdiction, authority or power, original or appellate or concurrent, as may be prescribed by law.'"

Lipscomb v. Tucker Cnty. Com'n., 197 W.Va. 84, 89, 475 S.E.2d 84, 89 (1996). As such, the circuit court did not abuse its discretion in denying petitioner's motion and dismissing the matter.

For the foregoing reasons, we find no error in the decision of the circuit court and the order denying petitioner's motion to file out of time is hereby affirmed.

Affirmed.

ISSUED: February 14, 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