

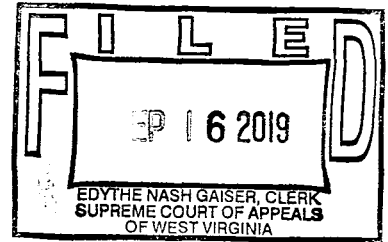
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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

DOCKET NO. 19-0019

TOBY E. BELL AND
JANICE JOHNSON,
Defendants below, Petitioners,



v.

LEE PERKINS, et al.
Plaintiffs below, Respondents,

PETITIONER'S REPLY BRIEF

(Appeal from Circuit Court of Pocahontas County Civil Action No. 16-C-13(D))

PAUL S. DETCH (WVSB# 1002)
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TABLE OF AUTHORITIES

STATUTES AND RULES

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Rule 10(g)

CASES:

Pyle v. Henderson, 65 W.Va. 39, 63, S.E. 762 (1909)

In re: Murphy, 9 Bankr, E.D. Va. (1981)

14B M.J. Penalties and Forfeitures, Sect. 6 P. 97

In conformance with Rule 10 (g) your petitioners herein file this reply brief.

STATEMENT REGARDING ORAL DECISION

Your petitioners herein state that it is his desire to have oral argument in this matter as previously requested.

ARGUMENT

Respondent's reply brief makes no denial, as the respondents cannot deny that the following issues are true.

1. Both the petitioners and respondents peacefully used and enjoyed the "Perkarosa" camp from 1990 through 2016, a period of twenty-six years. This was done operating under the interpretation of Judge Jolliffe's order that the property was vested and no maintenance fees were required.
2. The original proceeding was filed in 1984, specifically requested that there be an accounting made of the income and expenses of the property, for which the respondents have shown nothing to have been done in regards to an accounting for twenty-six years.
3. The respondents below, at no time, made any demand upon the appellants for any maintenance fee; notified them of any dereliction of duty, or even documented any complaint made by them about the failure to pay this maintenance fee for over twenty-six years.
4. In the reply brief, the appellee acknowledges that the bookkeeper was fully aware of failure to pay by the appellants and did nothing.
5. The appellant contends that Judge Jolliffe's order makes no provision for the resumption of any maintenance fees in the future. The parties lived peacefully occupying and using

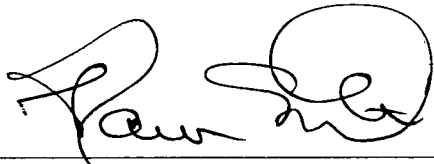
the property for twenty-six years, for which the appellant's interpretation of the order was that no further maintenance fees were due and payable.

6. The respondents acknowledge that a partition proceeding was filed in 1990 and was finally dismissed for lack of interest by either party in 1995. During this time period, and afterwards, the respondents acknowledge that no fees were being paid and did nothing to plead that any forfeitures had occurred. Had a forfeiture occurred, the respondents would have owned the property in its entirety and not owned an interest in common with the petitioners. The respondents just want to go back into the ancient history of this property in order to find some argument that allows them to make trouble for their co-tenants.
7. The respondents request a forfeiture. 14B M.J. Penalties and Forfeitures. M.J. is quoted as follows: "a forfeiture will be deemed waived by any agreement, declaration or course of action on the part of the person who is benefitted by such forfeiture which leads the other party to believe that by conforming thereto the forfeiture will not be incurred." Citing Pyle v. Henderson, 65 W.Va. 39 63 S.E. 762 (1909).
8. It is clear that twenty-six years of failing to make any demand for maintenance fee constitutes a waiver of that fee. The Court in the footnote says it is a well-established principle the law will not favor forfeitures. Accordingly, the Court must remain alert to take advantage of any circumstances that indicate an election to waive a forfeiture or any arrangement to do so in which a party is relied and reacted. In re: Murphy, 9 Bankr, E.D. Va. (1981).

CONCLUSION

The lower court's decision should be reversed.

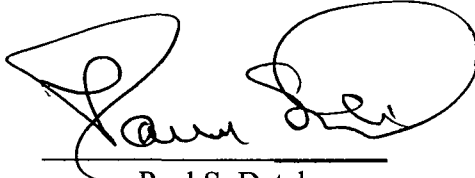
TOBY E. BELL AND
JANICE JOHNSON
By Counsel

A handwritten signature in black ink, appearing to read "Paul S. Detch". The signature is written in a cursive style with a large, circular flourish at the end.

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CERTIFICATE OF SERVICE

I, Paul S. Detch, hereby certify that a true and exact copy of the foregoing
PETITIONER'S REPLY BRIEF was served upon Jeffrey A. Pritt, Esquire, Pritt Law Firm,
PLLC, P.O. Box 708, Union, W.Va. 24983 by mailing a true and exact copy by regular
United States mail on this 13 day of Sept., 2019.



Paul S. Detch