

West Virginia.

2. After the death of Oras D. Dye, on January 6, 2016, his brother, Homer Dye, brought a hand printed will for probate into the Marion County Clerk's office. The Clerk's office lodged the original of the will, pending a review by the Fiduciary Supervisor.
3. On January 21, 2016, the Fiduciary Supervisor's Assistant sent a letter to Homer Dye concerning the validity of the hand printed will.
4. On January 26, 2016, Homer Dye came into the office of the Fiduciary Supervisor in response to the letter of January 21, 2016. The Fiduciary Supervisor explained to Homer Dye what was necessary to probate the hand printed will as a holographic will under West Virginia law. After such explanation, to assist Homer Dye, two standard Depositions (Affidavits) were given to Homer Dye, for witnesses to execute concerning the verification of the handwriting of Oras D. Dye. The Depositions (Affidavits) were the same Affidavits given to all persons tendering a holographic will for probate in Marion County, West Virginia, to provide the Marion County Clerk evidence authenticating the handwriting contained in a holographic will.
5. Homer Dye had the two affidavits signed and notarized for attachment to the hand printed will lodged in the office of the Marion County Clerk. The hand printed will and affidavits were then admitted to record by the Clerk's Office, in vacation, on February 4, 2016, as a holographic will.
6. Subsequently, the Estate of Oras Delmus Dye was assigned to the Marion County Fiduciary Supervisor and assigned Fiduciary File Number 18044. In response to inquiries in the pending Estate of Oras Delmus Dye, the hand-printed will and affidavits were reviewed by the Fiduciary Supervisor on

March 1, 2016. The Fiduciary Supervisor sent letters to the two (2) witnesses who had signed the Clerk's "Affidavit for Proof of Holographic Will". In written responses to the inquiries of the Fiduciary Supervisor, the persons who signed the "Affidavits for Proof of Holographic Will" admitted that they did not believe Oras Dye printed the writing contained in the hand-printed will, but they did believe it was his signature on the hand printed will. One of the witnesses disclosed to the Fiduciary Supervisor that the Will was printed by Amber McClain, who was now deceased, demonstrating that the Will of Oras Dye was not "wholly in the handwriting" of Oras Dye, as required by West Virginia Code, 41-1-3, as amended.

7. On April 18, 2016, the Fiduciary Supervisor received a letter from counsel for Homer Dye, referencing the problems with the probate of the hand printed will, in response to the letter from the Assistant to the Fiduciary Supervisor of January 21, 2016. Counsel for Homer Dye asserted that the hand printed will of Oras Dye was "entirely valid" demonstrating that Petitioner's Counsel was aware of legal issues with the probate of the will of Oras D. Dye.
8. Following the investigation by the Fiduciary Supervisor and in response to the letter of April 18, 2016, from counsel for Homer Dye, on April 25, 2016, the Fiduciary Supervisor sent a copy of the hand-printed will, along with a copy of his letters of March 1, 2016, to Alicia Healy and Yvonne Shaw, the two (2) witnesses on the Affidavits for Proof of Holographic Will, and their written statements concerning the validity of the hand printed will, to the attorney for Homer Dye and children of Oras Dye. The letter of April 25, 2016, by the Fiduciary Supervisor, requested a written response from the Attorney for Homer Dye and the children of Oras Dye, concerning the validity of the hand

printed will, within twenty (20) days. In such letter, the Fiduciary Supervisor advised counsel for Homer Dye that he was of the opinion that the hand printed will should be voided and that since Petitioner, Homer Dye, had the burden of proving the will of Oras Dye, he would take no further action during the twenty (20) day period.

9. The Fiduciary Supervisor never received a written response from the Attorney for Homer Dye or the children of Oras Dye. However, the children of Oras Dye came in to the office of the Fiduciary Supervisor the week of September 20, 2016, and expressed their concern that the Petitioner, Homer Dye, was trying to sell the real estate of their father, Oras Dye, based upon the hand printed Will that was still of record in the office of the Marion County Clerk.
10. The concern expressed by the children of Oras D. Dye presented the Fiduciary Supervisor with exigent circumstances, that the questionable Will could be used by Petitioner, Homer Dye, to sell real estate of Oras D. Dye, to the prejudice of the four children of Oras D. Dye, the intestate heirs of Oras D. Dye.
11. After reviewing Fiduciary File 18044 on the pending Estate of Oras D. Dye, which disclosed that neither Homer Dye nor his counsel, Richard Marsh, had filed any response to the letter of April 25, 2016, (a period of over five months), the Fiduciary Supervisor then prepared the Order Voiding the Will of Record, which was entered by the Marion County Commission on October 5, 2016. The Marion County Clerk's Office then recorded the Commission's Order and placed a notation on the recorded hand printed will, so that it could not be the basis for the sale of the real estate of Oras D. Dye. A certified copy of the Order of the Marion County Commission was then delivered to all

parties of interest. After the entry of the Marion County Commission's Order on October 5, 2016, the Estate of Oras D. Dye remained open, pending before the Fiduciary Supervisor of Marion County, West Virginia.

12. In 1982, the West Virginia Legislature created the Fiduciary Supervisor system as an optional probate system to the then existing Commissioner of Account system.
13. In West Virginia, County Commissions have jurisdiction of all matters probate and the appointment and qualifications of all estate representatives. West Virginia Code 7-1-3 and Article VIII § 6 of the West Virginia Constitution.
14. Marion County, West Virginia, adopted the Fiduciary Supervisor system for probate in 1982, to aid and assist the Marion County Commission in the proper and expeditious exercise of its probate jurisdiction. In the further exercise of the Commission's probate jurisdiction, the Fiduciary Supervisor has general supervision of all probate matters, fiduciary matters and all estate representatives.
15. In the present case, the probate of the Estate occurred on February 4, 2016, and the Fiduciary Supervisor notified the Petitioner on February 23, 2016, of questions for the witnesses to the hand printed will of Oras D. Dye. The Petitioner provided the requested information to the Fiduciary Supervisor and the Fiduciary Supervisor sent letters to the witnesses of the hand printed will on March 1, 2016. Upon receipt of the written responses of the witnesses of the hand printed will, which directly contradicted the Affidavits presented to the County Clerk by the Petitioner, the Fiduciary Supervisor realized the hand printed will was void. The Fiduciary Supervisor then promptly delivered all of the information he had gathered concerning the hand printed will on April 25,

2016, to the attorney for the Petitioner and the children of Oras D. Dye, the statutory heirs. The letter of April 25, 2016, requested a written response from the attorney for Petitioner, Homer Dye, and the children of Oras D. Dye, within twenty (20) days, but the Fiduciary Supervisor never received any response from any interested party.

16. In exercising the supervision of the open, pending probate of the Estate of Oras D. Dye, the Fiduciary Supervisor acted promptly with written notice to all interested parties. The open and transparent actions by the Fiduciary Supervisor were reasonable and proper under the circumstances presented by this Petition for Appeal.

17. Despite the timely and open actions of the Fiduciary Supervisor, the Petitioner asserts that to address the probate of the hand printed will of Oras D. Dye, the Fiduciary Supervisor and/or the Marion County Commission had to resort to civil actions under W. Va. Code 41-5 et seq. The Estate of Oras D. Dye was an open and active estate pending before the Fiduciary Supervisor and the Marion County Commission. If the supervision of the Estate of Oras D. Dye disclosed a probate issue, such issue is within the probate jurisdiction of the Fiduciary Supervisor and/or Marion County Commission. If the Fiduciary Supervisor and/or the Commission would have to file civil actions before this Circuit Court to resolve all probate estate matters, they would be divested of their probate jurisdiction. This Court would then be the de-facto Probate Court of Marion County, West Virginia, in express violation of Article VIII, Section 6 of the West Virginia constitution and W. Va. Code 7-1-3, as amended.

18. In exercise of their probate jurisdiction of the open estate of Oras D. Dye, by

the Fiduciary Supervisor and the Marion County Commission, the Petitioner, Homer Dye, and his attorney, Richard R. Marsh, were notified of legal issues concerning of the probate of the hand printed will and the intent to void the hand printed will of Oras D. Dye.

19. Despite the notifications, the Petitioner, Homer Dye, and his counsel, Richard R. Marsh, did not respond to the Fiduciary Supervisor for more than five (5) months of the Supervisor's letter of April 25, 2016. With actual knowledge of the intent to void the hand printed will of Oras D. Dye, counsel for the Petitioner, Richard R. Mash, knew, or should have known, the legal remedies available to his client. The Petitioner, Homer Dye, and his counsel, Richard R. Marsh, failed to respond to the Fiduciary Supervisor in a timely manner and likewise did not file a Petition for Probate in Solemn Form before the Marion County Commission or file an action of a Declaratory Judgment before this Court. However, from April 25, 2016, to October 5, 2016, the Petitioner, Homer Dye, took action to attempt to sell the real estate of his brother Oras D. Dye, under the void will, all to the prejudice of the children of Oras D. Dye, the statutory heirs of Oras D. Dye.

20. Applicable standards for procedural due process, outside the criminal process, depend upon the particular circumstances of a given case. Higginbotham v. Clark, 189 W. Va. 504, 432 S. E. 2d 774 (1993). Home Dye and his counsel, Richard R. Marsh, were provided with reasonable opportunities to respond to the legal issues concerning the probate of the hand-printed will of Oras Dye, for a period in excess of five (5) months. In this particular case this Court must compare and contrast the conduct and inaction of the Petitioner and his Counsel and the harm to the children of

Oras D. Dye, the statutory heirs, if their Father's real estate was lost, having been sold to a third party under a void will. After being notified the will of Oras D. Dye was going to be voided, Petitioner and his counsel had ample opportunity to file their responses to the Fiduciary Supervisor and other legal remedies at their disposal. They took no action whatsoever.

21 It is widely recognized that procedural due process standards are different for pro-se parties and the litigants represented by legal counsel. Legal counsel is expected to act with "reasonable diligence". Black's Law Dictionary 523 (9th Ed. 2009) defines "reasonable diligence" as a fair degree of diligence expected from someone of ordinary prudence under circumstances like those at issue. In this case the Fiduciary Supervisor notified all interested parties of his investigation and the issues concerning the probate of the hand printed will of Oras D. Dye. Consistent with his timely supervision of the Estate of Oras D. Dye, the Fiduciary Supervisor notified Petitioner's Counsel that he was meeting with the County Prosecutor to void the Will of Oras D. Dye, but the Fiduciary Supervisor would wait twenty (20) days before voiding the Will. Counsel for the Petitioner did not act with reasonable diligence by doing nothing for a period of more than five (5) months, while his client attempted to sell the real estate of Oras D. Dye.

22. Petitioner and his Counsel had timely and reasonable opportunities to avail themselves of remedies before the Fiduciary Supervisor and the Marion County Commission, which satisfies all procedural due process concerns in this particular case. Since the Petitioner and his Counsel declined to avail themselves of the legal remedies by their own conduct, this Court readily concludes Petitioner has not been deprived of Due Process of Law. State ex

rel Southland Properties, LLC, v. Janes, 811 S. E. 2d 273 (W. Va. 2018).

23. The Court further concludes from a thorough review of this matter, the actions of the Fiduciary Supervisor and the Marion County Commission were in accordance with all appropriate statutes and standards and were not otherwise arbitrary nor did they constitute an abuse of discretion.

It is therefore ORDERED that the Petition of Appeal of Decision of Marion County Commission, filed by Homer Dye, is dismissed from the active docket of this Court. To all of which actions of this Court, the Petitioner, Homer Dye, and his Counsel, Richard R. Marsh, are preserved their objections and exceptions.

Prepared by:

s/s Charles A. Shields

Charles A. Shields
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Approved by:

Richard Marsh

Counsel for Petitioner

/s/ David R. Janes
Circuit Court Judge
16th Judicial Circuit

Note: The electronic signature on this order can be verified using the reference code that appears in the upper-left corner of the first page. Visit www.courtswv.gov/e-file/ for more details.