**IN THE CIRCUIT COURT
OF CABELL COUNTY,
WEST VIRGINIA**

**STEPHEN M. HOOD,**

**Plaintiff,**

**v.**

**Civil Action No. 15-C-546
Special Judge Hoke**

**JEFFREY E. HOOD, Individually
And in his capacity as Executor
Of the Estate of Dorothy Hood, and
LINDA HOOD, Individually,**

**Defendants.**

**Procedural Order**

**Granting Defendants' Rule 56(c) Summary Judgment**

During January 2021, and February 2021, and at several prior hearings held before this Court, together with the entirety of the record generated in this matter subsequent to those times, came the Plaintiff, Stephen M. Hood, by counsel Mike Kelly, Esquire; Mark Kelley, Esquire; and Leon K. Oxley, Esquire and came the Defendants, Jeffrey E. Hood, Individually and in his capacity as Executor of the Estate of Dorothy Hood, by counsel, William L. Mundy, Esquire and George B. Morrone, III, Esquire, to proceed with numerous hearings and pre-trial conferences, at which time dispositive motions; responses; and proposed Orders were entertained by the Court, all pursuant to the applicable provisions of Rule 16(d) and of Rule 56(c) of the West Virginia Rules of Civil Procedure.

WHEREUPON, the Court, after receiving a status report from counsel as to the respective positions of the parties, noted in its review and consideration of such that the Plaintiff, Stephen M. Hood, (hereinafter referred to as "Plaintiff") had filed the instant action in

the Circuit Court of Cabell County, West Virginia. After reviewing the submission of pleadings by both parties herein, hearing the arguments of counsel on this matter, and after the review and consideration of all other matters in the record, the Court determined that all necessary and relevant facts had been generated for consideration by the Court, and the issues are now mature for the following determinations to be made by the Court.

Moreover, the Court notes that in every instance, whether through counsel's submissions or by *pro se* submissions, all with copies to the other parties' counsel, this Court has considered each and all of the points and authorities raised by each successive submission, ibn light of the continuingly evolving legal frame-work established by our Supreme Court on these issues, when such were relevant and material to the Court dispositions to be made herein. Thus, within that context, the Court provides the following Discussion section and the Court's Findings and Conclusions.

Discussion of Facts and Law

In regard to any Motion for Summary Judgment filed in such a case as the present one, the standard for granting or denying such relief is set forth in the express language of Rule 56(c) of the West Virginia Rules of Civil Procedure. In interpreting the test set forth in Rule 56(c), the Supreme Court has ruled:

> The test for whether a motion for summary judgment should be granted is essentially the same as the "rather restrictive standard" applied when ruling on motions for judgment on the pleadings. A motion for summary judgment should be granted only when it is clear that there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to clarify the application of the law. Gunn v. Hope Gas, Inc., 402 S.E.2d 505 (W. Va. 1991).

Further, the Court has held that the burdens of proof in attempting to meet this test are allocated between the moving party(s) and opposing party(s), respectively, as follows:

A. Burden of the Moving Party:

> A party who moves for summary judgment has the burden of showing that there is no genuine issue of fact and any doubt as to the existence of such issue is resolved against the movant for such summary judgment. Smith v. Sears, Roebuck & Co, 447 S.E.2d 255 (W. Va. 1994). Although, on a motion for summary judgment, an adverse party may not rest upon the mere allegations or denials of his pleadings, the moving party still will not be entitled to summary judgment unless the record demonstrates he has met his initial burden of establishing that there is no genuine issue as to any material fact. Ramey v. Ramey, 180 W.Va. 230 (1990).

B. Burden of the Opposing Party:

> When the moving party presents depositions, interrogatories or affidavits or otherwise indicates there is no genuine issue as to any material fact, the resisting party to avoid summary judgment must present some evidence that the facts are in dispute. Williams v. Precision Coil, Inc., 459 S.E. 2d 329 (W. Va. 1995)...by offering more than a "scintilla of evidence"...sufficient for a reasonable jury to find in a non-moving party's favor. Painter v. Peavy, 451 S.E. 2d 755 (W.Va. 1994).

The Supreme Court has however, provided another facet for the Court to consider by the issuance of Fayette County National Bank v. Gary C. Lilly, et al, 199 W. Va. 499 (1997). In the Lilly case, the Court held as follows in the first two syllabus points:

1. A motion for summary judgment should be granted only when (a) it is clear that there is no genuine issue of fact to be tried and (b) inquiry concerning the facts is not desirable to clarify the application of the law [inserted letters supplied].

Cited from Syl. Pt. 3, Aetna Casualty & Surety Co. v.Federal Ins. Co. of N.Y., 148 W. Va. 160 (1963);

2. Roughly stated, a 'genuine issue' for purposes of West Virginia Rule of Civil Procedure 56(c) is simply one half of a trialworthy issue, and a genuine issue does not arise unless there is sufficient evidence favoring the non-moving party for a reasonable jury to return a verdict for that

party. The opposing half of a trial-worthy issue is present where the non-moving party can point to one or more disputed 'material' facts. A material fact is one that had the capacity to sway the outcome of the litigation under the applicable law.

Cited from Syl. Pt. 5, Jividen v. Law, 194 W. Va. 705 (1995).

When evaluating a motion for summary judgment and considering the factual record in connection therewith, Cantarelli v. Grisso, No. 18-0839 (W. Va. 2020) held:

> [s]ummary judgment is appropriate where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, such as where the nonmoving party has failed to make a sufficient showing on an essential element of the case that it has the burden to prove.

Summary Judgment is appropriate when the record, taken as a whole, could not lead a rational trier of fact to find for the nonmoving party. Syl. Pt. 4, Painter v Peavy, 451 S.E. 2d 755 (W.Va. 1994); and,

C. Testamentary Capacity

When the issue of testamentary capacity is at issue in a case, our Supreme Court has recently ruled in a Memorandum Decision for Cantarelli v. Grisso, No. 18-0839 (W.Va. 2020), that testamentary capacity is to be determined at the time the Will is executed and the testimony of the drafting attorney, attesting witnesses, and attending physicians must be given substantial weight:

> "The time to be considered in determining the capacity of the testator to make a Will is at the time at which the Will was executed," (citation omitted), and in making the determination,
>
> > [t]he evidence of attesting witnesses, of attending physicians, and of a lawyer who drafted the will, is entitled to great weight on the question of mental capacity of a testator to make a will. Although such evidence in favor of a will is not conclusive, it must be clearly outweighed by other evidence in order to support a verdict against the validity of the will."

Further, according to Cantarelli, the fact that a person's mental acuity may have declined does not result in a loss of testamentary capacity:

> "[i]t is not necessary that a testator possess high quality or strength of mind, to make a valid will, nor that he then have as strong mind as he formerly had. The mind may be debilitated, the memory enfeebled, the understanding weak, the character may be peculiar and eccentric, and he may even want capacity to transact many of the business affairs of life; still it is sufficient if he understands the nature of the business in which he is engaged when making a will, has a recollection of the property he means to dispose of, the object or objects of his bounty, and how he wishes to dispose of his property." Syllabus Point 3, *Stewart v. Lyons*, 54 W.Va. 665 ., 47 S.E. 442 (1903).

Because the testamentary capacity of the individual is to be determined at the time the Will was executed, West Virginia law focuses on observations of the drafting attorney, the attesting witnesses and the attending physician's testimony is given substantial weight.

When evaluating a Will, according to Cantarelli the "evidence of attesting witnesses, of attending physicians, and of a lawyer who drafted the will, is entitled to great weight." Of equal importance to any analysis, Cantarelli instructed that even though that evidence may not be irrefutable, "it must be clearly outweighed by other evidence in order to support a verdict against the validity of the will"; and,

It is not necessary that a testator possess high quality or strength of mind, to make a valid Will, nor that he then have as strong mind as he formerly had. The mind may be debilitated, the memory enfeebled, the understanding weak, the character may be peculiar and eccentric, and he may even want capacity to transact many of the business affairs of life; still it is sufficient if he understands the nature of the business in which he is engaged when making a will, has a recollection of the property he means to dispose of, the object or objects of his bounty, and how he wishes to dispose of his property. Syllabus Point 3, *Stewart v. Lyons,* 54 W.Va. 665, 47 S.E. 442 (1903); James v. Knotts, 227 W.Va. 65, 705 S.E.2d 572 (W.Va., 2010).

When incapacity of a testator is alleged against a Will, the vital question is as to his capacity of mind at the time when the Will was made. Syllabus Point 4, *Stewart v. Lyons,* 54 W.Va. 665, 47 S.E. 442 (1903) James v. Knotts, 227 W.Va. 65, 705 S.E.2d 572 (W.Va., 2010).

The time to be considered in determining the capacity of the testator to make a Will is the time at which the Will was executed. Syllabus Point 3, *Frye v. Norton,* 148 W.Va. 500, 135 S.E.2d 603 (1964) James v. Knotts, 227 W.Va. 65, 705 S.E.2d 572 (W.Va., 2010).

Evidence of witnesses present at the execution of a Will is entitled to peculiar weight, and especially is this the case with the attesting witnesses. Point 2, Syllabus, *Stewart v. Lyons,* 54 W.Va. 665 [47 S.E. 442 (1903)]. Syllabus Point 4, *Frye v. Norton,* 148 W.Va. 500, 135 S.E.2d 603 (1964) James v. Knotts, 227 W.Va. 65, 705 S.E.2d 572 (W.Va., 2010).

D. Undue Influence

The burden of proving undue influence is upon the party who alleges it. "Mere suspicion, conjecture, possibility or guess that undue influence has been exercise[d] is not sufficient to support a verdict which impeaches the Will upon that ground." Syllabus Point 5, *Frye v. Norton,* 148 W.Va. 500, 135 S.E.2d 603 (1964); and,

"Undue influence which will invalidate a will is never presumed but must be established by proof which, however, may be either direct or circumstantial." Syl. Pt. 15, *Ritz v. Kingdon,* 139 W.Va. 189, 79 S.E.2d 123 (1953), *overruled on other grounds by* Syl. Pt. 6, *State v. Bragg.* 140 W.Va. 585, 87 S.E.2d 689 (1955). *Greer v. Vandevender,* No. 16-1228 (W.Va. February 9, 2008); and,

According to *Greer v. Vandevender,* No. 16-1228 (W.Va. February 9, 2008):

"[i]n an action to impeach a will the burden of proving undue influence is upon

> the party who alleges it and mere suspicion, conjecture, possibility or guess that undue influence has been exercise[d] is not sufficient to support a verdict which impeaches the will upon that ground." Syllabus Point 5, *Frye v. Norton*, 148 W.Va. 500, 135 S.E.2d 603 (1964).Syl. Pt. 3, *Milhoan v. Koenig*, 196 W. Va. 163, 469 S.E.2d 99 (1996).

Further, "'[u]ndue influence, to avoid a will, must be such as overcomes the free agency of the testator at the time of actual execution of the will.' Syllabus Point 5, *Stewart v. Lyons*, 54 W.Va. 665, 47 S.E. 442 (1903)." Syl. Pt. 10, *James v. Knotts*, 227 W. Va. 65, 705 S.E.2d 572 (2010). As was made clear in *Printz v Printz*, No. 13-0495 (W. Va. April 25, 2014):

> "Undue influence which will invalidate a will is never presumed but must be established by proof which, however, may be either direct or circumstantial." Syl. Pt. 15, *Ritz v. Kingdon*, 139 W.Va. 189, 79 S.E.2d 123 (1953), *overruled on other grounds by* Syl. Pt. 6, *State v. Bragg*, 140 W.Va. 585, 87 S.E.2d 689 (1955). However, if circumstantial evidence is used, it must be inconsistent with any theory other than undue influence. "To warrant a finding of undue influence which is based on circumstantial evidence the established facts must be inconsistent with any theory other than that of undue influence." Syl. Pt. 19, *Ritz* at 192, 79 S.E.2d at 126. We expressed this same principle in *Floyd:* "It is true that undue influence may be proved by circumstantial evidence, but to warrant the finding of undue influence from circumstantial evidence such proof must be consistent with the exercise of undue influence and inconsistent with any other theory than that of undue influence." *Id.* at 195, 133 S.E.2d at 734.

Undue influence, to avoid a Will, must be such as overcomes the free agency of the testator at the time of actual execution of the Will. Syllabus Point 5, *Stewart v. Lyons,* 54 W.Va. 665, 47 S.E. 442 (1903) *James v. Knotts,* 227 W.Va. 65, 705 S.E.2d 572 (W.Va., 2010).

The influence resulting from attachment or love, or mere desire of gratifying the wishes of another, if free agency is not impaired, does not affect a Will. The influence must amount to force or coercion destroying free agency. It must not be the influence of affection or attachment. It must not be mere desire of gratifying the wishes of another, as

that would be strong ground to support the Will. Further, there must be proof that it was obtained by this coercion, by importunity that could not be resisted; that it was done merely for the sake of peace, so that the motive was tantamount to force and fear. Syllabus Point 6, *Stewart v. Lyons,* 54 W.Va. 665, 47 S.E. 442 (1903) James v. Knotts, 227 W.Va. 65, 705 S.E.2d 572 (W.Va., 2010).

The Will of a person of competent testamentary mind and memory is not to be set aside on evidence tending to show only a possibility or suspicion of undue influence. Syllabus Point 7. *Stewart v. Lyons,* 54 W.Va. 655; 47 S.E. 442 (1903); James v. Knotts, 227 W.Va. 65, 705 S.E.2d 572 (W.Va. 2010).

E. Tortious Interference

Our Court has previously found that tortious interference with a testamentary bequest to be a tort in West Virginia, a tort not within probate court jurisdiction and therefore the probate time limits are inapplicable. See Barone v. Barone, 170 W.Va. 407 (1982). West Virginia Code § 55-2-12 covers the limitations period for a cause of action for tortious interference with a testamentary bequest pursuant to common law. See Printz v. Printz, No. 13-0495, 2014 WL 1672984 W.Va.

The elements to establish tortious interference with business relations are straightforward:

> "a plaintiff must show: (1) existence of a contractual or business relationship or expectancy; (2) an intentional act of interference by a party outside that relationship or expectancy; (3) proof that the interference caused the harm sustained; and (4) damages."

Torbett v. Wheeling Dollar Sav. & Trust Co., 173 W.Va. 210 (1983).

To prevail on a tortious interference claim, the Plaintiff would have to establish an expectancy of a testamentary bequest. Plaintiff would have to provide evidence that the decedent intended or desired to leave them any part of their estate. Plaintiff would also have to provide

evidence that the Defendants intentionally interfered with their expectancy of a testamentary bequest.

See Kelley v. Kelley, No. 15-0188, 2015 WL 7628821 (W.Va.).

F. Civil Conspiracy

A civil conspiracy is a combination of two or more persons by concerted action to accomplish an unlawful purpose or to accomplish an unlawful purpose to accomplish some purpose, not in itself unlawful, by unlawful means. The cause of action is not created by the conspiracy but by the wrongful acts done by the defendants to the injury of the plaintiff.

A civil conspiracy is not a *per se*, stand-alone cause of action; it is instead a legal doctrine under which liability for a tort may be imposed on people who did not actually commit a tort themselves but who shared a common plan for its commission with the actual perpetrator(s).

No. 14-0995, 2016 WL 765839 (W.Va.)

In order for Plaintiff to prevail with a claim of civil conspiracy, the Plaintiff would have to prove that the Defendants acted together to accomplish an unlawful purpose or to accomplish an unlawful purpose to accomplish some purpose, not in itself unlawful, by unlawful means. The cause of action is not created by the conspiracy but by the wrongful acts done by the Defendants to the injury of the plaintiff.

G. Conversion

"Any distinct act of dominion wrongfully exerted over the property of another, and in denial of his rights, or inconsistent therewith, may be treated as a conversion and it is not necessary that the wrongdoer apply the property to his own use. And when such conversion is proved the plaintiff is entitled to recover irrespective of good or bad faith, care or negligence, knowledge or ignorance."

Pine and Cypress Manufacturing Company v. American Engineering and Construction Company, 97 W.Va. 471 (1924); Wholesale Coal Co. v Price Hill Colliery Co., 98 W.Va. 438 (1925); Miami Coal Co., Inc. v. Hudson, 175 W.Va. 153 (1985).

In order for the Plaintiff to prevail on a claim for conversion, the Plaintiff must be able to prove the Defendants exerted dominion over the property of another, and in denial of the Plaintiff's rights, or inconsistent therewith, irrespective of the intentions, actions or knowledge of the Defendants. It is not necessary that the wrongdoer apply the property to his own use. Only when this is proven is the Plaintiff entitled to recover, irrespective of good or bad faith, care or negligence, knowledge or ignorance.

H. Insane Delusion

Our Courts have not thoroughly addressed the issue of insane delusion as it applies to the testator and the execution of a will. In Rice v. Henderson, 140 W.Va 284 (1954), the testamentary capacity of the testator was questioned by reason of undue influence and insane delusions. "***A testator's belief that he was saved from harm on several occasions by a guiding spirit does not establish insane delusion on his part. Indeed, it seems to be the settled law that testamentary capacity cannot be determined alone by what one believes, nor by the character of the tales he tells concerning spirits, spooks, and supernatural things. Even a belief in witchcraft is not necessarily conclusive evidence of insanity.' 57 Am. Jur., Wills, §86.

The same section of 57 Am. Jur., Wills, §86, states that, "On the other hand, insane delusions may be based upon spiritualism and establish a lack of testamentary capacity. One may become a monomaniac upon the subject of spiritualism by dwelling upon it too persistently and profoundly so that his or her will may be invalidated upon the ground of an insane delusion. A will executed by one under such an extraordinary belief in spiritualism that he or she follows blindly and implicitly the supposed direction of spirits in constructing the will is not admissible

to probate."

The Plaintiff would have to prove that the testator exhibited insane delusions based on their extraordinary belief in spiritualism that they followed when constructing their will which would therefore make it inadmissible to probate.

When examined within this context, the Court has determined that the relevant facts and the applicable law here are so clear, given the synopsis provided above, as to render a trial to determine these issues unnecessary as a matter of law.

Findings and Conclusions

As a result of all of the above, the Court has conducted a thorough review and consideration of the entire record, the submissions of the parties by motions, responses and replies, together with the oral arguments of counsel on such, and the Court has determined that this matter was ripe for decision, as is hereinafter set forth by the findings of fact and by the conclusions of law:

1. That based upon the pleadings in this matter, the Court has determined that it has jurisdiction and venue over the subject matter and the parties, in accordance with the applicable provisions of West Virginia Code §56-1-1 et seq., and Rule 56(c) of the West Virginia Rules of Civil Procedure, and within the context of the points and authorities cited herein above and hereinafter; and,

2. That in accordance with the recent decisions of the West Virginia Supreme Court of Appeals, as said summary judgment standards are outlined hereinabove in the "Discussion" section, and noting in particular the controlling aspects of Conn v. Motorist Mutual Insurance Company, 190 W. Va. 553 (1993) and of West Virginia Code §33-6A-1 and 3, the Court has determined that the WVRCP Rule 56(c) Motion for Summary Judgment, as moved for by the

Plaintiffs and as responded to by the Defendants in this case, on the issue of testamentary capacity, given the findings of relevant undisputed facts and the applicable conclusions of law determinative of the issues presented; and,

3. That the Last Will and Testament of Dorothy Hood prepared by Paul Farrell, Sr. (prior to his appointment as Cabell County Circuit Court Judge) was reviewed, approved, and executed by Mrs. Hood on September 7, 2007. The witnesses to the Will were attorney Paul Farrell and attorney Neisha Brown; and,

4. That at the time of the execution of the Will, Mrs. Hood lived alone, was managing her own affairs and signing her own checks; and,

5. That Stephen Hood, a describes a visit between himself and his mother around September 6 or 7, 2007 in his deposition, wherein he states his mother was living alone, handling her affairs, and operating her vehicle; and,

6. That in his deposition Stephen Hood also testified that he was not concerned for his mother's mental status on that same date or about her ability to continue to live on her own and to manage her affairs; and,

7. That affidavits were submitted to this Court, wherein Paul Farrell and Neisha Brown both attest to the fact that they believed that on September 7, 2007, Mrs. Hood was competent to execute her Will as she appeared to be of sound mind and understood the purpose of her Will, together with the way her estate would be distributed upon her death; and,

8. That the affidavit submitted by Terry McMahon, the Notary Public that notarized the signatures on the Will dated September 7, 2007, attests to the fact that she was present and observed the discussions among Dorothy Hood, attorney Paul Farrell and attorney Neisha Brown, and that she believed that Mrs. Hood was of sound mind when she executed her Will; and,

9. That Kevin Yingling, MD, served as Dorothy Hood's attending and primary care

physician since 2002, submitted an affidavit stating his opinion that during September 2007, Mrs. Hood had the "requisite cognitive capacity to consent to medical procedures, conduct her business, including executing a will"; and,

10. That various medical records submitted to this Court reflect similar findings concerning Mrs. Hood's mental competence, i.e. Dorothy Hood was seen by Dr. Yingling at Marshall Health on July 9, 2007, wherein his notes reflect that Mrs. Hood was in her usual state of health and mental competence; Drs. Ataro and Elbash at Marshall Health saw Mr.s Hood on September 13, 2007, and their notes reflect that Mrs. Hood was "Alert" and "oriented to time place and person"; Dr. Yingling saw Mrs. Hood on September 20, and his records reflect that he had a discussion with Mrs. Hood about her current and future living arrangements; and,

11. That in the deposition of Kathy Parrish, Mrs. Parrish indicated that she believed that during the Summer and Fall 2007 Mrs. Hood appeared to have a good understanding of her affairs and she observed nothing to indicate that she was not mentally competent; and,

12. That Dorothy Hood continued to live by alone until January 2008 when she relocated to an assisted living facility; and,

13. That Dorothy Hood was declared legally incompetent on February 1, 2008; and,

14. That the Court has determined that the affidavits submitted by the attesting witnesses, physicians, notary, etc. are entitled to great weight based upon the findings in Cantarelli; and,

15. That the Plaintiff submitted the report of Bobby Miller, MD, as evidence for his case. The report prepared by Dr. Miller was prepared after Dorothy Hood had executed her Will and also after Mrs. Hood passed away. Dr. Miller did not meet, see, examine, test, or have any contact with Mrs. Hood while she was alive. Dr. Miller's report did not indicate whether or not Dr. Miller reviewed any of the medical records of affidavits submitted by the Defendants in

this case; and,

16. That the requirements of Cantarelli require great weight be given to the actual observations of the individuals present at the signing of the Will. In that respect, Dr. Miller (now deceased) expressed the opinion that at the time that she executed her Will, Dorothy Hood "was not able to manage her daily affairs", with this opinion appearing to be expressly inconsistent with the evidence submitted to the Court. Within Cantarelli analytical frame-work, the opinion of Dr. Miller does not appear to be based upon any personal observations, or upon any of the medical records or affidavits presented to the Court, and is therefore not sufficient to create a genuine issue of material fact; and,

17. That within this same context, the Plaintiff, Stephen Hood, has not submitted evidence sufficient enough to overcome the evidence presented by the Defendants concerning the testamentary capacity of Mrs. Hood; and,

18. That the Plaintiff has offered little or no factual evidence to support his claim of undue influence. The evidence in the record, relates to Mrs. Hood's mental status. There is no additional evidence supporting the elements needed to prove undue influence. The evidence submitted in the case record is not sufficient to create a factual dispute for undue influence. As observed in *Greer* and *Printz*, this is not sufficient to create a factual dispute; and,

19. That the Plaintiff has offered little or no factual evidence to support his claim of tortious interference. The Plaintiff's evidence does not establish an expectancy of a testamentary bequest, nor does it prove that the decedent intended or desired to leave him any part of her estate. The Plaintiff has also failed to provide evidence that the Defendants intentionally interfered with his expectancy of a testamentary bequest from the estate; and,

20. That the Plaintiff has offered little or no factual evidence to support his claim of civil conspiracy. The Plaintiff's evidence does not prove any intentional act by the Defendants

that cause him harm. The Plaintiff's evidence does not establish that the Defendants acted together to accomplish an unlawful purpose, or to accomplish an unlawful purpose to accomplish some purpose, not in itself unlawful, by unlawful means, nor does it appear from the record that the Plaintiff can prove that a tort was committed by someone else with whom the Defendants shared in a common plan for the torts commission. Thus, in light of these determinations from the evidence, or lack thereof, since the tortious interference claim fails, the civil conspiracy claim cannot survive; and,

21. That the Plaintiff has offered little or no factual evidence to support his claim against the Defendants of conversion by the Defendants. The Plaintiff's evidence does not reflect that Defendants intentions, actions or knowledge indicated any conversion of the assets of the estate for their personal gain or to ensure that the Plaintiff received little or no inheritance upon distribution of the estate; and,

22. That the Plaintiff did not plead a cause of action in the original Complaint, or the Second Amended complaint for "Insane Delusion", but instead filed a WVRCP Rule 56(c) Motion for Summary Judgement alleging his mother suffered from "Insane Delusion" at the time of the execution of her Will. On that Motion, the Plaintiff did not provide evidence that proves the testator exhibited insane delusions based on her extraordinary belief in spiritualism that she followed when constructing her Will, which would therefore made it inadmissible to probate; and,

23. That the Court, after making a careful review of the record in accordance with the principles enunciated by our Supreme Court in Cantarelli, together with the other points and authorities cited herein, the Court has determined that it is just and reasonable as a matter of law to conclude that based upon the documents, arguments, evidence and material facts in this Case, there is no genuine issues of material fact in dispute; and,

24. That having so determined as a matter of law in this proceeding, that there

are no genuine issues of material fact in dispute by which a rational trier of fact could find for the Plaintiff, and as a result of all of the above, the Court believes as a matter of law that the Defendants' WVRCP Rule 56(c) Motion for Summary Judgment should be, and hereby is, GRANTED, that Plaintiff's complaint should be, and hereby is DIMISSED WITH PREJUDICE, and, that the Plaintiff's **objections and exceptions** are hereby noted for the record.

It is further ORDERED that the Clerk of this Court shall provide certified copies of this ORDER unto counsel for the respective parties, and all other parties, by hand delivery, USPS First Class mail, or by telefax communication to the following address:

Mark Kelly, Esquire
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ISSUED on this 15th day of January, 2022, A. D.

Jay M. Hoke
SPECIAL JUDGE

STATE OF WEST VIRGINIA
COUNTY OF CABELL

I, MICHAEL J. WOELFEL, CLERK OF THE CIRCUIT COURT FOR THE COUNTY AND STATE AFORESAID DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE COPY FROM THE RECORDS OF SAID COURT ENTERED ON _____

GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS _____

Mike Woelfel, CLERK
CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA