IN THE CIRCUIT COURT OF RITCHIE COUNTY, WEST VIRGINIA

STEPHANIE HAYMOND and
DAVID HAYMOND,

Plaintiffs,

v. **CIVIL ACTION NO. 20-C-30**
JUDGE SWEENEY

CHRISTOPHER HAYMOND,
individually and as Trustee of the Testamentary Trust created by the Last Will and Testament of Irene Nutter Haymond,

Defendants.

CERTIFICATION ORDER

On a former day, came the Plaintiffs, Stephanie Haymond and David Haymond, by their counsel, Joshua S. Rogers, Paige K. Vagnetti, and John R. Whipkey. Also came the Defendant, Christopher Haymond, by counsel Robert S. Fluharty, Jr. Whereupon, counsel for the Plaintiffs argued certain Deeds in question were void *ab initio* and the Defendant argued the Deeds were voidable. The Court instructed the parties to brief the issue and a hearing was held and pursuant to the Court's request, counsel submitted proposed Certification Orders pursuant to Rule 17 of the West Virginia Rules of Appellate Procedure.

I. FACTUAL BACKGROUND

1. On May 8, 1989, Irene Nutter Haymond ("Ms. Haymond") died testate as a resident of Riverside County, California.

2. Pursuant to her Last Will and Testament (the "Will"), Ms. Haymond created a testamentary trust (the "Trust") for the benefit of her grandchildren, Daniel Haymond, IV, Plaintiff David Haymond, Plaintiff Stephanie Haymond, Jessica Haymond, and Christen Haymond.

3. According to the terms thereof, fifty percent (50%) of the assets of the Trust were to be allocated to the issue of Ms. Haymond's son, Daniel Marsh Haymond, III, being Daniel Haymond, IV, and Plaintiff David Haymond, and the remaining fifty percent (50%) to the issue of Ms. Haymond's other son, the Defendant, being Plaintiff Stephanie Haymond, Jessica Haymond, and Christen Haymond.

4. In her Will, Ms. Haymond appointed her aforementioned two sons, Daniel Marsh Haywood, III, and the Defendant, as co-trustees of the Trust.

5. The primary assets of the Trust consisted of the surface of certain real property located in Ritchie County, West Virginia, and the minerals within and underlying such property (the "Real Property").

6. On or around September 4, 1993, Plaintiff Stephanie J. Haymond, at the request of her father, the Defendant, signed a document prepared by the Defendant purporting to transfer her current and future interests in the Real Property to the Defendant.

7. A few months later, on December 2, 1993, Plaintiff David Haymond, also at the request of the Defendant, signed a document purporting to convey his interest in the Real Property to the Defendant. The aforementioned documents signed by Plaintiff Stephanie J. Haymond and Plaintiff David Haymond may be referred to collectively hereinafter as the "Deeds."

9. The Will instructed the co-trustees to pay to the beneficiaries the income of the Trust in monthly or other convenient installments with the principal of the Trust being held in trust until the youngest beneficiary, Christen Haymond, reached the age of thirty (30) years at which point the Trust would terminate.

10. Christen Haymond turned thirty (30) years old in February of 2014.

11. The Will contained a spendthrift clause governing the Trust which stated that "[t]he interest of beneficiaries in principal or income shall not be subject to the claims of its creditors or others nor to legal process and may not be voluntarily or involuntarily alienated or encumbered." (the "Spendthrift Clause")

12. On or about August 6, 2020, the Plaintiffs initiated this action by filing their complaint (the "Complaint") with the Circuit Count of Ritchie County, West Virginia, in which they, pursuant to Count I of the Complaint, request that the Court

declare the Deeds void on the ground that the Spendthrift Clause prohibited the transfer, voluntary or otherwise, of any interest of the Plaintiffs in the Trust and/or Real Property until the termination of the Trust.

13. On or about October 30, 2020, the Defendant filed his answer to the Complaint in which he does not deny any of the factual allegations surrounding Count I, and, in fact, admits that the Plaintiffs purported to transfer their interest in the Real Property to the Defendant prior to the termination of the Trust.

14. On or about December 14, 2020, the Plaintiffs moved for judgment on the pleadings with regard to Count I of the Complaint by filing their Motion for Partial Judgment on the Pleadings (the "Motion").

15. In the Motion, the Plaintiffs cite to statutory law and case law in support of the Plaintiffs' argument that a conveyance in violation of a spendthrift clause is void *ab initio*.

16. On or around January 13, 2021, the Defendant filed Defendant's Memorandum of Law in Opposition to Plaintiffs' Motion for Judgment on the Pleadings (the "Response") in which the Defendant asserted that the Motion should be denied because the action is time-barred by statutes of limitation and/or laches and because the Plaintiffs consented to the conveyances of the Real Property to the Defendant.

17. In his Response, the Defendant cited to one case decided outside of West Virginia in which the court held that a state specific marketable title statute barred beneficiaries from enforcing a spendthrift clause to invalidate quitclaim deeds of future interests. The remainder of the statutory law and case law cited by the Defendant in his Response pertained to the applicability of statutes of limitation and laches to claims against trustees and the ability of beneficiaries to consent to a trustee's breach of trust.

II. CERTIFIED QUESTIONS AND PROPOSED ANSWERS

1. Adjudication of Count I of the Complaint wholly depends on whether the Deeds were void *ab initio*, which is a purely legal issue that is ripe for the Court's consideration at this time.

2. In view of the fact that the dispositive issue at hand in Count I of the Complaint is apparently an issue of first impression in West Virginia, this Court finds it appropriate, pursuant to W. Va. Code § 58-5-2 and Rule 17 of the Rules of Appellate Procedure, for the West Virginia Supreme Court of Appeals to determine the question of whether the Deeds were void *ab initio* as a matter of law.

3. FIRST CERTIFIED QUESTION: Is a transfer by deed of real property in violation of a spendthrift clause void *ab initio* or merely voidable?

FIRST PROPOSED ANSWER: Void *ab initio*.

4. SECOND CERTIFIED QUESTION: If the answer to number one (1) is "voidable", were the Plaintiff's required to institute a civil action asserting their claims that such deeds were void within a certain period of time following their execution and delivery of such deeds to the Defendant?

5. SECOND PROPOSED ANSWER: Yes, within the period of time provided by the factually appropriate limitation of actions provisions, if any.

Accordingly, these questions are hereby certified to the West Virginia Supreme Court of Appeals.

The Clerk of this Court is **ORDERED** to send certified copies of this Order with a list of docket entries to Edythe Nash Gaiser, Clerk of the Supreme Court of Appeals to forward a copy of this Order to counsel of record, forthwith.

ENTERED: May 9, 2022

TIMOTHY L. SWEENEY, THIRD CIRCUIT JUDGE

CLERK'S CERTIFICATE

STATE OF WEST VIRGINIA,

COUNTY OF RITCHIE, TO-WIT:

I, **ANGELA D. COOK,** Deputy Clerk of the Circuit Court of Ritchie County, State aforesaid, do hereby certify that the foregoing are true copies of the docket entries filed in the Case No. 20-C-30, being STEPHANIE HAYMOND VS. CHRISTOPHER HAYMOND, lately pending in the Circuit Court, in Ritchie County, West Virginia.

Given under my hand and the seal of said Court, this **4th** day of August, **2022.**

Angela D Cook

Deputy Clerk of the Circuit Court
of Ritchie County, West Virginia

Case Docket Entries

CC-43-2020-C-30

Court: **Circuit** County: **43 - Ritchie** Created Date: **8/10/2020** Security Level: **Public**

Judge: **Timothy L. Sweeney** Case Type: **Civil** Case Sub-Type: **JUDGMENT** Status: **Open**

Related Cases:

Style: **STEPHANIE HAYMOND v. CHRISTOPER HAYMOND**

	Entered Date	Event	Ref. Code	Description
1	8/10/2020	Conversion		TO CLERK BY DINSMORE & SHOHL,JOSHUA S.ROGERS,ESQUIRE --- $200.00
2		Conversion		CHECK, FILING FEE;
3	8/10/2020	Conversion		CCIS/CIVIL CASES,FILED;
4	8/10/2020	Conversion		COMPLAINT,FILED;
5	8/10/2020	Conversion		SUMMONS/COMPLAINT MAILED TO DINSMORE & SHOHL,JOSHUA S.ROGERS,
6		Conversion		ESQUIRE FOR SERVICE ON CHRISTOPHER HAYMOND;
7	8/31/2020	Conversion		WV SECRETARY OF STATE ACCEPTED SERVICE ON BEHALF OF CHRISTOPHER
8		Conversion		HAYMOND,INDICATING DELIVERY ON 08/27/2020,FILED;
9	9/16/2020	Conversion		RETURN OF SERVICE OF SUBPOENA FOR CHRISTOPHER HAYMOND,BY SUBSTIT
10		Conversion		-UTING SERVICE ON ROBERT FLUHARTY/ATTORNEY ON 09/09/2020,FILED;
11	11/4/2020	Conversion		ANSWER FILED WITH C/S:
12	11/4/2020	Conversion		NOTICE OF APPEARANCE AND SUBSTITUTION OF COUNSEL WITH C/S FILED:
13	12/16/2020	Conversion		PLAINTIFF'S MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS, MEMOR
14		Conversion		-ANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL JUG-
15		Conversion		MENT ON THE PLEADINGS W/ CERTIFICATE OF SERVICE:
16	12/16/2020	Conversion		PROPOSED ORDER FILED:
17	12/21/2020	Conversion		NOTICE OF HEARING SET FOR JANUARY 15,2020 AT 9:15 AM FILED WITH
18		Conversion		C/S. HEARING BE BY TEAMS
19	1/13/2021	Conversion		DEFENDANT'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS'
20		Conversion		MOTION FOR JUDGMENT ON THE PLEADINGS FILED WITH CERTIFICATE OF
21		Conversion		SERVICE (VIA FAX)
22	1/19/2021	Conversion		HEARING APPEARANCE LOG FOR 01/15/2021,FILED;
23	1/20/2021	Conversion		PROPOSED ORDER OF CONTINUANCE,LODGED AS PER JUDGE SWEENEY;
24	2/1/2021	Conversion		ORDER DATED 01/15/2021 ENTERED;ORDERED,ADJUDGED & DECREED THAT
25		Conversion		PLAINTIFFS SHALL HAVE UNTIL 02/12/2021 TO SUBMIT REPLY TO "DEF'S
26		Conversion		MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS' MOTION FOR JUDGEM

Case Docket Entries

CC-43-2020-C-30

	Entered Date	Event	Ref. Code	Description
27		Conversion		-ENT ON THE PLEADINGS";PARTIES SHALL SUBMIT PROPOSED FINDINGS OF
28		Conversion		FACT & CONCLUSIONS OF LAW IN SUPPORT OF THEIR RESPECTIVE POSITIO
29		Conversion		-NS ON PLAINTIFFS' MOTION ON OR BEFORE 03/15/2021 & STATUS CONFE
30		Conversion		-RENCE SET FOR 04/14/2021 AT 10:30 AM & COURT SHALL SFVISE PARTI
31		Conversion		-ES CLOSER TO STATUS CONFERENCE WHETHER ATTENDANCE SHALL BE REQU
32		Conversion		-IRED IN PERSON OR WHETHER THE HEARING WILL BE HELD REMOTELY;
33	2/1/2021	Conversion		CERTIFIED COPIES OF ORDER MAILED TO:JOSHUA S.ROGERS/DINSMORE &
34		Conversion		SHOHL,LLP;JOHN R.WHIPKEY/BLOCK & ASSOCIATES,LLC;ROBERT S.FLUHART
35		Conversion		-Y,JR/FLUHARTY & TOWNSEND;J.NICHOLAS BARTH/BARTH & THOMPSON;
36	2/16/2021	Conversion		PLAINTIFF'S REPLY BREIF IN SUPPORT OF MOTION FOR PATRIAL JUDGE-
37		Conversion		MENT ON THE PLEADINGS WITH CERTIFICATE OF SERVICE FILED:
38	3/17/2021	Conversion		DEFENDANT'S FINDINGS OF FACT AND CONCLUSION OF LAW WITH CERTI-
39		Conversion		FICATE SERVICE FILED.:
40	3/17/2021	Conversion		CITIED REFERENCE JOHNSON VS. JOHNSON FILED:
41	3/18/2021	Conversion		PLAINTIFF'S PROPOSED FINDINGS OF FACT & CONCLUSIONS OF LAW W/
42		Conversion		CERTIFICATE OF SERVICE,FILED;
43	4/13/2021	Conversion		ORDER DATED 04/13/2021,ENTRED;CONTINUES MATTER TO MAY 19,2021 AT
44		Conversion		3:00 PM AT RC COURTHOUSE;
45	4/13/2021	Conversion		CERTIFIED COPIES OF ORDER MAILED TO:JOSHUA S.ROGERS;JOHN R.WHIPK
46		Conversion		-EY;ROBERT S.FLUHARTY,JR;J.NICHOLAS BARTH;
47	8/10/2020	Scanned Document		Case Information Sheet
	47-1 8/10/2020	Civil Case Information Statement - Case Information Sheet		
48	8/10/2020	Scanned Document		w/exhibits
	48-1 8/10/2020	Complaint - w/exhibits		
49	9/16/2020	Scanned Document		of subpoena for christopher haymond, by substituting service on robert fluharty/attorney on 09/09/2020
	49-1 9/16/2020	Service Return - of subpoena for christopher haymond, by substituting service on robert fluharty/attorney on 09/09/2020		
50	10/26/2020	Scanned Document		Answer with C/S
	50-1 10/26/2020	Answer - Answer with C/S		
51	11/4/2020	Scanned Document		Notice of Appearance and Substitution of Counsel with C/S
	51-1 11/4/2020	Notice - Notice of Appearance and Substitution of Counsel with C/S		
52	12/16/2020	Scanned Document		Plaintiffs' Motion for Partial Judgment on the Pleadings and Memorandum of Law in Support of Plaintiffs' Motion for Partial Judment on the Pleadings with c/s
	52-1 12/16/2020	Motion - Plaintiffs' Motion for Partial Judgment on the Pleadings and Memorandum of Law in Support of Plaintiffs' Motion for Partial Judment on the Pleadings with c/s		

Case Docket Entries

CC-43-2020-C-30

	Entered Date	Event	Ref. Code	Description
53	12/16/2020	Scanned Document		Proposed Order from Joshua S. Rogers from Dinsmore
	53-1 12/16/2020	Proposed Order - Proposed Order from Joshua S. Rogers from Dinsmore		
54	12/21/2020	Scanned Document		SET FOR JANUARY 15, 2020 AT 9:15 AM--HEARING IS BY TEAMS
	54-1 12/21/2020	Notice of Case Hearing - SET FOR JANUARY 15, 2020 AT 9:15 AM--HEARING IS BY TEAMS		
55	1/13/2021	Scanned Document		Defendant's Memorandum of Law in Opposition to Plaintiffs' Motion for Judgment on the Pleadings w/Certificate of Service (via fax)
	55-1 1/13/2021	Other - Defendant's Memorandum of Law in Opposition to Plaintiffs' Motion for Judgment on the Pleadings w/Certificate of Service (via fax)		
56	1/19/2021	Scanned Document		HEARING APPEARANCE LOG FOR 01/15/2021
	56-1 1/19/2021	Other - HEARING APPEARANCE LOG FOR 01/15/2021		
57	1/26/2021	Scanned Document		Lodged- Unsigned Order of Continuance
	57-1 1/26/2021	Other - Lodged- Unsigned Order of Continuance		
58	2/1/2021	Scanned Document		DATED 01/15/2021
	58-1 2/1/2021	Order - DATED 01/15/2021		
59	2/16/2021	Scanned Document		Plaintiff's Reply Brief in Support of Motion for Partial Judgment on the Pleadings with C/S
	59-1 2/16/2021	Other - Plaintiff's Reply Brief in Support of Motion for Partial Judgment on the Pleadings with C/S		
60	3/17/2021	Scanned Document		Defendant's Findings of Fact and Conclusions of Law
	60-1 3/17/2021	Other - Defendant's Findings of Fact and Conclusions of Law		
61	3/17/2021	Scanned Document		cited reference of Johnson and Johnson that was inadvertently left out of Defendant's Findings of Fact and Conclusions of Law
	61-1 3/17/2021	Other - cited reference of Johnson and Johnson that was inadvertently left out of Defendant's Findings of Fact and Conclusions of Law		
62	3/18/2021	Scanned Document		PLAINTIFFS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW W/CERTIFICATE OF SERVICE
	62-1 3/18/2021	Other - PLAINTIFFS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW W/CERTIFICATE OF SERVICE		
63	4/13/2021	Scanned Document		DATED 04/13/2021
	63-1 4/13/2021	Order - DATED 04/13/2021		
64	5/14/2021 2:33:44 PM	Document Emailed		Court user emailed haymond.c@gmail.com document 48-1 - Complaint - w/exhibits
65	5/14/2021 2:34:49 PM	Document Emailed		Court user emailed haymond.c@gmail.com document 63-1 - Order - DATED 04/13/2021
66	8/2/2021 12:05:16 PM	Scanned Document		Other - Defendant's Submission of the Predicate facts pursuant to the instruction of the court and proposed certified questions w/certificate of service & attachment
	66-1 8/2/2021	Other - Defendant's Submission of the Predicate facts pursuant to the instruction of the court and proposed certified questions w/certificate of service & attachment		
67	3/17/2022 1:28:35 PM	Attorney Listed	D-001	A-1229 - Robert S. Fluharty, Jr.
68	3/17/2022 1:39:09 PM	Attorney Listed	P-001	A-9928 - Joshua Scott Rogers
69	3/17/2022 1:39:31 PM	Attorney Listed	P-001	A-10033 - John Randall Whipkey
70	3/17/2022 1:43:43 PM	E-Docketed		Certificate of Service - On March 15, 2022 the Plaintiff was served a Notice to Take the Deposition on David Haymond by Counsel for Defendant via USPS to Joshua S. Rogers and Paige K. Vagnetti and John R. Whipkey
	70-1 3/17/2022	Certificate of Service - On March 15, 2022 the Plaintiff was served a Notice to Take the Deposition on David Haymond by Counsel for Defendant via USPS to Joshua S. Rogers and Paige K. Vagnetti and John R. Whipkey		
	70-2 3/17/2022	Transmittal		

Case Docket Entries

CC-43-2020-C-30

	Entered Date	Event	Ref. Code	Description
71	3/17/2022 1:48:40 PM	E-Docketed		Certificate of Service - Counsel for Defendant certifies that on March 15, 2022 he served Interrogatories and Request for Production upon Plaintiff via USPS to Joshua S. Rogers and Paige K. Vagnetti and John R. Whipkey
	71-1 3/17/2022	Certificate of Service - Counsel for Defendant certifies that on March 15, 2022 he served Interrogatories and Request for Production upon Plaintiff via USPS to Joshua S. Rogers and Paige K. Vagnetti and John R. Whipkey		
	71-2 3/17/2022	Transmittal		
72	5/2/2022 12:34:32 PM	E-Filed		Certificate of Service - Certificate of Service
	72-1 5/2/2022	Certificate of Service - Certificate of Service		
	72-2 5/2/2022	Transmittal		
73	5/9/2022 4:23:15 PM	E-Filed		Order - Case - CERTIFICATION ORDER
	73-1 5/9/2022	Order - CERTIFICATION ORDER		
	73-2 5/9/2022	Transmittal		