

**IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA**

**No. 22-ICA-269**

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**JEFFREY DARAGO,  
Plaintiff below, Petitioner,**

**v.**

**RODNEY DARAGO and  
CATHY REESER,  
Defendants below, Respondents.**

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**RESPONDENT  
RODNEY DARAGO'S BRIEF**

(Appeal from Circuit Court of Monroe County -- Civil Action No. CC-32-2021-AA-1)

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## STATEMENT OF THE CASE

This case arises from a dispute regarding the allocation of funds received from the sale of a pipeline easement over real estate situated in Monroe County. The Petitioner claims that said funds belong to an Estate and should be distributed among three siblings, while the Respondent, Rodney Darago, maintains the proceeds belong solely to him.

The facts are undisputed. The parties hereto are the children of the late Oscar Darago. The senior Mr. Darago owned a home and small farm in Monroe County which he devised to his son, Rodney, via his 2008 *Will*: “I hereby give and bequeath all my Monroe County, West Virginia, real estate with all improvements thereon . . . to my son Rodney A. Darago”. *Last Will and Testament of Oscar D. Darago*, Apr. 10, 2008, Art. 3, ¶ A, pp. 1-2 [App. 1-2].<sup>1</sup> Oscar Darago died some years later, on November 24, 2018, and his *Will* was offered and accepted for probate (without challenge) shortly thereafter.<sup>2</sup>

Oscar D. Darago was survived by three children: The Petitioner, Jeffrey A. Darago; the Respondent, Rodney Darago; and, Cathy Reeser (an unrepresented Respondent herein). Per the *Will*, Jeffrey A. Darago was named Executor of the Estate. *Will*, Art. 1, p. 1 [App. 1]. At the time of his passing, Oscar Darago had not conveyed any pipeline easement over his Monroe County real estate. *Order Affirming County Commission*, Nov. 9, 2022, ¶ 3, p. 4 [App. 43]. Accordingly, the Petitioner filed an *Appraisal of the Estate* on January 22, 2019, which listed on Schedule A thereto that the decedent owned two tracts of land in Monroe County consisting of 6 acres (with

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<sup>1</sup> Page references to the Appendix prepared by Petitioner appear herein as “[App. \_\_ - \_\_]”.

<sup>2</sup> The *Will* is recorded in the Office of the Clerk of the County Commission of Monroe County, West Virginia, in Will Book 44, at Page 489, as Instrument No. 155113.

a house) and 47.5 acres, respectively, which is the land at issue in this proceeding.<sup>3</sup> The *Appraisal* also listed certain financial accounts that the decedent possessed, but was devoid of any entry regarding potential pipeline easement sale funds.

On March 4, 2019, over three months after Oscar Darago passed away, the Petitioner, Jeffrey Darago, acting as Executor of his Estate, executed a *Pipeline Right of Way and Easement Agreement* in favor of Mountain Valley Pipeline LLC by which the pipeline company was granted a right of way and easement over the Monroe County property that had been specifically devised to Rodney A. Darago.<sup>4</sup> For the sale of the easement, net funds totaling \$53,485.18 were paid directly to the Estate.<sup>5</sup> Rodney Darago neither executed the *Agreement*, and maintains that he never consented to the funds being paid into his father’s Estate. Accordingly, when a projected Final Settlement was distributed proposing that the monies received from the sale of the easement be split equally between all three children,<sup>6</sup> the Respondent filed a timely objection<sup>6</sup> which resulted in the instant proceeding.

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<sup>3</sup> The *Appraisal of the Estate* was not included as an Exhibit in this case because there is no dispute regarding its contents. It is recorded in the aforesaid Office of the Clerk of the County Commission of Monroe County, West Virginia, in Appraisal Book 54, at Page 427, as Instrument No. 155675. The *Appraisal* also reflected that the testator owned other real estate situate in Ohio, which was devised to the unrepresented Respondent, Cathy Reeser, but that real estate is not at issue in these proceedings. *Will*, Art. 3, ¶ B, p. 2 [App. 2].

<sup>4</sup> The *Pipeline Easement and Right of Way Agreement* was recorded in the aforesaid Clerk’s Office in Deed Book 297, at Page 16, as Instrument No. 157073. Again, as there was no dispute regarding its contents, it was never formally made an exhibit in these proceedings.

<sup>5</sup> *Order*, Monroe Co. Comm., Dec. 2, 2020 [App. 17] (directing the Petitioner, Jeffrey Darago, to “immediately pay over \$53,485.18 received for the conveyance of the pipeline right of way and easement to, Rodney Darago, without deduction of any kind . . . .”)

<sup>6</sup> The three-way split of the easement funds was proposed by the Petitioner as based upon the residuary clause in the *Will* leaving “the rest, residue and remainder of my estate, including real and personal property, wherever the same may be located, to my three children, equally, share and share alike . . . .” *Will*, Art.

Rodney Darago’s objection was assigned to a Fiduciary Commissioner for a hearing and recommendation. Because of the difficulties posed by the pandemic at that time, the parties agreed “to submit their positions” in writing to the hearing officer. *Recommendation Order to the Monroe County Commission*, Nov. 2, 2020, p. 1 [App. 8]. Ultimately, the Fiduciary Commissioner determined that the easement funds should be divided between the parties, but awarded Rodney Darago his attorney fees because she felt his “objections were legitimate and in good faith.” *Id.* at p. 2 [App. 9]. In reaching her decision, the Fiduciary Commissioner correctly considered the intent of the testator, but nevertheless premised her ruling on the faulty premise that she should also consider what might “have happened had Mr. Darago been alive when MVP awarded the money . . . .” *Id.* at p. 1 [App. 8].

Respondent then formally objected and excepted to the Fiduciary Commissioner’s recommendation, noting in particular that the sale of the pipeline easement occurred after Oscar Darago “had already died, and by that point the property then legally belonged to Rodney Darago.” *Objection and Exception to Fiduciary Commissioner’s Recommendation Order*, Nov. 9, 2020, p. 1 [App. 12]. Clearly, any speculation as to what Oscar Darago might have done with pipeline easement sale proceeds if the same had been received while he was still alive has absolutely no bearing on the disposition of his Estate after his death. The County Commission quickly agreed, reversing the Fiduciary Commissioner’s ruling in less than a month.

The Petitioner then appealed to Circuit Court advancing the same general arguments presented herein (with the exception of any contention that the record below was in any way deficient). *Petition for Appeal to Circuit Court of Objection and Exception to Fiduciary*

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3, ¶ F, p. 2 [App. 2]

*Commissioner's Recommendation Order*, Mar. 8, 2021, pp. 1-6 [App. 21-26]. However, the Monroe County Circuit Court upheld the Monroe County Commission, noting that the record herein reflected that “Oscar Darago owned the land in question at the time of his death, unencumbered by an easement owned by Mountain Valley Pipeline because the settlement occurred approximately four months after his death.” *Order Affirming County Commission*, Nov. 9, 2022, ¶ 8, p. 5 (emphasis supplied) [App. 44]. The Court also specifically found that: “Title to the easement in question did not pass until after the death of Oscar Darago.” *Id.*, ¶ 9, in part, p. 5 (emphasis supplied) [App. 44].

Petitioner never offered evidence at any stage of this proceeding contradicting the Circuit Court’s findings that the easement settlement, and conveyance of title, did not occur until *after* Oscar Darago’s passing. He did offer up a contingency fee agreement that the elder Mr. Darago signed while he was still alive, by which he engaged a law firm to negotiate with Mountain Valley Pipeline. *Engagement Agreement with Lollar Law PLLC*, Dec. 1, 2017, pp. 1-2 [App. 5-6]. However, this letter simply shows there was no settlement agreement in place before Oscar Darago died, and “that there were ongoing negotiations between Lollar Law LLC and Mountain Valley Pipeline, that began before the death of Oscar Darago, and culminated after his death, with the Executor, Jeffery Darago, entering into a settlement on behalf of the estate.” *Order Aff. Co. Comm.*, ¶ 2, p. 3-4 [App. 42-43]. Simply put, Oscar Darago hired a law firm to negotiate the sale of a pipeline easement, and in the end, the matter was still unresolved when he passed. Also, even though the easement negotiations began before Oscar Darago died, there is no dispute that he did nothing to alter his 2008 *Will* at any time despite that ongoing process.

## **SUMMARY OF ARGUMENT**

Neither the Monroe County Commission, nor the Monroe County Circuit Court, committed any error by their respective rulings that the Respondent, Rodney Darago, should receive the funds paid for the sale of a pipeline easement over the land that was specifically devised to him from his father. All the uncontested evidence received in this proceeding confirms that the sale and conveyance were consummated some months after the Respondent's father had already passed away. Accordingly, as his father intended by the plain language used in his *Will*, Rodney Darago was the sole owner of the land at the time it was burdened with the easement, and should therefore be entitled to the compensation that was paid for the resulting permanent damage done to it.

## **STATEMENT REGARDING ORAL ARGUMENT AND DECISION**

The Respondent believes that the facts and legal arguments will be adequately presented in the briefs and record on appeal, and that the decisional process will not be significantly aided by oral argument. However, if the Court determines that oral argument is appropriate, then the Respondent believes that a Rule 19 argument should be scheduled as this case involves assignments of error in the application of settled law and/or a narrow issue of law.

## ARGUMENT

### A. INTRODUCTION

Respondent hereby submits the following Response to the arguments advanced in Petitioners' Brief. The Petitioner listed four Assignments of Error in his Brief. However, his first two alleged errors both turn on the interpretation of the intent of the Testator, and therefore Respondent has combined his reply to those together, while responding to the third and fourth alleged errors separately.

### B. STANDARD OF REVIEW

When reviewing the final disposition of a circuit court acting as an intermediate appellate court from the County Commission, "[t]his 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." Haines v. Kimble, 221 W. Va. 266, 654 S.E.2d 588, Syl. Pt. 1 (2007) (quoting Burgess v. Porterfield, 196 W. Va. 178, 469 S.E.2d 114, Syl. Pt. 4 (1996)).

### C. DISCUSSION

- 1. The Circuit Court correctly affirmed the County Commission's refusal to accept and approve the recommendations of the Fiduciary Commissioner; and,**
- 2. The Circuit Court correctly recognized and enforced the clear and express intention of the Testator, Oscar Darago, as set forth in his *Will*.**

In his first Assignment of Error, Petitioner generally asserts that the Circuit Court committed some reversible error by affirming the County Commission's decision, and then more specifically indicates in his second Assignment of Error that the Circuit Court did not enforce the intention of the testator. Although these first two Assignments of Error are worded somewhat differently, a review of the reasoning set forth in support of each reveals they are both based

entirely upon the intent of the testator, and Petitioner's differing interpretation of the same. In fact, other than the citation included under Assignment of Error No. 1 setting forth the applicable standard of review in these situations, Walker v. West Virginia Ethics Com'n, 201 W. Va. 108, 492 S. E. 2d 167 (1997), the only other case mentioned in support of either Assignment of Error No. 1 or No. 2 is Emmert v. Old National Bank of Martinsburg, 169 W.Va. 48, 54, 246 S.E. 2d 236, 241 (1978) (which stands for the well-recognized proposition that: "The cardinal rule in the construction of wills is that the testator's intention controls, unless it is contrary to some positive rule of law or principle of public policy.") Accordingly, Respondent will address these first two Assignments of Error together.

Obviously, Respondent agrees that Emmert is a correct statement of West Virginia law as to the importance of considering the testator's intent when reviewing a will, and this principle plainly applies to this case. However, Petitioner falls short of addressing the real matter at issue regarding the intent of Oscar Darago in this case: He specifically left his Monroe County real estate to his son, Rodney, and then that very same property was subsequently burdened by a pipeline easement that was placed upon it. This distinction is critical, because the devise of land in this instance was a specific legacy as opposed to a general one:

A specific legacy is a gift by will of property which is particularly designated and which is to be satisfied only by the receipt of the particular property described. Income received during administration on property specifically devised shall become property of the specific devisee. A general legacy or devise is one which does not direct the delivery of any particular property; is not limited to any particular asset; and may be satisfied out of the general assets belonging to the estate of the testator and not otherwise disposed of in the will. Income received on the property which is the subject of a general bequest passes to the residue of the estate.

Watson v. Santalucia, 189 W.Va. 32, 427 S.E.2d 466, n. 1 (1993) (quoting with approval In Re Estate of Parker, 110 So.2d 498, 500-501 (Fla. App. 1959), *cert. denied*, 114 So.2d 3 (Fla.1959)) (emphasis supplied).

Therefore, the intent of Oscar Darago, as expressed in his *Will*, can only be fulfilled by Rodney Darago receiving the very land that was left to him, but that did not happen. Instead, it was burdened with a pipeline easement, and the resulting proceeds from the sale were paid into and retained by the Estate. Nevertheless, Petitioner argues that the pipeline easement sale proceeds should be controlled by the *Will's* residuary clause and divided between all three children. In support of that point, Petitioner asserts that any such “future liquid assets anticipated, would fall into the residuary clause to be divided equally between the three children.” *Petitioner’s Brief*, p. 7. However, ignoring that there is no actual language in the *Will* expressing any such intent at all, Petitioner does not even attempt to explain how such reasoning comports with the specific devise to Rodney Darago of the Monroe County real estate.

W.Va. Code § 41-3-1 plainly instructs: “A will shall be construed, with reference to the estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will.” As previously explained by this Court:

In McComb v. McComb, 121 W.Va. 53, 200 S.E. 49, this Court said: 'The general rule of interpretation that a will speaks as of the time of the testator's death is by our statute (Code, 41-3-1) applicable 'unless a contrary intention shall appear by the will.' In Tharp v. Tharp, 131 W.Va. 529, 48 S.E.2d 793, this Court held in point 2 of the syllabus that a will should be construed as vesting the estate devised or bequeathed at the death of the testator in the absence of language in the will which clearly indicates an intention of the testator to postpone the vesting of such estate until a future event.

Cuppett v. Neilly, 143 W.Va. 845, 852, 105 S.E.2d 548, 555 (1958), overruled on other grounds, Watson v. Santalucia, 189 W.Va. 32, 427 S.E.2d 466 (1993). Here, there is simply no “contrary

intention” expressed in the *Will* of Oscar Darago suggesting anything other than that he wanted Rodney Darago to have his Monroe County property, nor is there any language indicating that vesting of all right, title and interest in and to such property was to be postponed “until a future event.” Moreover, if we construe Oscar Darago’s *Will* as speaking “as of the time of the testator’s death”, then the very *Appraisal of the Estate* itself, as filed by Petitioner (and prior to the sale of the pipeline easement) is conclusive, as it reflects that he owned the Monroe County real estate at the time of his passing (without it being subject to any future contingency or sale).

In fact, although Petitioner introduced the contingency fee agreement into this action for a different purpose, it actually bolsters any conclusion regarding Oscar Darago’s intent. Obviously, the senior Mr. Darago knew he left his Monroe County land to Rodney via his 2008 *Will*, but he was also apparently aware (per the contingency fee agreement) that some resolution might be reached with the pipeline company to sell it an easement. Yet, he did nothing to modify his *Will* to provide for this contingency, or to express that something different be done with any “future liquid assets” that might be received after his death. He simply left the *Will* as it was, leaving the land to Rodney, with such specific devise vesting immediately at his passing.

And since this was a specific devise, and not a general legacy, there is no validity to any argument that the pipeline easement sale funds should be disposed of under the residuary clause of the *Will*. As the Florida Court of Appeals noted in its language as approved in Watson, *supra* p. 9, since the pipeline easement sale funds were “received during administration on property specifically devised [those funds] shall become property of the specific devisee.” *The only reason* the deed was signed by the executor – and the funds paid to the Estate -- was because it was still open and pending, and the land of a decedent is subject to debts of the Estate for up to one year

following the death of a testator. *See generally*, W.Va. Code § §44-8-5.<sup>7</sup> The mere fact that the Estate had not yet been settled when an agreement to sell the easement was finally reached with the pipeline company has no bearing at all on who receives the proceeds. The bottom line is that if this Estate had been settled and closed by the Petitioner, and then the easement sale agreement was finalized between Rodney Darago and the pipeline company, this case never arises. The only reason we are here before this Court is because the Petitioner went ahead and sold the easement, as Executor, before the Estate was formally closed.

In short, Petitioner has presented absolutely no evidence in this proceeding to contradict the specific intent expressed in the *Last Will and Testament of Oscar Darago* that his son, Rodney, was to receive his Monroe County real estate. Likewise, the Petitioner has presented no evidence that the culmination of the pipeline easement sale occurred *after* the death of Oscar Darago, and therefore *after* Rodney Darago was already the owner of that land. Accordingly, there is no argument supporting Petitioner's position that there was any intent on the part of the testator to somehow shift the proceeds from the post-death sale of part of a specific devise into a general legacy to be distributed under a standard residuary clause.

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<sup>7</sup> Although the land of a decedent can be subject to payment of debts, there is no dispute in this case that there were other liquid assets that were more than sufficient to satisfy Oscar Darago's Estate. The full text of W.Va. Code § 44-8-5 is as follows: "Any heir or devisee who shall sell and convey any real estate, which by this article is made assets, shall be liable to those entitled to be paid out of such assets, for the value thereof, with interest; in such case the estate conveyed shall not be liable, if at the time of the conveyance the purchaser shall have no notice of any fraudulent intent on the part of the grantor, and no suit shall have been commenced for the administration of such assets, nor any report have been filed, as aforesaid, of the debts, and demands of those entitled. But no alienation of such estate, made by an heir or devisee, within one year after the death of the testator or intestate, shall be valid against creditors of such testator or intestate, although no such suit shall have been commenced or report of debts and demands filed within such year."

**3. The Circuit Court correctly concluded that the resolution of this matter rested primarily upon the date that the title to the pipeline easement passed to Mountain Valley Pipeline.**

Petitioner next complains that the Circuit Court committed reversible error by focusing on the date of the pipeline easement conveyance as the deciding factor in its decision to uphold the County Commission. Once again, Petitioner hones in on the intention of the testator as somehow requiring a different result: “Here, the intention of the testator is clear, therefore the Circuit Court should not have resorted to legal presumptions and rules of construction, but rather should’ve ‘yield[ed] to the intention of the testator apparent in the will’. *Petitioner’s Brief*, p. 9 (quoting Couch v. Eastham, 29 W. Va. 784, 3 S.E. 23, Syll. Pt. 3 (1887), in part, as cited in Keller v. Keller, 169 W.Va. 372, 287 S. E. 2d 508, Syll. Pt. (1982)).

However, a review of the Circuit Court’s ruling shows that it did not rely on any “legal presumptions” or “rules of construction”, in reaching this decision but instead merely applied the undisputed facts of the case to the law of our state. That court noted that “[t]he real estate in question was titled in the name of the decedent, Oscar Darago, at the time of his death, and passed to Rodney Darago, pursuant to the provisions of his last will and testament.” *Order Affirming County Commission*, Nov. 9, 2022, ¶ 5, p. 4 [App. 43]. And, that although “there were ongoing negotiations . . . before the death of Oscar Darago,” there was no evidence that the late Mr. Darago granted any easement to Mountain Valley pipeline prior to his death. *Id.* at ¶¶ 2-3, pp. 3-4 [App. 42-43]. Moreover, the Circuit Court also specifically referenced W.Va. Code § 54-2-12, which explains that vesting of title in these situations does not occur until payment is made. *Id.* at ¶ 7, p. 4 [App. 43]. Finally, under W.Va. Code § 41-3-1, the Circuit Court had no other option but

to determine that the real estate passed to Rodney Darago unencumbered at the time of his father's passing, since a will speaks as of the time of the "death of the testator".

Accordingly, as aptly summarized by the Circuit Court, it had no other choice but to find "that Oscar Darago owned the land in question at the time of his death, unencumbered by an easement owned by Mountain Valley Pipeline because the settlement occurred approximately four months after his death." *Order Aff. Co. Comm.*, at ¶ 7, p. 4 [App. 43]. And if Oscar Darago owned the land free and clear at the time of his passing on November 24, 2018, then that is how Rodney Darago received it. Therefore, the conveyance of an easement several months later on March 4, 2019, is truly the deciding factor, because it was *after* Oscar Darago's death. There is simply nothing in the *Will* which changes anything about this at all, and therefore no argument regarding the intent of the testator makes any difference at all in this instance. The Circuit Court did not abuse its discretion by pointing to the undisputed date of the easement conveyance as being the determinative factor in this case, for the simple reason that there was no other date that has any legal significance in this case (other than the date of Oscar Darago's passing), nor does the Petitioner even suggest one.

**4. The Circuit Court correctly decided this matter as based upon the evidence presented to it, and there was no reason to remand it for further proceedings before the County Commission.**

Finally, the Petitioner alleges that the Circuit Court committed error by not remanding this case back to the County Commission for further evidentiary development, but does not advance this argument by explaining exactly why any such further proceedings might be necessary. Regardless, there are three significant reasons why Petitioner's suggestion that this case should have been remanded is without merit: (1) Petitioner consent to submitting this matter on briefs; (2) the facts are undisputed; and, (3) no request for remand was raised before the Circuit Court.

The primary reason the Circuit Court never considered remanding this case to the County Commission is because, as already noted herein, supra pp. 2-3, the parties agreed to submit this case via briefing to the Fiduciary Commissioner. That Commissioner specifically noted the same in her *Recommendation Order* and recited therein that it was due to the “worsening” of the pandemic at the time.<sup>8</sup> If there was some alleged deficiency with the briefing, then that should have been raised before the Fiduciary Commissioner, or at least before the County Commission when it considered her *Recommendation Order*. Petitioner cannot now complain of some alleged error arising from a supposedly deficient evidentiary record when the record was developed exactly as the parties agreed.

Almost equally as important though is that this case does not revolve around any disputed facts, nor does Petitioner suggest the same. There is absolutely no dispute as to the validity and/or wording of the decedent’s Will; the date of his death; or, the date of the signing of the pipeline easement agreement over three months thereafter. In fact, as presented in *Petitioner’s Brief* repeatedly, his main contention on appeal is not some factual dispute, but instead the interpretation of the intent of Oscar Darago as shown by the language he used in his *Will*. Of course, the interpretation of a Last Will and Testament is a matter of law for the court to decide utilizing various rules of construction. *See, e.g., Hedrick v. Mosser*, 214 W.Va. 633, 591 S.E.2d 191 (2003) (discussing the various legal principles applied to the language of a will to determine the testator’s intent). Accordingly, there is no reason to remand this case per Petitioner’s arguments because it all turns on the intent of Oscar Darago as reflected in his *Last Will and Testament*, and remanding the matter is not going to change the wording of his *Will*.

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<sup>8</sup> “Covid worsened and the CDC guidelines stepped up so in the best interest of everyone involved the parties and their attorneys agreed to submit their positions to me.” *Recommendation Order*, p. 1 [App. 8].

Finally, any suggestion as to the deficiency of the record herein is not something that can now be raised for the very first time on this appeal. The Circuit Court was sitting as a lower intermediate court of appeals when it reviewed and confirmed the decision of the County Commission. Accordingly, if Petitioner truly felt that the record below was somehow incomplete, then that issue should have been brought up before the Circuit Court. The fact that it was not strongly suggests that Petitioner has no genuine issue with the state of the record in this proceeding. Moreover, the “general rule is that nonjurisdictional questions not raised at the circuit court level, but raised for the first time on appeal, will not be considered.” Whitlow v. Board of Educ. of Kanawha County, 190 W.Va. 223, 226, 438 S.E.2d 15, 18 (1993).

In sum, there is no reason for this Court to now remand this matter back to Circuit Court, so that the Circuit Court can then remand it back to the County Commission. All parties hereto agreed to proceed on the record as presented. Moreover, the facts of this case are undisputed, and the language contained in Oscar Darago’s *Will* is not going to change with a remand.

## CONCLUSION

Rodney Darago's position in this matter has always been simple and straightforward: His father specifically left the Monroe County house and farm to him, and he should therefore receive the proceeds from the sale of a pipeline easement over it that occurred *after* Oscar Darago passed away. It is not his brother and sister who will bear the burden of the pipeline easement, but only him. The specific legacy left to him by his father has been permanently devalued, and the funds so received were intended to compensate for the perpetual harm done to the land. If his father had intended some different disposition of the funds received for the sale of the easement, then he could have so specified the same by changing his *Will* before he died. He did not do so, and his intent as expressed in that *Will* is unassailable.

For the reasons set forth herein, the ruling of the Circuit Court of Monroe County, affirming the ruling of the County Commission of Monroe County, should be upheld, and the Petitioner should be Ordered to immediately pay over to the Respondent the amount of \$53,484.18, without deduction, from the Estate of Oscar Darago, representing the amount received by it for the sale of a pipeline easement over the land specifically devised to Rodney Darago, as originally Ordered by the Commission.

RODNEY DARAGO  
By Counsel

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed RESPONDENT RODNEY DARAGO'S BRIEF with the Clerk of the West Virginia Intermediate Court of Appeals, via the West Virginia E-Filing system, on the date and time as shown on the Notice of Electronic Filing appended hereto. I certify that all participants in the case are registered West Virginia E-Filing system users and that service will be accomplished by the West Virginia E-Filing system, with the exception of Cathy Reeser, unrepresented Respondent, and I do further hereby certify that service of the attached RESPONDENT RODNEY DARAGO'S BRIEF was made upon Cathy Reeser by depositing a true and correct copy in the U.S mail, postage prepaid, on the same date, and properly addressed to her last known address as follows:

Cathy Reeser  
1140 Jeanette Dr  
Dayton, OH 45432

/s/ Jeffry A. Pritt