

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

Alfredo Castillo-Reyes,
Petitioner Below, Petitioner

v.) **No. 22-0373** (Hardy County CC-16-2022-C-AP-2)

West Virginia Department of Transportation,
Division of Highways, Dorman Parker, and
Benjamin Thorn,
Respondents Below, Respondents

MEMORANDUM DECISION

Petitioner Alfredo Castillo-Reyes appeals the April 18, 2022, order of the Circuit Court of Hardy County granting the motions to dismiss of Respondents West Virginia Department of Transportation, Division of Highways (“DOH”), and Dorman Parker (collectively “DOH respondents”) and Respondent Benjamin Thorn based on a lack of standing.¹ Upon our review, we determine that oral argument is unnecessary and that a memorandum decision affirming in part, and vacating in part, the circuit court’s order is appropriate. *See* W. Va. R. App. P. 21.

Petitioner filed an action in magistrate court alleging that a fence located along Lower Pine Grove Road, in Baker, West Virginia, was damaged and removed, or moved to an unsafe location, by DOH respondents. He alleged that Respondent Thorn, a neighbor, “prohibit[ed a] setback, fence, guard rail and black top road” making the road unsafe. Petitioner claimed damages in the amount of \$10,000 to pay his company Clear Space LLC to rebuild the fence. Respondents moved to dismiss the complaint, and the magistrate court granted that motion. Petitioner appealed to the circuit court. Respondents again moved to dismiss in circuit court under West Virginia Rule of Civil Procedure 12(b)(6), arguing that petitioner lacked standing to assert alleged damages to the fence in question because he did not own that fence, or the underlying real property, and so failed to state a claim upon which relief could be granted. Respondent Thorn also sought attorney’s fees as sanctions under Rule 11 of the West Virginia Rules of Civil Procedure in his motion. Petitioner appears to have argued that he had an interest in the property because of his marriage to the individual identified as the owner of the real property, or an agreement with that individual.

¹ Petitioner is self-represented. Respondents West Virginia Department of Transportation, Division of Highways, and Dorman Parker appear by counsel Michael E. Mullins. Respondent Benjamin Thorn appears by counsel Nathan H. Walters.

After a hearing, the circuit court granted the motions to dismiss. It found that although petitioner “zealously argued the status of his marriage,” he “failed to produce any evidence of ownership in the subject fence or property.” The circuit court considered the property deeds and a divorce decree provided by respondents as “evidencing the land and subject fence’s true owner was in fact not [petitioner]” and found that petitioner is “not the owner of the subject property or the fence in question.” As a result, it found petitioner had no standing to bring the claims set out in the magistrate court complaint against respondents. Regarding the request for sanctions, the court found that petitioner’s actions during the course of the litigation constituted a “vexatious, wanton, or oppressive assertion of a claim or defense that cannot be supported by good faith argument for application, extension, modification, or reversal of existing law.” The court dismissed the case with prejudice and ordered the entire appeal bond, in the amount of \$1,000, be forfeited to respondents for their attorney’s fees and costs, less any costs due to the court. Petitioner appeals that order.

“Appellate review of a circuit court’s order granting a motion to dismiss a complaint is *de novo*.” Syl. Pt. 2, *State ex rel. McGraw v. Scott Runyan Pontiac-Buick, Inc.*, 194 W. Va. 770, 461 S.E.2d 516 (1995). Here, the issue reviewed by this Court is whether petitioner had standing to bring his complaint.² Although the circuit court reached its decision under West Virginia Rule of Civil Procedure 12(b)(6), standing is an element of subject matter jurisdiction. *See Pavone v. NPML Mortgage Acquisitions, LLC*, 246 W. Va. 418, 421, 874 S.E.2d 21, 24 (2022) (quoting *State ex rel. Paul B. v. Hill*, 201 W. Va. 248, 256, 496 S.E.2d 198, 206 (1997)). Accordingly, West Virginia Rule of Civil Procedure 12(b)(1) applies, and we consider whether the circuit court erred in dismissing the claim for lack of standing, and so subject matter jurisdiction under that standard.³

² Petitioner briefly asserts a number of grounds for appeal that are unrelated to issues of standing or jurisdiction; however, the circuit court did not rule on any other grounds in its April 18, 2022, order and those issues are not properly before this Court. The Court will only address the issues ruled on by the circuit court. *See* Syl. Pt. 1, *Mowery v. Hitt*, 155 W. Va. 103, 181 S.E.2d 334 (1971) (“In the exercise of its appellate jurisdiction, this Court will not decide nonjurisdictional questions which were not considered and decided by the court from which the appeal has been taken.”).

In addition to those issues raised in passing that were not ruled on by the circuit court, petitioner also appears to challenge the circuit court’s order that his appeal bond was forfeited and awarded to respondents for their attorney’s fees and costs as a sanction. However, petitioner only makes a conclusory statement that the award of attorney’s fees was an abuse of discretion. This skeletal argument lacks citations to the record on appeal or to legal authority and so does not comply with Rule 10(c)(7) of the West Virginia Rules of Appellate Procedure. Therefore, we have no basis to, and cannot, find that the circuit court abused its discretion in awarding this sanction. *See Warner v. Wingfield*, 224 W. Va. 277, 281, 685 S.E.2d 250, 254 (2009) (citing *Davis ex rel. Davis v. Wallace*, 211 W. Va. 264, 266, 565 S.E.2d 386, 388 (2002) and applying an abuse of discretion standard of review to assessment of sanctions).

³ “This Court may, on appeal, affirm the judgment of the lower court when it appears that such judgment is correct on any legal ground disclosed by the record, regardless of the ground,

We have held that

[s]tanding is comprised of three elements: First, the party attempting to establish standing must have suffered an “injury-in-fact”—an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent and not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct forming the basis of the lawsuit. Third, it must be likely that the injury will be redressed through a favorable decision of the court.

Syl. Pt. 5, *Findley v. State Farm Mut. Auto. Ins. Co.*, 213 W. Va. 80, 576 S.E.2d 807 (2002).

This matter hinges on the first element of standing, an “injury-in-fact” to “a legally protected interest.” Here, respondents provided deeds identifying someone other than petitioner as the owner of the property on which the fence was located.⁴ In cases invoking traditional standing we have generally followed the “prudential standing rule,” which provides that litigants are normally barred “from asserting the rights or legal interests of others in order to obtain relief from injury to themselves.” *Kessel v. Leavitt*, 204 W. Va. 95, 118, 511 S.E.2d 720, 743 (1998) (quoting *Warth v. Seldin*, 422 U.S. 490, 509 (1975)). *See also Pavone*, 246 W. Va. at 421-22, 874 S.E.2d at 24-25 (quoting *Kessel* and discussing the prudential standing rule). While petitioner makes broad arguments as to matters underlying his relationship with the owner of the real property identified in the deeds, in *this* proceeding, based on the record on appeal, he failed to present evidence of ownership that is *specific* to the narrow issue presented—the fence that petitioner contends was damaged, or the real property on which the fence was located. Without evidence of a legally protected interest in the specific fence that is the subject of petitioner’s claim for damages, we agree with the circuit court that petitioner lacks standing. Although we find the circuit court did

reason or theory assigned by the lower court as the basis for its judgment.” Syl. Pt. 3, *Barnett v. Norfolk*, 149 W. Va. 246, 140 S.E.2d 466 (1965).

⁴ While generally a motion to dismiss under West Virginia Rule of Civil Procedure 12(b)(6) is determined based only on matters within the pleadings, in motions for dismissal under West Virginia Rule of Civil Procedure 12(b)(1), based on jurisdictional grounds, we have held that the circuit court may consider matters outside the pleadings without converting the motion to a Rule 56 motion for summary judgment. *See Elmore v. Triad Hospitals, Inc.*, 220 W. Va. 154, 157 n.7, 640 S.E.2d 217, 220 n.7 (2006) (discussing consideration of matters outside the pleadings in jurisdictional motions to dismiss). In this case, because respondents’ motions seek dismissal on jurisdictional grounds, we apply the same rationale. Further, the exhibits provided by respondents in this case are implicitly referred to in the complaint by petitioner’s assertion that he is an owner of the fence and are integral to that allegation. In addition, while petitioner makes arguments about the legal impact of those documents on his claim, he does not dispute the authenticity of those documents. In these circumstances, it was not error for the circuit court to consider the exhibits to the motions to dismiss. *See Syl. Pt. 6, Mountaineer Fire & Rescue Equip., LLC v. City Nat’l Bank of W. Va.*, 244 W. Va. 508, 854 S.E.2d 870 (2020) (discussing factors to consider when evaluating an exception to the general rule that a motion to dismiss is determined based only on the pleadings).

not err by dismissing petitioner's claims against respondents for lack of standing, because standing is an element of subject matter jurisdiction the matter should have been decided under West Virginia Rule of Civil Procedure 12(b)(1) and thus should be dismissed *without prejudice*. See *Tanner v. Raybuck*, 246 W. Va. 361, 368-69, 873 S.E.2d 892, 899-900 (2022) (discussing the general rule that a dismissal for lack of jurisdiction is without prejudice because it is not an adjudication on the merits). Therefore, we vacate the order of dismissal with prejudice and remand for entry of an order of dismissal under West Virginia Rule of Civil Procedure 12(b)(1) without prejudice for lack of standing.

For the foregoing reasons, we affirm in part, vacate in part, and remand for proceedings consistent with this opinion.

Affirmed in part, vacated in part, and remanded with instructions.

ISSUED: March 20, 2024

CONCURRED IN BY:

Chief Justice Tim Armstead
Justice Elizabeth D. Walker
Justice John A. Hutchison
Justice William R. Wooton
Justice C. Haley Bunn