No. 22-586

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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

LEWIS SPRINGER AND KAREN SPRINGER,
Petitioners and Plaintiffs below,

v.

BIG BEND MOUNTAIN RETREAT WATER UTILITY SYSTEM ASSOCATION, EARL GILLIS & KAREN GILLIS, WES RUNYAN & TAMY RUNYAN, AND TRACY WILSON & DAVID WILSON,
Respondents and Defendants below.

RESPONDENTS WES RUNYAN AND TAMY RUNYAN'S RESPONSE TO PETITIONERS LEWIS SPRINGER AND KAREN SPRINGER'S PETITION FOR APPEAL

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Respondents and Defendants below.

TO: THE HONORABLE JUSTICES OF THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Respondents and Defendants below, Wes Runyan and Tamy Runyan (hereafter "Respondents"), by counsel Daniel J. Burns and the law firm of Pullin, Fowler, Flanagan, Brown and Poe, PLLC, respectfully represents unto this Court that the Circuit Court of Summers County, West Virginia, ruled appropriately and lawfully, and committed no reversible error in the underlying action by granting the Motion to Dismiss filed by these Respondents and dismissing the claims of Petitioners and Plaintiffs below with prejudice. These Respondents respectfully ask this Honorable Court to reject the Petitioners' Petition for Appeal.

STATEMENT OF THE CASE

The underlying civil action arises from a Complaint filed by the Petitioners, and Plaintiffs below, Lewis and Karen Springer, regarding a water well and its associated infrastructure in Summers County, West Virginia. On or about December 15, 2021, Petitioners filed their Complaint against these Respondents, Wes and Tamy Runyan, and other named parties in the Circuit Court of Summers County, West Virginia. (A.R. 33-46). An Amended Complaint was filed in March 2022. (A.R. 65-76). Petitioners' Complaint is comprised of a sole count of "unjust enrichment" related to alleged expenses made by the Petitioners in conjunction with a shared well in the Big Bend Mountain Retreat area of Summers County, West Virginia. (A.R. 40-41)/

Although the Petitioners have not assigned any errors concerning the same, these Respondents believe that an examination of the historical facts contained in the record are relevant to this matter.[1] Petitioners are the owners of a 4.97 acre tract of land in the Talcott District of Summers County, West Virginia as further set forth and described in Deed Book 222 at page 427. (A.R. 1-2, 13-14, 34, and 119). The Respondents were the owners of 4.03 acres of land located in the Talcott District of Summers County, West Virginia as further set forth and described in Deed Book 273 at page 173. (A.R. 1-2, 13-14, 24, 199). Said property was purchased on or about March 11, 2021.[2] Both properties were located in the Big Bend Mountain Retreat area of Summers County, West Virginia.

[1] The Respondents note that a vast majority of the historical facts underlying this case come from pleadings filed in a related matter before the Circuit Court of Summers County. The same was not litigated in a traditional sense and, thus, many of the facts have been presented and have not been contested by either party.

[2] These Respondents no longer own this property having sold the same following entry of the Court's Order now on appeal.

As to the deeds of these properties, the same reflected and made reference to a deed dated February 1, 2012, which was recorded at Deed Book 242 at page 614. (A.R. 116-117). This Deed sought to create the "Big Bend Mountain Retreat Water Utility System."[3] This Deed granted the planned Big Bend Mountain Retreat Water Utility System, amongst other items, "all rights title, easements, rights of way, real and personal property necessary to operate and control the existing water system serving the Big Bend Mountain Retreat. Id. The same also required this planned entity to create conditions and responsibility for water use and for maintenance and upgrades to the system. Id.

When the Respondents purchased their property in the area, they were informed that they would have access to a common water well, well house, and other infrastructure necessary to obtain well water on their subject property. (A.R. 3, 45-46, 119). The various real estate documents, contract, and deeds reflected the same. There was no information provided that indicated or otherwise showed the existence of Big Bend Mountain Retreat Water Utility System or any other entity which managed said well. Id. When the Runyan Defendants took possession of the subject property, they were provided with keys to the subject well house to allow access to the well water and to allow them to turn on water access to their property, in the same or similar manner as the previous owners during their period of ownership of the property. Id.

Following the purchase and possession of their property, the Respondents initially enjoyed use of the well water and infrastructure without issue. On or about April 17, 2021, the Petitioners, acting as individuals as no water association existed, placed locks on the subject well infrastructure

[3] There is no record of this entity ever existing or being registered with any governmental agency or otherwise within the State of West Virginia prior to Petitioners' filing their Complaint. The Petitioners' have since sought to create such an entity, but no such entity exists at this time.

and denied the Respondents access to the water. (A.R. 4). This conduct resulted in the filing of a Petition, which was heard by this Court bearing case number 21-P-14. (A.R. 1-11). The lower Court initially granted Respondents Temporary Restraining Order and Preliminary Injunction. (A.R. 12-15, 23-26). The lower Court convened for several hearings as to Respondents' request for a Permanent Injunction, which was in the process of being finalized when the Petitioners filed their Complaint. (A.R. 28, 31, 43-64). It was during this underlying proceeding that the Petitioners provided the Respondents, amongst other items, some items at issue in the matter now before this Court.

Petitioner's Amended Complaint sought recovery of funds under the sole theory of "unjust enrichment." (A.R. 69-70). Petitioners alleged that they, along with the named Respondents, are members of the "Big Bend Mountain Retreat Water Utility Association."[4] Petitioners allege that, since its alleged inception, they have made payment for upkeep of the well and well infrastructure of the Big Bend Mountain Retreat Water Utility Association. (A.R 65-70). These payments, as Petitioners have alleged, include the following: litigation expenses to obtaining the rights to the well; pipe and pump replacements; pressure washing; staining and associated materials; well house repairs; locks, lighting, and general fixtures; travel expenses for business related to the Water Association; mailing; general property maintenance; electric bills; and other general expenses. (A.R. 68-69). The total claimed expenses, as alleged by the Petitioners, have exceeded $20,000. (A.R. 69).

[4] In their Complaint, Petitioners do not allege how the association was formed, when the same was formed, who the members are, etc. In fact, there is no such entity registered with the West Virginia Secretary of State nor the West Virginia Public Service Commission.

Under their sole count unjust enrichment, Petitioners allege that they have conferred a direct benefit to the Respondents through their alleged payment of expenses as outlined in the Complaint. (A.R. 69-70) Petitioners also allege that they have conferred benefit by way of providing the alleged Association a legal defense. (A.R. 69-70) Finally, Petitioners allege that the Respondents, inclusive of all named herein, were aware of and had direct knowledge of Petitioner's alleged spending. (A.R. 69-70) As a result, Petitioners contended that they are entitled to recovery of some or all of their expended funds, and other relief limited to costs and attorney's fees, as set forth in the Complaint. (A.R. 70).

The underlying facts above, along with a copy of the 2012 Deed and a list of expenses provided by counsel for the Petitioners in the injunctive action, were submitted to the Court via Respondents' Motion to Dismiss in Lieu of Answer along with a Memorandum of Law in Support of the same on or about April 29, 2022. (A.R. 114-137). As noted in Petitioners' opening brief, these Respondents sought dismissal by operations of the Doctrine of Laches as well as additional grounds set forth in their Motion. The lower Court heard the oral argument of the parties on said Motion on June 10, 2022. (A.R. 188-218). At the conclusion of the hearing, the Court made the following ruling:

> THE COURT: Okay. The Court has considered the matter and feels appropriate to handle this under Rule 56 as a motion – or excuse me, under Rule 12 as a motion to dismiss. I don't see anything that would prevent it from being considered as a Rule 12(b)(6) motion to dismiss. The Court feels like laches is an appropriate defense.
>
> The Court GRANTS the Motion to Dismiss on the doctrine of laches . . .

(A.R. 217).

On June 23, 2022, the Circuit Court of Summers County issued a well-reasoned, comprehensive, ten (10) page Order granting the Motion to Dismiss filed by these Respondents.[5] (A.R. 220-229). After reviewing the briefs and arguments of counsel, the Court determined that both the 2012 Deed as well as the list of expenses prepared by the Petitioners were appropriate for consideration consistent with Forshey v. Jackson, 671 S.E.2d 748 (W. Va. 2008) and the same did not require the Court to convert Respondents' Motion to summary judgement under Rule 56. (A.R. 223-224). Furthermore, the lower court, consistent with law and the record before it, determined that Petitioners did not, and could not, establish that the Doctrine of Laches did not operate as a bar to Petitioner's sole claim. (A.R. 224-228). In specifically addressing the issue of laches, the Court stated the following:

> That Deed, on its face, creates certain rights which the Court finds that the Plaintiffs have not demonstrated that they did not enforce for a period of ten (10) years or more. Plaintiffs have further failed to show that these Defendants are not prejudiced in this matter having not been consulted regarding past expenditures and by the simple passage of ten (10) or more years of time of unilateral expenditures by the Plaintiffs.

(A.R. 228-229). It is from the June 23, 2022, Order that the Petitioners now appeal. *See generally*, Petitioners' Brief.

SUMMARY OF ARGUMENT

As to Petitioners' first assignment of error, the lower Court did not err in considering documents outside of the four walls of the Complaint nor did not err in deciding Respondents' Motion to Dismiss under Rule 12. One of the documents in question, a deed, was properly made part of the record via judicial notice. The second, a list of expenses authored by the Petitioners,

[5] The Order also addressed the Court's ruling granting the Wilson Respondents' Motion to Dismiss under the same defense based on the Doctrine of Laches. Counsel for the Wilson Respondents has filed a separate brief in the matter now before this Court.

was implicitly relied upon in formulating both Petitioners' Complaint and the claims for damages contained therein. Furthermore, the authenticity of the same has not been challenged, only the contents therein. As to Petitioners' second assignment of error, the lower Court did not err in its dismissal of the Complaint under the Doctrine of Laches. The facts presented establish that the Petitioner was dilatory asserting and/or enforcing a known legal right for a period of ten (10) years prior to the subject Complaint in this matter. The facts presented further demonstrate that, as the subject expenses were expended over a ten year period without any input from these Respondents or others, the dilatory actions of the Petitioners have and will continue to severely prejudice the Respondents. As such, the lower Court's June 22, 2022, Order granting the Motion to Dismiss filed by these Respondents should be affirmed.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

These Respondents assert that, pursuant to Rule 18(a)(3)-(4) of the West Virginia Rules of Appellate Procedure, oral argument is not necessary because the dispositive issues have been authoritatively decided and the facts and legal arguments are adequately presented in the briefs and record on appeal, and the decisional process would not be significantly aided by oral argument. If this Court determines that oral argument is necessary, Respondents respectfully assert that oral arguments could be heard pursuant to Rule 19 and/or Rule 20 of the West Virginia Rules of Appellate Procedure.

ARGUMENT

A. STANDARD OF REVIEW

Appellate review of a circuit court's order granting a motion to dismiss a complaint is reviewed de novo." Syllabus point 2, State ex rel. McGraw v. Scott Runyan Pontiac Buick, Inc., 194 W.Va.

770, 461 S.E.2d 516 (1995). In reviewing challenges to the findings and conclusions of a circuit court, the West Virginia Supreme Court of Appeals applies a two-prong standard of review:

> We review the final order and the ultimate disposition under an abuse of discretion standard, and we review the circuit court's underlying factual findings under a clearly erroneous standard. Questions of law are subject to a de novo review.

Phillips v. Fox, 458 S.E.2d 327 (W.Va. 1995).

A review of a lower tribunal's decision to review documents outside the pleadings, attached to a Motion to Dismiss pursuant to Rule 12(b)(6) of the West Virginia Rules of Civil Procedure, is reviewed for an abuse of discretion. Mountaineer Fire & Rescue Equip., LLC v. City Nat'l Bank of W.Va., 244 W.Va. 508 (2020). With this standard of review in mind, these Respondents now address each assignment of error below.

B. THE CIRCUIT COURT PROPERLY APPLIED THE HOLDING OF *FORSHEY* AND DID NOT ERR IN DISMISSING THIS MATTER UNDER RULE 12 OF THE WEST VIRGINIA RULES OF CIVIL PROCEDURE.

As to Petitioners' first assignment of error, the focus on the same is the application of Forshey v. Jackson, 671 S.E.2d 748 (W. Va. 2008) to two (2) documents submitted to the court and the alleged failure of the lower Court to convert Respondents' Motion to Dismiss to a Motion for Summary Judgment. (Pets. Brief, pgs. 7-15). While the 2012 Deed is mentioned, it appears from a thorough review of Petitioners' brief that this first assignment of error focuses almost exclusively on the list of expenses discussed in the lower Court's Order. Id.

Initially, the Petitioners first contend that the expense list should not have been considered without conversion of the Motion because the Court identified the same as one that existed in the companion injunctive matter. Pets. Brief, pg. 11-12). Petitioners then contend that the inclusion of the expenses list runs afoul of Mountaineer Fire & Rescue Equip., LLC v. City Nat'l Bank of W.Va.,

244 W.Va. 508 (2020) and the test laid out therein. (Pets. Brief, pgs. 12-15). Specifically, the Petitioners maintain that the Complaint does not refer "explicitly" to this list. Id. Petitioners also argue that the expense list is not one which the lower Court could have taken proper judicial notice of in the underlying case. Id. Finally, the Petitioners state, in part, that the list was incomplete and thus did not make it susceptible to including under Forshey or Mountaineer Fire. Id.

As this Court has made clear time and time again, Rule 12(b)(6) permits a party to move to dismiss a pleading for "failure to state a claim upon which relief can be granted." Rule 12(b)(7) of the Rules of Civil Procedure further provides that:

> If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to **and not excluded by the court**, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

W.Va. R. Civ. Pro. Rule 12(b)(7)(emphasis added) Thus, the general rule is, that circuit courts considering motions under Rule 12(b)(6) should confine their review to the four corners of the complaint or other disputed pleading and may not consider extraneous documents.

This Court has recognized, however, a limited exception to this rule: a court may review documents annexed to a pleading. Rule 10(c) of the Rules of Civil Procedure provides that "[a] copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes." This Court has held in Syllabus Point 1 of Forshey v. Jackson, 222 W. Va. 743, 671 S.E.2d 748 (2008), that "[a] circuit court ruling on a motion to dismiss under Rule 12(b)(6) of the West Virginia Rules of Civil Procedure may properly consider exhibits attached to the complaint without converting the motion to a Rule 56 motion for summary judgment."

In Forshey, this Court addresses those where a trial court could review extraneous exhibits

without converting the Rule 12(b)(6) dismissal motion into one for summary judgment. This Court noted that, for purposes of Rule 12(b)(6),

> the complaint is deemed to include any written instrument attached to it as an exhibit or any statements or documents incorporated in it by reference. Even where a document is not incorporated by reference, **the court may nevertheless consider it where the complaint "relies heavily upon its terms and effect," which renders the document "integral" to the complaint**. . . .
>
> [G]enerally, the harm to the plaintiff when a court considers material extraneous to a complaint is the lack of notice that the material may be considered. Accordingly, **where plaintiff has actual notice of all the information in the movant's papers and has relied upon these documents in framing the complaint the necessity of translating a Rule 12(b)(6) motion into one under Rule 56 is largely dissipated**. . . . [O]n a motion to dismiss, a court may consider "documents attached to the complaint as an exhibit or incorporated in it by reference, . . . matters of which judicial notice may be taken, or. . . **documents either in plaintiffs' possession or of which plaintiffs had knowledge and relied on in bringing suit**. Because this standard has been misinterpreted on occasion, we reiterate here that a plaintiff's reliance on the terms and effect of a document in drafting the complaint is a necessary prerequisite to the court's consideration of the document on a dismissal motion; mere notice or possession is not enough.

Forshey v. Jackson, 222 W. Va. at 748, 671 S.E.2d at 753 (emphasis added)(*quoting* Chambers v. Time Warner, Inc., 282 F.3d 147, 152-53 (2d Cir. 2002)).

Thus, in light of Forshey, this Court has recently held that, when a movant makes a motion to dismiss a pleading pursuant to Rule 12(b)(6) of the West Virginia Rules of Civil Procedure, and attaches to the motion a document that is outside of the pleading, a court may consider the document only if "(1) the pleading **implicitly or explicitly refers to the document**; (2) the **document is integral to the pleading's allegations**; and (3) **no party questions the authenticity of the document**." Mountaineer Fire & Rescue Equip., LLC v. City Nat'l Bank of W. Va., 244 W. Va. 508, 528, (2020)(emphasis added). If a document does not meet these requirements, the circuit court must either expressly disregard the document or treat the motion as one for summary

judgment as required by Rule 12(b)(7). *Id.*

Speaking first to the list of expenses, the Respondents maintain that the same was appropriately considered by the lower Court and that Motion conversion was not required. The crux of Petitioners' Amended Complaint and the redress that they seek is for reimbursement of costs they allegedly incurred since 2012. (A.R. 67-79). Specifically, in their Complaint, Petitioners provide a list of expenses including, but not limited to, the following: litigation expenses to obtaining the rights to the well; pipe and pump replacements; pressure washing; staining and associated materials; well house repairs; locks, lighting, and general fixtures; travel expenses for business related to the Water Association; mailing; general property maintenance; electric bills; and, others general expenses. (A.R. 68-69). The expense list at issue, includes, in part, the following:

2006-2012	$9,072.00	Attorney fees for litigation to obtain well
7/10/19	$6,000.00	Drilling and other expenses related to well
8/2/14	$1,000.00	Pressure washing
3/27/19	$1,247.00	Supplies
Undated	$ 280.00	Property taxes
9/20/2012	$ 600.00	Payment to Earl Gillis
Undated	$ 200.00	Supplies
8/23/21	$ 32.00	Turnpike fees
Undated	$ 18.90	Mail expenses
7/8/21	$ 200.00	Surveillance tapes
7/12/21	$ 51.00	Trade Name Certificate
7/12/21	$3,200.00	Property Maintenance
6/30/21	$7,500.00	Attorney retainer
7/14/21	$ 825.00	BBMRWUS –Deposit for Water use
6/21 & 7/21	$ 155.09	Power for wellhouse

(A.R. 114-115). As this Court can and the lower Court did clearly see, the list of expenses mirrors those now being claimed by the Petitioners in their Complaint.

While the Petitioners contend that this list is incomplete, the same does reflect every area

that the Petitioners' make reference to general damages in the Complaint. Petitioners also claim the same is incomplete, incorrectly, as it does not address property taxes nor does it contemplate monies paid for water usage. First, the list does contain a line item for property taxes. (A.R. 115). Second, as has been discussed throughout the record below, neither the Petitioners nor anyone else in the Big Bend Mountain Retreat area have ever paid any sort of monthly rate for their water usage. While the list may not be what Petitioners' would provide to the jury in a trial, it certainly sets forth how and what expenses they are claiming support their claim for unjust enrichment in this case. The lower court's Order makes it clear that the list is being considered not for consideration of damages, but rather whether a valid claim has been presented. (A.R. 226-228). As the list reflects the claimed expenses and anticipated damages in this case, the same is implicitly referred to in the Complaint and appropriate for consideration in this case.

As to the remaining points of the Mountaineer Fire case, the same are met by the nature of the expense list provided by the Petitioner to the Respondents in this case. This list of expenses forms the basis for Petitioners' claims of unjust enrichment. Without Petitioners having expended the sums of money contained in the list, there would be no claim whatsoever that the Petitioners could assert in this case. In other words, without money having been spent there can be no unjust enrichment. Furthermore, Petitioners appear to be confusing authenticity of a document and the accuracy of the contents therein. Throughout the underlying case, these Respondents disputed the expenses incurred or expended by the Petitioners, but made no reference to or argued that this list, which Petitioners' themselves created, was not authentic.[6] Rather, as the Respondents' Motion to

[6] Most, if not all, discussions regarding the accuracy of the list occurred during settlement negotiations or discussions between counsel. Furthermore, the same occurred while the injunctive process was ongoing and not in any pleading after the filing of the Complaint. Thus, as it pertains both to settlement negotiations as well as the injunctive

Dismiss demonstrates, the expense list was taken for its word when considering the Petitioners' Complaint under the Doctrine of Laches.

Finally, as to the expenses list, it is important to note how the nature of this document ties into the analysis under Forshey. While notice or possession it not sufficient under Forshey, the facts presented in this case suggest that the Forshey criteria are met. As stated before, the document in question contains a list of expenses, the same expenses listed in the Complaint, that were prepared by the Petitioners related to the underlying injunctive proceeding. These expenses form the basis for Petitioners' claims for damages here. As this list was prepared by the Petitioners themselves, it is reasonable to believe, as the lower Court did, that Petitioners relied heavily on the same to craft their Complaint, had notice and possession of the same, and the document itself is authentic. Thus, under both Forshey and Mountaineer Fire, the lower Court did not err in considering this expense list in ruling on Respondents' Motion to Dismiss. Similarly, the lower Court did not err, under both Forshey and Mountaineer Fire, in determining this Motion under Rule 12(b)(6) as it did in this case.

Speaking briefly to the 2012 Deed, the Petitioners do not appear to challenge the lower Court taking judicial notice of the same. Assuming *arguendo* that the lower Court viewed the document under both Forshey and Mountaineer Fire, the lower Court did not err in considering the 2012 Deed in ruling on Respondents' Motion to Dismiss. The 2012 Deed is quoted in the Petitioners' Complaint, the same is relied upon explicitly in the Complaint, and no party has questioned the authenticity of the 2012 Deed. (A.R. 66). As such, the Court did not err and was not required to convert Respondents' Motion to Dismiss to one under Rule 56. Thus, the lower Court's decision should be affirmed.

C. THE CIRCUIT COURT DID NOT ERR IN HOLDING THAT THE PETITIONERS' CLAIMS ARE BARRED BY THE DOCTRINE OF LACHES.

In addressing the application of laches in this case, the Petitioners assert that the Court erred in granting the Respondents' Motion to Dismiss. Petitioners initially maintain that their Complaint sought "participation in the water system" in the form of monetary cooperation and establishment of a functioning association. However, no such claim nor no such relief was sought in the Complaint. Petitioners' Complaint addresses known and unknown expenses and claims that the parties were required to provide a monthly rate for water usage.[7] And, based on a plain reading of the Complaint, seeks reimbursement for pro rata shares of the same. There is no relief sought by the Petitioners, nor no relief that could be implied, that would require "non-monetary cooperation in forming a formal water-system structure, and the establishment of a long-term, prospective solution." (A.R. 65-70).

The remainder of Petitioners' argument is a string of unsupported statements regarding what has previously occurred and what the Petitioners have done in response. (Pets. Brief, pg. 17). For instance, Petitioners assert that they "made attempts" to obtain reimbursement and at one time formed a separate association for the purposes of maintaining adequate water service. (Pets. Brief, pgs. 18-19). Petitioners argue that these attempts, and specifically attempts to collect from these Respondents within a year of their purchase, is enough to defeat laches in this case.[8] Petitioners finally discuss prior expenses that other Respondents have partially reimbursed them for over the course of the past few

[7] Petitioners have never plead, nor provided any fact, that a rate was established, was created, or that they paid a rate which they are now, for the first time, claim they sought in their Complaint.

[8] Petitioners again make reference to matters outside the scope of this case and inappropriate for consideration on appeal. The injunctive matter is not properly before the court and had never been appealed. Similarly, the contents of settlement negotiations in the injunctive matter are not part of the record in the case nor appropriate for consideration on appeal.

years. (Pets. Brief, pg. 22). However, as noted above, Petitioners' argument fail to overcome laches as both a defense and a bar in this case.

While most causes of action are governed by applicable statute of limitations, the West Virginia Supreme Court has held that certain equitable claims, such as unjust enrichment, generally fall outside of the normal application of the general statute of limitation provisions under West Virginia Code. *See generally*, Absure, Inc. v. Huffman, 584 S.E.2d 507, 511 (W. Va. 2003) (per curiam). Plaintiffs' unjust enrichment claim is, in theory, equitable in nature and therefore subject to the doctrine of laches. Absure, Inc. v. Huffman, 584 S.E.2d 507, 511 (W. Va. 2003) (per curiam).

"Laches" is an equitable defense to tort claims, available to a Defendant in an action, which defense can be asserted in response to Plaintiff's inexcusable delay to assert a right Plaintiff possesses. *See, e.g.,* Syllabus, Bumgardner v. Corey, 124 W.Va. 373, 21 S.E.2d 360 (1942). "Laches is a delay in the assertion of a known right which works to the disadvantage of another, or such delay as will warrant the presumption that the party has waived [his] right." Syl. Pt. 4, State of West Virginia v. Carl Lee H., 196 W.Va. 369, 472 S.E.2d 815 (1996) *quoting* Syl. Pt. 2, Bank of Marlinton v. McLaughlin, 123 W.Va. 608, 17 S.E.2d 213 (1941); Syl. Pt. 1, State ex rel. Smith v. Abbot, 187 W.Va. 261, 418 S.E.2d 575 (1992). The Supreme Court of Appeals of West Virginia has further held:

> Where a party knows his rights or is cognizant of his interest in a particular subject-matter, but takes no steps to enforce the same until the condition of the other party has, in good faith, become so changed, that he cannot be restored to his former state if the right be then enforced, delay becomes inequitable, and operates as an estoppel against the assertion of the right. This disadvantage may come from death of parties, loss of evidence, change of title or condition of the subject-matter, intervention of equities, or other causes. When a court of equity sees negligence on one side and injury therefrom on the other, it is a ground for denial of relief.

Syl. Pt. 5, State of West Virginia v. Carl Lee H., *quoting*, Syl. Pt. 3, Carter v. Price, 85 W.Va. 744, 102 S.E. 685 (1920); Syl. Pt. 2, Mundy v. Arcuri, 165 W.Va. 128, 267 S.E.2d 454 (1980); Syl. Pt. 5, Laurie v. Thomas, 170 W.Va. 276, 294 S.E.2d 78 (1982).

The Doctrine of Laches further may be defined as:

> …[N]eglect as leads to a presumption that the party has abandoned his claim and declines to assert his right. It is delay in the enforcement of one's rights as works disadvantage to another; or, such delay without regard to the effect it may have upon another as will warrant the presumption that the party has waived his right.

Hoffman v. Wheeling Sav. & Loan Ass'n., 133 W.Va. 694, 707, 57 S.E.2d 725, 732-38 (1950). In turn, and in application, "one who seeks to assert the defense of laches must show, "(1) lack of diligence by the party against who the defense is asserted, and (2) prejudice to the party asserting the defense." Dep't of Health & Human Res., Child Advocate Office ex rel. Robert Michael B. v. Robert Morris N., 195 W. Va. 759, 762 (1995).

As noted above, both the 2012 Deed and the list of expenses authored by the Petitioners were and remain appropriate for consideration as part of Respondents' Motion to Dismiss.[9] From these documents, several key facts are established. First, Petitioners were part of the initial legal proceeding that resulted in the establishment of the subject deed. (A.R. 116). Second, this Deed sought to create an entity for the management of the subject water system when the Deed was created in 2012. (A.R. 116-117). Third, the Petitioners were identified as property owners at the time of execution of the 2012 Deed and were anticipated to be members of the association once it was formed. Id. Finally, Petitioners began unilaterally expending money towards and for the

[9] Assuming *arguendo* that the list of expenses was inappropriately considered, the analysis under laches remains unchanged by virtue of the 2012 Deed.

operation of the subject well system in 2012 and continued to do so since that time. (A.R. 67-70, 114-115).[10]

These facts alone establish that the Petitioners knew of their rights or were cognizant of their interest in a particular subject matter, i.e. the well, at a minimum when the Deed was generated in 2012. This is reflected in the Court's Order granting the Motion to Dismiss on several occasions. Petitioners do not dispute that they were aware of their rights at this time. Moreover, as the Petitioners have allegedly asked for reimbursement or contribution for property owners that pre-date these Respondents, there can simply be no argument that the Petitioners have not been aware of their asserted right to the same for the past ten (10) years. Rather, Petitioners maintain, initially, that they have attempted to seek reimbursement or cost-sharing as an assertion of this right.

However, the steps that the Petitioners undertook, for the sake of argument taken as true, are hardly assertion of a legal right to reimbursement. While requests have been made, by the Petitioners' own words the same, with few exceptions, have not been honored. Rather, the Petitioners continued to unilaterally and for their own benefit expend funds allegedly to keep and maintain water access. The record is absent of, because the same does not exist, any reference to any prior lawsuits, liens, or any other possible legal action against any prior property owner to seek contribution for these expenses. Rather, it was not until the Respondents fought back against the baseless assertions that money owed and a refusal to bend to the will of the Petitioners, that the first legal action was taken for the purpose of expense contribution. This was not lost on the

[10] Petitioners, in their Amended Complaint and throughout their brief, states that the Big Bend Mountain Retreat Water Utility System existed and that they were members. However, at all times relevant hereto, this is blatantly false and has been recognized as such through the record and Petitioners' Brief.

lower Court and reflected throughout his ruling on the Motion to Dismiss.

The second area of the laches analysis pertains to the prejudice that would be suffered by the party asserting the defense, in this case the Respondents. Whether it comes from the Complaint or the expense list authored by the Petitioners, it is clear the damages sought in the case are for any and all claimed expenses that have been incurred by the Petitioners since 2012. These expenses were incurred, apparently, without consent from or approval by any property owner serviced by the well, with the exception of the Petitioners. Yet now, Petitioners expect these Respondents to equally share in these expenses without consideration of the time of the expense, the parties utilizing the well at the time, or any other factor that may inequitably impact the Respondents. Even more prejudicial, as these Respondents were not property owners at the time most of these expenses incurred, these Respondents have no way of knowing now if the same were necessary, related, or reasonable in light of the needs of the well system. What Petitioners are expecting is that these Respondents will simply take their word for it and equally chip in, neither of which is equitable or proper under West Virginia law. Furthermore, Petitioners maintain time and time again that this "association" is owed for reasonable use of the water. First and most critical, there is not now, nor has there been, the association anticipated by the 2012 Deed. Second, and more importantly, no property owner since 2012 (and arguably before) has ever had to make these payments.

Finally, there is undoubtedly other grounds that support an inequitable prejudicial impact to these Respondents from the dilatory actions of the Petitioners. There is no dispute that several of the properties have changed hands over the years. Identifying who participated and to what extent they utilized the water system may never be able to be established. Furthermore, as we are

discussing expenses incurred upwards of ten (10) years ago, the required documentation to substantiate the need for and reasonableness of any said expenses will be difficult, if not impossible, to obtain. Additionally, as these decisions were made in real time, these Respondents will now lack the ability to object to or challenge the need for any expense or otherwise establish the same was not necessary. Finally, as stated in the outset, these Respondents, based primarily on the tyrannical conduct of the Petitioners, are no longer the owners of any property that would be serviced by the subject well system. During their time of ownership there was minimal water usage and, according to the Petitioners, no costs incurred to operate or maintain the well system. Yet, Petitioners seek a pro rata share of all past and future costs to operate and maintain the well system.

Simply stated, the Doctrine of Laches was correctly applied in this case. Petitioners, despite knowing their rights under the 2012 Deed, took no appropriate legal action to enforce their rights to claimed contribution for the well system. Rather, the Petitioners, acting with their own interests squarely in the focus, did what they saw fit for the better part of a decade so they could have access to well water. This delay is dilatory and simply inexcusable. The assertion of the same now only seeks to prejudice these Respondents, in the form of a baseless, inequitable equal share of ten (10) years worth of unchecked expenditures, many of which cannot and will never be able to be substantiated. Thus, it is the position of these Respondents that the lower Court did not err in its application of the Doctrine of Laches and appropriately granted dismissal of Petitioners' Complaint.

CONCLUSION AND PRAYER FOR RELIEF

The well-reasoned and properly supported Order of the lower Court in this case should not

be disturbed. The record in this case demonstrates that the Court did not err in considering extrinsic documents implicitly and explicitly related to Petitioners' sole cause of action in this case. The undisputed portions of the record, viewed in their entirety, establish that the Doctrine of Laches acts as, and in fact is, a bar to Petitioners' sole claim. Petitioners undisputedly had a legal right created in 2012 and, over the course of ten (10) years, took no action to enforce the same. Rather, the Petitioners acted in their sole interest and generated expenditures for their sole gain. Petitioners' dilatory behavior should not be rewarded as the same both establishes a waiver of their rights under the subject deed and acts only to prejudice these Respondents. In affirming the decision of the lower Court, this Court would be ensuring that the Petitioners do not reap any benefit from the dilatory delay in this case.

Based on the foregoing, Respondents, Wes and Tamy Runyan, respectfully request that this Court **DENY** Petitioners' Petition for Appeal.

Respectfully Submitted,
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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
INTERMEDIATE COURT OF APPEALS

Docket No. 22-586

LEWIS SPRINGER AND KAREN SPRINGER,
Petitioners and Plaintiffs below,

v.

BIG BEND MOUNTAIN RETREAT WATER UTILITY SYSTEM ASSOCATION, EARL GILLIS & KAREN GILLIS, WES RUNYAN & TAMY RUNYAN, AND TRACY WILSON & DAVID WILSON,
Respondents and Defendants below.

CERTIFICATE OF SERVICE

The undersigned, counsel of record for Respondent, does hereby certify on this 8th day of December, 2022, that a true copy of the foregoing "***RESPONDENTS WES RUNYAN AND TAMY RUNYAN'S RESPONSE TO PETITIONERS LEWIS SPRINGER AND KAREN SPRINGER'S PETITION FOR APPEAL***" was served via the WV E-file System and U.S. First Class Mail to counsel as follows:

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