IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

DOCKET NO. 22-621

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

v.

STEPHANIE HAYMOND and DAVID HAYMOND,
Plaintiffs Below, *Respondents*.

From the Circuit Court of Ritchie County, West Virginia
Civil Action No. 20-C-30

BRIEF OF RESPONDENTS STEPHANIE HAYMOND AND DAVID HAYMOND

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I. CERTIFIED QUESTIONS

1. Is the transfer by deed of real property in violation of a spendthrift clause void *ab initio* or merely voidable?

2. If the answer to number (1) is "voidable," were the Plaintiffs 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?

II. STATEMENT OF THE CASE

On May 8, 1989, Irene Nutter Haymond (a/k/a Mary Irene Haymond or Irene N. Haymond) ("Ms. Haymond") died testate as a resident of Riverside County, California. A.R. at 3.[1] Pursuant to the Last Will and Testament of Irene Nutter Haymond (the "Will"), Ms. Haymond created a testamentary trust (the "Trust") for the benefit of her grandchildren, Daniel Haymond, IV, Respondent David Haymond, Respondent Stephanie Haymond, Jessica Haymond, and Christin Haymond. *Id*. at 16. Specifically, 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 Respondent David Haymond; and the remaining fifty (50%) to the issue of Ms. Haymond's other son, the Petitioner, being Respondent Stephanie Haymond, Jessica Haymond, and Christin Haymond. *Id*. at 17. Pursuant to the Will, Ms. Haymond appointed her aforementioned two sons, Daniel Marsh Haywood, III, and the Petitioner, as co-trustees of the Trust. *Id*. at 16.[2]

The assets specifically devised to the Trust consisted solely of real property, including the surface of approximately 400 acres of real property located in Ritchie County, West Virginia, and the oil, gas, and minerals within and underlying such property (the "Real Property"). *Id.* at 16.

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[1] References to the Appendix Record, the contents of which were agreed to by the parties, are set forth as A.R.

[2] Daniel Marsh Haymond, III, died in August of 2013, leaving the Defendant as the sole trustee of the Trust.

Most notably, 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"). *Id.* at 18 (emphasis added).

On or around September 4, 1993, Respondent Stephanie J. Haymond, at the request of her father, the Petitioner, signed a document prepared by the Petitioner purporting to transfer her current and future interests in said Real Property to the Petitioner. *Id.* at 4, 35. A few months later, on December 2, 1993, Respondent David Haymond, also at the request of the Petitioner, signed a document purporting to convey his interest in the Real Property to the Petitioner. *Id.* at 4, 36-38. Pursuant to the terms of said deeds (the "Deeds"), the consideration paid for the purported transfers was only $100.00 and $3,000.00, respectively. *Id.* at 4-5.

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, Christin Haymond, reached the age of thirty (30) years. *Id.* at 4. Christin Haymond turned thirty (30) years of age in February of 2014. *Id.* at 5. After the termination of the Trust, the Petitioner executed deeds conveying to himself an interest in the Real Property and also purportedly conveying an interest in the Real Property that should belong to Respondent David Haymond to a trust for David Haymond's son, Zarick Haymond, but reserving a life estate in certain royalty income for the Respondent and his spouse. *Id.* at 5.

Based on the Spendthrift Clause, and the fact that the Deeds were executed prior to the termination of the Trust, the Respondents filed the complaint (the "Complaint") in the underlying action (the "Action") on August 6, 2020, wherein they, pursuant to Count I, requested that the Circuit Court of Ritchie County, West Virginia (the "Circuit Court"), declare the Deeds void

because the Spendthrift Clause prohibited the transfer, voluntary or otherwise, of any interest of the Respondents in the Trust until its termination. *Id.* at 6-7.

On or about October 30, 2020, the Petitioner filed his answer to the Complaint in which he did not deny any of the factual allegations surrounding Count I, and, in fact, admitted that the Respondents purportedly transferred their interest in the Real Property to the Petitioner prior to the termination of the Trust. *Id.* at 51. Thereafter, on or about December 14, 2020, the Respondents filed Plaintiffs' Motion for Partial Judgment on the Pleadings and an accompanying Memorandum of Law in Support of Plaintiffs' Motion for Partial Judgment on the Pleadings (the "Motion") wherein the Respondents requested that the Circuit Court rule that the Deeds were void *ab initio* based on the terms of the Trust and Spendthrift Clause therein. *Id.* at 68.

In response to the Motion, the Petitioner filed Defendant's Memorandum of Law in Opposition to Plaintiffs' Motion for Judgment on the Pleadings wherein the Petitioner asserted that the Deeds are neither void nor voidable because the Respondents consented to the conveyances and that the relief requested in the Motion for Judgment on the Pleadings is time-barred at both law and equity. *Id.* at 76-81, 85. Notably, the Petitioner failed to cite any relevant law in his response as to the effect of a spendthrift clause on the conveyance of real property made in violation of such clause. On or around February 12, 2021, the Respondents filed Plaintiffs' Reply Brief in Support of Motion for Partial Judgment on the Pleadings wherein they reasserted that the Deeds are void because spendthrift clauses prohibit and prevent a beneficiary from consenting to a conveyance and neither the doctrine of laches, nor any statute of limitations, is applicable to transactions that are void *ab initio*. *Id.* at 95-99.

Following the aforementioned Motion, response, and reply, the Respondents and the Petitioner, pursuant to instructions from the Circuit Court, filed their respective proposed Findings

of Fact and Conclusions of Law as well as Plaintiffs' Proposed Certification Order and Defendant's Predicate Facts Pursuant to the Instruction of the Court and Proposed Certified Questions. *Id.* at 102-144. Thereafter, by Certification Order dated May 9, 2022, the Circuit Court set forth the factual background of the Action with two certified questions, and the Circuit Court's proposed answers thereto, to be submitted to the Supreme Court of Appeals of West Virginia. *Id.* at 145,160. Importantly, the Circuit Court's proposed answer to its First Certified Question, being whether a transfer by deed of real property in violation of a spendthrift clause is void *ab initio* or merely voidable, is that such a deed is void *ab initio*. *Id.* at 150.

There are no questions of material fact that need to be resolved to conclude the legal issues raised in Count I of the Complaint.[3] Thus, the Certified Questions are ripe for this Court's consideration.

III. SUMMARY OF ARGUMENT

The issues before this Court are whether a beneficiary's purported transfer by deed of real property, held in trust, in violation of a spendthrift clause in such trust is void *ab initio* or merely voidable, and, if such a transfer is voidable, were the Respondents required to institute a civil action asserting their claims that the Deeds were void within a certain period of time following their execution and delivery of such deeds to the Petitioner. In answering the First Certified Question, the Deeds are void *ab initio* because the Respondents had no legal title to the Real Property at the time the Deeds were executed—they had only equitable title as beneficiaries of the Trust—and such transfers violated the Spendthrift Clause. The Respondents' position, which was adopted by the Circuit Court, is supported by West Virginia statutory law and case law as well as cases from foreign jurisdictions, which, like West Virginia, have also adopted the Uniform Trust

[3] The parties have reached a settlement as to the remaining Counts raised in the Complaint, and therefore the Civil Action will be concluded once Count 1 is resolved.

Code, and have directly addressed the issue certified to this Court. A contrary holding would conflict with the paramount rule in interpreting the provisions of a trust, namely that the intent of the settlor controls.

A holding by this Court that the Deeds were void *ab initio* would alleviate the need to address the Second Certified Question; however, assuming *arguendo* that the Deeds were merely voidable, the Respondents had ten (10) years from the Trust's termination to institute an action asserting their claims that the Deeds were voidable, and the doctrine of laches is not applicable as the pertinent claim seeks to quiet title to real estate. Therefore, the Action was timely filed.

IV. STATEMENT REGARDING ORAL ARGUMENT

The Respondents submit that oral argument is unnecessary for this appeal. The underlying facts to this appeal are undisputed, the legal arguments are adequately presented in the briefs, and the decisional process will not be significantly aided by oral argument.

V. ARGUMENT

A. Certification Standard.

The Uniform Certification of Questions of Law Act expressly permits the Supreme Court of Appeals of West Virginia to "answer a question of law certified to it by any court of the United States . . . if the answer may be determinative of an issue in a pending cause in the certifying court and if there is no controlling appellate decision, constitutional provision or statute of this State." W. Va. Code § 51-1A-3. This Court has found it necessary to answer a certification of a question of law when there has been a determinative issue in the underlying cause of action and no clear controlling precedent governed. *See Am. Modern Home Ins. Co. v. Corra*, 222 W. Va. 797, 804 n.2, 671 S.E.2d 802, 809 n.2 (2008).

When this Court is sitting pursuant to the Uniform Certification of Questions of Law Act, "it is simply asked to answer questions of law." *Barefield v. DPIC Cos.*, 215 W. Va. 544, 550, 600 S.E.2d 256, 262 (2004). Under its review, this Court will "assume that the findings of fact by the certifying court are correct." *Id.* Review is appropriate when the legal issue substantially controls the case. Syl. Pt. 5, *Bass v. Coltelli*, 192 W. Va. 516, 453 S.E.2d 350 (1994). The "standard of review of questions of law answered and certified by a circuit court is de novo." Syl. Pt. 1, *Gallapoo v. Wal-Mart Stores, Inc.*, 197 W. Va. 172, 475 S.E.2d 172 (1996).

As stated above, resolution of the Action is wholly dependent upon this Court's response to the two Certified Questions presented by the Circuit Court. The Circuit Court has certified all pertinent facts necessary for determination of the Certified Questions. Therefore, this Court's response is appropriate under the Uniform Certification of Questions of Law Act.

B. The Transfer by Deed of Real Property in Violation of a Spendthrift Clause is Void *Ab Initio*.

The law has long recognized that certain beneficiaries of a trust require protection from themselves. Such persons, referred to as "spendthrifts," have been defined by the First Edition of Black's Dictionary as "[a] person who by excessive drinking, gambling, idleness, or debauchery of any kind shall so spend, waste, or less his estate as to expose himself or his family to want or suffering . . . ." Black's Law Dictionary 1115 (1st ed. 1891). In 1990, around the same time as the Deeds were executed, Black's Law Dictionary expanded the definition of "spendthrift" to include someone "who spends money profusely and improvidently; a prodigal; one who lavishes or wastes his estate." Black's Law Dictionary 1400 (6th ed. 1990).

The mechanism put into place to protect such "spendthrifts" from themselves is known as a "spendthrift trust." The Second Edition of Black's Law Dictionary defines the term "spendthrift trust" as "[a] term commonly applied to those trusts which are created with a view of providing a

fund for the maintenance of another, and at the same time securing it against his improvidence or incapacity for his protection. Provisions against alienation of the trust funds by the voluntary act of the beneficiary or his creditors are the usual incidents." Black's Law Dictionary 1101 (2nd ed. 1910). This definition was endorsed or adopted by this Court over a century ago. *See Hoffman v. Beltzhoover*, 71 W. Va. 72, 74, 76 S.E. 968, 969 (1912) (recognizing that a "spendthrift trust" is a trust that is "created with a view of providing a fund for the maintenance of another, and at the same time securing it against his own improvidence or incapacity for self-protection"). The Sixth Edition of Black's Law Dictionary further expanded on this definition by providing that a "spendthrift trust" is "[o]ne which provides a fund for benefit of another than settlor, secures it against [the] beneficiary['s] own improvidence, and places it beyond his creditors' reach. A trust set up to protect a beneficiary from spending all of the money that he is entitled to." Black's Law Dictionary 1400 (6th ed. 1990).

In modern estate planning practice, spendthrift trusts are commonly utilized and accepted even when the beneficiaries do not meet the traditional definition of "spendthrifts." For example, such trusts are commonly used to protect inheritances when young and inexperienced beneficiaries are involved like the case here with Ms. Haymond's grandchildren. In fact, West Virginia has statutorily codified the aforementioned well-settled principles concerning spendthrift trusts. West Virginia Code § 36-1-18, which was in effect until West Virginia adopted the Uniform Trust Code in 2011, provided the following:

> Estates of every kind in real or personal property, holden or possessed in trust, shall be subject to the debts and charges of the persons to whose use or for whose benefit they are holden or possessed, as they would be if those persons owned the like interest in the things holden or possessed, as in the uses or trusts thereof; but **where the creator of the trust has expressly so provided in the instrument or conveyance creating the trust, <u>real</u>** or personal **property may be held in trust upon condition that the income therefrom shall be applied by the trustee to the support and maintenance of a beneficiary or beneficiaries of the trust** in being

> at the time of the creation of the trust, other than the creator of the trust, for the life of such beneficiary or beneficiaries, **without being subject to the liabilities of, or alienation by, such beneficiary or beneficiaries.**

W. Va. Code § 36-1-18 (1993) (emphasis added). This statute was in effect on the date the Deeds were executed by the Respondents, and while the Trust was still in existence. In 2011, West Virginia adopted the West Virginia Uniform Trust Code, and Section 5-502 thereof, titled "Spendthrift Provision," states that "[a] beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision, and, except as otherwise provided in this article, a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary." W. Va. Code § 44D-5-502.

The Supreme Court of Appeals of West Virginia has not directly addressed the application of the aforementioned statutes to attempted transfers of real property by beneficiaries prior to the termination of a spendthrift trust, but other jurisdictions have examined the issue presently before this Court and determined that (a) any purported transfer is void and (b) any deed that is void as a result of a violation of the spendthrift clause cannot later be deemed valid. The former point is illustrated by *Humphreys v. Welling*, a Missouri case with very similar facts to this Action, wherein a grandmother created a testamentary trust for the benefit of her grandson that provided the following:

> "'3rd. I hereby give, devise and bequeath unto my beloved grandson, Fred Humphreys, all of the residue of my property, both real and personal and wherever situated, which said property, however, I give and bequeath to my beloved grandson, Fred Humphreys, in trust, and I hereby appoint my son, Charlie Humphreys, as trustee, which said property is to be held in trust by the said Charlie Humphreys as trustee for the said Fred Humphreys until my said grandson Fred is thirty (30) years of age."

Humphreys v. Welling, 341 Mo. 1198, 1202, 111 S.W.2d 123, 124 (1937). The testamentary trust also contained the following provision: "I further provide that the said Fred shall not have the

power of alienation or disposing of said land or selling or managing or in any way conveying the same until he shall reach the age of thirty (30) years . . . ." *Id.* Prior to reaching the age of thirty (30) years, the grandson executed a deed on February 2, 1933, purporting to transfer his interest in certain real property held in the testamentary trust to his mother. *Id.* The grandson subsequently died intestate on March 31, 1933, and the remainder beneficiaries of the testamentary trust challenged the purported conveyance made before the grandson's death. The Supreme Court of Missouri held that the purported transfer was void because legal title to the real property was not in the grandson until the termination of the trust. *Humphreys,* 341 Mo. at 1204, 111 S.W.2d at 125-126. In arriving at its conclusion, the court focused on the intent of the testatrix and stated that "[t]the will evidences testatrix's solicitude for her beneficiary's material welfare and for a certain time a desire to safeguard against his possible inexperience in the ownership of the land." *Humphreys,* 341 Mo. at 1204, 111 S.W.2d at 126. Prior to said time, the beneficiary had only a contingent executory devise, not title in fee, that did not ripen into an estate until the termination of the trust. *Id.*

Similarly, another case, *Bradley v. Shaffer* from Texas, is instructive of the latter point, namely that a deed that is void as a result of a violation of the spendthrift clause cannot later be deemed valid. *See Bradley v. Shaffer,* 535 S.W.3d 242, 250 (Tex. App. 2017). In *Bradley,* a husband and wife had devised certain mineral interests into two testamentary trusts. *Id.* at 244. The beneficiaries of the two testamentary trusts subsequently placed the inherited mineral interests into a family trust. *Id.* The subject family trust contained a spendthrift clause that provided that "'[n]o . . . beneficiary shall have any right or power to anticipate, pledge, assign, sell, transfer, alienate or encumber his or her interest in the Trust in any way." *Id.* at 248. One of the beneficiaries of the family trust subsequently executed a mineral deed in 2006 purportedly conveying his

beneficial interest in the minerals held in the trust as well as any mineral interest held in the trust that he may acquire in the future. *Id.* at 245. The trustees of the family trust subsequently filed a declaratory judgment action seeking to have the purported conveyance declared void *ab initio*. *Id.*

In reaching its decision in *Bradley*, the Texas Appellate Court first acknowledged that the express terms of the family trust precluded the beneficiary from assigning his beneficial interest in the trust and thus any conveyances were invalid at the time that they occurred. *Id.* at 248. The court also addressed the question of whether the conveyance, which was void at the time it was made, could become valid later under the doctrine of after-acquired title. *Id.* The court, noting that a beneficiary's attempted transfer of her interest in a spendthrift trust is generally treated as void, held that the doctrine of after-acquired title was not applicable to a void conveyance. *Id.* at 250. Simply put, a void deed is always void. *See Chen v. Bell-Smith,* 768 F. Supp. 2d 121, 134 (D.C. 2011) (holding that a deed that is void *ab initio* is void from the beginning and nothing can cure it); *Heavner v. Hess,* 2022 W. Va. Lexis 605, *65 (W. Va. Sept. 20, 2022) (holding that a void deed is always void); *Brooke Grove Found., Inc. v. Bradford,* 2018 U.S. Dist. LEXIS 206608, * 22 (D. Md. Dec. 4, 2018) (holding that a deed that is void *ab initio* has no legal effect and a bona fide purchaser of property transferred thereby is not protected).

In addition to the aforementioned well-reasoned cases, the validity of a restraint on a beneficiary's ability to transfer his or her interest in a trust is well-recognized in a secondary and oft-cited legal resource for trust administration, even if the beneficiary is entitled to have the principal of the trust conveyed to him or her at a later date. Specifically, Section 153 of the Restatement (Second) of Trusts provides that "if by the terms of a trust the beneficiary is entitled to have the principal conveyed to him at a future date, a restraint on the voluntary or involuntary

transfer of his interest in the principal is valid." Restatement (Second) of Trusts § 153(1). The Restatement provides the following example:

> A transfers $100,000 to B in trust to pay the income to C until he reaches the age of thirty-five, and to pay him the principal when he reaches that age or to pay the principal to D on C's death if he dies before thirty-five. By the terms of the trust it is provided that C's interest in income and in principal shall not be transferrable by him or reachable by his creditors. The restraint on alienation is valid, both as to income and as to principal, and prior to C's reaching thirty-five or dying under that age his interest in income and principal is not assignable by him or reachable by his creditors.

Id. at § 153 cmt. b(1).

Finally, while the Supreme Court of Appeals of West Virginia has not specifically addressed whether a conveyance of real property held in trust by a beneficiary of such trust in violation of a spendthrift clause is void *ab initio*, a transfer of real estate in violation of a statutory provision is void. *See Miller v. Ahrens*, 163 F. 870, 874 (N.D.W. Va. 1908). Indeed, it has long been held that "[t]here never can be by the parties either ratification of confirmation of a contract that is expressly prohibited by law to be made, or which contravenes public policy." *Id.* at 875. Thus, a conveyance in violation of a West Virginia statute such as the spendthrift protections of West Virginia Code § 36-1-18 or current West Virginia Code § 44D-5-502 is void.

Here, like the situation in *Humphreys*, the testatrix, Ms. Haymond, created a trust for the benefit of her grandchildren that included only real property interests, including approximately 400 acres of surface and mineral rights in Ritchie County, West Virginia. The Trust contained a spendthrift clause stating 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**." A.R. at 18 (emphasis added). The Will further stated that the Trust would not terminate until the youngest grandchild attained the age of thirty (30) years, which occurred in February of 2014. *Id.* at 17. In 1993, over twenty (20) years prior to the

termination of the Trust, the Respondents executed the Deeds purporting to transfer their interests in the Real Property held in the Trust to the Defendant for nominal fees of $100.00 and $3,000.00, respectively. Said purported transfers were in clear violation of the Spendthrift Clause and the applicable West Virginia statutes cited above. Moreover, the Respondents had no legal title to convey when the Deeds were signed in 1993, and, similar to the situation in the *Bradley* case discussed above, the doctrine of after-acquired title is not applicable in cases where the initial conveyance was void *ab initio*. *See Bradley,* 535 S.W.3d at 250. As a result, the Deeds should be declared void *ab initio* as a matter of law by this Court.

Moreover, not only would any contrary holding contradict well-settled law, but such a contrary holding would also conflict with the paramount rule in interpreting the provisions of a trust, namely that the intent of the settlor controls. Specifically this Court has long held that "[i]t is axiomatic that 'the paramount principle in construing or giving effect to a trust is that the intention of the settlor prevails, unless it is contrary to some positive rule of law or principle of public policy.'" *Bond v. Bond,* 215 W. Va. 22, 26, 592 S.E.2d 801, 805 (2003) (citing Syl. Pt. 1, *Hemphill v. Aukamp,* 164 W. Va. 368, 264 S.E.2d 163 (1980)).

The Spendthrift Clause at issue in this case demonstrates Ms. Haymond's unequivocal intent to prohibit her grandchildren from conveying their interests in the Trust, including their interests in the Real Property, prior to the termination of the Trust, being upon the youngest grandchild attaining the age of thirty (30) years. As discussed, spendthrift protections are often added to trusts to protect beneficiaries from their own inexperience. In fact, that is exactly what Ms. Haymond's Will sought to safeguard against here where the Deed signed by Respondent Stephanie Haymond, which was prepared by the Petitioner, attempted to convey her entire interest in the Real Property for only $100.00, and the Deed signed by Respondent David Haymond

attempted to convey his entire interest in the Real Property for only $3,000.00. These scenarios epitomize the *Humphreys* court's concern with safeguarding a beneficiary's inexperience in land ownership and are the exact scenarios that spendthrift trusts are created, and Ms. Haymond tried, to prevent.

In his brief, the Petitioner erroneously argues that real estate can never be subject to a spendthrift clause. As support for said assertion, the Petitioner cherry picks portions of various cases decided in the 1920s in which the respective courts held that an equitable fee simple estate in real property cannot generally be encumbered by a spendthrift trust. The Petitioner, however, fails to cite provisions in the same cases where the courts recognized spendthrift trusts as a valid restraint on alienation of real property. For example, in one of the cases cited by Petitioner, *McCreery v. Johnston*, upon concluding that the plaintiff acquired an equitable fee simple estate in real estate, this Court examined whether real estate could ever be burdened or limited by having attached to it a spendthrift trust. *McCreery v. Johnston*, 90 W. Va. 80, 84, 110 S.E. 464, 465 (1922). In analyzing such, the Court stated:

> It must be borne in mind that all restraints upon alienation are against the public policy of our law. The policy of the law is that all property should, so far as is possible, be free to be aliened or disposed of by the actual owner thereof. There are, of course, limitations upon this rule but they are carried no further than the necessity of the occasion warranting them requires. One of the exceptions in this jurisdiction, and in most other jurisdictions in this country, is that an owner of property may create what is popularly called a spendthrift trust for the benefit of some improvident relative or friend. In England the validity of such trusts is denied and the same is true in some jurisdictions in this country. **However, the right of the owner of property to dispose of it in such a way that it will secure a maintenance to an improvident or impecunious relative, and save him from the effect of his own prodigality is firmly established in this state by our decisions**.

McCreery, 90 W. Va. at 84, 110 S.E. at 464-465 (emphasis added). The *McCreery* Court further analyzed the specific circumstances of the case and concluded that the restraint upon alienation at

issue in that case was beyond what was necessary to accomplish the testator's purpose of making provision for his son. *McCreery*, 90 W. Va. at 85, 110 S.E. at 466. Specifically, one factor that the Court considered in making its determination was the fact that the devise to the testator's son was "without any limitations as to time . . . ." *McCreery*, 90 W. Va. at 84, 110 S.E. at 465. Based upon the fact that the spendthrift provision was beyond what was necessary to accomplish the testator's purpose, the Court declined to enforce that specific spendthrift trust. *McCreery*, 90 W. Va. at 85, 110 S.E. at 466.

As illustrated then, the *McCreery* Court did not rule that a spendthrift provision is unenforceable against real estate as the Petitioner's brief asserts. Quite the contrary in fact. Not only is *McCreery* clearly distinguishable from the question currently before this Court because the Trust in the Action was to terminate upon the youngest beneficiary, Christin Haymond, reaching the age of thirty (30) years, *McCreery* actually supports Respondents' position because the Spendthrift Clause did accomplish Ms. Haymond's purpose to "safeguard against [her grandchildren's] possible inexperience in the ownership of the land." *Humphreys*, 341 Mo. at 1204, 111 S.W.2d at 126.

The Petitioner cites additional cases for the premise that real property cannot be subject to a spendthrift provision, however, each case cited by Petitioner is easily distinguishable from the Action and do not apply to the question and facts at-issue herein. For example, in *White v. White*, this Court analyzed the enforceability of restraints on alienation on real property. *White v. White*, 108 W. Va. 128, 144, 150 S.E. 531, 538 (1929). In doing so, the Court refused to rule on the validity of a restriction on alienation operating against only a person or a few persons and instead held only that a restriction on alienation to an entire race, being anyone of Ethiopian descent, when

appended to a fee simple estate, is void. *Id.* Obviously *White* is inapposite to the restriction created by a spendthrift trust (as is the case here) because it involved a restriction on alienation in a deed.

Likewise, the Petitioner's reference to *Cobb v. Moore* also sees him try to extend a preferred outcome in a matter with a totally different set of facts to the Action. In *Cobb*, a father devised real estate to his son with the condition that the devise would be null and void if his son ever sold said real estate. *Cobb v. Moore*, 90 W. Va. 63, 64, 110 S.E. 468 (1922). The Court determined that such a restraint on alienation of real property, *i.e.*, in a grant of a fee-simple estate, was void. *Id*. at 66, 110 S.E. at 469. Important to this set of facts though, the *Cobb* Court specifically observed that there was "no attempt to create what is termed a spendthrift trust[.]" *Id*.

Last, the Petitioner relies on *Kerns v. Carr*. In *Kerns*, a father, by deed, conveyed real property to his son. 82 W. Va. 78, 79, 95 S.E. 606 (1918). The deed provided that the son "is not to have power to sell or make a deed for such land, nor the law nor court of justice is not to have the right to sell or rent this land for [son]'s debts" and that at the son's death the real property "is to pass to his lawful heirs." *Id*. The son executed a deed conveying his interest in the real property, being a legal life estate, and the question presented to this Court was whether the deed was void as the result of the attempted restraint on alienation. *Id*. Again, like *White* and *Cobb*, the *Kerns* case presented an issue to this Court not related to the one presented here. In fact, the *Kerns* Court, like the *Cobb* Court, specifically noted that the deed in question in that case did not create or signify any intention to create a trust for the son's benefit or protection against the demands of creditors, but rather, conveyed land directly to the son with the remainder to the son's children in fee. *Id*.

In citing these older cases, which miss the mark as explained above, the Petitioner seems to be asserting that real property can never be held by a trust with a spendthrift provision as it

would constitute an unreasonable restraint on alienation. By doing so, the Petitioner conveniently ignores points of law and facts that defeat his position, and ignores decades of law permitting real estate to be held in spendthrift trusts. First, West Virginia expressly recognizes a spendthrift trust's ability to cover or include real property, namely West Virginia Code § 36-1-18, which was in effect on the date the Deeds were executed, and the now effective § 44D-5-502 of the West Virginia Uniform Trust Code, and spendthrift protections placed in trusts have long been recognized by courts as valid restraints on beneficial interests in trusts. *See, e.g.*, Restatement (Second) of Trusts § 153; *Humphreys, supra*.

Second, the restraint on alienation of the Real Property created by Ms. Haymond was limited, by intentional design, to a spendthrift restriction placed upon the beneficiaries' equitable title to the land, not the legal title to the land held by the trustee. Indeed, Ms. Haymond was apparently keenly aware of the limitations the law imposed on her ability to restrict or restrain alienation of the Real Property, which is why she did not prohibit the trustee from selling the Property, only the beneficiaries from selling their equitable title to the Property. Moreover, in the clause of the Trust in which she limited the Trust's duration to the youngest grandchild attaining the age of thirty (30) years, she likely knew she could not *require* it so she "wish[ed]" that the share of each grandchild in the Real Property "be kept in his or her family and passed on to his or her children or grandchildren." A.R. at. 17. In the next clause of the Trust, Ms. Haymond literally set forth the "Rule Against Perpetuities" to expressly signify her expectation and intent that the Trust should not violate same. *Id*. at 17-18. It was only then that Ms. Haymond included the permissible and reasonable Spendthrift Clause to prevent her (then young) grandchildren from alienating their interest in nearly 400 acres of surface and mineral rights before the youngest of them turned thirty (30) years old. *Id*. at 18.

Last, the Petitioner's argument fails to offer any rebuttal to the logical holdings of the Missouri and Texas courts in *Humphreys* and *Bradley*, respectively, and why said holdings should not be adopted in West Virginia, particularly since each jurisdiction relies heavily on the Uniform Trust Code.

Based on the foregoing arguments, the Respondents respectfully request that this Court hold that the transfer of a real property in violation of a valid spendthrift clause is void *ab initio* in response to the First Certified Question.

C. If the Deeds are Deemed Voidable, the Respondents Had Ten Years after the Termination of the Trust to Initiate the Action Asserting Their Claims to Declare the Deeds Void.

If this Court answers the First Certified Question by finding that the Deeds were void *ab initio,* the Second Certified Question becomes moot. Nonetheless, even if this Court finds that the Deeds were merely voidable, the Respondents were still within their statutory time period to challenge the Deeds and have them declared void. Under West Virginia law, "[w]here legal title is involved in a case, the statute of limitation applicable thereto governs ordinarily even if the legal title be involved in an equitable proceeding and if such statute does not bar the right to land, laches can not bar such right." Syl. Pt. 2, *Condry v. Pope,* 152 W. Va. 714, 166 S.E.2d 167 (1969). This Court has clarified that, in a trust action, any applicable statute of limitation concerning title to real property will not begin to run against a beneficiary until repudiation of the trust. *See* Syl. Pt. 3, *Bennett v. Bennett,* 92 W. Va. 391, 401, 115 S.E. 436, 439 (1922). This delay in the application of statutes of limitation is understandable given that the law is clear in West Virginia that legal title to property, including real property, does not vest in a trust's beneficiary until the termination of the trust. *See Dadisman v. Moore,* 181 W. Va. 779, 784, 384 S. E. 2d 816, 821 (1988). Up until

the termination of a trust, a trust's beneficiary has only an equitable interest in the trust's property. *Id.*

West Virginia Code § 55-2-1 provides that "[n]o person shall … bring an action to recover, any land, but within ten years after the time at which the right . . . to bring such action shall have first accrued to himself or to some person whom he claims." W. Va. Code § 55-2-1. Here, the Trust was to terminate in February of 2014 when the youngest of Ms. Haymond's grandchildren, Christin Haymond, reached the age of thirty (30) years. The repudiation of the trust occurred when the Petitioner, as the trustee, refused to give the Respondents a deed for their interests in the Real Property upon termination of the Trust. Thus, the Respondents had until February of 2024 to bring their claim to quiet title to the Real Property under West Virginia Code § 55-2-1.

The Petitioner, in his brief, admits that West Virginia Code § 55-2-1 is the relevant statutory limitation period for actions to recover land and quiet title.[4] The Petitioner, however, erroneously states that said statute of limitation begins to run when the transfers of real property occur. Per this Court's holding in *Bennett*, the Respondents assert that the statute was tolled until they had the right to command legal title to the property, which was when the Trust terminated in February of 2014.

Based on the foregoing, if this Court's response to the First Certified Question presented to this Court is that that transfer of real property in violation of a valid spendthrift clause is voidable, the Respondents still had ten (10) years from the Trust's termination to institute the Action asserting their claims to declare the Deeds void, and, since the Action was commenced

[4] The Petitioner argues that West Virginia § 52-2-12 is applicable to the Respondent's breach of trust claim, however, such argument is irrelevant as only the Respondents' claim to quiet title asserted in Count I of the Complaint is at issue before this Court.

within said period, the Respondents' request for declaratory relief in County I of their Complaint is not time-barred.

D. Laches Cannot Bar a Right Good Under a Legal Title Statute of Limitation.

The general rule in West Virginia is that laches and statute of limitations may co-exist, however, this Court, in *Condry*, clarified, in legal title cases, legal title is governed by the applicable statute of limitation and laches cannot bar a right good under the said statute of limitation. Syl. Pt. 2, *Condry*, 152 W. Va. 714, 166 S.E.2d 167. Here, both the Petitioner and the Respondents agree that West Virginia Code § 55-2-1, which imposes a ten (10) year statute of limitations on legal title claims, is applicable. As stated above, the ten-year period began to run when the Trust terminated in February of 2014 and the beneficiaries' legal title to the real property vested. Thus, since the ten (10) year period has yet to expire, laches is inapplicable to the Respondent's claim to quiet title to the Real Property by declaring the Deeds voids.

E. Laches, When Applicable, Does Not Begin to Apply until the Termination of a Trust and There is No Set Timeline Regarding the Amount of Delay That Constitutes Prejudice.

Finally, and assuming for argument's sake that the Petitioner's laches position could overcome the aforementioned hurdle set forth in *Condry*, which it cannot, the Petitioner's laches argument still fails. When analyzing the applicability of laches to claims, this Court has continually held that mere delay of time in asserting a claim will not bar relief in equity on the ground of laches. Syl. Pt. 2, *Bank of Marlinton v. McLaughlin*, 123 W. Va. 608, 17 S.E.2d 213 (1941). Rather, a party seeking to invoke laches as a defense to a claim must show (1) unreasonable delay and (2) prejudice due to such delay. *Ryan v. Ryan*, 213 W. Va. 646, 649, 584 S.E.2d 502, 504 (2003). As this Court has expressly stated, "[t]o be clear, the plea of laches cannot be sustained unless facts are alleged to show prejudice to the opposing party, or that the ascertainment of the truth is made

more difficult by the delay in seeking immediate relief." *Id.* "No rigid rule can be laid down as to what delay will constitute prejudice; every claim must depend on its own circumstances." *Id.*

As with statutes of limitation, this Court has clarified that laches will not begin to be applicable until the termination of an express trust. *See Bennett*, 92 W. Va. at 391, 115 S.E. at 439. Specifically, in *Bennett*, the Court found an express trust existed wherein the defendant agreed to split the proceeds from any sale of land amongst the plaintiff, the plaintiff's husband, and the defendant. *Bennett*, 92 W. Va. at 392-393, 115 S.E. at 436-437. The defendant subsequently leased and sold various mineral interests in the real estate without splitting the profits therefrom. *Bennett*, 92 W. Va. at 395, 115 S.E. at 437. Upon learning of such facts decades later, the plaintiff initiated her action for her share of the proceeds. *Bennett*, 92 W. Va. at 397, 115 S.E. at 438. The defendant claimed that the plaintiff's action was barred by laches. *Id.* This Court disagreed with the defendant and held that neither laches nor statutes of limitations begin to apply until the repudiation of the trust. *Bennett*, 92 W. Va. at 398, 115 S.E. at 439.

Based on the foregoing, if this Court's response to the First Certified Question is that a transfer of real property in violation of a valid spendthrift clause is voidable, and this Court finds that the doctrine of laches could apply, laches should not begin to run on the declaratory relief requested in Count I of the Complaint until the beneficiaries had the right to demand legal title to the Real Property upon the Trust's termination. Further, if that is the case, the Petitioner makes no mention of either why the Respondents commencing the Action in 2020, only six (6) years after the termination of the Trust, was unreasonable or how the Petitioner has been prejudiced by the Respondents commencing the Action at said time. As a result, Petitioner's reliance on laches must also fail.

VI. CONCLUSION

Based on the foregoing, the Respondents respectfully request that this Honorable Court answer the First Certified Question by holding that a transfer by a beneficiary of real property held in a trust in violation of a spendthrift clause is void *ab initio*. If such a transfer is void *ab initio*, the Second Certified Question is moot. If, however, this Honorable Court finds that such a transfer by a beneficiary is only voidable, the Respondents' claims to quiet title and to have the Deeds declared void are timely filed and not barred by the applicable statute of limitations or the doctrine of laches.

Respectfully submitted,

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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

DOCKET NO. 22-621

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

v.

STEPHANIE HAYMOND and DAVID HAYMOND,
Plaintiffs Below, *Respondents*.

From the Circuit Court of Ritchie County, West Virginia
Civil Action No. 20-C-30

CERTIFICATE OF SERVICE

I, Joshua S. Rogers, hereby certify that a true and exact copy of the foregoing **BRIEF OF RESPONDENTS STEPHANIE HAYMOND AND DAVID HAYMOND** was served on the following on this 21st day of July, 2023, via U.S. Mail to the following address:

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