

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

**The Shumard Foundation, Inc.,
Petitioner Below, Petitioner**

v.) No. 24-225 (23-ICA-290)

**UMB Bank, N.A., in its capacity as Successor Master
Trustee under that certain Master Trust Indenture
dated as of August 31, 2007, between
Ohio Valley University, Inc., and United Bank, Inc.,
Respondent Below, Respondent**

and

**B. Riley Financial, Inc.,
Respondent Below, Respondent**

and

**Ohio Valley University, Inc.,
Respondent Below, Respondent**

MEMORANDUM DECISION

Petitioner The Shumard Foundation, Inc. appeals the March 22, 2024, order of the Intermediate Court of Appeals of West Virginia (ICA) dismissing the petitioner’s appeal of a June 5, 2023, order of the Circuit Court of Wood County.¹ The ICA determined that it lacked jurisdiction because the order on appeal pertained to an extraordinary remedy. Upon our review, we determine that oral argument is unnecessary and that this case satisfies the “limited circumstances” requirement of Rule 21(d) of the Rules of Appellate Procedure for issuance of a memorandum decision rather than an opinion. For the reasons set forth below, the ICA’s order is reversed and this case is remanded to the ICA for consideration of the appeal.

¹ The petitioner is represented by counsel James W. Lane Jr., Eric M. Johnson, and L. Elizabeth King, and the respondent is represented by counsel Shawn P. George and Jennie O. Ferretti. B. Riley Financial, Inc. is the substituted receiver and Ohio Valley University Inc. is a named defendant in the underlying civil action. B. Riley Financial, Inc. and Ohio Valley University Inc. did not appear in this appeal.

The underlying civil action is a complaint for declaratory judgment commenced by the respondent here, UMB Bank, N.A., in its capacity as Successor Master Trustee under a certain Master Trust Indenture, against Ohio Valley University, Inc. (OVU).² The Master Trust Indenture provided that if OVU defaulted on its obligations to the respondent, then “the Master Trustee shall be entitled, as a matter of right, to the appointment of a receiver or receivers of the rights and properties pledged hereunder” The complaint sought a declaration that OVU had defaulted on its obligations and the Master Trustee “is entitled to further relief pursuant to the Bond Documents and W. Va. Code § 55-13-8 in the form of the appointment of a receiver to preserve and protect” OVU’s property. West Virginia Code § 55-13-8 provides, in relevant part, that “[f]urther relief based on a declaratory judgment or decree may be granted whenever necessary or proper.”

Shortly after the declaratory judgment action was commenced, OVU filed for chapter 7 bankruptcy. The bankruptcy court entered an order granting the respondent relief from the automatic stay to pursue certain rights and remedies. On March 8, 2022, the circuit court entered an “Agreed Order Granting Motion for Appointment of a Receiver” in which it appointed a receiver and concluded that the respondent was permitted to exercise rights and remedies as to certain property, including a particular asset of OVU that is the subject of dispute in this appeal. The petitioner then became involved in the declaratory judgment action to assert that it, and not the respondent, holds priority as a creditor with regard to this OVU asset. By stipulation of the parties, the lien dispute was presented to the circuit court for resolution. In an “Order Determining Lien Priority” entered on June 5, 2023, the circuit court concluded that the respondent is the superior creditor and is entitled to the proceeds derived from this asset.³

The petitioner appealed the circuit court’s June 5, 2023, order to the ICA. Pursuant to West Virginia Code § 51-11-4(b) and (b)(1) (2022 & 2024), the ICA has appellate jurisdiction over final circuit court orders entered in civil cases after June 30, 2022, “[u]nless specifically provided otherwise in this article[.]” One such exception, as stated in the 2022 version of the statute, is that the ICA does not have appellate jurisdiction over “[e]xtraordinary remedies, as provided in § 53-1-1 *et seq.* of this code, and any appeal of a decision or order of another court regarding an extraordinary remedy[.]” *Id.* § 51-11-4(d)(10) (2022).⁴

² See W. Va. Code §§ 55-13-1 to -16 (the Uniform Declaratory Judgments Act).

³ Because the issue on appeal to our Court is limited to the question of the ICA’s jurisdiction, we do not address the merits of the parties’ lien dispute. Also, the parties do not discuss whether the circuit court’s June 5, 2023, order is a final order or approximates a final order in its nature and effect; for purposes of deciding the limited issue presented to our Court, we assume that it is an appealable order.

⁴ The 2022 version of this statute was in effect when the appeal was filed at the ICA and when the ICA entered its dismissal order. Effective June 6, 2024, the Legislature amended the statute to provide that the ICA does not have appellate jurisdiction over “[j]udgments or final orders issued in proceedings where the relief sought is one or more of the following extraordinary remedies: writ of prohibition, writ of mandamus, writ of quo warranto, writ of certiorari, writ of habeas corpus, special receivers, arrests in civil cases, and personal safety orders[.]” W. Va. Code

After the parties had fully briefed the merits of their arguments, the ICA sua sponte entered its March 22, 2024, order dismissing the appeal. The ICA found that the circuit court’s March 8, 2022, order had appointed a “special receiver” pursuant to West Virginia Code § 53-6-1, which is in the extraordinary remedies chapter of the West Virginia Code, thus “this is an appeal of an order . . . regarding the extraordinary remedy of appointment of a special receiver” over which the ICA lacks jurisdiction per West Virginia Code § 51-11-4(d)(10).

The petitioner now appeals the ICA’s dismissal order. “We apply a de novo standard of review to an order from the Intermediate Court of Appeals of West Virginia granting a motion to dismiss an appeal.” Syl. Pt. 1, *Aaron W. v. Evelyn W.*, 251 W. Va. 1, 909 S.E.2d 36 (2024).

Our review of the appendix record reveals that under the particular facts of this case, the ICA erred in dismissing the petitioner’s appeal. Critically, no party sought or received an extraordinary remedy in this case. The respondent’s complaint for declaratory judgment sought a declaration that *under the terms of the Master Trust Indenture/bond documents*, it was entitled to the appointment of a receiver to protect OVU’s assets. Thus, the respondent was seeking a remedy specified in its contract—it was not seeking extraordinary relief. The respondent’s complaint asked the circuit court to appoint the receiver pursuant to the authority in West Virginia Code § 55-13-8 of the Uniform Declaratory Judgments Act (quoted *supra*). Likewise, the petitioner’s claim to lien priority was asserted as a stipulated interpleader matter in the course of the declaratory judgment action; it was not a claim for extraordinary relief. As such, the extraordinary remedies exception to the ICA’s civil jurisdiction does not apply.⁵

Accordingly, we reverse the ICA’s March 22, 2024, dismissal order and remand this case to the ICA for consideration of the petitioner’s appeal.

Reversed and Remanded with Directions.

ISSUED: September 10, 2025

CONCURRED IN BY:

Chief Justice William R. Wooton
Justice C. Haley Bunn
Justice Charles S. Trump IV
Justice Thomas H. Ewing
Senior Status Justice John A. Hutchison

§ 51-11-4(d)(10) (2024). For the reasons set forth herein, we would reverse the ICA’s dismissal order under either version of the statute.

⁵ The ICA’s error is understandable inasmuch as the circuit court’s March 8, 2022, “Agreed Order Granting Motion for Appointment of a Receiver” referred to the appointed receiver as a “special receiver” and specifically cited West Virginia Code § 53-6-1. However, this characterization in the circuit court’s order was not in accord with the parties’ pleadings and was obviously a misstatement.