

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

VALERIE JANE POE, as Administratrix
Of the Estate of Dorothy Louise Poe,
Plaintiff Below,

Petitioner,

v.

JAMES W. TAYLOR,
Defendant Below,

Respondent.

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No. 25-ICA-45

PETITIONER'S BRIEF

ON APPEAL FROM THE CIRCUIT COURT OF KANAWHA COUNTY,
WEST VIRGINIA

(Civil Action No. 23-C-1089)

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I. ASSIGNMENTS OF ERROR

The Circuit Court erred by concluding that West Virginia Code § 41-5-11 is a statute of limitation that bars the probate of a last will and testament after six months of entry of the county commission's final order closing the estate.

II. STATEMENT OF THE CASE

This matter involves the estate of decedent Dorothy Louise Poe who died September 3, 2021, at the age of 92, a resident of Kanawha County, West Virginia. (App. 007 at ¶10). Dorothy Louise Poe was predeceased by her spouse, Paul Poe, and she had no children. (App. 007-8 at ¶11). On October 7, 2021, Respondent James W. Taylor qualified as administrator of the intestate Estate of Dorothy Louise Poe. (App. 008 at ¶13). Respondent filed a list of heirs naming himself, Deb Shilling Pierce, Eugenia Colleen Toussant, Colletta Kay Carr, Steven Nelson Darrah, Sheri Ann Blile, Nolon R. Taylor, and Susan R. Penland as the heirs at law of Dorothy Louise Poe. (App. 008 at ¶15). Respondent James W. Taylor proceeded to administer the estate and closed the estate by filing the First and Final Settlement Report and Report of Claims on May 19, 2022. (App. 009 at ¶19). The Final Settlement reported \$1,304,622.38 available for distribution to the heirs at law. (App. 009 at ¶21). Upon information and belief, each of the heirs at law did receive a distribution from Respondent. (App. 009 at ¶22).

Petitioner Valerie Jane Poe is the sister-in-law of decedent Dorothy Louise Poe. (App. 010 at ¶29). Decedent's husband Paul Poe, and Petitioner's husband, John F. Poe, were brothers. (App.

010 at ¶29). Petitioner's husband John F. Poe died November 8, 2020, less than a year before Dorothy Louise Poe died. (App. 010 at ¶30). Subsequent to the closing of the Dorothy Louise Poe Estate, in April 2023, Petitioner discovered in the files of her deceased husband, a paper writing purporting to be the original Last Will and Testament of Dorothy Louise Poe dated November 14, 2008 (the "Will"). (App. 010-11 at ¶31-32). Petitioner's husband never informed her that he was in possession of decedent's Will, and Petitioner did not know decedent's Will was in his files. (App. 011 at ¶33-34).

On June 27, 2023, Petitioner lodged the Will with the Fiduciary Supervisor of the Kanawha County Commission for safekeeping and processing. (App. 011 at ¶35). The Will leaves Dorothy Louise Poe's assets to her siblings *per stirpes* and to her husband Paul's siblings *per stirpes*:

4.2 RESIDUE.

(a) I direct my Executor to sell all of my assets and give, devise and bequeath all the proceeds from the sell [sic] of my assets as follows: My Executor shall divide and set apart the residue of my estate in to as many equal shares as will allow my Executor to set apart one share for each of the following individuals: James O. Shilling, Grace Shilling Darrah, David M. Poe, John F. Poe, James H. Poe, and Sara Poe and one share to be divided equally by the children of my deceased sister, Ruth S. Taylor: Nolon Taylor, James Taylor and Sarah Penland.¹ If any of the individuals listed above predecease me, their share shall pass to their surviving issue, *per stirpes*. If any of the above listed individuals predecease me without issue, their share shall lapse.

¹ Ruth S. Taylor has a daughter named Susan Penland, not Sarah Penland. This seems to be a typographical error in the Will.

(App. 037).

James O. Shilling, Grace Shilling Darrah, and Ruth S. Taylor were all siblings of Dorothy Louise Poe. (App. 013 at ¶47). James O. Shilling predeceased Dorothy Louise Poe leaving as his surviving issue Deb Shilling Pierce.² (App. 013 at ¶50). Grace Shilling Darrah predeceased Dorothy Louise Poe leaving as her surviving issue Defendants Eugenia Colleen Toussant, Steven Nelson Darrah, Colletta Kay Carr, and Sheri Ann Blile. (App. 013-14 at ¶52).

John F. Poe, David M. Poe, James H. Poe, and Sara Poe are all siblings of Paul Poe, who was Dorothy Louise Poe's deceased husband. (App. 013 at ¶46). John F. Poe predeceased Dorothy Louise Poe leaving as his surviving issue (with Petitioner Valerie Jane Poe) John "Buddy" Poe, Elizabeth Poe, and Lucas Poe. (App. 014 at ¶54).

Essentially, the Will split the estate assets into seven equal shares, three of such shares would be distributed to the "Shilling" side of the family and four of such shares would be distributed to the "Poe" side of the family.³ Paul Poe's side of the family did not inherit anything pursuant to the intestate administration. (App. 022).

² Deb Shilling Pierce is not a Defendant to the action below because her share of the estate assets under the Will exceeds the share she received pursuant to the intestate administration.

³ The exact distributions to each beneficiary are set forth in the Complaint but are not necessary facts to this appeal. (App. 014-15).

The Will nominates James O. Shilling to serve as executor, or if he is unable or unwilling to serve, the Will nominates Jeffrey Pierce as successor executor. (App. 011 at ¶36). James O. Shilling predeceased Dorothy Louise Poe and Jeffrey Pierce filed a Declination as Executor dated July 7, 2023. (App. 011 at ¶¶37-38; 041). Petitioner Valerie Jane Poe qualified as Administratrix c.t.a. of the Estate of Dorothy Louise Poe by Order of the County Commission of Kanawha County, West Virginia, entered on August 30, 2023, the County Commission probated the Will and the estate was reopened. (App. 012 at ¶40).

III. PROCEDURAL HISTORY AND CIRCUIT COURT DECISION

On December 14, 2023, Petitioner Valerie Jane Poe filed the Complaint in Kanawha County Circuit Court in order to recover from the heirs-at-law the distributions they received in excess of the shares bequeathed to them in the Will. The Complaint contains two counts, Count I is for enforcement of the terms of the Will and recovery of property of the estate, and Count II is for Unjust Enrichment.

On January 16, 2024, Respondent James W. Taylor filed a Motion to Dismiss on the basis that the estate of Dorothy Louise Poe had already been fully administered and the estate closed by order of the Kanawha County Commission at the time the Will was admitted to probate. Petitioner filed a Response to the Motion to Dismiss on January 25, 2024. Respondent then filed a Reply and Supplemental Memorandum on May 9, 2024. Petitioner was granted leave to file a Surreponse and did file a Surreponse on May 15, 2024.

On January 2, 2025, the Kanawha County Circuit Court dismissed the action pursuant to West Virginia Code § 41-5-11 on the basis that the statute of limitations to probate the Will had passed and therefore the heirs-at-law were entitled to the distributions under the intestate administration, thus there could be no unjust enrichment or recovery of the assets. The order dismissed the civil action with prejudice.

All of the aforementioned pleadings, motions, responses, and order are included in the Appendix.

On January 31, 2025, Petitioner timely appealed the order.

IV. STATEMENT REGARDING ORAL ARGUMENT

Petitioner requests oral argument pursuant to West Virginia Rules of Appellate Procedure Rule 19 because the result below involves an assignment of error in the application of settled law.

V. SUMMARY OF ARGUMENT

The circuit court erred in applying the statute of limitations set forth in West Virginia Code § 41-5-11 to bar Petitioner's Complaint for return of property and the probate of a will after the estate had been closed by order of the county commission. West Virginia Code § 41-5-11 is not a statute of limitations that bars the probate of a will. West Virginia Code § 41-5-11 applies to bar the filing of a complaint to impeach or establish a will that has been admitted or refused to probate by order of the county commission after six months of entry of the order. Respondent Administrator James W. Taylor never tendered a will to the county

commission for admission to probate. Thus, West Virginia Code § 41-5-11 has no application here.

There is no statute of limitations concerning the probate of a will in West Virginia. Accordingly, the fact that an intestate estate for Dorothy Louise Poe has been opened, has been fully administered, and has been closed, is not a bar to the probate of her subsequently found Will which was admitted to probate by order of the county commission. Furthermore, there are statutes that permit recovery of distributed estate assets from beneficiaries in other similar situations.

VI. STANDARD OF REVIEW

"Since the preference is to decide cases on their merits, courts presented with a motion to dismiss for failure to state a claim construe the complaint in the light most favorable to the plaintiff, taking all allegations as true." Mountaineer Fire & Rescue Equip., LLC v. City Nat'l Bank of W. Va., 244 W. Va. 508, 515, 854 S.E.2d 870, 877 (2020). "Appellate review of a circuit court's order granting a motion to dismiss a complaint is *de novo*." Id. at Syl. Pt. 1. "Where the issue on an appeal from the circuit court is clearly a question of law or involving an interpretation of a statute, we apply a *de novo* standard of review." Syl. Pt. 1, Chrystal R.M. v. Charlie A.L., 194 W. Va. 138, 459 S.E.2d 415 (1995).

VII. ARGUMENT

- 1. West Virginia Code § 41-5-11 is a will contest statute and is not a statute of limitation that bars the probate of a last will and testament after entry of an order of the county commission closing the estate.**

This case involves the question of law whether West Virginia Code § 41-5-11 is a statute of limitation that bars the probate of a last will and testament after six months of entry of order by the county commission closing an estate. West Virginia Code § 41-5-11 is a statute concerning the contest of a will and does not apply to bar the mere probate of a will subsequent to the opening, or closing, of the administration of an estate.

Set forth in its entirety, West Virginia Code § 41-5-11 states:

After a judgment or order entered as aforesaid in a proceeding for probate ex parte, any person interested who was not a party to the proceeding, or any person who was not a party to a proceeding for probate in solemn form, may proceed by complaint to impeach or establish the will, on which complaint, if required by any party, a trial by jury shall be ordered, to ascertain whether any, and if any, how much, of what was so offered for probate, be the will of the decedent. The court may require all other testamentary papers of the decedent to be produced, and the inquiry shall then be which one of all, or how much of any, of the testamentary papers is the will of the decedent. If the judgment or order was entered by the circuit court on appeal from the county commission, such complaint shall be filed within six months from the date thereof, and if the judgment or order was entered by the county commission and there was no appeal therefrom, such complaint shall be filed within six months from the date of such order of the county commission. If no such complaint be filed within the time prescribed, the judgment or order shall be forever binding. Any complaint filed under this section shall be in the circuit court of the county wherein probate of the will was allowed or denied.

W. Va. Code § 41-5-11.

We must first parse the statute in order to understand its application. West Virginia Code § 41-5-11 sets forth a statute of limitations which begins to run on "the date of such order of the county commission." Id. The very first sentence of West Virginia Code

§ 41-5-11 defines such order of the county commission: "After a judgment or order entered as aforesaid in a proceeding for probate *ex parte*, [or]... a proceeding for probate in solemn form." Id. The statute does not itself define the "order of the county commission."

The rule of *in pari materia* sets forth that "Statutes which relate to the same subject matter should be read and applied together so that the Legislature's intention can be gathered from the whole of the enactments." Syl. Pt. 3, Smith v. State Workmen's Compensation Comm'r, 159 W. Va. 108, 219 S.E.2d 361 (1975). Thus it is clear that we must look to the "aforesaid" sections of Article 5 to determine the nature of the county commission order set forth in the respective proceedings and that those sections must be read *in pari materia* with West Virginia Code § 41-5-11.

The proceeding for probate *ex parte* is set forth in West Virginia Code § 41-5-10 and the proceeding for probate in solemn form is set forth in § 41-5-5. Both of these statutes concern the acceptance or rejection of a will to probate.

"Any person may move the county [commission]⁴ having jurisdiction, or the clerk thereof in vacation of the [commission], for the probate of such will," and thereafter, the county commission will enter an "*order admitting or refusing to admit the will to probate.*" W. Va. Code § 41-5-10 (emphasis added). Likewise, "the county [commission], sitting in a regular or special session, shall hear and determine all proceedings to admit a will to probate in

⁴ Probate jurisdiction used to lie with the "county court" which is now known as the county commission.

solemn form." W. Va. Code § 41-5-5. "At any time after the petition is filed and before *final order is made admitting or refusing to admit the will to probate* any person desiring to contest the will may appear and file a notice of contest in the proceeding, stating concisely the grounds of such contest." Id. (emphasis added).

Thus the "judgment or order entered as aforesaid in a proceeding for probate *ex parte*, [or]... a proceeding for probate in solemn form" referred to in West Virginia Code § 41-5-11 is the order of the county commission *admitting* the will to probate or *refusing* the will to probate. W. Va. Code § 41-5-11. West Virginia Code § 41-5-11 states that any person "may proceed by complaint to impeach or establish the will." Id. When read *in pari materia*, this clearly means to impeach the *admitted* will or to establish the *refused* will as set forth in the county commission order.

The substance of W. Va. Code § 41-5-11 has been the law in this state and the state of Virginia since 1785. Chitwood v. Collins, 122 W. Va. 267, 269-270, 8 S.E.2d 830, 831 (1940). The Supreme Court has examined the purpose of West Virginia Code § 41-5-11 on numerous occasions. "By statute, the county clerk was required upon the *ex parte* filing of a testamentary document to report the filing of the document to the county commission and the county commission then is required by statute to enter an order either admitting or refusing to admit the will to probate. See W.Va. Code § 41-5-10." Davey v. Estate of Haggerty, 219 W. Va. 453, 458, 637 S.E.2d 350, 355 (2006). "The six-month period that is provided by statute under West Virginia Code § 41-5-11 for impeaching such a will only operates "after" a judgment

or order is filed by the County Commission in conformity with West Virginia Code § 41-5-10." Id.

"The procedures to contest a will in the circuit court are contained in W. Va. Code, 41-5-7 and 11." Miller v. Robinson, 171 W. Va. 653, 655 n.2, 301 S.E.2d 610, 612 n.2 (1983). "Code 41-5-11 authorizes a suit in equity to impeach or establish a will already probated, the suit to be brought by a person who was not a party to the probate proceeding." Id. at 657, 613 (1983), *quoting* Lugar & Silverstein, West Virginia Rules of Civil Procedure 530 (1960).

"The sole purpose of the proceedings permitted under the provisions of Code, 41-5-11, is the determination of the validity of a challenged instrument purporting to be a will." Syl. Pt. 3, Mauzy v. Nelson, 147 W.Va. 764, 131 S.E.2d 389 (1963), *quoting* Canterberry v. Canterberry, 118 W. Va. 182, 189 S.E. 139 (1936). "The word "validity" has reference only to the validity of the probated paper as a testament, not to the validity of its provisions." Mauzy v. Nelson, 147 W. Va. 764, 131 S.E.2d 389 (1963), *quoting* Chitwood v. Collins, 122 W. Va. 267, 8 S.E.2d 830 (1940).

A will may impeached and may be invalid if it was created by a person "of unsound mind or under the age of eighteen years." W. Va. Code § 41-1-2. A will may also be impeached and may be invalid if it is not "in writing and signed by the testator... and unless it be wholly in the handwriting of the testator, the signature shall be made or the will acknowledged by him in the presence of at least two competent witnesses, present at the same time; and such witnesses shall subscribe the will in the presence of the testator, and of each

other, but no form of attestation shall be necessary." W. Va. Code § 41-1-3. Likewise, if a purported will does not meet the requirements of W. Va. Code § 41-1-2 and § 41-1-3, the county commission may refuse to admit the will to probate and enter an order stating the same. See W. Va. Code §§ 41-5-5; 41-5-10. It is from this county commission order refusing probate of a purported will that activates the statute of limitations of six months to file a complaint to establish the will that was refused probate as set forth in West Virginia Code § 41-5-11.

The Supreme Court has also held that West Virginia Code § 41-5-11 does not apply to the mere probate of a last will and testament that revokes a prior probated will. In the case of In re Winzenrith's Will, the testator executed a will in 1932, and later, in 1936, executed another will specifically revoking prior wills. In re Winzenrith's Will, 133 W. Va. 267, 268-9, 55 S.E.2d 897, 898-9 (1949). The 1932 will was probated shortly after testator's death in 1945. Id. at 268, 899. The beneficiary under the 1932 will (testator's wife) took possession of the property. Id. at 269, 899. In 1948, testator's beneficiary under the 1936 will (one of testator's sons) tendered it for probate. Id. The county court (now county commission) refused the probate of the 1936 will. Id. at 268, 898-9.

Therein the Court stated that the record from the county commission was not clear, but the Court assumed that the county commission refused probate for lack of a contest of the 1932 will within the statutory period permitted by W. Va. Code § 41-5-11 (then two years). Id. at 271, 900. The Court was confronted with and analyzed the question "whether the probate of the 1932 will, which

probate has become final, bars the probate of a later will, which, in its very terms, revokes the prior will." Id. The Court proceeded through "a rather extensive study of this question" which "convinced us that the probate of the will dated July 15, 1932, although regular in every way and now final, cannot be asserted as a bar to the probate of the later will dated July 1, 1936." Id.

The Court then remanded the probate proceeding to the county commission "with direction to that [commission] to set aside its order of October 11, 1948, refusing to probate the will of Nicholis Winzenrith, dated July 1, 1936, and, upon reasonable notice to interested parties, hear and determine the question of whether such will shall be admitted to probate as the last will and testament of the said Nicholis Winzenrith, and without regard to the probate of the former will of the said Winzenrith, dated July 15, 1932." Id. at 278, 903.

The Court held that "A proceeding to probate a will bearing date subsequent to that of a will already admitted to probate, in the same court, does not constitute a contest or impeachment of the earlier will, or of the judgment of probate thereof." Syl. Pt. 1, In re Winzenrith's Will, 133 W. Va. 267, 55 S.E.2d 897 (1949); Weese v. Weese, 134 W. Va. 233, 246, 58 S.E.2d 801, 809 (1950) (overruled on other grounds). Likewise, the probate of a will "does not, in itself, bar the subsequent probate, *in the same court*, of a will executed by the same testator, on a date subsequent to the date of the earlier will so admitted to probate..." Syl. Pt. 2, In re Winzenrith's Will, 133 W. Va. 267, 55 S.E.2d 897 (1949) (emphasis added).

Like supplanting the probate of an older will with a newer will that revokes prior wills, a probated will supplants an intestate estate administration. "The law favors testacy over intestacy." Syl. Pt. 8, In re Estate of Teubert, 171 W. Va. 226, 298 S.E.2d 456 (1982). Intestacy or intestate succession only applies to those parts of a decedent's estate that was not effectively disposed of by will: "Any part of a decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs as prescribed in this code, except as modified by the decedent's will." W. Va. Code § 42-1-2(a).

West Virginia Code § 44-1-6 provides the mechanism for ending an intestate administration and beginning a testate administration once a will is probated: "If a will of the deceased be afterwards admitted to record, or if, after administration is granted to a creditor or other person than a distributee, any distributee who shall not have before refused shall apply for administration, there may be a grant of probate or administration, after reasonable notice to such creditor or other person theretofore appointed, in like manner as if the former grant had not been made, and such former grant shall thereupon cease." W. Va. Code § 44-1-6.

In its Final Order Granting Motions to Dismiss, the circuit court concluded that:

Pursuant to the requirements of W. Va. Code § 41-5-11, a Complaint to establish a will must be filed within six months of the county commission's final order. Thus, Plaintiff (or any other person who was not a party to the probate proceeding before the Kanawha County Commission), was required to file her Complaint on or before November 19, 2022. However, Plaintiff's Complaint was not filed until December 14, 2023. Therefore, the Court finds that

Plaintiff's Complaint fails to state a claim upon which relief can be granted to enforce the Purported Will because Plaintiff's Complaint was filed outside of the time frame prescribed to establish a will.

(App. 109-110 ¶21).

It should be noted that the circuit court seems to misconstrue Petitioner's Complaint as one to contest or establish a will. The Complaint does not seek to contest or establish a will. The Last Will and Testament of Dorothy Louise Poe dated November 14, 2008 has already been established as it was admitted to probate by order of the county commission on August 30, 2023, and none of the heirs-at-law or beneficiaries contested its validity. (App. 035, 042). Petitioner's complaint seeks the return of assets received by the heirs-at-law in excess of what they were bequeathed under the probated will. (App. 019).

It is clear that the circuit court misapplied the statute of limitations of six months as set forth in the will contest statute of W. Va. Code § 41-5-11 to the mere probate of a will. The circuit court also misconstrued which order of the county commission begins the running of the clock for the statute of limitations. The circuit court concluded that the statute begins to run upon entry of the county commission order accepting final settlement and closing the estate, but that is in error as it begins to run upon entry of the order admitting or refusing the will to probate. W. Va. Code § 41-5-11. West Virginia Code § 41-5-11, nor the other sections of Article 5 of Chapter 41, make reference to an order closing the estate.

In this case, there was no county commission order admitting or refusing a will to probate *until Petitioner filed the*

will and the county commission admitted it to probate and reopened the Estate on August 30, 2023. (App. 012, 042). When Respondent James W. Taylor qualified as Administrator of the Estate of Dorothy Louise Poe and the estate was first opened on October 7, 2021, the Estate was opened as an intestate estate. (App. 021). Respondent did not tender a will for probate, therefore there was no order entered by the county commission admitting a will to probate or refusing a will to probate that could have been challenged by complaint pursuant to West Virginia Code § 41-5-11.

The circuit court's conclusion that West Virginia Code § 41-5-11 applied to intestate estates would create an absurdity. West Virginia Code § 41-5-11 states that "Any complaint filed under this section shall be in the circuit court of the county wherein probate of the will was allowed or denied." W. Va. Code § 41-5-11. If the circuit court's interpretation of West Virginia Code § 41-5-11 is correct, then the probate of a will within six months of the grant of administration of an intestate estate would have to be challenged by filing a circuit court action to supplant the intestate estate, even when there is no challenge to the validity of the will that has been tendered for probate. That is not the law and the circuit court has erred.

2. There is no statute of limitations that bars the probate of a last will and testament after entry of an order of the county commission closing the estate.

There is no statute of limitations that prevents the probate of an otherwise valid will due to the passage of time or after the estate has been closed by order of the county commission. The

national legal treatise Page on Wills states that the rule is "If no statutes have been passed which, either by their express terms or by fair construction, apply to a delay in filing a will or in presenting it for probate, there is no limit to the time within which a will may be filed or presented for probate; and accordingly a delay in propounding a will for probate does not prevent the court from admitting it to probate." 3 Page on Wills, § 26.26, n.1, citing In re Winzenrith's Will, 133 W. Va. 267, 55 S.E.2d 897 (1949).

As dictum, the Supreme Court has not found the probate of wills many years after the estates were first opened to be untimely. In Davey, a will that was later contested as being a forgery was admitted to probate over five years after the grant of intestate administration. Davey v. Estate of Haggerty, 219 W. Va. 453, 454-455, 637 S.E.2d 350, 351-352 (2006). In Winzenrith, the Court directed the county commission to hear the matter of probate of a subsequently dated will three years after the first will was admitted to probate by order of the county commission. In re Winzenrith's Will, 133 W. Va. 267, 278, 55 S.E.2d 897, 903 (1949). There, the Court went on to state that "Furthermore, the time element is not considered of too great importance, for in cases where no question arises out of which principles of estoppel would apply, the beneficiary under the later will would not be barred from presenting the later will for probate." Id. at 272, 900. The Court in Winzenrith also cited with approval the old case of Schultz, in which the county commission had the right to admit or reject a will which was tendered for probate 15 years after

the first will was admitted to probate. Id. at 272, 900-1, *citing* Syl. Pt. 4, Schultz v. Schultz, 51 Va. 358, 10 Gratt. 358 (1853).

In Winzenrith, the Court further cited with approval to out-of-state cases in which a will was admitted to probate many years after the estate was first opened: five years after initial probate in Kentucky, see Wilson v. Wilson, 188 Ky. 53, 221 S.W. 874 (1920); five years after initial probate in Virginia, see In re Bentley's Will, 175 Va. 456, 9 S.E.2d 308 (1940).

The Virginia Supreme Court in Bentley noted that "We are not unmindful of the fact that it would greatly promote the stability of titles to real estate if some limitation were placed upon the time within which a will may be probated after the death of the testator, or if the probate of a subsequent will were placed upon the same footing as the institution of a contest of a will already probated. These, however, are matters for the General Assembly and not for the courts." Id. at 465, 312.

Such concerns should be alleviated because in West Virginia, bona fide purchasers of real estate, who purchased the real estate from heirs and devisees of the decedent, are protected by statutes clearing title to the real estate after one year of the date of death of the decedent, even when a will with contrary provisions is filed for probate more than one year from decedent's death. W. Va. Code § 41-5-19; § 41-5-20.

While the closing of an estate in accordance with West Virginia Code §§ 44-3A-4a, 44-3A-19, and 44-4-18, may bring some finality to the personal representative of the estate, it does not

bring finality to all interested parties to the estate. A creditor who never presented its claim against the decedent before the personal representative distributed the surplus of the estate may file a lawsuit directly against the distributees or legatees, jointly or severally, within two years of the distribution of the surplus. W. Va. Code § 44-2-27(a). A creditor may collect a debt of the decedent from an heir or devisee who inherited real estate from the decedent or sold real estate of the decedent. W. Va. Code §§ 44-8-5; 44-8-6.

The circuit court cited to several statutes for its conclusion that “the West Virginia Legislature has emphasized its interest in finalizing and accelerating the settlement of estates.” (App. 108 at ¶17). While that conclusion may be generally accurate, it is clear that the circuit court failed to consider other policies of the West Virginia Legislature and any exceptions to that rule.

It should first be mentioned that “The law favors testacy over intestacy.” Syl. Pt. 8, In re Estate of Teubert, 171 W. Va. 226, 298 S.E.2d 456 (1982). Where effect can be given to a person’s intent in his or her last will and testament, a court construing the last will and testament will do so “unless it is contrary to some positive rule of law or principle of public policy.” Syl. Pt. 1, Farmers & Merchants Bank v. Farmers & Merchants Bank, 158 W. Va. 1012, 216 S.E.2d 769 (1975).

The West Virginia Legislature is interested in protecting minors, convicts, and mentally incapacitated persons. West Virginia Code § 41-5-12 permits a “person interested who, is at the time of the judgment or order is under the age of eighteen years, or is a convict

or a mentally incapacitated person, may file a complaint to impeach or establish the will, within one year after he becomes of age, or other disability ceases." W. Va. Code § 41-5-12. This provision can permit a will to be contested possibly *decades* after the estate is closed and settled.

The West Virginia Legislature is interested in protecting personal representatives from lawsuits by decedent's creditors. West Virginia Code § 44-2-26 bars creditors of the decedent who failed to present a creditor claim before the creditor claim deadline "from recovering such claim of or from the *personal representative*." W. Va. Code § 44-2-26 (emphasis added). In its Order, the circuit court misconstrued this statute as "forever barring creditors from asserting claims against a properly administered estate." App. 108 at ¶17.

The West Virginia Legislature is interested in protecting creditors of decedents by permitting them to file lawsuits against beneficiaries and heirs of decedents who received property from the estate. W. Va. Code §§ 44-2-27(a); 44-8-5; 44-8-6.

The West Virginia Legislature could have created a statute of limitations to prevent the late probate of a will but it has not done so. Even though the West Virginia Legislature has emphasized its interest in finalizing and accelerating the settlement of estates, there are other policies the circuit court failed to consider that outweigh this policy.

Respondent also claims that Petitioner seeks to undo all of the estate administration. (App. 067). Petitioner as Administratrix C.T.A. of the Estate of Dorothy Louise Poe does not seek to undo the

entire estate administration but only seeks to recover the assets distributed to the heirs-at-law and then to distribute those assets in accordance with the decedent's wishes as set forth in her Will. While it may come as a shock to a distributee of an estate to have to give back some of the money he or she received, it is not unforeseeable. After all, a creditor has two years from the distribution of the estate assets to file a lawsuit against the distributees to recover the assets. Here, Petitioner filed her Complaint prior to the two-year anniversary of the distribution of the Estate.

VIII. CONCLUSION

The circuit court erred in applying the statute of limitations set forth in West Virginia Code § 41-5-11 to bar Petitioner's Complaint for the return of funds to be distributed in accordance with the probated will. West Virginia Code § 41-5-11 is not a statute of limitations that bars the probate of a will. West Virginia Code § 41-5-11 applies to bar the impeachment or establishment of a will that has been admitted or refused to probate by order of the county commission. There is no statute of limitations on the probate of a will in West Virginia. Accordingly, the fact that an intestate estate for Dorothy Louise Poe has been opened, has been fully administered, and has been closed, is not a bar to the probate of her subsequently found Will which was admitted to probate by order of the county commission. The Court should reverse the circuit court's Order and remand the case for further proceedings.

VALERIE JANE POE, as
Administratrix of the Estate
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CERTIFICATE OF SERVICE

The undersigned counsel for Petitioner Valerie Jane Poe, as Administratrix of the Estate of Dorothy Louise Poe, certifies that on April 2, 2025, the "**Petitioner's Brief**" was served upon the parties via File & ServeXpress to the following counsel of record:

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