No. 25-ICA-45

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.

RESPONDENT'S BRIEF

James W. Taylor

By counsel,

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STATEMENT OF THE CASE

Dorothy Louise Poe ("Decedent") passed away a resident of Kanawha County on September 3, 2021. Jt. App. 105 at ¶ 1. Finding no will, the Decedent's nephew, Respondent James W. Taylor ("Respondent"), was duly and properly appointed as Administrator for the Estate of the Decedent ("Estate"). Jt. App. 028. Thereafter, Respondent properly prepared and filed an Appraisement of the Estate, caused notice to creditors to be published, and then prepared and filed a proposed settlement report for the Estate around May of 2022. Jt. App. 028-030. All beneficiaries and unsatisfied creditors of the Estate were given notice and an opportunity to object to Respondent's proposed settlement, and the Estate was advertised for settlement in the local, Kanawha County newspapers, The Charleston Gazette and the Charleston Daily Mail. Jt. App. 030. No exceptions or objections to the final settlement of the Estate were made. Jt. App. 030. As such, on May 19, 2022, the Fiduciary Supervisor for Kanawha County submitted the First and Final Settlement Report and Report of Claims of James W. Taylor-The Estate of Dorothy Louise Poe to the Kanawha County Commission. Jt. App. 028-030. Thereafter, the Kanawha County Commission entered an Order approving Respondent's final settlement report, thereby closing the Estate. Jt. App. 106 at ¶ 5.

In accordance with the West Virginia laws of intestacy, Respondent distributed the assets of the Estate being $1,304,622.38, amongst the eight nieces and nephews of the Decedent: Respondent, Eugenia Colleen Toussant, Colletta Kay Carr, Nolan R. Taylor, Steven Nelson Darragh, Sheri Ann Blile, Susan R. Penland, and Deb Shilling Pierce.[1] Jt. App. 027; 029.

Nearly a year after the Estate was settled and closed, and 19 months after the death of the Decedent, in April of 2023, the Petitioner, Valerie Jane Poe ("Petitioner"), purportedly found a will

[1] It is unknown how much of the distributed monies remain.

belonging to the Decedent. Jt. App. 010 at ¶ 31. Petitioner's husband, John F. Poe, and the Decedent's husband, Paul Poe, were brothers, and Petitioner's husband had died on November 8, 2020. Jt. App. 010 at ¶ 29-30. Petitioner claimed to have found the Last Will and Testament of Dorothy L. Poe, dated November 14, 2008, (the "Purported Will"), amongst her deceased husband's files. Jt. App. 010 at ¶ 31. The Purported Will named James O. Shilling as the executor of the Decedent's Estate and Jeffrey Pierce as his successor. Jt. App 35 at ¶ 2.1. James O. Shilling predeceased the Decedent and Jeffrey Pierce declined to serve as the executor of the Purported Will. Jt. App. 011 at ¶ 37; 041. Therefore, four months after finding the Purported Will, Petitioner was appointed as administratrix c.t.a. of the Estate, and the Estate was re-opened to admit the Purported Will to probate. Jt. App. at 042.

As to the residue of the Estate, the Purported Will directed the following:

> 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 e divided equally by the children of my deceased sister, Ruther S. Taylor: Nolon Taylor, James Taylor and Sarah Penland. 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.

Jt. App. 037 at ¶ 4.2.

Subsequently, Petitioner brought the matter at hand against Respondent, Eugenia Colleen Toussant, Colletta Kay Carr, Nolan R. Taylor, Steven Nelson Darragh, Sheri Ann Blile, Susan R. Penland. Petitioner filed a Complaint on December 14, 2023, for enforcement of will and recovery of property of the estate, as well as unjust enrichment. Jt. App. 006-042. In her Complaint, Petitioner asserted that the Estate should have been divided into seven equal shares and distributed in the following way:

1) Deb Shilling Pierce, the surviving issue of James O. Shilling (Decedent's brother), receives his one-seventh (1/7th) share of the testate Estate;
2) Eugenia Colleen Toussant, Steven Nelson Darrah, Colletta Kay Carr, and Sheri Ann Blile, being the surviving issues of Grace Shilling (Decedent's sister), receive her one-seventh (1/7th) share of the testate Estate;
3) Nolon R. Taylor, James W. Taylor, and Susan R. Penland, the surviving issues of Ruth S. Taylor (Decedent's sister), receive her one-seventh (1/7th) share of the testate Estate;
4) David M. Poe (the brother of Decedent's husband) receives a one-seventh (1/7th) share of the testate Estate;
5) James H. Poe (the brother of Decedent's husband) receives a one-seventh (1/7th) share of the testate Estate;
6) Sara Poe (the sister of Decedent's husband) receives a one-seventh (1/7th) share of the testate Estate; and
7) John "Buddy" Poe, Elizabeth Poe, and Lucas Poe, being the surviving issues of John F. Poe (the brother of Decedent's husband and Petitioner's husband) receive his one-seventh (1/7th) share of the testate Estate. Jt. App. 012-015.

Respondent filed a Motion to Dismiss the Complaint on January 16, 2024, arguing that Petitioner failed to state a claim upon which relief can be granted pursuant to Rule 12(b)(6) of the West Virginia Rules of Civil Procedure. Jt. App. 043-045. Petitioner filed a response on January 25, 2024. Jt. App. at 046-055. Respondent then filed a Reply and Supplemental Memorandum in Support of Defendant James W. Taylor's Motion to Dismiss on May 10, 2024, to which Petitioner filed a Surresponse to Reply and Supplemental Memorandum in Support of Defendant James W. Taylor's Motion to Dismiss on May 13, 2024. Jt. App. 058-079.

On January 2, 2025, the Kanawha County Circuit Court ("Circuit Court") issued a Final Order Granting Motions to Dismiss, dismissing all claims against all of the defendants ("Order"). Jt. App. 105.[2] The Circuit Court based this decision on West Virginia Code § 41-5-11, concluding that "West Virginia law does not permit the enforcement of the Purported will because this action was filed outside of the statute of limitations and, therefore, the full and proper intestate administration of the Estate completed before the Purported Will was found should stand." Jt. App. 110 at ¶ 25. The Circuit Court also found that "the alleged facts under the Complaint also do not support a claim for unjust enrichment because [Respondent] and his co-defendants rightfully received the assets of the Estate under the applicable laws of intestate succession." Jt. App. 110-111 at ¶ 26.

SUMMARY OF ARGUMENT

The issue in this matter is straightforward: if a decedent is deemed to have died intestate and the intestate estate has been fully and properly administered and distributed, can a later-discovered purported last will and testament of the decedent be admitted to probate upturning the prior intestate administration and distributions? For many reasons, the answer is no. A quite obvious reason why the answer is no is because otherwise the process of passing and determining title to real estate in West Virginia would be entirely disrupted. In addition, if a proper and full intestate administration can be completely undone by a later-found last will and testament, anyone who inherits assets from an intestate estate would theoretically never have surety that the inherited assets from the estate would not be "clawed back" later—perhaps years or even decades later—if someone later attempts to present a purported last will and testament of the decedent.

[2] The defendant Eugenia Colleen Toussant filed a motion to dismiss for lack of jurisdiction on March 18, 2024, Jt. App. 112-113, to which the Petitioner filed a response on May 23, 2024, Jt. App. 117-149. In its Order, the Circuit Court did not address the merits of Ms. Toussant's motion because the statute of limitations issue was dispositive of the matter. Jt. App. 111 at n.1.

Presumably being aware of these obvious concerns, the West Virginia Legislature has, over time, implemented a statutory scheme for the administration of decedents' estates that provides for finality and certainty.

STATEMENT REGARDING ORAL ARGUMENT

Respondent believes oral argument is unnecessary because 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. Notwithstanding the foregoing, Respondent, through counsel, is prepared to present oral argument.

STANDARD OF REVIEW

The Petitioner's Brief accurately states that the standard of review in this matter is *de novo*. "Appellate review of a circuit court's order granting a motion to dismiss a complaint is *de novo*." Syl. Pt. 1, *Mountaineer Fire & Rescue Equip., LLC*, 244 W. Va. 508, 854 S.E.2d 870 (2020).

ARGUMENT

I. The Circuit Court did not err by finding that West Virginia Code § 41-5-11 provides a statute of limitations for establishing a will.

West Virginia Code § 41-5-11 provides:

> 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.

The Circuit Court determined,

> 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.

Jt. App. 109-110 at ¶ 21.

Unlike some subject matters, the jurisprudence of "will contests" in West Virginia is fairly expansive. Most "will contests" involve *challenging* the validity of a last will and testament, such as when allegations are made that a testator or testatrix lacked capacity or was subject to undue influence at the time of execution of a last will and testament. In such cases, it is well established that W. Va. Code § 41-5-11 imposes a clear six-month statute of limitations period for actions *challenging* the validity of a last will and testament. *See Syl. Pt. 3 Barone v. Barone*, 170 W. Va. 407, 131 S.E.2d 389 (1963) ("Traditional will contests challenging admission to probate of a particular document or portions thereof are limited by the two-year [now six-month] statute of limitations in W. Va. Code, 41-5-11."). Over time, the Legislature has made several amendments to 41-5-11 with each amendment reducing the applicable statute of limitations period. The six-month period that is applicable today was the result of an amendment made in 1994.

Petitioner essentially argues that because the last will and testament at issue in this matter is not being challenged in the traditional sense, § 41-5-11 is not applicable. Petitioner's Brief at 7. That is simply not the case. As the Circuit Court noted, § 41-5-11 also applies to actions seeking to *establish* a last will and testament. Notwithstanding the expansive jurisprudence of "will

contests" in West Virginia, there do not appear to be many cases involving someone trying to establish, rather than impeach or challenge, a last will and testament. Here, Petitioner is attempting to "establish" a last will and testament beyond the applicable statute of limitations period in § 41-5-11. The Circuit Court was correct in determining that § 41-5-11 applies to instances such as this where one is attempting to establish a last will and testament beyond the six-month period.

Petitioner argues that § 41-5-11 is not applicable to her action attempting to establish a last will and testament when the statute is read *in pari materia* with other provisions contained in the West Virginia Code concerning "the acceptance or rejection of a will to probate." Petitioner's Brief at 8. The West Virginia Supreme Court of Appeals ("Supreme Court") has said, "[s]tatutes 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." *Johnson v. Kirby*, 230 W. Va. 432, 739 S.E.2d 283 (2013) (internal citations omitted).

Respondent agrees that § 41-5-11 should be read *in pari materia* and that the Court should, in determining the applicability of § 41-5-11, consider other statutes that relate to "the acceptance or rejection of a will to probate." From Respondent's standpoint, reading § 41-5-11 with other provisions of the code means that the last will and testament should be subject to the "acceptance or rejection" provisions set forth in $ 41-5-11 because there are other provisions in the code that make clear the Legislature's intent to expedite the settlement of estates and provide finality and certainty. As the Supreme Court has held, the purpose of the applicable limitations period in § 41-5-11 "is to accelerate the settlement of estates." *McKinley v. Queen*, 125 W. Va. 619, 25 S.E.2d 763 (1943). Discussed below are several statutes that the Legislature has enacted to accelerate the settlement of an estate. Undoubtedly, application of § 41-5-11 advances the Legislature's intent to accelerate the settlement of estates while not applying § 41-5-11 would go against that intent. The

Circuit Court was correct in its application of § 41-5-11 to an action seeking to establish a last will and testament.

II. West Virginia law provides no mechanism for establishing a decedent's will after a full and complete intestate administration.

Even if this Court finds that West Virginia Code § 41-5-11 does not apply, there are no means under West Virginia law for reopening an estate that has been fully administered under the laws of intestacy following a final order of settlement by the county commission. In general, West Virginia law clearly prioritizes efficiency and finality in estate administration.

Petitioner relies on *Davey v. Estate of Haggerty*, 219 W. Va. 453, 637 S.E.2d 350 (2006), to demonstrate that the Supreme Court has "as dictum . . . not found the probate of wills many years after the estates were first opened to be untimely." Petitioner's Brief at 16. This interpretation is misplaced.

Davey is easily distinguishable from this matter. In *Davey*, an estate was opened intestate, and a purported will was found and introduced for probate six years after the decedent's death. *Davey*, 219 W. Va. at 454-55, 637 S.E.2d at 351-52. There, the validity of the later-discovered will was contested (which is not the case here), and the Supreme Court's holding turned on whether or not the contest was barred by the statute of limitations. *Id.* The Supreme Court reversed the trial court's decision that upheld the later-found will, and the intestate administration was *not* rescinded. *Id.* at 458, 647 S.E.2d at 355. Moreover, the *Davey* case does not discuss whether the decedent's estate had been fully administered and settled intestate before the newly discovered will was presented for probate, distinguishing it from the matter at hand.

Petitioner also relies on *In re Winzenrith's Will*, 133 W. Va. 267, 271, 55 S.E.2d 897, 900 (1949). However, this case addresses the probate of a subsequently discovered will after a prior

will had already been probated. That simply is not the case here. Once again, this case fails to address the issue at hand because it does not address the probate of a later found will after a full, proper, and complete intestate administration. Furthermore, the Court in *Winzenrith* did not hold that a later found will must always be allowed to stand in place of a prior will. Rather, the Court remanded the case out of an abundance of caution. *Id.* at 277 ("[W]e have concluded that the safe procedure, for all concerned, is to…cause the proceeding to be remanded…"). There is no law allowing for the probate of a later found will after an estate has been fully and properly administered.

Accordingly, the cases relied on by Petitioner do not demonstrate that a newly discovered will can be probated after a full intestate administration has been completed. In fact, Petitioner has cited no West Virginia case law or statutory authority that provides a procedure for reopening an estate after the estate has been fully administered intestate.

This absence of authority is significant given West Virginia's strong interest in finalizing the administration of an estate in a prompt and efficient manner. While Respondent recognizes that West Virginia law favors testacy over intestacy, this idea is outweighed by the necessity to promote efficiency and certainty in the finalization of estate administration. The circuit court correctly recognized these principles. Jt. App. 108 at ¶ 16, 17.

The West Virginia Legislature has consistently demonstrated its interest in promoting efficiency and finality in the settlement of estates. For example, West Virginia Code § 44-2-26 bars an estate's creditors that did not make a claim within the timeframe given by published notice from making a claim against the personal representative. The Supreme Court held that the purpose of this statute is "relieving the personal representative from the great responsibility and liability formerly imposed upon him, and of preferring the diligent over the dilatory creditor in cases where

the estate does not pay out . . . .” Syl. Pt. 3, *In re Reynolds Estate*, 116 W. Va. 249, 180 S.E.6 (1935). Additionally, West Virginia Code § 44-2-27(a), bars creditors from bringing any claims against distributees of an estate two years after an estate's closure.

Further, under West Virginia Code § 44-4-14a(a), every estate fiduciary is required to make a full and final settlement, report and accounting for the decedent's estate, and shall notify the county commission of the same. West Virginia Code § 44-4-18 provides:

> The [final settlement] report, to the extent to which it may be so confirmed by the county commission, or confirmed on appeal by the circuit court, shall be taken to be correct, and shall be binding and conclusive upon creditors of a decedent's estate, and *binding and conclusive upon every beneficiary of the estate who has had notice that the report has been laid before the fiduciary commissioner for settlement*, or upon completion of the report was notified by the fiduciary commissioner of its completion and that the same would remain in his office ten days subject to inspection and exception.

(emphasis added). This means that the final settlement report filed by a fiduciary is binding and conclusive upon every beneficiary of the estate. This once again demonstrates the Legislature's commitment to finality in estate administration.

Here, Respondent's First and Final Settlement Report and Report of Claims was confirmed by the Fiduciary Supervisor for Kanawha County on May 19, 2022, and submitted to the Kanawha County Commission for its confirmation. Jt. App. 028-030. In this report, the Fiduciary Supervisor noted:

> The estate was advertised for settlement on the First Tuesday of May, 2022 in the Charleston Gazette and the Charleston Daily Mail, two newspapers of general circulation in Kanawha County, West Virginia. Then on May 12, 2022, there was a deadline for filing exceptions and/or objections to the final settlement of the estate. No exceptions and/or objections were received in response to this publication.

Jt. App. 030. Thus, the alleged beneficiaries of the Decedent's Estate under the Purported Will, along with Petitioner, had notice that Decedent's Estate was being settled and finalized. They made

no filing exceptions or objections to Respondent's First and Final Settlement Report and Report of Claims. As such, the report was binding and conclusive upon the alleged beneficiaries, and any further issues with the final settlement of the Estate could not be raised.

Petitioner maintains that, while West Virginia Code § 44-4-18 "may bring some finality to the personal representative of an estate, it does not bring finality to all interested parties to the estate." Petitioner's Brief at 17-18. Petitioner then references West Virginia Code § 44-2-27(a), which provides:

> Every creditor who has not presented his claim to the fiduciary commissioner before distribution of the surplus by the personal representative, or before that time has not instituted a civil action or suit thereon against the personal representative, may, if not barred by limitation, bring a civil action against the distributees and legatees, jointly or severally, at any time within two years after such distribution.

Petitioner uses this statute to argue that distributees of an estate should foresee that they may have to give back the assets they received because a creditor has two years to file a lawsuit against the distributees to recover the assets. Petitioner's Brief at 20. However, Petitioner fails to acknowledge that West Virginia Code § 44-2-27(a) in and of itself is a statute of limitations barring the collection of already distributed funds after an estate has been closed for two years. This statute reinforces the very notion of finality that Petitioner argues against.

Petitioner also cites West Virginia Code § 41-5-12 which permits one who is a minor, a convict, or a mentally incapacitated person to file a complaint to impeach or establish a will within one year after he or she becomes of age or after the disability ceases. Petitioner's Brief at 18-19. Petitioner argues that this demonstrates that a will can be contested many years after an estate has been closed and settled. Yet, Petitioner neglects to recognize that this statute represents another statute of limitations that has been put in place to prevent the redistribution of assets that have already been administered under a previously probated will. The Legislature enacted this statute

with the limitation that as soon as a minor turns eighteen or a mentally incapacitated person's disability ceases, he or she only has *one year* to impeach/establish a will. They do not have an indefinite amount of time. Moreover, this statute simply cannot be used as an example in the matter at hand, as it allows a minor to file a complaint to impeach a will that has already been probated rather than overturn the administration of an intestate estate.

Petitioner further cites *In re Bentley's Will*, 175 Va. 456, 9 S.E.2d 308 (Va. 1940), regarding the Virginia Supreme Court's contention that a limitation should be placed upon the time limit within which a will can be probated after a testator's death *in order to promote the stability of real estate titles*. Petitioners Brief at 17. Petitioner states that such concerns are alleviated in West Virginia because West Virginia Code §§ 41-5-19 and -20 protect bona fide purchasers of real estate from a decedent's heir or devisee named in a probated will from claims under a decedent's will unless the will is filed for probate within one year of the decedent's death. Even though these statutes provide protection for a small number of people who are bona fide purchasers, they do not protect the large number of West Virginia heirs and purported devisees against the turmoil that is created when someone attempts to probate a will that is found months, years, or decades later.

The West Virginia Legislature has repeatedly made clear its intention to protect personal representatives, distributees, and bona fide purchasers of estate assets from uncertainty and legal issues once an estate has been closed. Yet, Petitioner insists that such parties should no longer be protected once a will has been discovered, even if the decedent's estate was closed many years prior.

Petitioner argues that a newly discovered will may be probated at *any time* after an estate has been fully administered and closed. This would open the door to the initiation of probate proceedings decades after the decedent died and possibly even several years after his or her

beneficiaries have passed themselves. Further, permitting the probate of wills years after an estate has been closed would invite a flood of dubious "newly discovered" wills. Individuals would be dissuaded from becoming personal representatives due to the fear of being involved in future litigation. Ultimately, Petitioner's position would create chaos, upend settled estates, and undermine the State's interest in finalizing the administration of estates quickly and efficiently.

Here, Respondent properly fulfilled his administrative duties and correctly administered the Decedent's Estate in accordance with the West Virginia laws of intestate distribution. Upon closing of the intestate estate, Respondent was forever relieved of his duties and absolved from any future liability in connection with his administration of the intestate estate. Respondent took on a great responsibility as the administrator of the Estate and worked diligently and efficiently to ensure that the Estate was administered and closed in a timely manner.

CONCLUSION

For the foregoing reasons, and for any and all other reasons appearing to the Court, Respondent submits that this Court should affirm the ruling of the Circuit Court, and further award to Respondent such further relief as the Court deems necessary and appropriate.

CERTIFICATE OF SERVICE

The undersigned counsel for Respondent, James W. Taylor, as Defendant, certifies that on May 2, 2025, the foregoing **Respondent's Brief** was served upon the parties via File & ServeXpress to the following counsel of record:

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