

**IN THE INTERMEDIATE COURT OF APPEALS OF WEST  
VIRGINIA**

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*HARVEY BELLOMY and NANCY BELLOMY,  
Defendants and Counter-Plaintiffs-Below, Petitioners.*

*FALCON RIDGE HOMEOWNERS ASSOCIATION, INC.  
Plaintiffs and Counter-Defendants-Below, Respondent.*

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ON APPEAL FROM AN ORDER OF THE CIRCUIT COURT OF  
MERCER COUNTY, WEST VIRGINIA  
CIVIL ACTION NOS. 2023-C-59

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**RESPONSE BRIEF OF THE RESPONDENT**

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## **STATEMENT OF THE CASE**

This case arises from a dispute regarding the application of restrictive covenants contained in the Falcon Ridge Declaration to real property owned by Petitioners Lee and Nancy Bellomy. The Circuit Court of Mercer County entered final orders granting declaratory judgment in favor of Respondent Falcon Ridge Unit Owners Association and against Petitioners. Petitioners now seek appellate review of those orders through eleven assignments of error.

The record below demonstrates the parties extensively briefed the Circuit Court regarding the issues the Petitioners raise before this honorable Court. Most recently in their MOTION TO ALTER OR AMEND JUDGMENT UNDER W. VA. R. CIV. P. 59(E) AND MOTION FOR STAY UNDER W. VA. R. CIV. P. 62(C), wherein Petitioner argues almost the precise assignment of errors raised before this honorable Court. *See* App 000467-68. The Court below heard Petitioner's arguments and correctly decided none of the alleged errors necessitated a reversal in course regarding its previous decision (App 000460-64). App 000559-67.

## **SUMMARY OF ARGUMENT**

Respondent respectfully submits that Petitioners' assignments of error lack merit and that the Circuit Court's final orders should be affirmed. Petitioners' challenges fall into four categories, each of which fail to demonstrate reversible error.

First, regarding Assignments of Error nos. 1 and 9, the Circuit Court's orders contain sufficient findings to support meaningful appellate review under established West Virginia precedent. Second, concerning Assignments of Error nos. 2-6, the Circuit Court properly applied relevant law, including the Uniform Common Interest Ownership Act where applicable. Third, as to Assignments of Error nos. 7 and 8, any application of W. Va. Code § 36-3-11 was appropriate under the circumstances. Finally, regarding Assignments of Error nos. 10 and 11 are factually not

applicable to this case as they allege actions on the part of the Circuit Court that did not occur. To the extent the Circuit Court did undertake the alleged errors, the Circuit Court acted within its proper judicial authority.

### **STATEMENT REGARDING ORAL ARGUMENT AND DECISION**

Respondent submits that oral argument is unnecessary in this matter. The legal issues presented are well-settled under West Virginia law, and the extensive briefing by the parties provides sufficient guidance for this Court's review. However, should this Court determine that oral argument would be beneficial, Respondent is prepared to participate.

### **ARGUMENT**

Petitioner's raise a tremendous number (eleven) errors of law in an apparent last gasp attempt to overturn the lower court's ruling. These stated errors are without merit and accordingly this honorable Court must affirm the lower court's ruling based on the following reasons.

#### **A. The Mercer County Circuit Court Sufficiently Reviewed Documents and the Law in its Findings of Fact and Conclusions of Law. (Addressing Assignment of Error 1)**

Petitioners' first assignment of error challenges the sufficiency of the Circuit Court's factual findings and legal conclusions. However, this challenge fails under established West Virginia appellate standards.

Here, Petitioners have failed to demonstrate how the Circuit Court's findings were insufficient for meaningful appellate review.

The standard for reviewing circuit court findings after a bench trial is a deferential one. Syl. Pt. 1, *Public Citizen, Inc. v. First National Bank in Fairmont*, 198 W.Va. 329, 480 S.E.2d 538 (1996) (Courts apply a two-pronged deferential standard when reviewing challenges to findings and conclusions made after a bench trial: "The final order and the ultimate disposition are reviewed

under an abuse of discretion standard and the circuit court's underlying factual findings are reviewed under a clearly erroneous standard.”) *See also Harrell v. Cain*, 242 W. Va. 194, 202, 832 S.E.2d 120, 128 (W. Va. 2019).

Petitioners broadly argue that the Court below failed to analyze the record documents, but a review the “Order Granting Plaintiff’s Motion for Declaratory Judgment and Denying Defendant’s Motion for Rule 59 Relief” shows otherwise. Within the Findings of Facts, the Circuit Court reviewed the “Declaration of Covenants, Conditions, and Restrictions”; the Deed for Lot 94 (the “community nature park”); the Deed of Correction; applicable law on the correction of deeds; the fact that the parties “presented their case” to the Circuit Court in a hearing held on November 7, 2024; the fact that “no title search” was conducted by Petitioner’s prior to filing their corrective deed; the Minutes from the homeowners association meetings; and the plat map. *See* AP 000559-64.

There is nothing in the record or otherwise pointed to by Petitioners to support the argument that the Circuit Court “failed to analyze the case record or to cite to documents in the Final Order and the Rule 59(e) Order to support the declaratory judgments it made.”

Accordingly, Petitioners have not met their burden of demonstrating that the Circuit Court's findings were an abuse of discretion or the factual determinations were clearly erroneous, and therefore the Circuit Court’s Orders must be **AFFIRMED**.

**B. The Circuit Court Properly Applied the Appropriate Law to the Facts of this Case. (Addressing Assignment of Error 2)**

Petitioners contend that the Circuit Court failed to properly apply the Uniform Common Interest Ownership Act. However, this argument lacks merit. It is clear from the face of the Order

Granting Plaintiff's Motion for Declaratory Judgment and Denying Defendant's Motion for Rule 59 Relief that the Circuit Court weighed and applied the Uniform Act. *See* AP-000565.

The Uniform Common Interest Ownership Act governs “the formation, management, and termination of common interest communities, whether the community is a condominium, planned community, or real estate cooperative.” *Univ. Commons Riverside Home Owners Ass'n v. Univ. Commons Morgantown, LLC*, 230 W. Va. 589, 591, 741 S.E.2d 613 (2013). The Act provides specific procedures for the creation and enforcement of restrictive covenants in such communities.

Petitioners' argument that the Circuit Court failed to apply the Uniform Act is a red herring and ignores the fundamental principle that restrictive covenants are governed by the intention of the parties. Specifically, this Court has stated “[t]he fundamental rule in construing covenants and restrictive agreements is that the intention of the parties governs, gathered from the entire instrument by which the restriction is created, the surrounding circumstances, and the objects which the covenant is designed to accomplish. Syl. Pt 3, *Jubb v. Letterle*, 191 W. Va. 395, 446 S.E.2d 182 (1994), *See Also* Syl pt. 2, *Allemong v. Frenzel*, 178 W. Va. 601, 363 S.E.2d 487 (1987).

Petitioners reliance upon the Uniform Act does not change the fact that there existed clear covenants and restrictions The record demonstrates that the Falcon Ridge Declaration was properly created and recorded, establishing a common scheme of development for the mutual benefit of all owners. Specifically, the Declaration of Covenants, Conditions, and Restrictions for Falcon Ridge (AP-000049) properly tracks the statutory requirements laid down under the Uniform Act.

The Circuit Court's application of relevant legal principles was appropriate under these circumstances.

**C. The Circuit Court Correctly Decided that Petitioner’s Lots Are Subject to the Falcon Ridge Declaration and The Deeds in Question Expressly State They are Part of the Falcon Ridge Subdivision. (Addressing Assignment of Error 3 & 4)**

Petitioners' combine their third and fourth assignments of error in their argument, but essentially argue the Circuit Court erred in concluding that Petitioners' lots were conveyed and acquired subject to the Falcon Ridge Declaration where “deeds in question all expressly state that the Property is part of the Falcon Ridge Subdivision” and “as such, they are governed by the Restrictive Covenants set out for use in the Falcon Ridge planned community.”

Petitioners' argument that explicit deed language is required fails under West Virginia's established general plan development doctrine. This Court has consistently held that when a developer creates "a general plan or common scheme of development restricting the usage of all lots within the subdivision for the mutual benefit of all owners," individual lot owners acquire enforceable rights against other owners within the planned development. *Jubb v. Letterle*, 185 W. Va. 239, 243, 406 S.E.2d 465, 469 (W. Va. 1991). This doctrine recognizes that "each individual owner purchasing property within the area originally designated" as part of the subdivision "acquired a right to enforce the restrictive covenants against any other owner or owners." *Jubb v. Letterle*, 191 W. Va. 395, 397, 446 S.E.2d 182 (W. Va. 1994). This principle directly contradicts the contention that only lots with explicit deed references are subject to the Declaration.

Further, the Deeds themselves that Petitioner states are not subject to the Declaration explicitly provide a conveyance of “Lots 26-42, inclusive, Lots 44-54, inclusive, Lots 63-67, inclusive, Lots 89, 90, 91, 94 and Tracts A, B, and C, **Falcon Ridge Subdivision**, Beaver Pond District, Mercer County, West Virginia . . .” See *Specifically* AP-000063 (original deed to Respondents) & AP-000066 (corrective deed to Respondents). These Deeds facially state they are

part and parcel of the Falcon Ridge Subdivision and therefore subject to the Declaration governing the same.

**D. There is No Evidence in the Record that the Court Below Relied on Parol Evidence to Make its Determination. (Addressing Assignment of Error 5)**

Petitioners contend that the Circuit Court improperly considered Parol evidence in the form of a Brochure from Falcon Ridge, but any reference to the same is notably absent from the Orders of the Circuit Court below, besides a passing mention in the Order upon reconsideration and only in response to Petitioner's argument of improper consideration of parol evidence in their motion for reconsideration. AP-000565.

Petitioner cites nowhere in the Appendix to support this contention. In fact, the Petitioner's only arguable support for this contention arises only after they made the claim the Court below considered the "brochure" in their Motion for Reconsideration and the Circuit Court adequately addressed this claim stating it to be "disingenuous at best" and then reiterating the argument above that "The Deeds in question all expressly state that the Property is part of the Falcon Ridge Subdivision." AP-000565. Flatly, the Circuit Court never had to determine whether the Deeds were ambiguous, because they never weighed parol evidence in arriving at the decision the Petitioner's property were subject to the Declaration.

**E. The Status of the Crazy Mountain Cycles Parcels is not Comparable to the Petitioner's Parcels and there was no Final Adjudication on the Merits Regarding their Status. (Addressing Assignment of Error 6)**

Petitioners in this assignment of error claim that the property conveyed to Crazy Mountain Cycles, LLC is indistinguishable from there own, and given that that property is not subject to the Declaration, there's ought not be either. But, as the Petitioner's urge this honorable Court, a comparison of the grants present in the respective Deeds shows facially different grants.

The Deed granting property to Crazy Mountain Cycles (AP-000185-187) concerns different parcels separate and apart from those of the Petitioner with different granting histories and are therefore not apt to comparison. Flatly, they are not identical in nature. Additionally, there was no final adjudication by the Circuit Court as to the merits of a claim of whether or not the Crazy Mountain Cycles properties were in fact subject to the Declaration.

**F. The Circuit Court Correctly Determined that Petitioners Failed to Comply with Statutory Requirements and Properly Exercised its Authority to Grant Appropriate Relief under Established West Virginia Procedural Rules. (Addressing Assignment of Error 7)**

The Circuit Court correctly determined that Petitioners failed to comply with statutory requirements and properly exercised its authority to grant appropriate relief under established West Virginia procedural rules.

As an initial matter, Petitioner's claim "Respondent made no factual allegations to give Petitioners notice that it claimed that Petitioners' title to a part of Lot 94 would be in issue" (Pet. Br. at 31), but Petitioners cannot claim to have been "sandbagged" as they themselves put Lot 94 directly into this matter, raising claims regarding their rights in their counterclaim for declaratory judgment. AP-000043.

Petitioners argue that elements (B) and (C) of W. Va. Code § 36-3-11(c) were not satisfied, but this argument fails on the facts. The statute requires that an "obvious description error" be apparent by reference to other information and that the deed recite the parcel's correct address or tax map identification number. In fact, the corrective deed does reference other documents in the chain of title wherein the correct information is contained. *See* AP-000066-67 (providing granting clauses wherein prior deeds (Deed Book 1094, at page 177 (the deed purported to be the corrected which itself references Deed Book 965 at page 121 for the source (AP000063)) and Deed Book

918, at page 286). Here, these references to Deeds with the correct information necessary to render this an “obvious description error” such that the Circuit Court could have and did reasonably find the requirements of West Virginia Code § 36-3-11 applied. The Circuit Court's factual findings regarding these elements should be afforded appropriate deference.

Contrary to Petitioners' assertion that this presents a novel question of law the Circuit Court possessed clear authority under W. Va. Code § 36-3-11 to address improper corrective instruments. The statute's remedial provisions necessarily include judicial authority to invalidate non-compliant corrective deeds that circumvent required procedural safeguards.

West Virginia Rule of Civil Procedure 54(c) expressly provides that every final judgment “shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings.” W. Va. R. C. P. 54(c). The rule establishes that plaintiffs need only provide “general notice as to the nature of his or her claim.” *State ex rel. W. Va. Univ. Hosps., Inc. v. Scott*, 246 W. Va. 184, 203, 866 S.E.2d 350, 369 (2021).

Petitioners cite federal cases for the proposition that Rule 54(c) has limits, but West Virginia law is clear that “challenges based on such technicalities cannot prevail under our Rules of Civil Procedure.” *Wal-Mart Stores E., L.P. v. Ankrom*, 244 W. Va. 437, fn. 74 (2020). The West Virginia Supreme Court has specifically rejected arguments that pleading technicalities should preclude application of substantive statutory requirements. *See Elsey Ford Sales, Inc. v. Solomon*, 167 W. Va. 891, 895, 280 S.E.2d 718, 721 (1981).

This Court has provided: “[a]s a general rule, a trial court may not grant summary judgment sua sponte on grounds not requested by the moving party. An exception to this general rule exists when a trial court provides the adverse party reasonable notice and an opportunity to address the grounds for which the court is sua sponte considering granting summary judgment.” Syl. pt. 3,

*State ex rel. Nat'l Union Fire Ins. Co. of Pittsburgh, P.A.*, 243 W. Va. 681, 850 S.E.2d 680, (2020)

Here, Petitioners had full opportunity to address the validity of their Deed of Correction throughout the litigation process. In addition to the issues surrounding Lot 94 and notice thereof, the use of West Virginia Code § 36-3-11 as an argument was raised prior to the oral argument before the Circuit Court on the parties respective motions for summary judgment. *See* AP-000402. Accordingly, the Circuit Court's use of West Virginia Code § 36-3-11 was not a sudden surprise instead Petitioner had reasonable notice and an opportunity to address the ground.

Here, the Circuit Court properly found that Respondents owned Lot 94 as the same was deeded to them in 2007:

The said party of the first part does hereby grant, sell and QUIT-CLAIM, with the exception mentioned below, all of its right, title and interest in and to the western portion of Lot 94 over which the right-of-way from Circle Drive presently exists, together with the platted portion of the right of way of Hastings Street from its intersection with the western line of Saxton Street to the northwest corner of Lot 25 and to the northeast corner of Lot 90 to the northwest corner of Lot 102, and all of Saxton Street.

AP-000175-176. In this Deed, Shoemaker Construction Company, Inc. deeded the above to Falcon Ridge Unit Owners' Association, Inc. Clearly, the legal description of the conveyance provides , "all of its right, title and interest in and to the western portion of Lot 94 over which the right-of-way from Circle Drive presently exists." The Circuit Court's factual determination that the corrective deed failed to adhere to the explicit statutory requirements is sound and should be **AFFIRMED**.

**G. Respondent Clearly Owns the Roads in Falcon Ridge and the Circuit Court's Decision Should be Affirmed. (Addressing Assignment of Error 8)**

As laid out above, the Circuit Court properly concluded:

The streets were granted to the Falcon Ridge Homeowners Association as "common elements" in the restrictive covenants that were recorded in the Office of the Mercer County

Clerk at Deed Book 750 at page 110. The streets are specifically addressed at pages 114 and 115 in this document. The streets cannot, then be deeded to the Bellomys by Mark Shoemaker, Jr., as they weren't his property to sell.

AP-000565. The 2007 Deed again lays out the fact that the streets contained within the current Falcon Ridge community were deeded to them exclusively and the could not have deeded those streets to the Petitioner: "platted portion of the right of way of Hastings Street from its intersection with the western line of Saxton Street to the northwest corner of Lot 25 and to the northeast corner of Lot 90 to the northwest corner of Lot 102, and all of Saxton Street." AP-000175.

The Circuit Court's order here sufficiently relied upon the facts put forth in the record to make the determination that Respondents held no title to the streets running through Falcon Ridge. Accordingly, the Circuit Court's ruling should be **AFFIRMED**.

**H. The Circuit Court did not Rule that Respondent Owned All of Lot 94, Rather, and Correctly that Petitioner did not Own Lot 94 Because Petitioners did not Follow the Statutory Requirements of Corrective Deeds. (Addressing Assignment of Error 9)**

Here, Petitioner frames their assignment of error as that the Court erroneously ruled that Respondent's own "all of Lot 94", but that was not the Circuit Court's ruling. The Circuit Court concluded:

The Defendants did not follow the statutory requirements to correct the deed to include any portion of Lot 94. Accordingly, it is the finding of this Court that the Defendant's own no portion of lot 94. Accordingly, any question regarding the placement of the sign upon that land is moot.

AP-000565. Petitioner's assignment of error presents decided a step beyond what the Circuit Court ruled, to wit: the Court did not reach the merits of the question of whether Falcon Ridge owned anymore than the "western portion" of Lot 94, only that Petitioners did not own any portion of Lot 94 as a result of their legally defective corrective deed.

As the assignment of error asks this Court to remedy an alleged error not present on the record, this Error should be dismissed and the Circuit Court's order should be **AFFIRMED**.

**I. There is No Evidence that the Circuit Court's Decision to Visit the Properties was a "Gross Abuse of Discretion" (Addressing Assignment of Error 10)**

Without reference to the appendix record or reliance on any West Virginia case law, Petitioner claims the Judge's visit to the property without notice to the parties, constituted a "gross abuse of discretion" such that it merits a complete reversal and relief from the Circuit Court's order.

Petitioner's posit this visit prejudiced their position so greatly that it somehow translated into not just an abuse of discretion but a gross abuse of discretion. Plainly, there is no evidence the visit had any effect or was factored into the Court's decision in anyway. Further, if the Court feels it is appropriate to visit the properties at issue to obtain a greater understanding of the layout of the properties at issue, such investigation may well benefit both the parties and the Court. It would seem appropriate and well within the power of the Circuit Court to undertake this, even if *sua sponte*.

As Petitioner cite no prejudice as a result of the Circuit Court's action, or cite to anything to indicate it actually materially affected the Circuit Court's ruling, the Circuit Court's order should be **AFFIRMED**.

**J. The Circuit Court did Not Grant the Petitioner Injunctive Relief Its Final Order and therefore this Assignment of Error is Mooted. To the Extent the Circuit Court Granted Injunctive Relief it was Necessary to Effectuate the Intent of its Order and Did Not Violate Petitioner's Constitutional Rights As Petitioner had Opportunity to be Heard on the Merits. (Addressing Assignment of Error 11).**

As an initial matter, nothing contained in the record indicates that Respondent's were granted injunctive relief, therefore this assignment of error is moot. To the extent that it is

interpreted that the Respondent was granted injunctive relief on a *sua sponte* basis, the Circuit Court was squarely within its discretion to do so.

West Virginia courts have consistently recognized the inherent power of circuit courts to enforce their own orders. For instance, in *Brown v. Brown*, this Court emphasized that “[i]t is well established that a court of equity has the inherent power to enforce its own decrees. *Brown v. Brown*, 135 W. Va. 579, 586, 64 S.E.2d 620, 625 (W. Va. 1951). Similarly, in *Charles WV Mall, LLC v. Charleston Urban Renewal Auth.*, this Court made clear “a trial court always has inherent authority to regulate and control the proceedings before it and to protect the integrity of the judicial system.” *Charles WV Mall, LLC v. Charleston Urban Renewal Auth.*, 248 W. Va. 565, 569, 889 S.E.2d 287, 291 (W. Va. 2023).

The Due Process Clauses of the West Virginia Constitution and Federal Constitution afford parties the procedural rights of notice and opportunity to be heard. *In re Gazette FOIA Request*, 222 W. Va. 771, 671 S.E.2d 776 (2008). The due process of law guaranteed by state and federal constitutions requires both notice and the right to be heard when applied to court procedures. U.S. Const. Amend. V & XIV. W. Va. Const. Art. III, § 10.

In this case, Petitioners received adequate notice and opportunity to be heard throughout the proceedings. The extensive briefing and argument demonstrate that Petitioners were afforded full due process protections.

### **CONCLUSION**

Based on the foregoing grounds, supported by the above facts and cited law, Respondent respectfully requests that this Honorable Court **AFFIRM** the Circuit Court’s decision.

Respectfully submitted,

**FALCON RIDGE HOMEOWNERS  
ASSOCIATION, INC.**

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**IN THE INTERMEDIATE COURT OF APPEALS OF  
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*HARVEY BELLOMY and  
NANCY BELLOMY,*  
Petitioner,

v.

DOCKET NO: 25-279

*FALCON RIDGE HOMEOWNERS  
ASSOCIATION, INC.,*  
Respondent.

**CERTIFICATE OF SERVICE**

I, Ronald N. Walters Jr., counsel for Respondent, do hereby certify that service of the foregoing *Respondent's Brief* in the above-styled matter have been made upon Counsel of Record for the State of West Virginia this 30th day of October, 2025, via electronic filing.

FALCON RIDGE  
HOMEOWNERS  
ASSOCIATION, INC.  

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By Counsel

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