

INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

Harvey Bellomy and Nancy Bellomy,

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Defendants and
Counter-Plaintiffs Below, Petitioners,

v.

No. 25-ICA-279

On appeal from Mercer County
Circuit Court no. 23-C-59

Falcon Ridge Homeowners Association, Inc.,

Plaintiff and
Counter-Defendant Below, Respondent.

REPLY BRIEF OF PETITIONERS LEE AND NANCY BELLOMY

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REPLY BRIEF OF PETITIONERS LEE AND NANCY BELLOMY

For their Reply in support of their appeal and in opposition to *Response Brief of the Respondent*, Petitioners, Lee and Nancy Bellomy state the following:

I.

INTRODUCTION

The Mercer County Circuit Court, without any legal basis, stripped Petitioners of their ownership of valuable real estate interests. In a stroke of a pen, without any analysis tethered to applicable law, the lower court also decreed that Petitioners' lots are subject to the Falcon Ridge Declaration, making the lots and Petitioners liable for assessments and use restrictions.

The orders below are erratic and vacuous. Petitioners have carefully laid out the documentary evidence and the applicable law—largely the Uniform Act—that require this Court to reverse the orders below in favor Petitioners. Respondent offers virtually nothing to contradict Petitioners' argument, and certainly not their statement of facts. Respondent fails to seriously confront Petitioners' assignments of error. Respondent, as the trial court, simply refuses to acknowledge the applicable law to this case.

The documents do not lie: Petitioners' lots have never been made subject to the Falcon Ridge Declaration in compliance with the Uniform Act or common law. Petitioners' lots are not and cannot rightly be adjudicated to be part of Falcon Ridge. Contrary to the lower court's very poor and flawed orders, Petitioners' lots thus are not subject to the obligation to pay assessments to Respondent nor to the use restrictions contained in the Falcon Ridge Declaration.

Further, Respondent, like the lower court, applies no standard or principle of law that merits the judicial divestiture of Petitioners' ownership of valuable real estate interests in the form of access easements through Falcon Ridge's streets and the residue of Lot 94.

The Final Order and the Rule 59(e) Order are deficient in that they lack findings of fact and conclusions of law to permit meaningful appellate review. They are sloppy, conclusory orders, omitting analysis sufficient to give Petitioners and this Court an understanding of the basis for its rulings for Respondent.

For the ICA, there are two main take-away for this case. First, the Uniform Act, that is, the Uniform Common Interest Ownership Act, has abrogated the common law of common interest communities in West Virginia. The 1987 Supreme Court opinion in *Jubb v. Letterle*, which Respondent cites as a governing legal authority, has been abrogated to the extent that the Falcon Ridge Declaration fails to conform to the Uniform Act.

Second, W. Va. Code § 36-3-11 is inapplicable to this case. The facts of this case do not support its application, and the statute does not confer on the lower court the power to divest Petitioner of their property right of access, ingress and regress to their property through the streets of Falcon Ridge.

II.

POINTS IN REPLY

1. Respondent incorrectly asserts that “the standard for reviewing circuit findings after a bench trial is a deferential one.” Response at 2. There was no bench trial below. Petitioners and Respondent submitted briefs, responses and replies on dispositive motions under Rule 56(c) of the West Virginia Rules of Civil Procedure. “A circuit court’s entry of summary judgment is reviewed *de novo*.” Syl. Pt. 1, *Painter v. Peavy*, 192 W. Va. 189, 451 S.E.2d 755 (1994). This Court’s appellate review is *de novo*.

2. Respondent incorrectly asserts: “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. Response at 4 (citing AP 565). Respondent’s assertion is false—and laughable. The lower court resolutely neither weighed nor applied the Uniform Act despite Petitioners’ repeatedly asking the lower court to do so.

The lower court’s orders and analysis resolutely ignore the Uniform Act. There is an ironic exception in the form of a single, tantalizing reference. “The Restrictive Covenants¹ expressly set out a desire of the Falcon Ridge Community to be a planned community and to be covered by the Uniform Common Interest Ownership Act” and also noting that “[t]he parties admit that this is the case.” Response at 7 (citing AP 565)². The lower court fails to explain why it acknowledges the application of the Uniform Act to Falcon Ridge while failing to apply the Uniform Act to Falcon Ridge.

Our Supreme Court would disapprove the lower court’s abandonment of the Uniform Act: The Legislature provided that the Uniform Act ‘applies to all common interest communities’ created within West Virginia after July 1, 1986.[³] See W. Va. Code § 36B-1-101. Unless expressly provided by the Uniform Act, the Act’s provisions ‘may not be varied by agreement, and rights conferred may not be waived.’ W. Va. Code § 36B-1-104. Furthermore, ‘[a] declarant may not act under the power of attorney, or use any other device, to evade the limitations or prohibitions of [Chapter 36B of the West Virginia Code] or the declaration. *Id.*

¹ The lower court improperly refers to the Falcon Ridge Declaration here as “the Restrictive Covenants”. The Uniform Act chooses the term “declaration” as W. Va. Code § 36B-1-13(13) that must include an obligation for the upkeep of the common elements to qualify a common interest community as such under W. Va. Code § 36B-1-103(7).

² It was the declarant of Falcon Ridge—and not the “Falcon Ridge Community”—that declared its “desire” in the Falcon Ridge Declaration to subject Falcon Ridge to the whole of the Uniform Act. AP 161. To be sure, the desire or even intent of declarant is immaterial to a court’s determination whether a common interest community is subject to the Uniform Act. A common interest community becomes subject to the Uniform Act by operation of law. That is, a “common interest community” in West Virginia is created when there is “real estate with respect to which a person, by virtue of his ownership of a unit, is obligated to pay for real estate taxes, insurance premiums, maintenance or improvement of other real estate described in a declaration.” W. Va. Code § 36B-1-103(7).

³ The West Virginia Legislature enacted the Uniform Act in 1984, to take effect as of July 1, 1986, as an expansion of the *Uniform Condominium Act* to apply to three types of “common interest community”: the condominium, the planned community, and the cooperative. Falcon Ridge is a planned community.

Justice Holdings, LLC v. Glade Springs Vill. Property Owners Ass’n, 250 W. Va. 563, 569 (2023).

The Uniform Act’s provisions extend to the entire subject matter of common interest communities. The Uniform Act comprehensively addresses their creation (Article 2); their management (Article 3); and the protection of purchasers with respect to them (Article 4). *See* W. Va. Code § 36B-1-101 *et seq.*

‘The primary rule of statutory construction is to ascertain and give effect to the intention of the Legislature. Syl. Pt. 8, *Vest v. Cobb*, 138 W.Va. 660, 76 S.E.2d 885 (1953). ‘It is a cardinal rule of statutory construction that a statute should be construed as a whole, so as to give effect, if possible, to every word, phrase, paragraph and provision thereof, but such rule of construction should not be invoked so as to contravene the true legislative intention.’ Syl. Pt. 9, *Vest*. Further, ‘[i]t is always presumed that the legislature will not enact a meaningless or useless statute.’ Syl. Pt. 4, *State ex rel. Hardesty v. Aracoma - Chief Logan No. 4523, Veterans of Foreign Wars of U.S., Inc.*, 147 W.Va. 645, 129 S.E.2d 921 (1963). Therefore, given these guidelines:

A statute should be so read and applied as to make it accord with the spirit, purposes and objects of the general system of law of which it is intended to form a part; it being presumed that the legislators who drafted and passed it were familiar with all existing law, applicable to the subject matter, whether constitutional, statutory or common, and intended the statute to harmonize completely with the same and aid in the effectuation of the general purpose and design thereof, if its terms are consistent therewith. Syl. Pt. 5, *State v. Snyder*, 64 W.Va. 659, 63 S.E. 385 (1908).

Justice Holdings, LLC v. Glade Springs Vill. Property Owners Ass’n, 250 W. Va. 563, 589

“The remedies provided by this chapter shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed.” W. Va. Code § 36B-1-113(a) “Any right or obligation declared by this chapter is enforceable by judicial proceeding.” W. Va. Code § 36B-1-113(b).

Indeed, the lower court fails to apply a single one of its statutory provisions. The lower court's failure to apply the Uniform Act alone constitutes fundamental reversible error that requires this Court to reverse and vacate the final orders and to enter judgment for Petitioners.

The ICA issued its Memorandum Decision in *Wilbur v. Locust Hill Unit Owners Association, Inc.* (memorandum decision (24-ICA-270 April 29, 2025)). In that case, the homeowners association for a planned community under the Uniform Act⁴ sued a unit owner for alleged violations of use restrictions.⁵ The Jefferson County Circuit Court, after hearing from an advisory jury, entered a final order entering judgment against the homeowner. On appeal to the ICA, the homeowner cited "several assignments of error" contending that the terms in the declaration for the planned community were "unambiguous" and "plainly do not prohibit Mr. Wilber's flag". *Id.* at 1. The ICA recounted that "[i]t was Mr. Wilber's contention that there was no indication that the Declaration's terms were ambiguous, and that it was a threshold question of law not sufficiently addressed by the circuit court." *Id.* at 2. The ICA agreed and remanded the case because of the inadequate final order:

Here, the record is completely devoid of any analysis or affirmative determination by the circuit court regarding its interpretation of the Declaration, especially with respect to the issue of ambiguity. This determination is imperative for this Court to understand the circuit court's rationale for concluding that consideration of extrinsic evidence and use of an advisory jury was necessary to interpret and apply the contractual provisions of the Declaration in this case. Thus, the circuit court's failure to enter a detailed trial order with sufficient findings of fact and conclusions of law addressing this significant question of law impedes this Court's ability to conduct a meaningful appellate review of this case on the merits. Simply stated, without this threshold determination we are unable to determine

⁴ Locust Hill, as is Falcon Ridge, is subject to *UCIOA* codified in W. Va. Code § 36B-1-101 to W. Va. Code § 36B-4-120.

⁵ "The case centers on a "Let's Go Brandon" flag flown by Mr. Wilber on this property" which the association believed constituted a "political campaign sign" that the declaration prohibited, a claim that the homeowner disputed." *Wilbur v. Locust Hill Unit Owner's Association, Inc. Id.* at p. 3.

whether the circuit court's findings of fact are clearly erroneous or if its ultimate disposition is an abuse of discretion.

Id. at p. 5.

The lower court's failure to apply the Uniform Act at all goes to the heart Petitioners' assignments of error.

3. Throughout this case Respondent and the lower court have shoved the Uniform Act aside and placed all of their credibility on the bald assertion that was the "intent" of the Falcon Ridge declarant to include in Falcon Ridge, uniquely, only six⁶ out of 45 lots, all of which Petitioners acquired at the same time by the same deeds from the same grantors, even though there is no document or instrument that accomplishes this magic trick. Instead, Respondent and the lower court rely exclusively on the 1987 Supreme Court opinion in *Jubb v. Letterle*: "The 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 object which the covenant is designed to accomplish." Syl. Pt. 3, *Jubb v. Letterle*, 191 W. Va. 395, 446 S.E.2d 182 (1994).

First, the Uniform Act, not *Jubb Letterle*, primarily governs whether a declarant has created a "common interest community". The effect of the Uniform Act is to abrogate and supplant common law rules to determine whether a "common interest community" has been created in conformance with the Uniform Act.

The obligation to pay for the upkeep of other real property in the planned community must be explicitly attached to a lot for that lot to be subject to the obligation. In this case, the obligation

⁶ The lower order declared that *only* Petitioners' Lots nos. 52, 53, 54, 89, 90, and 91 are subject to the Falcon Ridge Declaration while failing to address why Petitioners' remaining 39 lots, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 44, 45, 46, 47, 48, 49, 50, 51, 63, 64, 65, 66, 67 and Tracts A, B, and C, are not subject to the Falcon Ridge Declaration. AP 188-192.

to pay has never been attached to Petitioners' lots. The courts of Colorado, which adopted a version of the Uniform Act, have acknowledged the creation of a common interest community in that state when several documents or instruments in the public record are read together to satisfy the mandatory requirement that the declaration contain a "legally sufficient description of the real estate included in the common interest community". The Supreme Court of Colorado held that

[u]nder CCIOA, a common-interest community may be created "only by recording a declaration executed in the same manner as a deed." § 38-33.3-201(1), C.R.S. (2017). A declaration is "any recorded instruments however denominated, that create a common interest community, including any amendments to those instruments and also including, but not limited to, plats and maps." § 38-33.3-103(13). ***Thus, 'a declaration need not consist of a single document.'*** *Pulte Home*, ¶ 43, 382 P.3d at 829. ***That said, for one or more documents to create a common-interest community (and thus amount to a declaration), "they must, at a minimum, (1) establish an obligation to pay for various expenses associated with common property and (2) attach that obligation to individually owned property."*** *Id.* at ¶ 44, 382 P.3d at 829 (emphasis in original).

McMullin v. Hauer, 2018 CO 57, P15 (2018) (emphasis supplied).

In this case, the Falcon Ridge Declaration includes an obligation "to pay for various expenses associated with common property"⁷ but fails to attach the obligation to Petitioners' lots.

Second, the intent of the declarant, in any given case, might possibly bear on whether a declarant intended to create a common interest community; nonetheless, the declaration must comply with the requirements of the Uniform Act for the effective creation of a common interest community. *See e.g., Justice Holdings, LLC v. Glade Springs Vill. Property Owners Ass'n*, 250 W. Va. 563, 577 ("We need not address any substantive legal issues regarding the parties' intent

⁷ Section 1.8 of the Falcon Ridge Declaration defines "Common Expenses". AP 162. But the Falcon Ridge Declaration does NOT include an obligation to pay for upkeep of the Common Elements defined in Section 1.7 of the Falcon Ridge Declaration (*id.*) but, for purposes of this case and now this appeal, Petitioners have assumed that West Virginia courts would not enforce the Uniform Law on its requirement that the declaration actually impose the obligation. *See* W. Va. Code § 36B-1-103(7).

and whether the circuit court should have reformed the Declaration by one word. Even if we directed the circuit court to adopt Justice Holdings's proposed reformation, this remedy does not create a declaration that meets the requirements for the LELPC exception in W. Va. Code § 36B-1-203(2).” Respondent wants to make case this about whether “there existed clear covenants and restrictions . . .” while also baldly claiming that “the Falcon Ridge Declaration was properly created and recorded . . .” Response at 4. This is a false flag. No one in this case disputes the existence of the Falcon Ridge Declaration. Rather, Petitioners dispute that they acquired the lots subject to the Falcon Ridge Declaration.

Third, the real issue is that Petitioners acquired their lots free and clear of the Falcon Ridge Declaration. This Court will note that Respondent is unable to contradict Petitioners’ showing that none of the lots Petitioners acquired were conveyed to be subject to the Falcon Ridge Declaration.

4. Respondent is not credible when it claims that Falcon Ridge includes Petitioners’ lots nos. 52, 53, 54, 89, 90, and 91 under the “general plan or common scheme of development” doctrine discussed in. Response at 5. Here is the ringer: “This principle directly contradicts the contention that only lots with explicit deed references are subject to the Declaration.” *Id.* Here Respondent essentially concedes the truth of Petitioners’ factual assertion that their deeds omit “explicit deed references” making them subject to the Falcon Ridge Declaration. Further, the so-called general plan or common scheme of development doctrine described in *Jubb v. Letterle* cannot possibly apply in this case because Plat 6995 includes 124 lots and parcels.. The Falcon Ridge Declaration caps the number of units or lots possibly to be included in Falcon Ridge at 49. AP 165. Under the general plan or common scheme of development doctrine all 124 lots and parcels shown on Plat 6995 would have to be included in Falcon Ridge, gutting the lower court’s conclusions and Respondent’s claims to the contrary.

5. Respondents then pivot from a discussion of the general plan or common scheme of development doctrine to its reiteration of the lower court's conclusion that Petitioners' "deeds themselves . . . 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 . . .'" Response at 5 (citing Petitioners' two deeds at AP 963 and AP 64). That is flatly false.

The reference to "Falcon Ridge Subdivision" in Petitioners' two deeds does not make them subject to the Falcon Ridge Subdivision. If that claim were true, then all 45 of Petitioners lots, not only six of them, conveyed by the deeds would be subject to the Falcon Ridge Declaration. AP 188-192; AP 459-464; AP 558-567. By the same token, all of the lots conveyed to Crazy Mountain Cycles, LLC by a third deed, including 29 lots including a reference in the legal description to "Falcon Ridge", also would be subject to the Falcon Ridge Declaration by virtue of the lower court's reasoning. AP 185-187.

Respondent has no credibility on this point. Respondent, without hesitation, agreed to orders (AP 113-115, 476-479) that excludes all of Crazy Mountain Cycles' lots from Falcon Ridge while insisting that Petitioners' lots must be included in Falcon Ridge. The trial court has endorsed the highly disparate treatment even though all of Petitioners' and Crazy Mountain Cycles' lots were conveyed in the same manner.

Respondent claims "a comparison of the grants present in the respective Deeds shows facially different grants." Response at 6. This is unsupported in that Respondent fails to rationally explain how they are different. Instead, Respondent resorts to gibberish: "The Deed granting property to Crazy Mountain Cycles (AP 185-187) 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.” Response at 7. These are the sum and substance of Respondent’s argument is incoherent.

They deeds to both Petitioners and Crazy Mountain Cycles are virtually identical in that their descriptions include a reference to “Falcon Ridge” while also not making the conveyances of them subject to the Falcon Ridge Declaration. Compare AP 184-187 and AP 188-192.

On April 16, 2025, the lower court entered an *Amended Order of Dismissal* in which Respondent acknowledged and agreed that Crazy Mountain Cycles “acquired all of those certain lots or parcels of real estate” identified as “Lots pt. 62, 79 thru 88 & 104 thru 120 Falcon Rdg. Inc. Pcls 52-7 & 28 30-31.1-44-45-48-49-52 thru 71 inclusive of Tax Map 17B” as shown on “Map Showing Subdivision of Hilltop Manor Bluewell Development Corp Beaver Pond District Mercer County Bluewell, West Virginia Scale 1” – 20’ Feb.-Nov 1976 A.M Shields Reg. Prof. Eng.’,” recorded in the Mercer County Clerk’s office in Microfilm Plat no. 6995” are “***not subject to the Falcon Ridge Declaration***”. AP 477-478 (emphasis supplied).

There is not a hair’s breadth of a difference between the deeds conveying lots to Petitioners and the deed conveying lots to Crazy Mountain Cycles. That is why Respondent is incapable of reconciling its favorable treatment of Crazy Mountain Cycles’ lots, excluding them from Falcon’s Ridge, and the unfavorable treatment of some of Petitioners’ lots and parcels.

In truth, neither Petitioners’ lots and parcels nor Crazy Mountain Cycles’ lots are subject to the Falcon Ridge Declaration because there is no text, provision or clause in the deeds that makes them subject to the Falcon Ridge Declaration. Petitioners’ Brief at 9-10.⁸

⁸ There are only two possible legal outcomes. Either all of Petitioners’ lots and parcels and all of Crazy Mountain Cycle’s lots are subject to the Falcon Ridge Declaration, or they are all are not. (If they all are subject to the Falcon Ridge Declaration, then it would be the case that Petitioners and the now-owner of Crazy Mountain Cycle’s lots would have super-majority control of Falcon Ridge and could choose to terminate the entire common interest community.

6. Respondent—as does the lower court—completely misapprehends both the effect and the applicability of W. Va. Code § 36-3-11. Response at 10-11. Petitioners ask this Court to explain both the effect and the applicability of W. Va. Code § 36-3-11 and, in so doing, to reverse the errors committed below divesting Petitioners of their ownership of the residue of Lot 94, a result incorrectly premised on W. Va. Code § 36-3-11.

Petitioners ask this Court to clearly hold that W. Va. Code § 36-3-11 does not create a remedy to invalidate or set aside a deed or conveyance for a person’s failure to conform to the statute’s requirements for correcting certain kinds of error in deeds.⁹ Petitioners assert that even if there was a failure to conform with W. Va. Code § 36-3-11 in this case—which there was not—the lower court nevertheless had no power under W. Va. Code § 36-3-11 to divest Petitioners of their ownership of the residue of Lot 94.¹⁰

Second, W. Va. Code § 36-3-11 is altogether inapplicable to this case. That statute applies only to a case implicating an “obvious description error” that carries a statutorily defined meaning. Under W. Va. Code § 36-3-11(a)(4), an “obvious description error” is defined to mean

an ‘error in a real property description contained in a recorded deed, deed of trust, or mortgage where (A) the parcel is identified and shown as a separate parcel on a recorded subdivision plat; (B) the error is apparent by reference to other information on the face of the deed, deed of trust, or mortgage, or on an attachment to the deed, deed of trust, or mortgage, or by reference to other instruments in the chain of title for the property conveyed thereby; and (C) the deed, the deed of trust, or mortgage recites elsewhere the parcel’s correct address or tax map identification number.’

W. Va. Code § 36-3-11(a)(4)

⁹ Petitioners are unaware of any binding court decision implicating W. Va. Code § 36-3-11.

¹⁰ In support of this point, the statute provides that “[t]he remedies under this section are not exclusive and do not abrogate any right or remedy under the laws of the State of West Virginia other than this section.” W. Va. Code § 36-3-11(l).

These elements are conjunctive. All must be present for W. Va. Code § 36-3-11 to apply. Elements (B) and (C) are not present in this case. In 2020, Petitioners acquired a number of lots shown on Plat 6995 *excluding the residue of Lot 94* by a deed from Shoemaker. AP 188-189. In 2021, Petitioners acquired the residue of Lot 94 by a Deed of Correction from Shoemaker that “excepted and reserved from Lot 94, the western portion thereof . . .” AP 190-191 (emphasis supplied.)

Reviewing the Deed of Correction, this Court will immediately grasp that the “claimed error” is not apparent by reference to other information on the face of the Deed of Correction and that the Deed of Correction does not recite elsewhere Lot 94’s “correct address or tax map identification number.” The Court also will grasp that Petitioners acquired the residue of Lot 94, that is, the portion of Lot 94 that Respondent did not acquire in 2006.

Indeed, the Deed of Correction to Petitioners from Shoemaker “excepted and reserved from Lot 94, the western portion thereof . . .” AP 66.

Further, under W. Va. Code § 36-3-11(a)(4)(D) gives particular examples of an “obvious description error” to include: “(i) An error transcribing courses and distances, including the omission of one or more lines of courses, and distances or the omission of angles and compass directions; (ii) An error incorporating an incorrect recorded plat or a deed reference; (iii) An error in a lot number or designation; or (iv) An omitted exhibit supplying the legal description of the real property thereby conveyed.” None of these examples is found in this case.

Notably, the lower court declined to apply these definitive provisions to the example of the residue of Lot 94.

Respondent declines to offer any facts or legal analysis in support of the lower court’s conclusory decision to divest Petitioners of their ownership of the residue of Lot 94.

Indeed, there is no “obvious description error”¹¹ implicated in the conveyances of two portions of Lot 94. The Deed of Correction conveying the residue of Lot 94 not previously conveyed to Respondent has no effect on Respondent’s ownership of the western portion of Lot 94 because the Deed of Correction does not purport to convey any of the western portion of Lot 94.

7. Petitioners and Respondent (and Respondents’ members) have clear vested rights in the streets and roads shown on Plat 6995. Response at 9-10. In a 2007 quitclaim deed, the Falcon Ridge declarant, as the party of the first part, conveyed to Respondent

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 . . .

The party of the first part does not sell or convey any of the streets not so mentioned above and the party of the first part further reserves an easement for ingress, egress and utility lines for itself, its assigns and successors across the streets so conveyed.

AP 175-177 (emphasis supplied).

Later, by two deeds, the declarant and its successors, conveyed by quitclaim deed the rest of the streets and roads to Petitioners not conveyed to Respondent together with their reserved rights. AP 63-AP 68.

¹¹ The statute defines “obvious description error” as “an error in a real property parcel description contained in a recorded deed, deed of trust, or mortgage where: (A) The parcel is identified and shown as a separate parcel on a recorded subdivision plat; (B) The error is apparent by reference to other information on the face of the deed, deed of trust, or mortgage, or on an attachment to the deed, deed of trust, or mortgage, or by reference to other instruments in the chain of title for the property conveyed thereby; and (C) The deed, deed of trust, or mortgage recites elsewhere the parcel’s correct address or tax map identification number.” W. Va. Code § 36-3-11(a)(4).

By the 2020 deed, Shoemaker conveyed to Petitioners all of its “right, title and interest in Hastings Street, situate between Lots 89 and 103 as shown on said plat [6995], and an un-named street situated between Lots 63, 64, 65 and Tracts A and B and Hastings Street between Lots 26 and 52 to its terminus at Lot 43.” AP 63.

In the 2021 deed of correction, Shoemaker declared its intent “to convey all of the right, title and interest of Mark Timothy Shoemaker to all of his property in and near Falcon Ridge Subdivision . . . but the description contained in that Deed was incomplete and requires supplement and correction . . .” AP 66. By the 2021 deed of correction, Shoemaker further quitclaimed to Petitioners:

all of their right, title and interest in 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. . .

all of their right, title and interest in Hastings Street, situate between Lots 89 and 103 as shown on said plat, and Somerset Lane from Saxon Street to its terminus at Lots 66 and 67, and the Plat Road between Lot 94 and Lot 19 from Circle Drive to Hastings Street, and Hastings Street between Lots 26 and 52 to its terminus at Lot 43

all of their interest and the interests of Shoemaker Construction Company, Inc. in and to streets reserved from that certain Deed dated September 18, 2007, of record in the said Clerk’s Office in Deed Book 918, at page 286

the easement reserved from that Deed for ingress, egress and utility lines for purposes over the streets conveyed by that Deed to Falcon Ridge Unit Owners’ Association, Inc.

AP 66-67.

The lower court purports to set aside the two deeds by which Petitioners acquired their rights in the roads for access. Respondent seriously misrepresents to this Court the contents of the 2007 deed from the Falcon Ridge declarant to Respondent when it states that “[t]he 2007 Deed again

lays out the fact that the streets within the current Falcon Ridge community were deeded to them [sic] exclusively and the [sic] could not deed those streets to the Petitioner.” Response at 10.

8. Without notice to Petitioners or their counsel, Judge Wills decided to visit Falcon Ridge. *See* Response at 11. There is no record of what he observed or which properties he visited or whether he met or discussed the case with anyone else.

Judge Wills was not a finder of fact in this case. Yet, he chose to become a jury where none was asked or required. The parties had already submitted their respective briefs under Rule 56(c) of the West Virginia Rules of Civil Procedure.. A view of real estate becomes evidence in a case as the Supreme Court of Appeals explains:

A ‘view’ is ‘the act or proceeding by which a tribunal goes to observe an object that cannot be produced in court because it is immovable or inconvenient to remove.’ *View*, BLACK'S LAW DICTIONARY (11th ed. 2019) (emphasis added); *accord Barron v. United States*, 818 A.2d 987, 990 (D.C. 2003) (‘A jury view is proper when “an object in question cannot be produced in court because it is immovable or inconvenient’ and, therefore, it is necessary for the fact-finder “to go to the object in its place and there observe it.” *Dailey v. District of Columbia*, 554 A.2d 339, 340-41 (D.179) (*quoting* IV WIGMORE ON EVIDENCE § 1162 at 362 (1972 & 1988 Supp.)).’); *State v. Pauline*, 100 Haw. 356, 374, 60 P.3d 306, 324 (2002) *overruled on other grounds as stated in State v. Abdon*, 134 Haw. 114, 334 P.3d 777 (Ct. App. 2014), *as corrected* (Oct. 27, 2014), *aff’d*, 137 Haw. 19, 364 P.3d 917 (2016) (‘The very definition of a view favors treating it as evidence. *Black’s Law Dictionary* defines a “view” as “the act or proceeding by which [a] tribunal goes to an object which cannot be produced in court because it is immovable or inconvenient to remove, and there observes it.” *Black’s Law Dictionary* 1568 (6th ed. 1990).’); § 219. *Views*, 2 *Mccormick On Evid.* § 219 (8th ed.)

In re Goldston, 246 W. Va. 61, 69 (2021).

The unaccompanied site view is not the only example of Judge Wills’s failure to give notice to Petitioners or their counsel of its proceedings. On April 15, 2025, Judge Wills held an *impromptu* hearing on a request of counsel for Crazy Mountain Cycles to amend an earlier order

dismissing Crazy Mountain Cycles while declaring that its lots are not subject to the Falcon Ridge Declaration. AP 476-479. Only Petitioners and their counsel were unavailable on a few minutes' notice of the hearing. AP 492-495. Judge Wills proceeded with the hearing and gave relief to Crazy Mountain Cycles despite the insufficient notice to Petitioners and their counsel. *Id.*

West Virginia judges cannot do anything they want to do. This Court should redress Judge Wills's conduct in a manner corresponding with its gravity. An appropriate remedy would be to vacate the Final Order and the Rule 59(e) Order.

9. In reference to Assignment of Error no. 11, Respondent writes: "As an initial matter, nothing contained in the record indicates that Respondent's [sic] 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* bases, the Circuit Court was squarely within its discretion to do so." Response at 11-12.

Respondent is helping to prove Petitioners' point. Respondent did not seek, nor were Petitioners ever aware that in this case they would be required to defend against a judicial or equitable enforcement of the use restrictions in the Falcon Ridge Declaration. Petitioners have been deprived on their right to defend against claims. Respondent made no claims seeking to enforce use restrictions against Petitioners. The lower court had no power to order *sua sponte* that Petitioners adhere to use restrictions. It was beyond the framework of the claims in the case.

For this Error, the equitable relief against Petitioners should be reversed and vacated.

III.

CONCLUSION AND PRAYER FOR RELIEF

For all of the foregoing reasons and those contained in its pleadings, Petitioners, Lee and Nancy Bellomy, pray that this Court reverse and vacate the Final Order and the Rule 59(e) Order

and enter declaratory judgments for Petitioners in accordance with the points in the Petition and this Reply. In addition, this Court should dissolve the Circuit Court's injunction against Petitioners, whether temporary or permanent, and further, award Petitioners their lawyers' fees, costs and expenses, and such other relief equitable or legal just and reasonable.

HARVEY LEE BELLOMY
and NANCY BELLOMY

By their counsel,

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INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

Harvey Bellomy and Nancy Bellomy,

Defendants and
Counter-Plaintiffs Below, Petitioners,

v.

No. 25-ICA-279

On appeal from Mercer County
Circuit Court no. 23-C-59

Falcon Ridge Homeowners Association, Inc.,

Plaintiff and
Counter-Defendant Below, Respondent.

CERTIFICATE OF SERVICE

I, Mark A. Sadd, counsel for Petitioners, do hereby affirm that on November 14, 2025 counsel for Respondent was served with a copy of *Reply Brief of Petitioners Lee and Nancy Bellomy*, by electronic mail and through File and Serve Xpress to the following record of counsel:

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/s/ Mark A. Sadd
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