

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

FILED
August 27, 2026

JAMES M. PIERSON,
Plaintiff Below, Petitioner

ASHLEY N. DEEM, CHIEF DEPUTY CLERK
INTERMEDIATE COURT OF APPEALS
OF WEST VIRGINIA

v.) No. 25-ICA-450 (Cir. Ct. Kanawha Cnty. Case No. CC-20-2023-C-333)

FRANKLIN ALVA PIERSON, JR., Individually
and as EXECUTOR of the ESTATE of FRANKLIN
ALVA PIERSON, BARBARA PIERSON, and
PIERSON REFRIGERATION SERVICES, INC.,
Defendants Below, Respondents

MEMORANDUM DECISION

Petitioner James M. Pierson appeals the Circuit Court of Kanawha County's October 16, 2025, order granting Respondents Franklin Alva Pierson Jr.'s, individually and as Executor of the Estate of Franklin Alva Pierson's, Barbara Pierson's, and Pierson Refrigeration Services, Inc.'s motion for summary judgment. Respondents filed a joint response.¹ Petitioner did not file a reply.

This Court has jurisdiction over this appeal pursuant to West Virginia Code § 51-11-4 (2024). After considering the parties' arguments, the record on appeal, and the applicable law, this Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision affirming the circuit court's orders is appropriate under Rule 21 of the West Virginia Rules of Appellate Procedure.

This case concerns an alleged obligation to maintain a private access road and bridge over Angel Fork Road in Tornado, West Virginia. Petitioner and his late brother, Franklin Pierson, Sr., owned contiguous parcels of real property designated as Parcels A, B, C, and D on a subdivision plat recorded in Kanawha County. The portion of the access road at issue adjoins Parcels A and D. Parcels A and D were originally part of a larger 78-acre tract conveyed to Franklin Pierson, Sr., and Barbara Pierson in 1994.

In June 1997, Franklin Pierson, Sr., and Barbara Pierson conveyed to petitioner a one-half undivided interest in two tracts comprising Parcel D, while retaining fee

¹ Petitioner is self-represented. Respondents are represented by Jakeb H. Shuck, Esq., and John F. Hussell IV, Esq.

ownership of Parcel A. On November 23, 1998, petitioner prepared a Deed and Agreement purporting to convey to petitioner a one-half undivided interest in the lands underlying the access road traversing Parcel D. The Deed and Agreement further purported to impose upon the owner of Parcel A a perpetual obligation to bear one hundred percent of the maintenance costs for the access road and the bridge connecting it to Angel Fork Road.

Following the subsequent divorce of Franklin Pierson, Sr., and Barbara Pierson, Barbara conveyed her interests to Franklin Pierson, Sr., on February 27, 2004, resulting in Franklin Pierson, Sr., and petitioner each holding a fifty-percent undivided interest in Parcel D and the access road. Franklin Pierson, Sr., died in 2022, and his son, Franklin Pierson, Jr., was appointed administrator of the estate. Notice to creditors was published, and the sixty-day statutory period set forth in West Virginia Code § 44-3A-4 expired on November 6, 2022. In October 2022, petitioner attempted to file a proof of claim alleging \$258,000 in estimated road-maintenance costs; however, in April 2023 he filed a notice withdrawing the claim, expressly acknowledging that his submission did not comply with West Virginia Code § 44-3A-6. Petitioner did not resubmit a new or amended claim within the sixty-day period.

On April 19, 2023, petitioner initiated the present civil action, asserting claims for breach of contract, actual and constructive fraud, civil conspiracy, breach of fiduciary duty, conversion, unjust enrichment, waste, and seeking compensatory damages, punitive damages, and injunctive relief. In the breach of contract claim, petitioner alleged that respondents had breached their duty under the 1998 Deed and Agreement to maintain the access road and bridge. The remaining counts generally alleged wrongdoing in connection with the assets of Franklin Pierson, Sr.'s estate. Respondents moved for summary judgment on February 10, 2025. Petitioner filed a response and respondents filed a reply.

On October 16, 2025, the circuit court granted respondents' motion for summary judgment and dismissed all claims with prejudice. The circuit court found the Deed and Agreement unambiguous, determined that no material factual disputes existed, and concluded that petitioner's breach of contract claim failed as a matter of law. The court determined that petitioner could not enforce the Deed against Pierson Refrigeration Services, Inc., because it was not a party to the Deed. Similarly, the court found that the breach of contract claim failed against Barbara Pierson because the Deed only purported to bind the owner of Lot A, and she conveyed her entire interest in that property in 2004. The circuit court also concluded that the maintenance obligation in the Deed could not be enforced against Franklin Alva Pierson, Jr., relying on the Supreme Court of Appeals of West Virginia's ("SCAWV") holding that "no burdens can be imposed on lands by any covenant of the owner, which will run with the land and bind any grantee of the land; for such covenants are personal and are not covenants real running with the land." Syl. Pt. 6, in part, *W. Va. Transp. Co. v. Ohio River Pipe-Line Co.*, 22 W. Va. 600 (1883). The court

concluded that the maintenance obligation was a personal covenant to Franklin Pierson, Sr., and that it did not bind Franklin Alva Pierson, Jr., as his successor in interest.

The circuit court found that petitioner lacked standing to pursue his remaining claims related to the management of the estate because he was not a creditor of the estate. In determining that petitioner was not a creditor of the estate, the court relied on West Virginia Code § 44-3A-32 (2016):

Every person having a claim against a deceased person, whether due or not, who shall not, when notice to creditors has been published as prescribed in this article, have presented his or her claim on or before the sixty-day time period fixed in such notice, or before that time have instituted an action thereon, shall, notwithstanding the same be not barred by some other statute of limitations that is applicable thereto, be barred from recovering such claim of or from the personal representative, or from thereafter setting off the same by way of counterclaim or otherwise against the personal representative in any action whatever[.]

W. Va. Code § 44-3A-32.² Noting that petitioner initially submitted a timely claim against the estate in response to the notice to creditors, but that he voluntarily withdrew that claim and failed to file another before the sixty-day time period expired, the court concluded that W. Va. Code § 44-3A-32 barred him from recovering his purported claim against the estate from the personal representative of the estate. Having determined that petitioner was legally barred from recovering his alleged claim against the estate, the court reasoned that he could not be harmed by alleged mismanagement of the estate. Accordingly, the court determined that petitioner could not demonstrate an invasion of a legally protected interest sufficient to satisfy standing requirements articulated in syllabus point five of *Findley v. State Farm Mutual Automobile Insurance Co.*, 213 W. Va. 80, 576 S.E.2d 807 (2002).³

² This section includes an exception to this bar for creditors who did not have actual notice of the notice to creditors. However, the circuit court noted that since petitioner initially submitted a claim against the estate, there is no dispute that he had actual notice. Petitioner does not dispute this conclusion on appeal, so this exception is not at issue.

³ Syllabus point 5 of *Findley* provides:

Standing is comprised of three elements: First, the party attempting to establish standing must have suffered an “injury-in-fact”—an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent and not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct forming the basis

Our review of a circuit court's entry of summary judgment is de novo. *Painter v. Peavy*, 192 W. Va. 189, 451 S.E.2d 755 (1994). A court should grant "[a] motion for summary judgment ... only when it is clear that there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to clarify the application of the law." *Id.* at Syl. Pt. 2 (internal quotations and citations omitted).

Petitioner lists five assignments of error in his brief. However, he argues these as three main contentions: that the circuit court erred in granting summary judgment on his breach of contract claim due to alleged factual disputes regarding petitioner's claim of equitable title and the intent of the original parties to the Deed and Agreement, that the circuit court erred in finding that he lacked standing for claims related to the management of the estate, and that the circuit court granted summary judgment prematurely and should have allowed additional discovery. We disagree.

First, petitioner contends that there are disputed issues of fact related to his interest in the land, including whether he held "equitable title" to the property. Petitioner claims that this factual issue could be determinative of his standing to enforce the maintenance obligations in the Deed. This argument appears to be based on a misunderstanding of the circuit court's rulings. Although the circuit court found that petitioner lacked standing with respect to all of his claims other than his breach of contract claim, it did not find that he lacked standing to enforce the Deed. Instead, it found that he could not enforce the Deed against Barbara Pierson because she relinquished her interest in the property in 2004 or against Pierson Refrigeration Services, Inc., because it was never a party to the Deed. Petitioner did not meaningfully challenge these dispositive conclusions,⁴ and therefore we find no error in the circuit court's decision to grant summary judgment to these two respondents on petitioner's breach of contract claim.

Petitioner also argues that there are issues of fact regarding whether the original parties to the Deed intended the maintenance obligation to run with the land. However, petitioner fails to explain how any such factual issue would be material. The circuit court concluded that the maintenance obligation in the Deed did not run with the land because West Virginia law prohibits a grantor's covenant from running with the land. The SCAWV has explained that it is "committed to the doctrine that, except as between landlord and

of the lawsuit. Third, it must be likely that the injury will be redressed through a favorable decision of the court.

⁴ Petitioner asserts in a conclusory fashion that "[g]enuine issues of material fact exist regarding the relationship between the parties and whether Pierson Refrigeration Services, Inc. was bound by the Deed and Agreement." This unsupported assertion is insufficient to demonstrate error in the circuit court's conclusion that the Deed did not bind Pierson Refrigeration Services, Inc.

tenant, no burden can be imposed on land by a grantor's covenant so as to bind a subsequent grantee of the covenantor." *McIntosh v. Vail*, 126 W. Va. 395, 28 S.E.2d 607, 613 (1943) (citing *W. Va. Transp. Co. v. Ohio River Pipe-Line Co.*, 22 W. Va. 600 (1883)). As petitioner has not challenged this dispositive ruling,⁵ any factual dispute regarding the parties' intent for the maintenance obligation would have been immaterial. See Syl. Pt. 5, in part, *Jividen v. Law*, 194 W. Va. 705, 461 S.E.2d 451 (1995) ("A material fact is one that has the capacity to sway the outcome of the litigation under the applicable law."). Accordingly, petitioner has not demonstrated error in the circuit court's decision to grant summary judgment on his breach of contract claim against Frank Pierson, Jr.

Next, petitioner argues that the circuit court erred in concluding that he lacked standing to pursue the remainder of his claims. Petitioner disputes the circuit court's conclusion that he was not a creditor of the estate by pointing to various definitions of the term "creditor" in inapplicable West Virginia statutes and caselaw. However, the circuit court did not conclude that petitioner lacked standing because he failed to satisfy general definitions of the term creditor. Rather, it determined that he lacked standing because he had no recoverable interest in the estate. The SCAWV has recognized that generally "persons who have no interest in a decedent's estate do not have standing to object to the sale of estate property" or "to challenge the actions of" the personal representative. *Latimer v. Mechling*, 171 W. Va. 729, 735-36, 301 S.E.2d 819, 825-26 (1983).⁶ The circuit court concluded that petitioner was barred under West Virginia Code § 44-3A-32 from recovering his alleged claim on the estate against the personal representative of the estate based on his failure to submit a timely notice of claim. Having concluded that petitioner had no ability to recover his alleged claim against the estate, the circuit court determined that he had no legally protected interest that could be harmed by the management of the estate. Petitioner's insistence that he is a "creditor" of the estate under other definitions of the term is unpersuasive if he cannot demonstrate an ability to recover on his alleged claim.

Petitioner offers only one reason the circuit court erred in concluding that West Virginia Code § 44-3A-32 barred his ability to recover on his alleged claim against the estate: that his claim against the estate was a contingent or unliquidated claim. Without citing any support, he claims a contingent or unliquidated claim "would not be barred by the expiration of the 60-day creditor claims period." However, West Virginia Code § 44-3A-9 (1982) provides for unliquidated or contingent claims to be filed "at the time provided

⁵ Petitioner does not argue that the maintenance obligation could have been enforced as an equitable servitude. See *Cole v. Seamonds*, 87 W. Va. 19, 104 S.E. 747 (1920).

⁶ "Persons who have been held to have an interest in an estate include heirs, devisees, legatees, distributees, creditors and purchasers of estate property." *Id.* at 735, 301 S.E.2d at 825 (collecting cases). Here, petitioner has not claimed any other interest in the estate other than as a creditor.

for in the notice . . . in the same manner as other claims.” W. Va. Code § 44-3A-9; *see* Syl. Pt. 3, *Hose v. Est. of Hose*, 230 W. Va. 61, 62, 736 S.E.2d 61, 63 (2012) (“In order to assert a contingent or unliquidated claim against an estate, [W. Va. Code § 44-3A-9] requires that an affidavit be filed setting out facts that give notice of the nature of the claim and the probable amount of the claim.”). Moreover, West Virginia Code § 44-3A-32 does not exempt unliquidated or contingent claims from its bar to recovery for untimely claims.

As petitioner has not demonstrated that the circuit court erred in concluding that West Virginia Code § 44-3A-32 bars his ability to recover his alleged claim on the estate against Franklin Alva Pierson, Jr., as personal representative of the estate, and he has not argued that he has any other basis for recovering on his claim,⁷ we find no error in the circuit court’s conclusion that he lacked standing to maintain claims based on the alleged mismanagement of the estate. Accordingly, petitioner has not demonstrated any error in the circuit court’s order granting summary judgment on all his remaining claims.

Finally, the record conclusively demonstrates that petitioner withdrew his claim in the estate and did not file a new or amended claim within the statutory period required by West Virginia Code § 44-3A-32 (2016). Thus, petitioner is not a creditor of the estate and lacks standing to challenge the personal representative’s conduct or to challenge the estate’s administration.

Finally, petitioner’s argument that summary judgment was premature due to incomplete discovery is unavailing, as he did not pursue the avenues available under Rule 56(d) of the West Virginia Rules of Civil Procedure to seek additional time for discovery. *See Payne’s Hardware & Building Supply, Inc. v. Apple Valley Trading Co.*, 200 W. Va. 685, 490 S.E.2d 772 (1997). Moreover, petitioner does not explain how additional discovery could have impacted the circuit court’s dispositive bases for granting summary judgment on all of his claims, as discussed above. Accordingly, we find that petitioner has not demonstrated that the circuit court erred by granting summary judgment prematurely.

Accordingly, we find no error in the circuit court’s conclusions that petitioner’s claims against respondents in his complaint fail as a matter of law.

For the foregoing reasons, we affirm the circuit court’s October 16, 2025, order.

Affirmed.

⁷ Petitioner cites West Virginia Code § 44-3A-33 for the proposition that an action may be brought against the distributees and legatees of an estate. However, he does not claim to have timely filed such an action or that this section preserves his interest in the estate such that he has standing to maintain his claims.

ISSUED: August 27, 2026

CONCURRED IN BY:

Chief Judge Daniel W. Greear
Judge Charles O. Lorensen
Judge S. Ryan White