IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

FILED
August 27, 2026
ASHLEY N. DEEM, CHIEF DEPUTY CLERK
INTERMEDIATE COURT OF APPEALS
OF WEST VIRGINIA

LUCINDA LEWIS and LISA LEWIS-MANRIQUE,
Plaintiffs Below, Petitioners

v.) No. 25-ICA-479 (Cir. Ct. Kanawha Cnty. Case No. CC-20-2022-C-855)

LAURIE LEWIS,
Defendant Below, Respondent

MEMORANDUM DECISION

Petitioners Lucinda Lewis ("Cindy") and Lisa Lewis-Manrique ("Lisa") appeal the Circuit Court of Kanawha County's November 6, 2025, order denying their Rule 59(e) motion and the circuit court's March 8, 2024, order granting Respondent Laurie Lewis' ("Laurie') motion to dismiss or motion for summary judgment.[1] Laurie filed a response.[2] Cindy and Lisa filed a joint 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 some error in the circuit court's decision but no substantial question of law. This case satisfies the "limited circumstances" requirement of Rule 21(d) of the West Virginia Rules of Appellate Procedure for reversal in a memorandum decision. For the reasons set forth below, the circuit court's orders are affirmed, in part, reversed, in part, and this case is remanded to the circuit court for further proceedings consistent with this decision.

Lucy Lewis ("Lucy") died in 2020, survived by three adult daughters: Cindy, Lisa, and Laurie. In 2012, Lucy executed a will and powers of attorney naming Laurie as executor, attorney in fact, and healthcare surrogate. Cindy and Lisa allege that beginning in 2017, Lucy's declining mental condition caused her to rely heavily on Laurie, who increasingly controlled her finances.

---

[1] Due to the similarities in the parties' first and last names, we will refer to the parties by their first names for clarity.

[2] Cindy and Lisa are represented by John J. Brewster, Esq., and Christopher J. Winton, Esq. Laurie is represented by John F. Hussell IV, Esq.

Several disputes arose between the parties. The first concerns a substantial investment account which was titled jointly between Lucy and Laurie with rights of survivorship. Cindy and Lisa allege that Laurie used undue influence and the power of attorney to transfer Lucy's assets into this joint account, diverting property outside the estate contrary to Lucy's will's equal distribution clause. After Lucy's death, Laurie closed the account and retained all funds pursuant to her survivorship rights.

The second dispute involved the will's conditional devise of Lucy's residence to Laurie. Laurie was required to pay Cindy and Lisa each $20,000 within eight months after Lucy's death or the devise would lapse. Laurie paid Cindy on time but did not pay Lisa timely, although Laurie claims to have attempted payment on multiple occasions. The home was subsequently sold, and Cindy and Lisa claimed the devise lapsed and the sale proceeds belonged to Lucy's residuary estate.

Cindy and Lisa further allege misconduct in the administration of Lucy's estate. They allege Laurie filed a short form settlement without notifying them or securing their signatures, despite their status as residuary beneficiaries. In addition, Cindy and Lisa requested an accounting from Laurie of all transactions made under the power of attorney, asserting none had ever been provided, despite statutory requirements under West Virginia law.

Cindy and Lisa filed suit in 2022 alleging the following six claims: Count I: Failure of Conditional Devise of Real Estate and Entitlement to Shares; Count II: Breach of Trust on Real Estate; Count III: Claim to Joint Investment Account; Count IV: Breach of Fiduciary Duty on Joint Account; Count V: Breach of Fiduciary Duties in Administration of Estate; and Count VI: Accounting by Agent Under Power of Attorney. In response to the lawsuit, Laurie filed a motion to dismiss, in part, and motion for summary judgment, in part. On March 10, 2023, a hearing was held before a senior status judge sitting by temporary assignment. At the hearing, the circuit court granted Laurie's motion as to Counts I and II of the complaint and took the rest under advisement. In its March 8, 2024, order the circuit court granted summary judgment and dismissed all counts of the complaint. Cindy and Lisa filed a motion for a new trial pursuant to Rule 59(e) of the West Virginia Rules of Civil Procedure, which the circuit court denied in its November 6, 2025, order. This appeal of the two orders followed.

"The standard of review applicable to an appeal from a motion to alter or amend a judgment, made pursuant to W. Va. R. Civ. P. 59(e), is the same standard that would apply to the underlying judgment upon which the motion is based and from which the appeal to this Court is filed." Syl. Pt. 1, *Wickland v. Am. Travellers Life Ins. Co.*, 204 W. Va. 430, 513 S.E.2d 657 (1998). In this case, the circuit court granted summary judgment, thus our review is de novo. Syl. Pt. 1, *Painter v. Peavy*, 192 W. Va. 189, 451 S.E.2d 755 (1994) ("A circuit court's entry of summary judgment is reviewed *de novo*."). With these standards in mind, we turn to the parties' arguments.

Cindy and Lisa assert four assignments of error: (1) the circuit court erred in granting summary judgment on Counts III through VI; (2) the circuit court erred in dismissing Counts I and II; (3) the circuit court erred in denying their Rule 59(e) motion; and (4) the circuit court erred in concluding that they failed to plead fraud with particularity. Upon review, we conclude that summary judgment was proper as to Counts I and II but was improperly granted as to Counts III through VI.

Regarding Counts I and II, we concur that Cindy and Lisa lack standing because they fail to demonstrate an injury resulting from Laurie's conduct. In reaching this conclusion, we agree with the circuit court that Laurie satisfied the requirements of the conditional devise, which required her to pay Cindy and Lisa $20,000 each within eight months of their mother's death. There is no dispute that Cindy received her $20,000 payment on December 21, 2020, a date within the eight-month deadline.

With respect to Lisa, Laurie produced an affidavit stating in part that she "attempted to pay Lisa Lewis-Manrique Twenty Thousand Dollars pursuant to Article Three of the Will, but Lisa Lewis-Manrique refused to accept the payment." She also testified that she offered to pay Lisa $20,000 numerous times within the eight-month deadline, but on each occasion, Lisa refused to accept it.[3] She also testified that she remained willing to pay Lisa $20,000.

Lisa did not testify at the hearing on the motion for dismissal and summary judgment. Further, she did not provide an affidavit prior to the hearing, nor was the language of the verified complaint sufficient to preclude summary judgment.

Paragraph 12 of the verified complaint provided that "Defendant Laurie Lewis failed to pay $20,000 in cash to each of Plaintiffs Lucinda Lewis and Lisa Lewis-Manrique." Although a verified complaint can create a triable issue, *Browning v. Halle*, 219 W. Va. 89, 94, 632 S.E.2d 29, 34 (2005) (per curiam); *Foster v. Good Shepherd Interfaith Volunteer Caregivers, Inc.*, 202 W. Va. 81, 85, 502 S.E.2d 178, 182 (1998) (per curiam), this complaint was not verified by Lisa. It was verified by Lucy, but, as the parties agree, she had no personal knowledge of whether Lisa was paid or offered $20,000 in a timely manner, and a sworn statement must be based on personal knowledge to create a triable issue. *State ex rel. Cnty. Comm'n of Jackson Cnty. v. McCoy,* 160 W. Va. 540, 547, 236 S.E.2d 217, 221 (1977); *see* W. Va. R. Civ. P. 56(e) (an affidavit used to oppose a

[3] The will states that the money must be "paid" rather than "offered" within eight months, but we take this to mean that Laurie receives the house if she makes a good faith effort to pay it within eight months even if a sister refuses to accept payment.

motion for summary judgment "shall be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated").

After the hearing, Lisa submitted an affidavit saying in part that "[d]uring the eight months after Mother's death…Laurie made no attempt to pay me the $20,000.00" and she did not refuse to accept payment of this sum. Even if we assume that this late filed affidavit could be considered to create a genuine issue of material fact, our ruling would not change because trial courts may decide factual issues relevant to standing. 9 Cyc. of Fed. Proc. §31:71, Westlaw (3rd ed. database updated May 2026) ("Standing is a question of law for the court, and the trial judge, rather than the jury, is to resolve factual issues relevant to determining whether a party has standing."). Accordingly, neither Cindy nor Lisa suffered an injury traceable to Laurie's conduct and Counts I and II were properly dismissed.

Regarding Counts III and IV, the record reveals multiple disputed factual issues concerning Lucy's mental capacity, the use of the power of attorney, and Lucy's intent in creating and funding the joint investment account. The verified complaint alleges dementia, diminished capacity, undue influence, and the possibility that the account was one of convenience or created by mistake. These disputed facts preclude summary judgment.

Further, the circuit court provided no legal basis for dismissing Counts V and VI, which concern alleged breach of fiduciary duties in the administration of the estate and the statutory requirement for an accounting under the power of attorney. Laurie did not request dismissal or summary judgment on these counts, and they concern conduct independent of the joint account. Dismissal of Counts V and VI was therefore improper.

Finally, we conclude that Cindy and Lisa's constructive fraud claim is pleaded sufficiently to defeat dismissal. The heightened pleading standards associated with other categories of fraud is not required when pleading a claim for constructive fraud in the context of jointly owned bank accounts. In *Kanawha Valley Bank v. Friend*, 162 W. Va. 925, 253 S.E.2d 528 (1979), the Supreme Court of Appeals of West Virginia held that,

> A presumption of constructive fraud may arise in connection with joint bank accounts with survivorship, if the parties to the joint account occupy a fiduciary or confidential relationship. This presumption requires the person who benefits from the creation of the account to bear the burden of proving that the funds were, in fact, a bona fide gift.

Id. at Syl. Pt. Here, we determine that Cindy and Lisa sufficiently pleaded constructive fraud under this standard.

Based on the foregoing, we affirm the circuit court's March 8, 2024, and November 6, 2025, orders to the extent they dismiss Counts I and II, reverse to the extent they dismiss Counts III through VI, and remand this matter for further proceedings consistent with this decision.

Affirmed, in part, Reversed, in part, and Remanded.

ISSUED: August 27, 2026

CONCURRED IN BY:

Chief Judge Daniel W. Greear
Judge S. Ryan White

Judge Charles O. Lorensen, not participating.