

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

FILED

August 27, 2026

R.M. ROACH & SONS, INC.,
Defendant Below, Petitioner

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

v.) No. 25-ICA-489 (Cir. Ct. Berkeley Cnty. Case No. CC-02-2022-C-297)

HARRY JOHNSON and BONNIE BUNDY,
Plaintiffs Below, Respondents

MEMORANDUM DECISION

Petitioner R.M. Roach & Sons, Inc. appeals the November 17, 2025, order entered by the Circuit Court of Berkeley County which granted, in part, a motion to dismiss filed by Respondents Harry Johnson and Bonnie Bundy. Respondents filed a response.¹ Petitioner filed 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 order is appropriate under Rule 21 of the West Virginia Rules of Appellate Procedure.

The underlying litigation between these parties began on October 5, 2022, when respondents filed a class action complaint against petitioner related to fees and lease issues concerning propane tanks serviced, and allegedly owned, by petitioner. *See generally* W. Va. R. Civ. P. 23. Respondents filed a first amended complaint and motion for class certification on February 16, 2024. The amended complaint alleged three classes of plaintiffs and asserted violations of the West Virginia Consumer Credit and Protection Act, seeking declaratory and injunctive relief. Relevant here, respondents' pleadings asserted that they owned the underground propane tank located on their property.

Petitioner filed its answer on October 29, 2024, denying respondents' claim of tank ownership and asserting its own ownership interest. Petitioner also raised twenty-five affirmative defenses. A class certification hearing was held on November 19, 2024. At the hearing, petitioner opposed class certification, in part, due to the ongoing dispute over the

¹ Petitioner is represented by J. Tyler Mayhew, Esq., Patrick C. Timony, Esq., and Gregory E. Kennedy, Esq. Respondents are represented by Stephen G. Skinner, Esq., and Shawn H. Hogbin, Esq.

tank's ownership. In response, respondents' counsel made the following statement to the court:

They have filed no counterclaim against my clients about the ownership of this tank. It is not an issue in this case. It is let's see how much mud we can throw up against the wall. The adequacy issue should be do these people are they able to represent the classes. When I listened to the challenge to adequacy he's saying, well, after they were customers of us, they bought propane elsewhere, therefore, that makes them inadequate. And because we asserted that it was owned by us, technically what they did was not kosher under West Virginia law. That doesn't have anything to do with anything in this case. Quite frankly, for the purposes of this, *we'll stipulate that Roach owns the tank*. For the purposes of this case, we will stipulate that Roach owns the tank. It is not an issue in this case. Roach says they own the tank.

(emphasis added).

The circuit court granted class certification on November 20, 2024, and memorialized its ruling in an order entered December 2, 2024. On April 16, 2025, respondents listed their property for sale through a realtor. The listing contained the following disclosure: "Important Note: There is an underground propane tank on the property. Ownership of the tank is currently the subject of a legal dispute between the seller and a third-party. The sellers have a scheduled mediation on April 18th."

On May 2, 2025, petitioner filed a complaint for declaratory judgment against respondents, which sought a declaration on tank ownership and asserted claims for conversion and unjust enrichment. This complaint was docketed in the Circuit Court of Berkeley County as Case No. CC-02-2025-C-240. Respondents closed on the sale of their home on May 9, 2025. On May 16, 2025, petitioner moved to consolidate its civil action with respondents' pending class action pursuant to Rule 42(b) of the West Virginia Rules of Civil Procedure.

On May 28, 2025, respondents filed a motion to dismiss petitioner's newly filed action. On June 6, 2025, respondents filed a notice in the class action case stating that they did not oppose consolidation. However, they simultaneously moved to dismiss petitioner's complaint. Respondents argued, among other things, that even if consolidation were appropriate, Rule 13(a) of the West Virginia Rules of Civil Procedure barred petitioner's claims because they constituted compulsory counterclaims that petitioner failed to raise in the nearly three years since the class action commenced. On June 22, 2025, the circuit court entered an order granting petitioner's motion to consolidate, consolidating petitioner's newly filed action with respondents' ongoing class action case.

Petitioner responded to the motion to dismiss on July 2, 2025. It argued that Rule 13(a) did not apply because its claims arose only after class certification, when respondents violated their prior stipulation from the November 19, 2024, hearing by listing the property with a disclosure indicating an ongoing dispute over tank ownership. Petitioner asserted that the impending sale to a bona fide purchaser required timely filing of its complaint to protect its ownership rights.

The circuit court held a hearing on respondents' motion to dismiss on November 17, 2025. That same day, the court entered the order now on appeal, granting the motion in part.² The court concluded that petitioner's tank ownership claims in its May 2025 complaint were compulsory counterclaims that were precluded under Rule 13(a). The circuit court was not persuaded by petitioner's argument regarding the discrepancy between respondents' counsel's stipulation in November 2024 and the April 2025 real estate listing. Instead, the court found that "these are only the most recent events in a longstanding dispute over tank ownership." It determined that tank ownership had been in dispute since "the outset of the [class action] litigation," and supported that determination with numerous references to pleadings and filings in the record in which respondents alleged that they owned the propane tank and that petitioner had previously serviced it. The court further noted that the issue of tank ownership did not arise for the first time at the November 2024 class certification hearing and concluded that petitioner's counterclaim should have been raised in its responsive pleadings to the class action proceedings in 2022 or 2024.

The circuit court later denied petitioner's motion for stay. This appeal followed.³ Our standard of review for reviewing a circuit court's order granting a motion to dismiss is de novo. *Folse v. Rollyson*, 249 W. Va. 389, 393, 895 S.E.2d 244, 248 (Ct. App. 2023).

² By virtue of its ruling pursuant to Rule 13(a), the circuit court declined to address the remaining grounds raised by respondents' motion to dismiss: statute of limitations, laches, and failure to join an indispensable party. For those reasons, the court framed its ruling as granting the motion in part.

³ Petitioner also filed a motion for stay with this Court, which was refused by order entered on February 19, 2026. Respondents filed a motion to dismiss this appeal, arguing that the order was not final and appealable because it did not resolve all issues pending in the class action case below and it was not certified as final. Petitioner filed a response, arguing that the order on appeal dismissed the entirety of its 2025 complaint, rendering the order final as to that case, despite its consolidation with the class action. The Court refused respondents' motion to dismiss by order entered on January 27, 2026, but the parties reiterated their jurisdictional argument in their briefing.

In arguing that the order dismissing its complaint was a final order resolving the 2025 case despite its consolidation with the class action, petitioner relies on *Hall v. Hall*,

In its single assignment of error on appeal, petitioner contends that the circuit court erred in granting respondents' motion to dismiss. Specifically, petitioner argues that the court erroneously concluded that its claims were compulsory counterclaims that were waived because they were not timely asserted. Petitioner maintains that, prior to respondents' tank-ownership stipulation, there was no reason to separately plead a counterclaim in the class action because respondents' own complaint placed tank ownership squarely at issue. According to petitioner, the stipulation was an agreement between the parties that resolved tank ownership. Petitioner asserts that respondents later misrepresented that stipulation in April 2025 in order to facilitate the marketability and sale of their home. By doing so, petitioner argues, respondents contradicted the stipulation, effectively converted petitioner's tank, and sold it to a third party as a fixture of the real property. Petitioner contends that these actions created its causes of action, all of which are based on events occurring after it filed responsive pleadings in the class action. Petitioner therefore argues that its claims were not compulsory counterclaims, but permissive counterclaims authorized by Rule 13(e) of the West Virginia Rules of Civil Procedure. *See* W. Va. R. Civ. P. 13(e) ("The court may permit a party to file a supplemental pleading asserting a counterclaim that matured or was acquired by the party after serving an earlier pleading."). Petitioner further asserts that it properly raised the claims by separate complaint because respondents' April 2025 disclosure created exigent circumstances that

in which the Supreme Court of the United States interpreted Rule 42(a) of the Federal Rules of Civil Procedure to conclude that "constituent cases [in a consolidated matter] retain their separate identities at least to the extent that a final decision in one is immediately appealable by the losing party." *Hall v. Hall*, 584 U.S. 59, 77 (2018). We have also treated consolidated cases as retaining aspects of their separate identities for purposes of appellate jurisdiction. *SWN Prod. Co., LLC v. City of Weirton Bd. of Zoning Appeals*, No. 23-ICA-405, 2024 WL 1730044, at *2-3 (W. Va. Ct. App. Apr. 22, 2024) (finding this Court lacked appellate jurisdiction over circuit court order deciding extraordinary remedy of writ of certiorari despite circuit court's consolidation of certiorari matter with civil case that this Court had previously exercised appellate jurisdiction over), *aff'd sub nom. City of Weirton v. SWN Prod. Co., LLC*, 931 S.E.2d 825 (W. Va. 2026).

We recognize *Hall* is entitled to "substantial weight" in our interpretation of Rule 42(a) of the West Virginia Rules of Civil Procedure. *Painter v. Peavy*, 192 W. Va. 189, 192 n.6, 451 S.E.2d 755, 758 n.6 (1994). However, given the particular procedural history of this case, we find it unnecessary to decide whether to adopt *Hall*'s reasoning to Rule 42(a) generally. Here, prior to consolidation, respondents filed motions to dismiss petitioner's 2025 action in both that action and the class action case. Moreover, they consented to consolidation while maintaining that the 2025 action should be dismissed. Given that the November 17, 2025, order on appeal granted respondents' pre-consolidation motion to dismiss the 2025 action, we find that the 2025 action retained its independent character sufficiently that the order is final for purposes of this Court's jurisdiction.

made filing a motion to amend its answer in the class action impractical. We are not persuaded by these contentions and find no error in the circuit court's ruling.

We begin by finding that petitioner's assertion that its claims should be treated as permissive under Rule 13(e) is not properly supported on appeal and will not be considered. On that issue, we observe that petitioner fails to cite to the record to establish that it raised a Rule 13(e) argument at the November 17, 2025, hearing, and preserved the issue for appeal. Rule 10(c)(7) of the West Virginia Rules of Appellate Procedure requires that an argument "must contain appropriate and specific citations to the record on appeal, including citations that pinpoint when and how the issues in the assignments of error were presented to the lower tribunal" and further states that the Court "may disregard errors that are not adequately supported by specific references to the record on appeal." *See State v. LaRock*, 196 W. Va. 294, 302, 470 S.E.2d 613, 621 (1996) ("Although we liberally construe briefs in determining issues presented for review, issues which are not raised, and those mentioned only in passing but are not supported with pertinent authority, are not considered on appeal.").^{4 5}

As previously established, the circuit court treated the matter as compulsory counterclaims under Rule 13(a) of the West Virginia Rules of Civil Procedure. The relevant language of the rule states:

In General. A pleading shall state as a counterclaim any claim that--at the time of its service--the pleader has against an opposing party if the claim: (A) arises out of the transaction or occurrence that is the subject matter of the opposing party's claim; and (B) does not require adding another party over whom the court cannot acquire jurisdiction.

W. Va. R. Civ. P. 13(a)(1). The circuit court found that Rule 13(a) applied because the record established that tank ownership has been at issue since respondents filed their class action complaint in 2022 and remained in dispute throughout the litigation, including in 2024 when respondents filed their amended complaint and petitioner filed an answer denying respondents' allegation that they owned the tank. Notably, petitioner does not dispute that ownership has been a matter in controversy since 2022. Instead, petitioner maintains that the stipulation made at the November 2024 class certification hearing mooted the ownership dispute, and that the issue was revived only when respondents

⁴ In similar cursory fashion, petitioner mentioned Rule 13(e) in its written response opposing respondents' motion to dismiss below; however, for the same reasons indicated above, that is insufficient to preserve the issue on appeal.

⁵ This rationale also applies to petitioner's argument, to the extent it is raised, that the separate complaint was unavoidable because under the circumstances, the filing of a motion to amend was impractical.

disclosed a pending ownership dispute in their April 2025 real estate listing. On that basis, petitioner argues that its claim could not have arisen from the same transaction or occurrence as contemplated by Rule 13(a). This argument is not persuasive.

Petitioner's position is undermined by its failure to cite any precedent or authority supporting its view, relying instead on a subjective interpretation of the record. Further, petitioner's argument is contradicted by precedent from our state's highest court, which holds that, for the purposes of Rule 13(a), "claims and counterclaims arise out of the same 'transaction or occurrence' if there is a logical relationship between the claim and the counterclaim." *State ex rel. Strickland v. Daniels*, 173 W. Va. 576, 583, 318 S.E.2d 627, 633 (1984). *Strickland* further explained: "'Transaction' is a word of flexible meaning. It may comprehend a series of many occurrences, depending not so much upon the immediateness of their connection as upon their logical relationship." *Id.* (citation modified) (quoting *Moore v. N.Y. Cotton Exch.*, 270 U.S. 593, 610 (1926)).

Applying this framework, we conclude that the record demonstrates that Rule 13(a) precludes the claims raised in petitioner's complaint. Petitioner's claims center on the dispute over tank ownership, a dispute that has remained a consistent and substantial point of contention between the parties since the class action complaint was filed. Contrary to petitioner's characterization, the ownership issue was never resolved and was not transformed by respondents' stipulation. The logical relationship between these claims is inescapable. We therefore find no error in the circuit court's decision.

Accordingly, we affirm.

Affirmed.

ISSUED: August 27, 2026

CONCURRED IN BY:

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