

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Docket No. 25-754
Intermediate Court Docket Number 24-ICA-394

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SANDRA K. TRENT,

PETITIONER,

v.

KERMIT WILEY, SR.

RESPONDENT.

On appeal from a Final Order of the Intermediate Court of
West Virginia,

RESPONDENT'S SUMMARY RESPONSE

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RESPONSE TO ASSIGNMENTS OF ERROR

1. The Circuit Court took no action after this Appeal was granted.
2. The Circuit Court did no coerce the Petitioner to sign a deed. .
3. The Intermediate Court did not err in finding the handwritten document prepared by Petitioner was a written contract..
4. There was no evidence presented in the Circuit Court concerning the allegation of the manufactured home and real estate being separate.
5. The Petitioner was represented by counsel in the Circuit Court and made no objection to any portion of the conduct of the proceedings as demonstrated by the transcripts and absence of any motion related to due process.

STATEMENT OF THE CASE

Facts and Procedural history

By agreement dated January 24, 2024, prepared wholly by the Petitioner, the Respondent agreed to purchase, and the Petitioner agreed to sell, real estate in Mercer County, West Virginia, located at 131 Pansey Place, Princeton, West Virginia 24739, Beaver Pond District, for the purchase price of \$60,000.00, and the Respondent paid a cash down payment of \$10,000.00. The property is described as Lot 8, Elkview Subdivision, Beaver Pond District, Mercer County. **Appendix, Exhibit B.** Petitioner prepared the contract after consultation with her then husband James Trent; she gave the signed agreement to her husband James Trent to give to the Respondent, which he did that same morning in exchange for a payment of \$10,000.00 as a deposit on the purchase. **Appendix, p. 12.** Petitioner acknowledged receiving the deposit, then refused to perform

the contract, claiming that the contract did not represent the agreement of the parties and was nothing more than a receipt for a loan. **Exhibit A Transcript, p. 19.** Petitioner further acknowledged that the sales price of \$60,000.00 came from her husband and represented that she thought the agreement included what could be called an acceleration clause that if the property appraised for more, then the sale price went up.

Respondent filed the civil action below and sought specific performance of an unambiguous contract that he had partially performed by paying a \$10,000.00 deposit and the exchange of promises therein. Petitioner filed an answer denying there was a meeting of the minds concerning the contract of sale of her residence.

A bench trial by agreement was conducted in the Circuit Court on August 12, 2024. The Circuit Court received the testimony only of the two parties and the exhibits of the parties. The Court directed the parties to file proposed findings of fact and conclusions of law, which was timely done. After consideration of the briefs and the record, the Circuit Court found that the parties intended a contract but did not have a meeting of the minds on the terms of the contract. **Appendix Exhibit C., pp. 6-8.** The Court found that the document was a contract but that, based on the Petitioner's testimony, there was not a meeting of the minds. **Appendix Exhibit C. pp. 7-8.** The Court further sustained an objection to the Petitioner attempting to say the contract she wrote was confusing, finding the contract terms spoke for themselves. **Appendix Exhibit A. Transcript, p. 28.** The Court further found that the Respondent did not know about any contingency asserted by the Petitioner in her testimony. **Appendix Exhibit C., p. 7-8.** The Circuit Court allowed parol evidence by the Petitioner to contradict the plain meaning of the written agreement that was prepared by the Petitioner.

The Circuit Court found for the Petitioner, yet did not address the \$10,000.00 deposit given by the Respondent to the Petitioner, unjustly enriching the Petitioner.

The Respondent appealed to the Intermediate Court. After the matter became mature, the Intermediate Court ruled that the record below was “replete with overt acts by the parties to establish a meeting of the minds regarding the intent and terms of the agreement.” **Appendix Exhibit D. p 5.** The Intermediate Court reversed the Circuit Court and upheld the Contract for \$60,000.00.

After the decision was issued and the mandate entered, Respondent moved for enforcement of the Intermediate Court Decision and a hearing was held on October 10, 2025. **Appendix Exhibit G.** In that hearing, the Circuit Court made no rulings. Counsel for Respondent represented efforts to contact Petitioner’s counsel below in the Circuit Court. In that hearing, Petitioner represents she was pressured with an IRS matter when the transcript reveals her social security number was needed for a principal residence sale being tax free. **Appendix Exhibit G, p. 9.** After the colloquy with the Court including Petitioner and Respondent’s Counsel, Petitioner said: “I’ll sign whatever I need to,” then proceeded to agree to sign the deed that day. **Appendix Exhibit H.** There was no coercion. **Appendix Exhibit G, p. 10 -12.**

What is factually revealing in this appeal and in the appeal below is the Petitioner acknowledges receiving \$60,000.00 for her property yet makes no representation concerning the return of that money if she is successful.

STANDARD OF REVIEW

1. "In reviewing challenges to the findings and conclusions of the circuit court made after a bench trial, a two pronged deferential standard of review is applied. 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. Questions of law are subject to a de novo review." Public Citizen, Inc. v. First Nat. Bank in Fairmont, 198 W.Va. 329, 480 S.E.2d 538 (1996). Smith v. Smith, 639 S.E.2d 711, 219 W.Va. 619 (W. Va. 2006) (Syllabus 1)..

ARGUMENT

West Virginia law is clear on the requirements of an agreement to sell real estate.

West Virginia Code §46-3-1 states:

No contract for the sale of land, or the lease thereof for more than one year, shall be enforceable unless the contract or some note or memorandum thereof be in writing and signed by the party to be charged thereby, or by his agent. But the consideration need not be set forth or expressed in the writing, and it may be proved by other evidence.

WV Code 36-1-3 Contracts for sale or lease of land; necessity of writing (West Virginia Code (2024 Edition))

In this case, the Petitioner prepared and had tendered to the Respondent through her husband the contract and received in exchange the sum of \$10,000.00. She is the owner of the subject property. The Petitioner disagrees that the writing means what it says and that the contract is in some way ambiguous. She stated that she had conversations with her husband about an appraisal contingency, **Appendix Exhibit A, Transcript, p. 14**. She further said the Respondent had no idea about her intentions when she wrote the contract. **Appendix Exhibit A, Transcript, pp. 14, 20**. She admitted she prepared the contract and never talked to the Respondent about the terms of it. **Appendix A, Transcript, pp. 20-21**. If the sale to Respondent did not go through, he would get his \$10,000.00 back in her mind. **Appendix A, Transcript, p.14**.

Contracts of clear language are to be enforced according to their terms:

In syllabus point five of New v. GameStop, Inc., 232 W.Va. 564, 753 S.E.2d 62 (2013), this Court held:

“A valid written instrument which expresses the intent of the parties in plain and unambiguous language is not subject to judicial construction or interpretation but will be applied and enforced according to such intent.” Cotiga Development Co. v. United Fuel Gas Co., 147 W.Va. 484, 128 S.E.2d 626 (1962), Syllabus Point 1.” Syl. pt. 1, Bennett v. Dove, 166 W.Va. 772, 277 S.E.2d 617 (1981). Allegheny Country Farms, Inc. v. Huffman, 237 W.Va. 355, 787 S.E.2d 626 (W. Va. 2016)

The Circuit Court allowed the Petitioner's testimony of what she believed were the terms of the contract, which amounted to parol evidence to interpret a writing formed after the parol evidence.

3. "Extrinsic evidence of statements and declarations of the parties to an unambiguous written contract occurring contemporaneously with or prior to its execution is inadmissible to contradict, add to, detract from, vary or explain the terms of such contract, in the absence of a showing of illegality, fraud, duress, mistake or insufficiency of the consideration." Syl. pt. 1, [182 W.Va. 759] Kanawha Banking & Trust Co. v. Gilbert, 131 W.Va. 88, 46 S.E.2d 225 (1947). Tri-State Asphalt Products, Inc. v. McDonough Co., 391 S.E.2d 907, 182 W.Va. 757 (W. Va. 1990).

This Court is the arbiter whether there is any ambiguity in the contract:

[t]he mere fact that parties do not agree to the construction of a contract does not render it ambiguous. The question as to whether a contract is ambiguous is a question of law to be determined by the court." Accord syl. pt. 2, Supervalu Operations v. Center Design, 206 W.Va. 311, 312, 524 S.E.2d 666, 667 (1999); syl. pt. 4, Pilling v. Nationwide Mut. Fire Ins. Co., 201 W.Va. 757, 758, 500 S.E.2d 870, 871 (1997). CONSOL Energy, Inc. v. Hummel, 238 W.Va. 114, 792 S.E.2d 613 (W. Va. 2016).

The Circuit Court leaned heavily in the decision below that the Petitioner didn't make the deal that's in the contract with the Respondent even though:

- a. The contract is in clear, unambiguous language.
- b. The Petitioner wrote it in her own handwriting.
- c. The contract had a legal purpose.
- d. The consideration was clear.
- e. No appraisal contingency was contained within the contract as alleged by the

Respondent.

The Circuit Court was influenced by a subsequent offer for much greater consideration than this sales price. That influence did not take into account that the

Petitioner and her husband needed money, the Respondent was willing to again provide it in addition to funds he had already provided, and that the sale price considering what all the Petitioner's husband owed the Respondent was reasonable. **Appendix Exhibit A. Transcript, pp. 23-24.** The Circuit Court in hindsight sympathized with the Petitioner by avoiding the contract and not ordering a refund of the \$10,000.00 deposit. In doing so, the Circuit Court made a clear error of law:

"And where both parties to a contract have equal means and opportunity to acquire information, so that by ordinary diligence either may rely on his own judgment, they will be presumed to have done so, and if not, they must abide by the consequences of their own folly or carelessness." Syl. pt. 6, *Jones v. McComas*, 92 W.Va. 596, 115 S.E. 456 (1922).
Tri-State Asphalt Products, Inc. v. McDonough Co., 391 S.E.2d 907, 182 W.Va. 757 (W. Va. 1990)(Syllabus 6)

If Petitioner made what was for her a bad deal, she must abide by it.

The Circuit Court in its conclusion of law to justify rejecting this contract in part stated:

It is elementary that mutuality of assent is an essential element of all contracts. *Wheeling Downs Racing Ass'n v. West Virginia Sportservice, Inc.*, 158 W.Va. 935, 216 S.E.2d 234 (1975). In order for this mutuality to exist, it is necessary that there be a proposal or offer on the part of one party and an acceptance on the part of the other. Both the offer and acceptance may be by word, act or conduct that evince the intention of the parties to contract. That their minds have met may be shown by direct evidence of an actual agreement or by indirect evidence through facts from which an agreement may be implied. See *Lacey v. Cardwell*, 216 Va. 212, 217 S.E.2d 835 (1975); *Charbonnages de France v. Smith*, 597 F.2d 406, 415-416 (4th Cir. 1979). *Ways v. Imation Enterprises Corp.*, 589 S.E.2d 36, 214 W.Va. 305 (W. Va. 2003).

This is error. *Ways v. Imation Enterprises Corp.* dealt with a proposed class action of employees suing to establish that the employer defendant had made numerous oral promises of employment and then breached those promises. Here, there are no oral

promises alleged by the Petitioner from the Respondent. The Respondent made a promise to buy Petitioner's property for \$60,000.00 and gave a contemporaneous deposit of \$10,000.00. The only evidence of different terms came from the drafter of the contract who changed her mind when she got a better offer. There is no evidence within the written document of different terms, and that document is unambiguous. To allow the Petitioner to allege additional terms after the fact flies in the face of established contract law and could render many contracts uncertain and unenforceable.

A clear parallel to this case is the idea of reformation of a deed after the fact. That issue has been discussed in Smith v. Smith, 639 S.E.2d 711, 219 W.Va. 619 (W. Va. 2006), which stated in Syllabus 5:

To justify the reformation of a clear and unambiguous deed for mistake, the mistake must be one of fact, not of law; the mistake must be mutual and common to both parties to the deed; the unambiguous deed must fail to express the obvious intention of the parties; and the mutual mistake must be proved by strong, clear and convincing evidence.

In Smith, there was a controversy over to what the seller and purchaser had agreed in selling a building in Hinton. The Appellant therein alleged a mistake in the deed of the property being conveyed. The Circuit Court found that the deed was clear and unambiguous as to what it granted and that, therefore, parol evidence was inadmissible to interpret it. The Supreme Court reversed in finding that parol evidence could be introduced but that the appellants fell far short of establishing the mutual mistake by strong, clear, unequivocal and convincing evidence. The parol evidence admitted went to interpret a reservation clause in the deed allowing the appellees certain use of the parking lot sold to the appellees which the Supreme Court found to be ambiguous based on the testimony of

the parties of the use of that parking lot over an extended period of time for an annual three-day apple butter festival and ingress and egress across it.

Here, Petitioner did not allege any contact with Respondent to express her desire for a contingency of appraised value, she did not include it in her writing that she prepared, and she elicited no evidence from Respondent that notwithstanding the contract document she wrote, he was aware of her desire to increase the price or give him back his deposit if she got a better offer.

CONCLUSION

Respondent established a valid written contract to purchase the property of Petitioner on its terms. Petitioner failed to show by strong, clear, unequivocal and convincing evidence that there was a mutual mistake. Petitioner failed to show that the contract was ambiguous. Respondent failed to show that Petitioner was aware of terms that should have been included in the contract other than the terms included in the contract.

Petitioner has made a deal and must live by the deal she made under contract and conveyance principles. The Circuit Court erred in both its findings of fact that the contract had no meeting of the minds and its conclusions of law that Petitioner had met her burden of proof. The Intermediate Court found the Circuit Court erred and its ruling was contrary to well established principles of contract law. Further, Petitioner has allowed Respondent to change positions subsequent to the mandate of the Intermediate Court and has accepted the full sales price of the contract.

The sales contract should be enforced.

KERMIT WILEY, SR.,

By Counsel.

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RESPONDENT.

CERTIFICATE OF SERVICE

I, WILLIAM S. WINFREY, II, of counsel for the Responent, do hereby certify that a true and correct copy of the foregoing Respondent's summary arguhas this day been served upon the following Petitioner by first class mail:

Sandra Trent
131 Pansy Place
Princeton, WV 24740

This the 1st day of May, 2026.

/s/ William S. Winfrey, II
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