
IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

GREGORY H. SCHILLACE,
Petitioner,

vs.

HORIZON VENTURES OF WEST VIRGINIA, INC.,
Respondent.

RESPONDENT'S BRIEF

Submitted by:

/s/Mark A. Kepple

Mark A. Kepple, Esq.

W. Va. Bar Id. #7470

Benjamin P. Visnic, Esq.

W. Va. Bar Id. #12289

Bailey & Wyant, PLLC

1219 Chapline St.

Wheeling, West Virginia 26003

P: (304) 233-3100

F: (304) 233-0201

Email: mkepple@baileywyant.com

Email: bvisnic@baileywyant.com

Joseph G. Nogay, Esq.

W. Va. Bar ID #2743

Sellitti, Nogay & Nogay

3125 Pennsylvania Avenue

Weirton, WV 26062

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
I. ASSIGNMENTS OF ERROR.....	1
II. STATEMENT OF THE CASE	1
A. Factual History.....	1
B. Procedural History.....	5
III. SUMMARY OF ARGUMENT	6
IV. STATEMENT REGARDING ORAL ARGUMENT.....	7
V. ARGUMENT	7
A. Standard of Review.....	7
B. Fatally, Petitioner’s brief never addresses the portion of the lower court’s decision stating that one circuit court cannot modify the decision of another circuit court.....	8
C. The equitable doctrines of <i>res judicata</i> and collateral estoppel are specifically applicable to this civil action and serve as a bar to Petitioner’s claims.....	9
1. <i>Res judicata</i> applies to this matter.....	9
2. Collateral estoppel applies to this matter and serves as a bar to Petitioner’s claims.....	11
D. The doctrine of judicial estoppel does not apply to this matter.....	12
E. The doctrine of unclean hands does not apply to this matter.....	14
VI. CONCLUSION	16

TABLE OF AUTHORITIES

West Virginia Cases:	Pages(s)
<i>Blake v. Charleston Area Medical Center, Inc.</i> , 201 W. Va. 469, 498 S.E. 2d 41 (1997).....	9
<i>Chalifoux v. W. Virginia Dep't of Health & Hum. Res.</i> , 250 W. Va. 617, 906 S.E.2d 270 (2023)	9, 10, 11
<i>Foster v. Foster</i> , 221 W. Va. 426, 655 S.E.2d 172 (2007)).....	15
<i>Haendel v. Clark</i> , No. 7:17-CV-00135, 2019 WL 1372166 (W.D. Va. Mar. 26, 2019).....	1
<i>In re Harley C.</i> , 203 W. Va. 594, 509 S.E.2d 875 (1998).....	11
<i>Law. Disciplinary Bd. v. Scotchel</i> , 234 W. Va. 627, 768 S.E.2d 730 (2014).....	16
<i>Law. Disciplinary Bd. v. Schillace</i> , 247 W. Va. 673, 885 S.E.2d 611 (2022) (mandate issued February 17, 2023).....	1
<i>McNamara v. Brauchler</i> , 570 F. App'x 741 (10th Cir. 2014).....	1
<i>Schillace v. Matheny</i> , No. 25-ICA-37, 2025 WL 2491069 (W. Va. Ct. App. Aug. 29, 2025).....	1
<i>Schofield v. W. Virginia Dep't of Corr.</i> , 185 W. Va. 199, 406 S.E.2d 425 (1991).....	8
<i>State ex rel. Shamblin v. Dostert</i> , 163 W.Va. 361, 255 S.E.2d 911 (1979).....	8
<i>State v. Miller</i> , 194 W. Va. 3, 459 S.E.2d 114 (1995).....	11, 12
<i>Trickett v. Laurita</i> , 223 W. Va, 357, 674 S. E. 2d 218 (2009).....	11
<i>W. Virginia Dep't of Transp., Div. of Highways v. Robertson</i> , 217 W. Va. 497, 618 S.E.2d 506 (2005).....	13

<i>Whitacre P'ship v. Biosignia, Inc.</i> , 358 N.C. 1, 591 S.E.2d 870 (2004).....	13
---	----

<i>U.S. Expl., LLC v. Griffin Producing Co.</i> , 243 W. Va. 318, 844 S.E.2d 89 (2020)	15
---	----

Statutes and Rules:

W. Va. R. App. P. 10(c).....	1
------------------------------	---

W. Va. R. App. P. 19.....	7
---------------------------	---

I. ASSIGNMENTS OF ERROR

Respondent Horizon Ventures of West Virginia, Inc. (“Respondent” or “Horizon”) does not allege any cross-assignments of error.¹

II. STATEMENT OF THE CASE

A. Factual Background

Petitioner Gregory H. Schillace (“Petitioner” or “Schillace”) filed charging liens in two cases between Horizon and American Bituminous Power Partners, L.P. (“AMBIT”), attempting to recover monies he claimed to be owed by Horizon, based on a contingency agreement between Mr. Schillace and Horizon in a matter unrelated to either of the cases in which he filed the charging liens, specifically Civ. A. 13-C-196 (Ohio Co. 2013).² *See, e.g.*, J.A. 101, J.A. 103. Civ. A. 18-C-76 (Marion Co. 2018) and Civ. A. 18-C-130 (Marion Co. 2018). He presented no evidence that he had a contract, written or oral, with Horizon in either of those cases. The Marion County Circuit Court, Wilson, J., held a hearing *on the merits* of Petitioner’s argument. *See* J.A. 139.³

At that hearing, Mr. Schillace explained that he believed he could recover attorney’s fees and expenses through either a charging lien or through a *quantum meruit*-based civil suit:

¹ Petitioner’s Brief does not comply with W. Va. R. App. P. 10(c) as the sections are out of order and the brief includes sections which are not listed in the rule. The majority of the Brief is identical to Petitioner’s Response to Motion to Dismiss, J.A. 244 – 260. Respondent has addressed Petitioner’s Brief as if it actually complied with those requirements, to the best of its ability.

² While Mr. Schillace is proceeding *pro se*, Respondent notes that Mr. Schillace was a practicing member of the West Virginia State Bar until his license was suspended in *Law. Disciplinary Bd. v. Schillace*, 247 W. Va. 673, 885 S.E.2d 611 (2022) (mandate issued February 17, 2023). *See, e.g., Schillace v. Matheny*, No. 25-ICA-37, 2025 WL 2491069, at *2 (W. Va. Ct. App. Aug. 29, 2025). He should not, therefore, be held to any less stringent pleading requirement extended to *pro se* parties. *See, e.g., Haendel v. Clark*, No. 7:17-CV-00135, 2019 WL 1372166, at *1 (W.D. Va. Mar. 26, 2019), *McNamara v. Brauchler*, 570 F. App’x 741, 743 n.2 (10th Cir. 2014).

³ Petitioner’s Statement of Facts offers much on the history between Mr. Schillace and Horizon, but extremely little about the relevant facts of this appeal or the underlying Marion County proceedings. His relevant fact section is, generously, found between Pet. Br. p. 10, ¶ 1 to 11, ¶ 1.

18 | contingent fee, and didn't say that I was. What I am entitled
19 | to is the reasonable amount or reasonable attorneys fees and
20 | unreimbursed advanced expenses that were provided to the
21 | client.

22 | THE COURT: And what's the vehicle to get that,
23 | Mr. Schillace? The attorneys lien that you're arguing here or
24 | a civil suit?

1 | MR. SCHILLACE: Your Honor, both.

J.A. 159 - 160, 10:17 – 11:1.

The Court explained that Mr. Schillace had produced no evidence which would satisfy his claims under *either a quantum meruit standard or a charging lien*:

11 | bell. My concern is, is that there is -- you cite this
12 | contract, and I have nothing. There is nothing in front of
13 | this Court, I don't have any testimony, I don't have any
14 | documentation, I don't have anything, first of all to
15 | establish if there is a contract that would meet this prong;
16 | and secondly, I have no evidence presented to this Court to
17 | make a determination if I were going to look at quantum meruit
18 | as to what would be appropriate quantum meruit in this case.
19 | I don't have either of those.

J.A. 160, 11:11 – 11:19. At first, Mr. Schillace claimed that he was unaware that he was attending a hearing on the merits of his case. J.A. 165, 16:19 – 16:24. However, the Court reviewed the record, and determined that the Notice of Hearing *expressly* stated that the noticed hearing was a hearing on the merits. *See* J.A. 166, 17:1 – 17:6; *see also* J.A. 139 (the actual Notice).

Ultimately, Mr. Schillace decided to testify on his own behalf. J.A. 173, 24:3 – 24:5. He testified that the contract in question was a contingency contract with Horizon for 13-C-196:

11 Q. Now, wait a minute. I'm trying to make sure,
12 because you're asking me to make a ruling, and I want to make
13 the right ruling.

14 A. I understand.

15 Q. What I'm hearing is, is that the only contract that
16 you're claiming is in existence is the contract in which you
17 were contracted as counsel on a contingency basis?

18 A. Your Honor, that is the only written agreement that
19 I had between myself and Horizon Ventures.

J.A. 175, 26:11 – 26:20; *see also* J.A. 127 (the contract itself). Schillace further admitted during this hearing on the merits, *inter alia*, that he and Horizon President Stanley Sears never had any discussion about an hourly rate, that he did not have any communications between he and Horizon relating to those rates, that he did not have time sheets showing time worked, and otherwise could not prove any of his claims. *See generally* J.A. 178 – 192.

The Court ultimately found that Plaintiff could not prove that he was owed any money:

5 The contract that was admitted into evidence is clearly
6 not in reference to all matters or for this particular matter
7 that we are concerned about here today. The language speaks
8 for itself, and that's the interpretation of this Court.
9 The Court also would indicate given that, for that
10 reason, the Court's going to deny, as I've indicated,
11 Mr. Schillace's request for fees in this matter.

J.A. 196, 47:5 – 47:10. The Court’s final order in this regard confirmed this decision. On November 4, 2024, the Court made the following relevant findings of fact and conclusions of law:

Mr. Schillace claimed to have provided over 800 hours of work to Horizon and to have advanced thousands of dollars of costs, but provided no explicit accounting or written evidence to substantiate his claim of work completed and how specific costs were allocated or incurred. Mr. Schillace also confusingly claimed, but again, provided no evidence to support his claim, that Horizon tacitly agreed to his claimed hourly rate of \$350.00 per hour, even though his claim for fees appears to be grounded in a contingency fee contract which does not contain any agreed-to hourly rates. Mr. Schillace admitted that he did not present and could not present any evidence other than his testimony regarding this alleged relationship, and that he believes billing records, contracts, invoices, and time entries existed, but were not in his possession and he did not retain copies of the same.

J.A. 144.

Aside from Mr. Schillace’s unsubstantiated testimony, he did not present any evidence that Horizon came to a fee agreement with him for either Civil Action No. 18-C-76 or Civil Action No.18-C-130 cases, or that Horizon agreed to pay him \$350 per hour. Further, Mr. Schillace indicated that he believed that he had an existing relationship with Horizon at the time of the litigation which would somehow cause the contingency fee agreement from Civil Action No.13-

C-196 to control *any* matter involving a dispute between Horizon and AMBIT. No law or fact supports this theory.

Finally, Mr. Schillace admitted that he failed to subpoena Stanley Sears, Horizon President, to attend the hearing and testify regarding the matters. Mr. Schillace admitted that there was no lawsuit filed against Horizon claiming unpaid legal bills.

J.A. 144 – 145. The Court ultimately held:

Having thoroughly evaluated the matter, the testimony, the proffer of counsel, the admitted exhibits and absence of other evidence, this Court FINDS that Horizon's position as set forth in its Motion to Strike is well founded in fact and in law. While this Court acknowledges that Mr. Schillace did perform some work for Horizon on the matters in question, the Court finds that Mr. Schillace is unable to prove the existence of a valid written or oral contract between himself and Horizon regarding Civil Action No. 18-C-76 and Civil Action No.18-C-130. The Court further finds that Mr. Schillace failed and is unable to provide evidence of any work he completed on these matters or hours billed for that work. Without that evidence, he cannot meet the legal standard necessary to establish an attorney's lien and recover attorney's fees in this case or in any other case between the parties. Finally, the Court finds that Mr. Schillace failed to provide evidence of any work he completed on these matters led to the judgment or fund at issue in this matter.

J.A. 146.

Critically, the Court found that Mr. Schillace could not provide evidence of a written or oral contract between himself and Horizon in regards to the two cases in which he sought charging liens, and that he could not provide any evidence of work he completed on those matters or hours billed for that work. *Id.* Accordingly, it found that **“[w]ithout that evidence, he cannot meet the legal standard necessary to establish an attorney's lien and recover attorney's fees in this case or in any other case between the parties.”** *Id.* (emphasis supplied).

Inexplicably, Schillace did not appeal *this* decision. He did not request a new hearing from Judge Wilson, nor did he file any motions to alter or amend the judgment. Instead, he speciously filed the instant case in another county, ostensibly to see if he could achieve a different result in another court.

B. Procedural History

On or about January 27, 2025, Mr. Schillace filed the instant case in Harrison County. J.A. 0001. In the Complaint, he repeated his already adjudicated claim that he was owed monies in Civ.

A. 13-C-196G, Civ. A. 18-C-130, and Civ. A. 18-C-76. *See* J.A. 0001 – 0019. Because Petitioner decided to air information protected by attorney-client privilege in his Complaint, Respondent was forced to file an Emergency Motion to Seal the Complaint, which the Court granted. *See* J.A. 0072, J.A. 0085.

On February 28, 2025, Respondent filed a Motion to Dismiss Mr. Schillace’s claims based on collateral estoppel and *res judicata*. J.A. 0088. Mr. Schillace timely responded on March 19, 2025. J.A. 0244. Respondent replied on March 26, 2025. J.A. 0267.

The Harrison County Circuit Court, Schaffer, J., issued its detailed Final Order granting Respondent’s Motion to Dismiss on October 6, 2025. J.A. 0331. The Court based that decision primarily on the fact that the Marion County Court specifically found that Mr. Schillace could not “**meet the legal standard necessary to establish an attorney’s lien and recover attorney’s fees in this case or in any other case between the parties.**” J.A. 340 (emphasis in original.) The Circuit Court further explained that the Marion County Court “has already found that Mr. Schillace could not prove the existence of a valid written or oral contract between himself and Horizon regarding Marion County Circuit Court Case 18-C-76 or Case No. 18-C-130 as well as that his work in Ohio County Circuit Court Case No. 13-C-196G was not tied to those cases.”⁴ *Id.*

The Court below ultimately found that both collateral estoppel and *res judicata* barred Mr. Schillace’s claims, and that his arguments regarding judicial estoppel were without merit, and dismissed his claim, with prejudice. *See* J.A. 344, 349, 351-357, 358 – 359.

III. SUMMARY OF ARGUMENT

⁴ As above, Petitioner had only a contingency fee contract for 13-C-196G, a case in which Schillace testified to making claims which he knew were not possible under the contract between Horizon and AMBIT, made zero (0) dollars, and which ultimately caused Horizon to get sued in 18-C-130. *See, e.g.*, J.A. 189, 40:15 – 40:20, J.A. 340, 355.

Schillace intervened in two Marion County lawsuits between Horizon and American Bituminous Power Partners, LLP (“AMBIT”) by filing charging liens in which he claimed that he was owed money, despite not having a relevant oral or written contract regarding those matters, recorded time, or any other evidence of a governing contract or agreement. He first asked the Marion County Circuit Court to resolve his legal right to monies in that case, and it obliged.

The Court properly dismissed his suit, expressly finding that he could not proceed with any of his claims because he produced no evidence in support of any of his claims. Petitioner then committed the fatal error at the center of this case. Rather than appeal, or take any action regarding that ruling, he filed a duplicative claim in Harrison County Circuit Court in an apparent attempt to circumvent the Marion County Circuit Court’s decision and have one circuit judge essentially overrule another.

Harrison County Circuit Court correctly determined that his claims were barred by collateral estoppel and *res judicata*, and further clearly and correctly explained that Petitioner’s claim did not have any legitimate legal value. Petitioner’s appeal is largely duplicative of his Response to Defendant’s Motion to Dismiss and does not meaningfully address the lower court’s specific findings. For those and other reasons set forth herein and in the Harrison County’s order of dismissal, this Court should accordingly affirm the lower court’s decision.

IV. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Respondent agrees that oral argument in this matter is appropriate under W. Va. R. App. P. 19 as Petitioner is claiming assignments of error in the application of settled law, *i.e.*, the application of *res judicata*, collateral estoppel, and judicial estoppel to bar a claim which has already been litigated.

V. ARGUMENT

A. Standard of Review

Respondent agrees with Petitioner that this Court reviews Motions to Dismiss *de novo*. Pet. Br., p. 11. Respondent disagrees with the remainder of Petitioner’s standard of review discussion as it appears to claim that the standard of review has something to do with the applicability of *res judicata* as a matter of law. *See* Pet. Br., p. 12. Petitioner’s errors as to *res judicata* are discussed further, *infra*.

B. Fatally, Petitioner’s brief never addresses the portion of the lower court’s decision stating that one circuit court cannot modify the decision of another circuit court.

Petitioner, in his brief, steadfastly avoids addressing the fact that that circuit courts cannot modify the judgments of other circuit courts, as the Harrison County Court carefully explained. J.A. 387 – 388, ¶¶ 62 - 64. In explaining so, it specifically quoted the Supreme Court in *Schofield v. W. Virginia Dep’t of Corr.*, 185 W. Va. 199, 406 S.E.2d 425 (1991), which stated:

Syllabus Point 2 of *Shamblin* said:

W.Va. [C]onst., art. 8 § 1, W.Va. Const., art. 8 § 3, and W.Va. Const., art. 8 § 6 when read together provide an orderly and exclusive system by which errors of circuit courts may be corrected only by the West Virginia Supreme Court of Appeals and not by other circuit courts. One circuit court may not **directly or indirectly interfere** with the orders of another circuit court unless specifically provided by statute or civil rule regardless of how erroneous such orders may be.

Schofield at 406, S.E.2d at 430 (1991) (quoting Syl. Pt. 2, *State ex rel. Shamblin v. Dostert*, 163 W.Va. 361, 255 S.E.2d 911 (1979)) (emphasis added). If Mr. Schillace believed, as he represents to this Court, that the Marion County Court’s decision was incorrect when it found that he could not meet the legal standard to proceed with his claim “in this case or in any other case between the parties,” he should have appealed that decision instead of filing a parallel claim in another county.

As Judge Shaffer explained, “Mr. Schillace chose not to appeal [the Marion County] November 4, 2024, Order; and that choice does not grant Plaintiff the right to file a parallel claim

in another Court as such would be repetitive litigation to which *res judicata* prevents.” J.A. 0387, ¶ 60. Respondent agrees. Petitioner’s appeal should be denied.

C. The equitable doctrines of *res judicata* and collateral estoppel are specifically applicable to this civil action and serve as a bar to Petitioner’s claims.

Mr. Schillace claims that neither *res judicata* or collateral estoppel should bar his claims. Pet. Br., p. 12. However, his claims in the Harrison County case at issue in this appeal are identical to his claims in the Marion County matter. The lower court correctly determined that both preclusive doctrines apply to this case, and this Court should do the same. *See* J.A. 344 – 349.

1. *Res judicata* applies to this matter.

The elements of *res judicata* are as follows:

First, there must have been a final adjudication on the merits in the prior action by a court having jurisdiction of the proceedings. Second, the two actions must involve either the same parties or persons in privity with those same parties. Third, the cause of action identified for resolution in the subsequent proceeding either must be identical to the cause of action determined in the prior action or must be such that it could have been resolved, had it been presented, in the prior action.

Chalifoux v. W. Virginia Dep’t of Health & Hum. Res., 250 W. Va. 617, 628–29, 906 S.E.2d 270, 281–82 (2023) (quoting, in part, Syl. Pt. 4, *Blake v. Charleston Area Medical Center, Inc.*, 201 W. Va. 469, 498 S.E.2d 41 (1997)).

The lower court found that the Marion County Court “definitively adjudicated [Petitioner]’s claims for monies from the settlement in 18-C-76, finding that [Petitioner] has no evidence of an oral or written contract between Horizon and himself for either Case No. 18-C-76 or Case 18-C-130.” J.A. 0346, ¶ 45. It went on to find, correctly, that the parties in the instant case, *i.e.*, Horizon and Schillace are the same, that Judge Wilson, in the previous Marion County case, found Petitioner did not present evidence to support his claims, and that Petitioner, in the court

below, did not provide any legitimate reason why *res judicata* would not apply to the case *sub judice*. J.A. 0347.

Petitioner asserts, without any legal support, that his “presentation” of an attorney’s lien, *i.e.*, a *claim* to collect attorney’s fees, does not act as collateral estoppel or *res judicata* with respect to a *lawsuit* to collect attorney’s fees. Pet. Br. p. 14, ¶ 1. This assertion is legally and factually incorrect. Petitioner had his chance, at an evidentiary hearing with a judge, in a court of competent jurisdiction, to present this claim. He failed at doing so, then failed to appeal the same.

Petitioner first claims that *res judicata* cannot apply because he has not been paid. Pet. Br. 14, ¶ 1. That is not a legally valid reason to discard a preclusion doctrine. Mr. Schillace *testified* in open court that he did not possess any evidence upon which he could prove that he was owed money. *See generally* J.A. 178 – 192. After hearing his testimony, the Court found that he could not “**meet the legal standard necessary to establish an attorney’s lien and recover attorney’s fees in this case or in any other case between the parties.**” J.A. 340, ¶ 1. (emphasis in original). If Petitioner thought that finding was legally incorrect, he could have appealed it. He chose not to.

Moreover, Mr. Schillace implies that the issue he raised in Civ. A. 18-C-76 is not identical to the case *sub judice*. *See* Pet. Br. p. 14, ¶ 14. However, the law does not require the case to be identical. The cause of action merely “must be such that it could have been resolved, had it been presented, in the prior action.” *See, e.g., Chalifoux* at 628 – 629, S.E.2d at 281 – 282. Here, the Marion County Circuit Court took evidence on, and expressly ruled on, Mr. Schillace’s claims related to all three cases. *See* J.A. 0145, ¶ 3 – 0146, ¶ 1.

Petitioner also incorrectly posits *res judicata* is inapplicable, “the Notice of Attorney Lien” he filed in Marion County “does not involve the same parties as the underlying action.” Pet. Br. p. 14, ¶ 2 – p. 15, ¶ 1. Apparently, Schillace believes this to be the case because he was not an original

party to Civ. A. 18-C-76. *Id.* at p. 15, ¶ 1. However, the lower court already addressed, and disregarded, this argument. Specifically, the Court found that Petitioner *chose* to intervene in 18-C-76, rather than file a separate lawsuit. *See* J.A. 0347, ¶ 52. By doing so, Mr. Schillace made himself “as much a party to the action as the original parties, and **render[ed] himself vulnerable to complete adjudication of the issues in litigation between himself and the adverse party.**” J.A. 0348, ¶¶ 53 – 54; *see also In re Harley C.*, 203 W. Va. 594, 598, 509 S.E.2d 875, 879 (1998) (emphasis supplied).⁵

Here, Petitioner’s claims were already adjudicated. The lower court correctly identified that “Mr. Schillace specifically intervened in Marion County Circuit Court case No. 18-C-76 and asked for a ruling from that Court on the exact factual claims he includes herein; whereupon he not only received an adverse ruling but, also chose not to file any appeal thereon.” J.A. 0346, ¶ 57.

The lower court, therefore, correctly applied *res judicata* in dismissing Mr. Schillace’s claim.

2. Collateral estoppel applies to this matter and serves as a bar to Petitioner’s claims.

The elements of collateral estoppel are as follows:

(1) The issue previously decided is identical to the one presented in the action in question; (2) there is a final adjudication on the merits of the prior action; (3) the party against whom the doctrine is invoked was a party or in privity with a party to a prior action; and (4) the party against whom the doctrine is raised had a full and fair opportunity to litigate the issue in the prior action.

State v. Miller, 194 W. Va. 3, 9, 459 S.E.2d 114, 120 (1995).

⁵ Here, Petitioner also continues his maddening motion practice from the lower court proceedings of citing a long case without a pin citation, leaving Respondent and this Court to guess as to what portion of, *inter alia*, an 11-page case in *Trickett v. Laurita* he is citing at Pet. Br. p. 15, ¶ 1 or which part of a 14-page case in *Chalifoux v. W. Va. Dept. of Health and Human Resources*, 250 W. Va. 617, 906 S.E.2d 270 (2023) he refers to at Pet. Br. p. 15, ¶ 2. *See, e.g.*, J.A. 274, fn. 3. Presumably, despite Respondent’s complaints about this at the lower court level, Petitioner did not bother fixing these citations when copy-pasting his arguments from the lower court into his appellate brief. *Cf.* J.A. 254 – 257 and Pet. Br. pp. 13 – 16.

The lower court applied *State v. Miller* and found that (a) the issues in the instant case were substantively addressed and decided by the Marion County Circuit Court; (b) the Marion County Circuit Court made a “definitive, final adjudication” that Mr. Schillace had no evidence to prove his claims; and (c) that the parties are the same. J.A. 0344, ¶ 34.

Critically, too, the lower court found that “[Schillace] had a full and fair opportunity to litigate the issue because the Marion County Circuit Court not only allowed him to *pro se* file his Objection therein, but also conducted an in-person hearing on those matters, including evidentiary production and admission as well as taking sworn testimony of Mr. Schillace thereat.” J.A. 345, ¶ 34.

Petitioner does not meaningfully dispute these findings. Instead, he incorrectly argues, again, that he was not a party to Civ. A. 18-C-76, an issue which the lower court already addressed. *See* Pet. Br., 16 ¶ 1; *see also* J.A. 348, ¶¶ 53 – 54. He also argues that he could not have gotten the same relief from his charging lien in 18-C-76 as he claims in this lawsuit, which has nothing to do with collateral estoppel. *See* Pet. Br. 16, ¶ 1. Rather, “collateral estoppel requires identical issues raised in successive proceedings and requires a determination of the issues by a valid judgment to which such determination was essential to the judgment.” *State v. Miller*, 194 W. Va. 3, 9, 459 S.E.2d 114, 120 (1995). The legal issues here are identical to the ones he raised and adjudicated in Marion County and were already determined by that Court. Schillace did not appeal that ruling. The lower court was therefore correct in determining that Petitioner’s claim is barred by collateral estoppel.

D. The doctrine of judicial estoppel does not apply to this matter.

Judicial estoppel prevents parties from *re-litigating* an issue when:

(1) the party assumed a position on the issue that is clearly inconsistent with a position taken in a previous case, or with a position taken earlier in the same case;

(2) the positions were taken in proceedings involving the same adverse party; (3) the party taking the inconsistent positions received some benefit from his/her original position; and (4) the original position misled the adverse party so that allowing the estopped party to change his/her position would injuriously affect the adverse party and the integrity of the judicial process.

W. Virginia Dep't of Transp., Div. of Highways v. Robertson, 217 W. Va. 497, 506, 618 S.E.2d 506, 515 (2005). Moreover:

Judicial estoppel ... is distinguishable from its companion doctrines in two principal respects. First, judicial estoppel seeks to protect courts, not litigants, from individuals who would play 'fast and loose' with the judicial system.... Second, because of its inherent flexibility as a discretionary equitable doctrine, judicial estoppel plays an important role as a gap-filler, providing courts with a means to protect the integrity of judicial proceedings where doctrines designed to protect litigants might not adequately serve that role."

Id. (citing, in part, *Whitacre P'ship v. Biosignia, Inc.*, 358 N.C. 1, 591 S.E.2d 870, 887 (2004)). If judicial estoppel would apply anywhere in this case, it would apply to prohibit Plaintiff from attempting to sneak this matter into Harrison County Circuit Court instead of appealing the issues at bar from the Marion County Circuit Court's decision.

Petitioner claims that judicial estoppel prevented Respondent from moving to dismiss his claim because counsel made representations in the Civ. A. 18-C-76 hearing that Petitioner could, in fact, bring another lawsuit. Pet. Br. 16 – 17. As this argument is copied, *verbatim*, from Petitioner's Response to Motion to Dismiss to the lower court below, Respondent points to the Court's ruling which properly adjudicated this issue. *Cf.* Pet. Br. 16 – 18, J.A. 0257 – 258. Specifically, the lower court entertained these exact arguments and correctly found that **Horizon did not claim that Petitioner *never* had a right to bring a separate lawsuit, but, rather that Horizon's position in this matter is that Schillace's ability to bring a second lawsuit "evaporated when the Court accepted [Schillace's] invitation to rule and dismissed his claim."** See J.A. 0351, fn. 5. Respondent's counsel did not, in fact, allege one argument in Marion

County and a different, conflicting argument in Harrison County, and the Harrison County Court agreed. The lower court found that Petitioner's ability to bring a judicial estoppel claim disappeared when he invited the Court to rule on his rights in Civ. A. 18-C-76 and Civ. A. 18-C-130 at the hearing. J.A. 0351, ¶¶ 70 – 72.

The lower court further explained that the *factual* findings by the Marion County Court, *i.e.*, that Schillace had no evidence of any contract, work completed, or hours billed *at all*, let alone that “led to the judgment or fund at issue,” doomed his ability to relitigate his claim, not any specific argument by Respondent. *See* J.A. 146, ¶ 2; *see also* J.A. 352, ¶¶ 74 – 75.

As the lower court noted, those factual findings from the Marion County case needed to be appealed. J.A. 0352, ¶ 76. Those findings preclude Petitioner's ability to collaterally attack them in other courts. *See, e.g.*, J.A. 0353, ¶ 77 (“Having failed to appeal such Circuit Court's findings, Mr. Schillace cannot disregard those findings by collaterally attacking them in this Court as Plaintiff herein.”) Because Schillace took no action to challenge the Marion County Court's findings on this issue, the lower court correctly found that his judicial estoppel argument was without merit or basis.

The lower court correctly disagreed with Schillace's judicial estoppel argument, and, by virtue of merely repeating the argument in his appeal brief filed herein, has provided nothing to this Court which would require it to rule differently than the lower court did on this issue.

E. The doctrine of unclean hands does not apply to this matter.

Petitioner also revisits, again *verbatim*, his misapprehended argument that Respondents are equitably estopped by the doctrine of unclean hands from invoking preclusive doctrines. *See* Pet. Br., p. 18. This argument is without legal merit. As the lower court noted, the doctrine of unclean

hands is a *defense*, not a basis to prevent a party from appropriately arguing res judicate or collateral estoppel. J.A. 0353, ¶ 84. Specifically, the doctrine of unclean hands states:

Whenever and if it is made to appear to the court that by reason of fraudulent or other unconscionable conduct, the plaintiff has lost his right to invoke a court of equity, the court will, on the motion of a party, or its own motion, wash its hands of the whole.

Indeed, this Court may, *sua sponte*, invoke the doctrine of unclean hands to invoke an equitable and just result.

U.S. Expl., LLC v. Griffin Producing Co., 243 W. Va. 318, 327, 844 S.E.2d 89, 98 (2020) (quoting *Foster v. Foster*, 221 W. Va. 426, 431, 655 S.E.2d 172, 177 (2007)). The Court correctly found that Mr. Schillace did not provide any authority which would allow the doctrine of unclean hands to apply to Respondent, and Mr. Schillace merely repeats the same argument and case law here. See J.A. 0354 – 0355, ¶¶ 86 – 89; *also cf.* Pet. Br. 18 – 20 and J.A. 258-260.

The lower court also went one step further and explained that even if the doctrine of unclean hands *would* apply to Respondents, the actual facts of this matter preclude its application. J.A. 0355, ¶ 90. Specifically, the lower court identified that Horizon “received no monetary award” from Civ. A. 13-C-196G, “wherefrom Mr. Schillace and Horizon’s October 27, 2015 *Contingency Fee Contract* originally arose.” *Id.* at ¶ 91.

It further explained that Schillace valued his services under the agreement to total \$311,925.67, with \$17,223.70 in expenses, “with no factual support provided,” and that, *inter alia*, “[f]rom the time of entering such Contract until the time he was terminated by Horizon, it appears that Schillace won nothing and recovered nothing, as provided for under their *Contingent Fee Contract*.” See J.A. 0355 – 0356, ¶¶ 91 – 99. The Court concluded by stating that “[Schillace] is now asking this Court, as he unsuccessfully asked the Marion County Court in Case No. 18-C-76, to enforce a fee for two civil cases for which no representation agreement was signed, and for

which no written evidence of any other agreement to [Schillace's] "regular" fee exists..." J.A. 0357, ¶ 105.

The lower court properly found that Mr. Schillace fully relied upon the contingent fee contract as the source of his demand in all three (3) civil actions, and that his claims were fully entertained and ruled upon in Marion County. *See* J.A. ¶¶ 106 – 107.

The lower court's opinion properly deals with Petitioner's position, both legally and factually, and explains why Petitioner's assertions are both legally and factually incorrect. Petitioner incorrectly claims that "the respondent may assert that some amount of attorney fees are not owed, the respondent cannot fairly assert that it owes the petitioner nothing." Pet. Br. 19, ¶ 2. Petitioner admitted to the Marion County Court that he had, in short, no evidence of anything that he intended to prove his claims. Respondents are unaware of any case which holds that equitable relief springs into existence when a party has no evidence to otherwise succeed on a claim.

Rather, Mr. Schillace is requesting the Court to enforce significant fees for which he has no evidence whatsoever. His attempt to bill a client for previously undocumented time on a *contingency fee contract* seems to clearly violate the Rules of Professional Conduct. In fact, the Supreme Court specifically *disbarred* John Scotchel because, *inter alia*, he charged unreasonable fees, failed to communicate the basis of the fees to his client, and failed to have his fees in writing. *See* J.A. 278 – 279. *Law. Disciplinary Bd. v. Scotchel*, 234 W. Va. 627, 642, 768 S.E.2d 730, 745, 747 (2014). Schillace is asking the Court permission to do the same thing.

The lower court correctly rejected Mr. Schillace's unclean hands argument, and this Court should do the same.

VI. CONCLUSION

Petitioner's appeal should be denied. He has provided no valid basis for this Court to reverse the lower court's order. Petitioner initially filed, and lost, a claim in Marion County, in which the Court made legal and factual findings that effectively blocked his ability to pursue any factually adjacent claims there or in other courts. He did not appeal those legal and factual findings, instead ignoring that opinion and bringing the instant, almost identical, lawsuit in a different county. The Harrison County Circuit Court, the lower court below, correctly rejected this second lawsuit, in a detailed opinion. Petitioner largely ignored *that* opinion as well and filed an appeal with this Court that is largely duplicative of Petitioner's original arguments in his Response to Motion to Dismiss filed below, rather than one that addresses the lower court's actual legal and factual findings.

Accordingly, Respondent moves this Court to affirm the decision of the Harrison County Circuit Court, for the reasons stated herein.

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

GREGORY H. SCHILLACE,
Petitioner,

vs.

HORIZON VENTURES OF WEST VIRGINIA, INC.,
Respondent.

CERTIFICATE OF SERVICE

I, the undersigned counsel for the Respondent, hereby certify that I served a true copy of the foregoing Respondent's Brief upon the following individuals, by mailing a true and correct copy, via the U.S.P.S., postage prepaid, on the 10th day of March 2026:

Gregory H. Schillace
P.O. Box 1526
Clarksburg, WV 26302-1526
T: 304-624-1000
ghs@schillacelaw.com

Submitted by:

/s/Mark A. Kepple
Mark A. Kepple, Esq.
W. Va. Bar Id. #7470
Benjamin P. Visnic, Esq.
W. Va. Bar Id. #12289
Bailey & Wyant, PLLC
1219 Chapline St.
Wheeling, West Virginia 26003
P: (304) 233-3100
F: (304) 233-0201
Email: mkepple@baileywyant.com
Email: bvisnic@baileywyant.com

Joseph G. Nogay, Esq.
W. Va. Bar ID #2743
Sellitti, Nogay & Nogay
3125 Pennsylvania Avenue
Weirton, WV 26062