

IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

**RICHARD DIBELLA and
SHRADDHA JOSHI,
Defendants Below, Petitioners**

**FILED
September 25, 2026**

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

v.) No. 26-ICA-17 (Cir. Ct. Berkeley Cnty. No. CC-02-2025-C-AP-25)

**MELANIE MASTERMONICO,
Plaintiff Below, Respondent**

MEMORANDUM DECISION

Petitioners Richard Dibella and Shraddha Joshi appeal the December 23, 2025, order of the Circuit Court of Berkeley County denying their appeal of the magistrate court order. Respondent Melanie Mastermonico filed a response.¹ Petitioners filed a reply. The issue on appeal is whether the circuit court erred by ordering immediate possession of the property to Ms. Mastermonico, ordering petitioners to return their keys to the property by December 19, 2025, and ordering petitioners to pay Ms. Mastermonico \$1900 in past-due rent and damages.

This Court has jurisdiction over this appeal pursuant to West Virginia Code § 51-11-4 (2026). 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.

On December 17, 2018, Ms. Joshi entered into a written lease with Martha James, the owner of the property located in Bunker Hill, WV. Under the terms of the handwritten lease, Ms. Joshi was to pay \$300 per month. The term of the lease is disputed, as it appears that someone altered it to reflect a termination date of "June 5, 2029." According to the lease, either party could terminate it by providing the other party with sixty days' notice to quit. Ms. James passed away, testate, on October 13, 2021. In her will, Ms. James left the majority of the residue of her estate to Ms. Mastermonico, the remaining residue to Michael Mastermonico, and appointed Ms. Mastermonico as the sole executor. The will was probated and settled without objection on October 5, 2023. Following the death of Ms. James, Ms. Joshi continued to make regular rent payments to Ms. Mastermonico.

¹ Both parties are self-represented.

The petitioners and/or their business associate, Ray Poli, operated a pre-owned car business on the leased property. On September 12, 2025, Ms. Mastermonico delivered a Notice to Terminate Tenancy to Mr. Poli at the property at issue. The notice served by Ms. Mastermonico, addressed to Mr. Dibella, ordered the tenant(s) to vacate the premises on or before October 12, 2025. It is undisputed that on the same date, Ms. Mastermonico telephoned petitioners and advised them that she was terminating the lease and they were to vacate on or before October 12, 2025. It is also undisputed that on September 25, 2025, petitioners visited the leased property, whereupon Ms. Mastermonico provided them with the written notice of termination and ordered petitioners to vacate the property by October 12, 2025. On or about October 12, 2025, Mr. Poli vacated the property and returned his key to Ms. Mastermonico. Petitioners, however, did not vacate the property, nor did they return their key to Ms. Mastermonico. Further, petitioners ceased paying rent and did not pay rent for October, November, and December 2025.

On October 14, 2025, Ms. Mastermonico filed an unlawful detainer action in magistrate court against petitioners. On November 18, 2025, the magistrate court held a hearing on this matter. Following the hearing, the magistrate court awarded possession of the property to Ms. Mastermonico and gave petitioners thirty days to vacate the property.

On November 20, 2025, petitioners appealed the ruling to the circuit court. At a de novo bench trial on December 19, 2025, Ms. Mastermonico sought immediate possession of the property and \$900 for rent arrearage. Additionally, Ms. Mastermonico testified that the refusal of the tenant to vacate the property resulted in her losing the sale of the property, which, in turn, resulted in her loss of \$1,000 earnest money that she put down on a house she wished to purchase. Ms. Mastermonico also sought \$1,632 related to a financing arrangement she lost when the property purchase did not go through; lastly, she asked for attorney fees.

The parties agreed that Ms. Joshi possessed the only existing copy of the handwritten lease. Ms. Mastermonico contended that someone had altered the document such that the length of tenancy was extended. Ms. Mastermonico testified that Ms. James would not have signed a lease for ten years, although she admitted that she was not present when the lease was signed. Ms. Mastermonico testified that on or about September 13, 2025, she delivered a Notice to Terminate Tenancy directly to Mr. Poli, who then telephoned Mr. Dibella in Massachusetts. The written notice was not provided to petitioners at this time because Ms. Mastermonico did not have the petitioners' Massachusetts address. However, Ms. Mastermonico testified that when the petitioners visited the property on September 25, 2025, she provided them with a copy of the written notice of termination. The written notice signed by Ms. Mastermonico on September 25, 2025, lists October 12, 2025, as the lease termination date, and the notice included a note that a phone call notice was provided on September 12, 2025.

Ms. Joshi admitted that on September 25, 2025, she received the written notice of the lease termination that also ordered her to vacate the premises by October 12, 2025. Ms. Joshi contends that this notice failed to provide her with the sixty days' notice as the lease required. Ms. Joshi acknowledged that Ms. Mastermonico did not have her Massachusetts address. Further, Ms. Joshi admitted that she had not paid three months of rent, but said that it was because she had incurred losses related to vandalism, including the loss of a sign (on October 14 and 15, 2025), carried out by Ms. Mastermonico. Ms. Joshi also testified she was fearful of entering the property due to the vandalism.

Ms. Mastermonico's counsel argued to the circuit court that Ms. Mastermonico provided the notice to terminate the lease to Mr. Poli, who paid petitioners for the right to be on the property. Thus, counsel argued that when Mr. Poli received the notice, it served as constructive notice to petitioners, in addition to the telephone call placed to Mr. Dibella on that same day.

On December 23, 2025, the circuit court issued a Final Order of Possession/Removal: Wrongful Occupation of Rental Property. The court found that the lease's original term expired on July 5, 2019, and not 2029. The court noted that petitioners possessed the original copy of the lease, and that the term date of 2019 was written over, thereby altering the date to the year "2029." The court also noted that the altered section of the lease did not contain any initials or signatures to indicate the parties' mutual intent to extend the lease to 2029. Thus, the circuit court found that the petitioners failed to meet their burden of proof regarding the modification and deemed the modification invalid. After deeming the modification invalid, the court determined that the original term ended in 2019, and after that, the petitioners continued to lease under a month-to-month tenancy.

The court also found that after Ms. James passed away in 2021, Ms. Mastermonico, a beneficiary under the will, became the owner of 75% of the property. The will was probated and settled without objection in 2023. Citing Syl. Pt. 4, *Wiles v. Walker*, 88 W. Va. 147, 106 S.E. 423 (1921), the circuit court held that to prevail on an action for unlawful detainer, the plaintiff must show by a preponderance of the evidence a possessory right superior to that of the defendant. Further, the court noted that an unlawful detainer action is not designed to settle or adjudicate the title of real property or even investigate the ownership of the property. The court found that the petitioners did not meet their burden of proof to establish a possessory right to the property superior to Ms. Mastermonico.

Because the court found the modification to the lease term was invalid, it determined that the lease had converted to a month-to-month tenancy in 2019, and the sixty-day notice provision no longer applied. The court held that a one-month notice period applied. The court found that petitioners had constructive notice of termination on September 12, 2025, when Ms. Mastermonico gave Mr. Poli the written notice, and that petitioners received actual notice via a telephone call on September 12, 2025, followed by a written copy of the notice on September 25, 2025. Thus, the court determined that petitioners received a thirty-

day notice to terminate. The court also noted that petitioners were in arrears for rent payments for October through December 2025.

The court ordered immediate possession of the property to Ms. Mastermonico, and ordered petitioners to return their keys to the property by December 19, 2025. Petitioners were also ordered to pay \$900 in rent arrearage, and \$1,000 in damages for Ms. Mastermonico's lost earnest money deposit. Petitioners now appeal.

On appeal, we apply the following standard of review:

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.

Syl. Pt. 1, *Pub. Citizen, Inc. v. First Nat. Bank in Fairmont*, 198 W. Va. 329, 480 S.E.2d 538 (1996).

With this standard in mind, we turn to petitioners' assignments of error, which we will address out of order for efficient disposition. Petitioners argue that the court erred by disregarding the express terms of the written lease, which they assert provided for a tenancy extending until June 5, 2029. Petitioners also contend that the lease required that they be given sixty days' notice of termination, and yet they were afforded fewer than thirty days; petitioners further argue that Ms. Mastermonico did not provide notice to Ms. Joshi, the tenant who signed the lease. We disagree and consider these arguments together as they are all rooted in the terms of the lease.

The court found that someone had written over the original termination date contained in the handwritten lease, attempting to extend it for a ten-year term – until 2029. The court found that the lease, which had been in the petitioners' sole possession, did not contain any initials or signature beside the modification to show the lessor intended to modify the lease. Thus, the court found the modification was invalid, and that the original lease term ended in 2019. Since petitioners continued to occupy and pay rent, the court determined that this resulted in a month-to-month tenancy. The court also found that Ms. Mastermonico provided proper notice to petitioners to terminate their month-to-month lease.

Petitioners argue that Ms. Mastermonico failed to present evidence to establish an alteration in the lease. Further, petitioners dispute the court's determination that the initial lease term was from July of 2018 to July of 2019. Instead, petitioners claim that the lease began in December, and they do not agree that it terminated in 2019. We find that

petitioners have not established error in the circuit court’s factual determination that the lease was modified or that it terminated in 2019. We also find that petitioners have not established that the circuit court erred by concluding that the modification was invalid and that the original lease term ended, thus converting it to a month-to-month lease. Petitioners’ focus on the exact months set forth in the original lease term is misplaced. The exact dates of the lease term become inconsequential once it is established that the modification is invalid. The original term ended prior to September 12, 2025, at which point the leasehold became a month-to-month tenancy, and at which point Ms. Mastermonico served a notice to terminate it.

Petitioners argue that the court erred in finding they received proper notice of the lease termination. Their first argument rests on a contention that the lease required a sixty-day notice. We disagree. As discussed, since the original lease term ended, the sixty-day notice provision no longer applies. Pursuant to West Virginia Code § 37-6-5 (1923), a month-to-month tenancy may be terminated by giving one month’s notice.² Petitioner next asserts that the court erred in finding that Ms. Mastermonico provided them with the statutory one month’s notice. Again, we disagree and find no error. First, the circuit court noted that Mr. Poli, the petitioners’ business partner, received a written notice on September 12, 2025. Next, the circuit court noted that on the same day that Mr. Poli received the notice, petitioners received actual notice of the termination via a telephone call. Finally, petitioners received a copy of the notice on September 25, 2025, when they visited the property.

The Supreme Court of Appeals of West Virginia (“SCAWV”) has held:

[t]he only purpose for the requirement of notice is to afford the one served with an opportunity to protect himself should he choose to do so. While it is always better to follow the mode of service prescribed in an agreement,

² West Virginia Code § 37-6-5 provides as follows:

A tenancy from year to year may be terminated by either party giving notice in writing to the other, at least three months prior to the end of any year, of his intention to terminate the same. A periodic tenancy, in which the period is less than one year, may be terminated by like notice, or by notice for one full period before the end of any period. When such notice is to the tenant, it may be served upon him, or upon anyone holding under him the leased premises, or any part thereof. When it is by the tenant, it may be served upon anyone who at the time owns the premises in whole or in part, or the agent of such owner, or according to the common law. This section shall not apply where, by special agreement, some other period of notice is fixed, or no notice is to be given; nor shall notice be necessary from or to a tenant whose term is to end at a certain time.

service by that mode is not fatal if the one to be served has had actual notice of the action to be taken. Here, the fact that the notice was not delivered by registered mail does not furnish a reason for invalidating the termination of the lease. The record is replete with evidence [of] actual notice of the delinquency and of the termination of the lease.

Dixon v. Am. Indus. Leasing Co., 162 W. Va. 832, 837, 253 S.E.2d 150, 153 (1979).

In *Dixon*, the Court considered whether notice complied with a provision in the lease. However, we find that the same reasoning should apply to the present case in which the statutory notice provision applies. As in *Dixon*, the record here establishes that petitioners had timely, actual notice of the lease termination. Further, West Virginia Code § 37-6-5 provides that notice may be served “upon anyone holding under him the leased premises,” and Mr. Poli, petitioners’ business associate, received one month’s notice.

Next, petitioners argue that the circuit court erred by relying on Ms. Mastermonico’s testimony about the lease term because she lacked personal knowledge about the lease since she was not present when Ms. James and Ms. Joshi executed it. Petitioners also suggest that the court erred by not requiring expert handwriting testimony about the lease modification and that it improperly disregarded the lease terms. We disagree. The court did not merely rely on Ms. Mastermonico’s testimony to find that someone modified the handwritten lease. As the court noted, it is clear that a date was written over it, and no initials or signatures exist to show the parties shared a mutual intent to modify it.³

We also note that the SCAWV has consistently held that “[d]etermining the credibility of witnesses and weight of evidence is ‘the exclusive function and task of the trier of fact.’” *Lilly v. Huntington Nat’l Bank*, No. 22-553, 2023 WL 7983837, at *3 (W. Va. Nov. 17, 2023) (memorandum decision) (quoting *State v. Guthrie*, 194 W. Va. 657, 669 n.9, 461 S.E.2d 163, 175 n.9 (1995)). Further, Rule 52(a)(6) of the West Virginia Rules of Civil Procedure provides, in relevant part, that when a court sits without a jury, “[f]indings of fact, whether based on oral or other evidence, shall not be set aside unless clearly erroneous, and the reviewing court shall give due regard to the trial court’s opportunity to judge the witnesses’ credibility.” Thus, we find no error.

³ The SCAWV has found that pursuant to Rule 701 of the West Virginia Rules of Evidence, that “[o]ne who is familiar with a certain individual’s handwriting may express an opinion as to the authenticity of a signature” and that under Rule 901(b)(2), a “[n]onexpert opinion as to the genuineness of handwriting, based on familiarity not acquired for purposes of litigation, is a proper means of authentication or identification.” *Chichester ex rel. Est. of Cook v. Cook*, 234 W. Va. 183, 190, 764 S.E.2d 343, 350 (2014).

Petitioners argue that the circuit court erred by finding that Ms. Mastermonico had standing to maintain the eviction action without requiring competent evidence of ownership or a superior right to possession. We disagree. The court found that Ms. James' will was probated and settled without objection in 2023 and that Ms. Mastermonico was a beneficiary under the will. Petitioners bear the burden to establish a possessory right superior to that of Ms. Mastermonico, and they fail to point to any part of the record that establishes their superior possessory right. Also, as noted by the circuit court, an unlawful detainer action is not designed to settle or adjudicate the title of real property or even adjudicate the ownership of the property. *See Tribeca Lending Corp. v. McCormick*, 231 W. Va. 455, 745 S.E.2d 493 (2013). Thus, petitioners' arguments about the validity of Ms. James' will are misplaced. We find petitioners did not establish error regarding Ms. Mastermonico's standing to bring an unlawful detainer action.

Petitioners contend that the circuit court's award of damages was unsupported by evidence, and it failed to consider the evidence of interference with their use of the premises. We note that Ms. Mastermonico testified regarding damages and the circuit court accepted her testimony, as is the exclusive function and task of the trier of fact. We find no error. Further, Rule 52(a)(6) of the West Virginia Rules of Civil Procedure provides, in relevant part, that when a court sits without a jury, "[f]indings of fact, whether based on oral or other evidence, shall not be set aside unless clearly erroneous, and the reviewing court shall give due regard to the trial court's opportunity to judge the witnesses' credibility." We also note that petitioners' claims of interference with their use of the premises hinge on alleged activities that occurred on October 15, 2025, which is after the date Ms. Mastermonico requested them to vacate the property and after they ceased paying rent. We find no error.

Finally, petitioners argue that the circuit court deprived them of a meaningful opportunity to be heard and limited their ability to present evidence and develop a defense. We disagree. As borne out by the transcript of the hearing, the circuit court afforded petitioners and Ms. Mastermonico an opportunity to present testimony and provide evidence in support of their cases. Thus, we find no reversible error.

In sum, as the SCAWV has held,

An appellant must carry the burden of showing error in the judgment of which he complains. This Court will not reverse the judgment of a trial court unless error affirmatively appears from the record. Error will not be presumed, all presumptions being in favor of the correctness of the judgment.

Syl. Pt. 5, *Morgan v. Price*, 151 W. Va. 158, 150 S.E.2d 897 (1966).

Finding no reversible error, we affirm the circuit court's December 23, 2025, order.

Affirmed.

ISSUED: September 25, 2026

CONCURRED IN BY:

Chief Judge Daniel W. Greear
Judge S. Ryan White

Judge Charles O. Lorensen, not participating