IN THE INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

FILED

November 10, 2026

released at 3:00 p.m.
ASHLEY N. DEEM, CHIEF DEPUTY CLERK
INTERMEDIATE COURT OF APPEALS
OF WEST VIRGINIA

GREGORY H. SCHILLACE
d/b/a SCHILLACE LAW OFFICE,
Plaintiff Below, Petitioner

v.) No. 25-ICA-432 (Cir. Ct. Harrison Cnty. Case No. CC-17-2025-C-40)

HORIZON VENTURES OF WEST VIRGINIA, INC.,
Defendant Below, Respondent

MEMORANDUM DECISION

In this appeal, Petitioner Gregory H. Schillace d/b/a Schillace Law Office ("Mr. Schillace") argues that Respondent Horizon Ventures of West Virginia, Inc. ("Horizon") owes him over $300,000 for past legal work, and related expenses, that Mr. Schillace performed for Horizon in three separate prior cases. In its October 6, 2025, order granting Horizon's motion to dismiss, the Circuit Court of Harrison County found that Mr. Schillace's suit to recover these fees was barred by res judicata and collateral estoppel. Horizon filed a response in support of the circuit court's order.[1] Mr. Schillace filed a reply.

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 that there is error in the circuit court's decision, but no substantial question of law. For these reasons, a memorandum decision affirming, in part, and reversing, in part, the circuit court's order and remanding the matter to the circuit court is appropriate under Rule 21 of the West Virginia Rules of Appellate Procedure.

In 2013, Horizon filed a lawsuit in the Circuit Court of Ohio County against American Bituminous Power Partners, L.P. ("AMBIT") and other entities. This matter was docketed as 13-C-196. On October 27, 2015, Horizon and Mr. Schillace executed a Contingency Fee Contract ("2015 Contract") for Mr. Schillace to represent Horizon in that matter.

On May 18, 2018, through counsel other than Mr. Schillace, Horizon filed a lawsuit against AMBIT in the Circuit Court of Marion County, which was docketed as 18-C-76.

[1]Mr. Schillace is self-represented. Horizon is represented by Mark A. Kepple, Esq., Benjamin P. Visnic, Esq., and Joseph G. Nogay, Esq.

Horizon and Mr. Schillace did not execute a written contract for Mr. Schillace to represent Horizon in this case. In August of 2018, AMBIT filed an action against Horizon in the Circuit Court of Marion County, which was docketed as 18-C-130.

On February 26, 2021, Mr. Schillace filed a "Notice of Filing Attorney Charging Lien" against Horizon in each of the two Marion County Cases. In June of 2024, the parties in Marion County Case 18-C-76 submitted a proposed order indicating that AMBIT and Horizon had settled the case, and that Horizon was entitled to $50,000. The proposed order did not include any reference to Mr. Schillace's charging lien against Horizon. On July 12, 2024, Mr. Schillace filed an objection to the entry of judgment in Marion County Case 18-C-76, arguing that any judgment for Horizon should contemplate his lien. Mr. Schillace claimed that he was entitled to $9,115.23 of the $50,000 judgment: $8,895.00 for incurred legal fees representing Horizon in that matter, and $220.23 for unreimbursed costs.[2] On August 29, 2024, Horizon filed a motion to strike Mr. Schillace's objection.

On September 19, 2024, the Circuit Court of Marion County held a hearing in Case 18-C-76 on Mr. Schillace's objection and Horizon's motion to strike. At the hearing, Horizon's counsel argued that Mr. Schillace's charging lien in Marion County Case 18-C-76 must necessarily fail because Horizon had only contracted with him in Ohio County Case 13-C-196. Horizon's counsel specifically stated that any argument that Mr. Schillace was entitled to recover for work performed absent a contract was outside the scope of an attorney charging lien, explaining "[t]hat's a quantum meruit argument. That's a suit he has to bring. That's not a charging lien." Horizon's counsel repeatedly reiterated the position that any quasi-contractual recovery would have to be filed in subsequent lawsuit, stating "[n]ow, quantum meruit, maybe he prevails, maybe he gets some money on that, but that's a civil suit, like the Court said."

The circuit court allowed Mr. Schillace, who was representing himself, to testify in support of his charging lien. Mr. Schillace conceded that the 2015 Contract for Ohio County Case 13-C-196 was the only written contract he executed to represent Horizon. However, he testified that he had an oral contract with Horizon President Stanley Sears to represent Horizon with respect to additional matters, and that the written contract, despite being executed for Ohio County Case 13-C-196, was intended to encompass representation in all matters between Horizon and AMBIT, including Marion County Case 18-C-76.

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[2]Mr. Schillace's initial charging lien did not specify these amounts, and he did not file his "Amended Notice of Filing Attorney Charging Lien" specifying these amounts until September 26, 2024, after the circuit court held a hearing on the lien. However, Horizon recognized in filings below in this matter that Mr. Schillace sought $9,115.23 through his lien. In the October 6, 2025, final order in this matter, the circuit court also recognized that Mr. Schillace's charging lien sought this amount.

After hearing Mr. Schillace's testimony, the circuit court concluded that he had failed to prove his entitlement to recovery under an attorney charging lien in Marion County Case 18-C-76 because he had not demonstrated a contract applicable to that case. However, in doing so, the court specifically noted that recovery under a quasi-contractual theory of quantum meruit was not before the court:

> [T]here's no question Mr. Schillace was involved in representation. He did work. How much? I don't know. To what extent and how much that was worth, if we're looking at quantum meruit, how much time, I have no idea based upon the evidence in front of me today.
>
> But quite frankly what I'm charged with determining today is a decision regarding the lien as opposed to any separate civil matter that's been sued for quantum meruit, and based upon what I've heard today, this Court is going to deny any request for fees based upon attorneys liens to Mr. Schillace. This Court does not believe that there has been an appropriate showing of any contract that would provide this Court ample legal grounds to award monies to Mr. Schillace.

The circuit court concluded that the 2015 Contract "is clearly not in reference to all matters or for this particular matter that we are concerned about here today. The language speaks for itself, and that's the interpretation of this Court."

On November 4, 2024, the circuit court entered its order reflecting this ruling, granting Horizon's motion to strike Mr. Schillace's objection. The circuit court concluded that Mr. Schillace was not entitled to recover pursuant to a charging lien in Marion County Case 18-C-76 because he had not demonstrated the existence of a valid contract with Horizon or that he had performed work for Horizon:

> [T]he 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.

Mr. Schillace did not appeal this ruling.

On January 27, 2025, Mr. Schillace filed his complaint in the underlying matter in the Circuit Court of Harrison County. In the complaint, Mr. Schillace alleged that he had contracted to represent Horizon in the 2015 Contract and that he had performed work for Horizon in Ohio County Case 13-C-196, Marion County Case 18-C-76, and Marion County Case 18-C-130. Mr. Schillace sought recovery of fees and expenses related to each of the three cases under both breach of contract and quantum meruit theories.[3]

On February 28, 2025, Horizon filed a motion to dismiss the complaint for failure to state a claim under Rule 12(b)(6) of the West Virginia Rules of Civil Procedure. Horizon argued that the Circuit Court of Marion County's finding in Case 18-C-76 that Mr. Schillace could not demonstrate the existence of a valid contract applicable to that case or Marion County Case 18-C-130 precluded Mr. Schillace, under the doctrine of collateral estoppel, from recovering in this matter. Horizon also argued that the Circuit Court of Marion County's November 4, 2024, Order was res judicata to his claims in this matter.

On March 19, 2025, Mr. Schillace filed a response to the motion to dismiss, arguing that neither res judicata or collateral estoppel applied. Mr. Schillace also argued that Horizon should be barred from making its preclusion arguments under the doctrines of unclean hands and judicial estoppel. Specifically regarding judicial estoppel, Mr. Schillace pointed to the litany of statements Horizon's counsel made in the September 19, 2024, hearing in Marion County Case 18-C-76 to the effect that the issue in that case was limited to a contract-based attorney charging lien and that any quantum meruit argument would have to be raised in a separate lawsuit. Mr. Schillace argued that, given those statements, Horizon should be estopped from arguing that the denial of his attorney charging lien in that prior case precludes him from seeking quantum meruit relief in this matter. Horizon filed a reply in support of the motion.

On October 6, 2025, the circuit court entered an order granting Horizon's motion to dismiss. The circuit court found that Mr. Schillace's current action was barred by res judicata and collateral estoppel. The court also rejected Mr. Schillace's arguments based on unclean hands and judicial estoppel. It is from that order that Mr. Schillace now appeals.

[3]Although Mr. Schillace did not specifically set out his quasi-contractual theory of relief under a "quantum meruit" heading, he alleged that he rendered legal services to Horizon and that Horizon refused to compensate him for those services. *See Kopelman & Assocs., L.C. v. Collins*, 196 W. Va. 489, 496, 473 S.E.2d 910, 917 (1996) (recognizing that "[a] lawyer discharged with cause can recover in *quantum meruit* for services rendered up to the time of discharge."). As the parties on appeal use the term "quantum meruit" to refer to Mr. Schillace's claim for quasi-contractual relief, we will use that term in this decision to encompass his allegations seeking relief under quasi-contractual theories.

Our review of an order granting a motion to dismiss is *de novo*. Syl. Pt. 2, *State ex rel. McGraw v. Scott Runyan Pontiac-Buick, Inc.*, 194 W. Va. 770, 461 S.E.2d 516 (1995). Moreover, "[t]he trial court, in appraising the sufficiency of a complaint on a Rule 12(b)(6) motion, should not dismiss the complaint unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Syl. Pt. 3, *Chapman v. Kane Transfer Co., Inc.*, 160 W. Va. 530, 236 S.E.2d 207 (1977). On appeal of an order dismissing a complaint under Rule 12(b)(6), the allegations of the complaint must be taken as true. Syl. Pt. 1, *Wiggins v. E. Associated Coal Corp.*, 178 W. Va. 63, 357 S.E.2d 745 (1987). Additionally, "where the issue on an appeal from the circuit court is clearly a question of law, we apply a *de novo* standard of review." Syl. Pt. 1, *Chrystal R.M. v. Charlie A.L.*, 194 W. Va. 138, 459 S.E.2d 415 (1995) (citation modified); *Mountain Am., LLC v. Huffman*, 229 W. Va. 708, 710, 735 S.E.2d 711, 713 (2012) ("The application of *res judicata* to bar litigation involves a question of law[.]").

Mr. Schillace raises three assignments of error on appeal: 1) that the circuit court erred in finding that his claims[4] below were barred by res judicata and collateral estoppel; 2) that the circuit court erred in finding that Horizon was not barred from arguing preclusion by judicial estoppel; and 3) that the circuit court erred in not applying the doctrine of unclean hands. We will address each argument in turn.[5]

With respect to res judicata, also known as claim preclusion, we apply the following three-factor test:

> Before the prosecution of a lawsuit may be barred on the basis of *res judicata,* three elements must be satisfied. 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

[4]Mr. Schillace organized his complaint in three counts, corresponding to each of the three cases in which he claims to have represented Horizon: Ohio County Case 13-C-196, Marion County Case 18-C-130, and Marion County Case 18-C-76. Mr. Schillace then included a set of "common allegations" applicable to all three counts, indicating that he was pursuing relief under both breach of contract and quantum meruit theories. For purposes of this decision, we treat the complaint as raising two claims, breach of contract and quantum meruit, each seeking recovery stemming from each of these three cases.

[5]The circuit court concluded that it could take judicial notice of the record in Marion County Case 18-C-76 without converting Horizon's motion to dismiss to a motion for summary judgment. Because Mr. Schillace does not assign this ruling as error on appeal, we will not disturb it.

> 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.

Syl. Pt. 4, *Blake v. Charleston Area Med. Ctr., Inc.*, 201 W. Va. 469, 498 S.E.2d 41 (1997). In contrast to res judicata, collateral estoppel is a narrower doctrine that focuses on issues actually litigated:

> Collateral estoppel will bar a claim if four conditions are met: (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.

Syl. Pt. 1, *State v. Miller*, 194 W. Va. 3, 459 S.E.2d 114 (1995). Collateral estoppel also requires that the determination in the first action was "essential to the judgment." *Id.* at 9, 459 S.E.2d at 120.

As each of these doctrines requires consideration of what was adjudicated in the prior action, we begin our analysis of preclusion by addressing what was litigated in Marion County Case No. 18-C-76. In that case, Mr. Schillace filed an attorney charging lien, seeking to recover $9,115.23 from the $50,000 judgment for services he claimed to have rendered to Horizon in that matter. The Supreme Court of Appeals of West Virginia ("SCAWV") has held that "[a] charging lien is the equitable right of an attorney to have fees and costs due the attorney for services in a particular action secured by the judgment or recovery in such action." Syl. Pt. 4, in part, *Shaffer v. Charleston Area Med. Ctr., Inc.*, 199 W. Va. 428, 485 S.E.2d 12 (1997). The SCAWV has specifically defined the requirements to prove such a lien against a former client:

> There are four requirements for the imposition of an attorney's charging lien against an attorney's client or former client. First, there must be a valid oral or written contract between the attorney and the attorney's client or former client. Second, there must be a judgment or fund that resulted from the attorney's services. Third, the attorney must have filed notice of his/her intent to assert a charging lien, and such notice must have been served on the attorney's client or former client against whose interest in said judgment or fund the lien is sought to be enforced. Fourth, notice of the lien must be filed before the proceeds of the judgment or fund have been distributed.

Syl. Pt. 8, *Trickett v. Laurita*, 223 W. Va. 357, 674 S.E.2d 218 (2009). "A charging lien brought against an attorney's client or former client may proceed in a separate suit or in

the underlying action in which the judgment sought to be attached was obtained." *Id.* at 360, 674 S.E.2d at 221, Syl. Pt. 7.

On appeal, Mr. Schillace argues that the denial of his charging lien in Marion County Case 18-C-76 should not preclude his breach of contract and quantum meruit claims for fees in this action. Mr. Schillace contends that his charging lien in Marion County Case 18-C-76 was a limited equitable remedy by which he could only have obtained limited payment from the judgment in that case, rather than the full amount that he seeks in this case. He also argues that the denial of the charging lien should not preclude his claims in this action because the lien was decided by a court, rather than a jury. Finally, he contends that he was not a party to Marion County Case 18-C-76.

We agree with Mr. Schillace that the circuit court erred in finding that his claims in this matter were barred by res judicata. As an initial matter, the causes of action Mr. Schillace raised below—breach of contract and quantum meruit—are not identical to the charging lien in Marion County Case No. 18-C-76. Indeed, Horizon recognizes that Mr. Schillace's current claims are not identical to his prior charging lien. However, Horizon argues that this is irrelevant, because Mr. Schillace relies on essentially the same facts in this case that he relied on in Marion County Case 18-C-76. Because of this, Horizon contends that Mr. Schillace could have raised his current claims in that action.

Horizon is correct that, when deciding the third element of res judicata, whether a cause of action could have been raised in the prior action, we must look at "whether the same evidence would support both actions or issues." Syl. Pt. 4, in part, *Slider v. State Farm Mut. Auto. Ins. Co.*, 210 W. Va. 476, 557 S.E.2d 883 (2001). However, we find it unnecessary to reach this analysis in this case, because we agree with Mr. Schillace that he was not a full party to Marion County Case 18-C-76. While Mr. Schillace was undoubtedly a party to his request for a charging lien, we agree that his participation in Marion County Case No. 18-C-76 was limited to that equitable remedy. *See Trickett* at 360, 674 S.E.2d at 221, Syl Pt. 5 ("An attorney's charging lien for his fee is confined to the judgment or fund recovered by him as attorney" (citation omitted)). Horizon does not identify any authority for the proposition that an attorney who files a charging lien in an underlying case against a former client necessarily intervenes as a full party in that case and can raise substantive claims. Accordingly, we agree with Mr. Schillace that he could not have raised his current breach of contract and quantum meruit claims in Marion County Case No. 18-C-76 because he was not a full party to the case. Accordingly, the circuit court erred in concluding that Mr. Schillace's complaint below was barred by res judicata.

We also agree with Mr. Schillace that, to the extent his breach of contract and quantum meruit claims in this case seek fees stemming from Ohio County Case 13-C-196 and Marion County Case 18-C-130, those claims are not barred by collateral estoppel. As discussed, collateral estoppel will not bar a claim unless "[t]he issue previously decided is

identical to the one presented in the action in question." *Miller*, 194 W. Va. at 6, 459 S.E.2d at 117, Syl. Pt. 1. "In other words, the central inquiry on collateral estoppel is whether a given issue has been actually litigated by the parties in the earlier suit." *Abadir v. Dellinger*, 227 W. Va. 388, 394, 709 S.E.2d 743, 749 (2011) (citation modified). In pursuing a charging lien specifically for fees earned in Marion County Case No. 18-C-76, Mr. Schillace did not litigate his claim to fees earned in Ohio County Case 13-C-196 or Marion County Case 18-C-130. Horizon disputes this, arguing instead that in addressing Mr. Schillace's charging lien in Marion County Case No. 18-C-76, the "Marion County Circuit Court took evidence on, and expressly ruled on, Mr. Schillace's claims related to all three cases."[6] Horizon emphasizes the circuit court's broadly worded conclusions in the November 4, 2024, order denying the lien. Specifically, Horizon points to the circuit court's finding that Mr. Schillace had not provided evidence of work performed for Horizon and 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."

We acknowledge that, in denying Mr. Schillace's charging lien in Marion County Case No. 18-C-76, the circuit court framed its conclusions broadly. However, this simply does not change what was actually litigated in Marion County Case No. 18-C-76. While Mr. Schillace testified at the hearing in Marion County Case No. 18-C-76 about his entire relationship with Horizon over the course of all three cases, his lien in that case—what was actually litigated—related only to the work performed in Marion County Case No. 18-C-76. Put differently, had he prevailed on his charging lien, Mr. Schillace would have only recovered fees earned in that particular case from the judgment in that matter. *See Trickett* at 360, 674 S.E.2d at 221, Syl Pt. 5. Indeed, Horizon recognized as much below in its motion to dismiss filed below, noting that Mr. Schillace's charging lien was a claim for $9,115.23— $8,895 in fees and $220.23 in costs—not a claim to recover fees for all three cases. At the September 19, 2024, hearing on the charging lien, the circuit court also confirmed the understanding that only Marion County Case No. 18-C-76 was at issue, explaining that "[t]he contract that was admitted into evidence is clearly not in reference to all matters *or for this particular matter that we are concerned about here today*." (emphasis added). Because the charging lien at issue in Marion County Case No. 18-C-76 was confined to Mr. Schillace's claim for fees and costs arising from his alleged representation of Horizon in that specific matter, his current claims seeking fees stemming from Ohio County Case No. 13-C-196 and Marion County Case No. 18-C-130 are not identical to the issues decided in that matter.

[6]At oral argument, counsel for Horizon conceded that Mr. Schillace's entitlement to fees for work performed in Ohio County Case 13-C-196 was not at issue in the litigation of the charging lien in Marion County Case No. 18-C-76. Counsel further conceded that Mr. Schillace's claims for fees related to Ohio County Case 13-C-196 had not been "part of [Horizon's] analysis" in this appeal.

While the difference in issues is dispositive of collateral estoppel, we also note that the circuit court's findings in the November 4, 2024, order denying the charging lien that purported to address the parties' entire relationship or to relate to "any other case between the parties" were extraneous to the resolution of that lien. To decide whether Mr. Schillace proved the elements of a charging lien in Marion County Case No. 18-C-76, it was not necessary for the circuit court to make any findings related to the potential validity of a claim for fees in the parties' other cases. To the extent the circuit court purported to decide issues related to the parties' other cases, including Ohio County Case 13-C-196 and Marion County Case 18-C-130, those findings were not essential to the judgment denying Mr. Schillace's charging lien in Marion County Case No. 18-C-76 and cannot be collateral estoppel to his claims now. *See Miller*, 194 W. Va. at 9, 459 S.E.2d at 120 (explaining the determination in the first action must have been "essential to the judgment" for collateral estoppel to apply); *State v. Azeez*, No. 14-0951, 2015 WL 5125803, at *12 (W. Va. Aug. 31, 2015) (memorandum decision) (recognizing that collateral estoppel "precludes relitigation of issues actually litigated and necessary to the outcome of the first action" (citation modified)). Accordingly, we find that the circuit court erred in concluding that collateral estoppel barred Mr. Schillace's breach of contract and quantum meruit claims to the extent those claims related to fees allegedly earned in Ohio County Case No. 13-C-196 and Marion County Case No. 18-C-130.

We also agree that the circuit court erred in finding that collateral estoppel barred Mr. Schillace's quantum meruit claim to the extent it related to fees earned in Marion County Case No. 18-C-76. In pursuing a charging lien in that case, Mr. Schillace was required to prove the existence of a valid contract applicable to that case and that his services contributed to the judgment in that matter. *See* Syl. Pt. 8, *Trickett v. Laurita*, 223 W. Va. 357, 674 S.E.2d 218 (2009). In contrast, an attorney's recovery under a theory of quantum meruit is for the reasonable value of services rendered. *See Kopelman & Assocs., L.C. v. Collins*, 196 W. Va. 489, 497, 473 S.E.2d 910, 918 (1996). Therefore, the validity of Mr. Schillace's charging lien in Marion County Case No. 18-C-76 is not identical to his current claim for quantum meruit recovery for services rendered in that case. Indeed, at the September 19, 2024, hearing, the Circuit Court of Marion County explained on the record that what it was "charged with determining" was "a decision regarding the lien as opposed to any separate civil matter that's been sued for quantum meruit."[7] To the extent the circuit court's broad conclusions in the November 4, 2024, order denying that lien purported to

[7]As discussed above, at the hearing on the charging lien, both Horizon's counsel and the circuit court denounced the idea that the disposition of the charging lien was dispositive of a quantum meruit theory. Indeed, Horizon's counsel firmly rejected the idea that a quantum meruit argument could be decided through the disposition of the validity of the charging lien, explaining "[t]hat's a quantum meruit argument. That's a suit he has to bring. That's not a charging lien."

foreclose Mr. Schillace's claim for quantum meruit, they were not essential to the judgment in that case and cannot be collateral estoppel. Accordingly, the circuit court erred in finding that collateral estoppel barred Mr. Schillace's quantum meruit claim related to services he allegedly provided to Horizon in Marion County Case No. 18-C-76.[8]

However, we find that the circuit court did not err in concluding that collateral estoppel barred Mr. Schillace's breach of contract claim for fees earned in Marion County Case No. 18-C-76. The first element Mr. Schillace would have to prove in his breach of contract claim related to Marion County Case No. 18-C-76 is that he actually contracted to represent Horizon in that case. *See Sneberger v. Morrison*, 235 W. Va. 654, 669, 776 S.E.2d 156, 171 (2015) ("A claim for breach of contract requires proof of the formation of a contract, a breach of the terms of that contract, and resulting damages."). This is identical to the first element he had to prove to establish a charging lien in that case. *See Trickett*, 223 W. Va. at 360, 674 S.E.2d at 221, Syl. Pt. 8 ("First, there must be a valid oral or written contract between the attorney and the attorney's client or former client."). As discussed, Mr. Schillace and Horizon, the parties in this case, litigated that issue in Marion County Case No. 18-C-76, and the circuit court adjudicated the merits of the issue by finding "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."

We find no merit in Mr. Schillace's suggestion that the issues were not identical or that he did not have a full and fair opportunity to litigate the existence of a contract simply because the validity of his charging lien was decided by a court rather than a jury. It is true that the SCAWV has held that "[f]or purposes of issue preclusion, issues and procedures are not identical or similar if the second action involves application of a different legal standard or substantially different procedural rules, even though the factual settings of both suits may be the same." *Miller*, 194 W. Va. at 6, 459 S.E.2d at 117, Syl. Pt. 3. However, the SCAWV has recognized that issues decided by a court can be entitled to preclusive effect. In *Bland v. State*, the SCAWV recognized that a circuit court's summary judgment order entered in an administrative appeal could be collateral estoppel in a later civil case.

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[8]At oral argument, Horizon argued that Rule 1.5 of the West Virginia Rules of Professional Conduct prohibits Mr. Schillace's quantum meruit claim. In its response brief, Horizon asserted in passing that Mr. Schillace's "attempt to bill a client for previously undocumented time on a contingency fee contract seems to clearly violate the Rules of Professional Conduct," but did not otherwise develop this argument. Accordingly, we decline to address the merits of this argument. *See Argus Energy, LLC v. Marenko*, 248 W. Va. 98, 103-04, 887 S.E.2d 223, 228-29 (2023) (explaining that appellate courts generally do not address non-jurisdictional arguments clearly raised for the first time at oral argument); *State v. LaRock*, 196 W. Va. 294, 302, 470 S.E.2d 613, 621 (1996) (explaining that issues "mentioned only in passing but [that] are not supported with pertinent authority, are not considered on appeal.").

See Bland v. State, 230 W. Va. 263, 272-73, 737 S.E.2d 291, 300-01 (2012) (per curiam). Indeed, the SCAWV has recognized that an administrative decision itself can have preclusive effect "if it resulted from a procedure that seems an adequate substitute for judicial procedure." *Ruble v. Rust-Oleum Corp.*, 250 W. Va. 324, 329, 902 S.E.2d 873, 878 (2024) (citation modified); *see also B & B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 150 (2015) ("[T]he right to a jury trial does not negate the issue-preclusive effect of a judgment, even if that judgment was entered by a juryless tribunal.").

We find that the circumstance that the circuit court, rather than a jury, determined that Mr. Schillace failed to prove the existence of a contract related to Marion County Case No. 18-C-76 does not deprive that finding of preclusive effect. Mr. Schillace was afforded ample judicial procedure to establish his charging lien in Marion County Case No. 18-C-76, including an evidentiary hearing at which he was permitted to testify and introduce evidence in support of his lien. Accordingly, we find that the issue of the existence of a contract was identical in both cases, and that Mr. Schillace had a full and fair opportunity to litigate it in Marion County Case No. 18-C-76. As the existence of a contract is a necessary element of Mr. Schillace's breach of contract claim seeking fees earned for services performed in Marion County Case No. 18-C-76, we find no error in the circuit court's conclusion that Mr. Schillace's breach of contract claim related to that case was barred by collateral estoppel.

We also find that Mr. Schillace's argument that the circuit court erred by not applying judicial estoppel is moot. Mr. Schillace argues that Horizon should have been estopped from arguing that his quantum meruit claim in this case is barred under res judicata or collateral estoppel. Because we have already determined that Mr. Schillace's quantum meruit claim is not precluded under either doctrine, the issue of whether Horizon should have been judicially estopped from arguing preclusion is moot.[9]

Based on the foregoing, the circuit court erred in concluding that res judicata barred Mr. Schillace's claims. The circuit court also erred in finding that collateral estoppel barred his quantum meruit claim, and in concluding that collateral estoppel barred Mr. Schillace's breach of contract claim to the extent it related to fees and costs stemming from Ohio County Case 13-C-196 and Marion County Case 18-C-130. However, the circuit court did not err in concluding that collateral estoppel barred Mr. Schillace's breach of contract claim

[9]We find that Mr. Schillace's argument that Horizon was barred from arguing preclusion by the doctrine of unclean hands is moot for the same reason. Although Mr. Schillace's argument on this issue is somewhat sparse, it appears to be largely duplicative of his judicial estoppel argument, in that he believes Horizon should not have been able to claim in Marion County Case No. 18-C-76 that quantum meruit was not at issue and then argue in this case that quantum meruit relief was precluded. As we have already determined that Mr. Schillace's quantum meruit claim is not precluded, this issue is also moot.

to the extent it related to Marion County Case No. 18-C-76. Therefore, we affirm the October 6, 2025, order of the Circuit Court of Harrison County to the extent the court dismissed Mr. Schillace's breach of contract claim for fees stemming from Marion County Case No. 18-C-76. We reverse the order as to the dismissal of all other claims and remand this matter for further proceedings consistent with this decision.

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

ISSUED: November 10, 2026

CONCURRED IN BY:

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