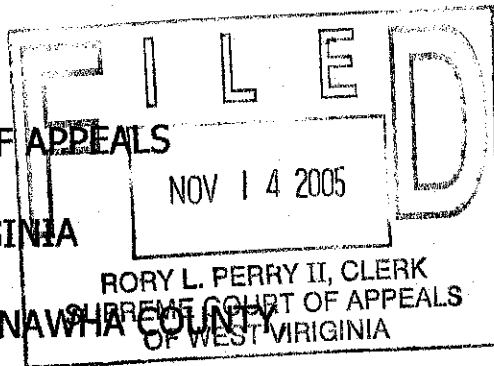


CASE NO. 32726

IN THE SUPREME COURT OF APPEALS
OF THE
STATE OF WEST VIRGINIA

FROM THE CIRCUIT COURT OF KANAWHA COUNTY
WEST VIRGINIA
CASE No. 99-C-2207



CHRISTINE McCONAHA, Individually
And In Her Capacity
As Administratrix Of The Estates Of
JAMES VINTON SLATER and MABEL FLORENCE SLATER,
Plaintiff/Appellant,

VS.

ETHEL ISABELLE RUST, JANET EVENE BURDETTE
MARVIN DARRELL SLATER, JESSE EDWARD SLATER
JESSE EDWARD SLATER, JR., ROBERTA I. KINTZ,
SAMUEL WEBSTER HARRISON, JR. and GEORGE HARRISON,
Defendants/Appellees.

BRIEF OF APPELLEES
JESSE EDWARD SLATER
and
JESSE EDWARD SLATER, JR.

Counsel for Appellees
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CASES:

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French v. Dillon, 120 W.Va. 268, 197 S.E. 725 (1938)

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Worthington v. Staunton, 16 W.Va. 208, 1880 WL 4002 (W.Va.) (1880)

Triad Energy Corporation of West Virginia, Inc. vs. Renner et al, 215 W.Va. 573, 600 S.E.2d 285 (2004)

Summers v. Bennett, 68 W.Va. 157, 69 S.E. 690 (1910)

P E T I T I O N
TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF
APPEALS
OF WEST VIRGINIA

PROCEEDING AND NATURE OF THE RULING
OF THE CIRCUIT COURT

This is an appeal from the Circuit Court of Kanawha County, West Virginia which entered a final order on the disposition of three (3) parcels of real estate located on Sigmon Fork of Tappers Creek, Poca District, Kanawha County, West Virginia.

The Appellant, Christine McConaha, filed a partition suit against the Appellees herein on September 29, 1999, alleging that Appellees Jesse Edward Slater and Samuel Harrison, Jr. were using the entirety of the property for their own benefit and seeking an accounting for fair rental value and the compensation of lost rental value due to the use of the subject property.

Appellees George Harrison and Samuel Harrison, Jr. filed answers to the complaint and amended complaint herein. Appellees Jessie Slater and Jesse Slater, Jr. also filed answers to the complaint and amended complaint filed herein.

The matter was referred to Special Commissioner, John N. Charnock, Jr. for hearing on December 17, 2003. The Special Commissioner made a ruling

which in essence awarded each party a 1/7th interest in the subject property. An objection to the Special Commissioner's ruling was filed by Appellee Jesse Edward Slater and a hearing was held in the Circuit Court of Kanawha County before Judge Stucky. On November 16, 2004, the circuit court entered a Final Order partitioning the property. Appellant, Christine McConaha, filed a notice of appeal and petition for appeal with this Court which was granted by this Court on September 12, 2005.

STATEMENT OF FACTS OF THE CASE

James Vinton Slater and Mabel Florence Slater, his wife, were the owners of three parcels of real estate located on Sigmon Fork of Tupper's Creek, Poca District, Kanawha County, West Virginia. James Vinton Slater died intestate on January 30, 1962, leaving said property to his wife and seven children who survived him. Said real estate is described as: (1) one acre surface, more or less, and 1/2 interest in minerals; (2) 17.18 acres surface, more or less, and 1/2 interest in minerals; and (3) 37 acres more or less, and 1/2 interest in minerals.

Mabel Florence Slater died October 6, 1992. James and Mabel Slater left seven children as heirs at law, to-wit: Christine McConaha, Ethel Isabelle Rust, Janet Evene Burdette, Marvin Darrell Slater, Jesse Edward Slater, Roberta I. Kintz, and Elvin D. Slater, deceased. Samuel Webster Harrison is the adopted son of Elvin D. Slater as is evidenced by an Order of Adoption entered by the Circuit Court of Kanawha County, West Virginia, entered on the 8th day of

November 1985 and of record in the Kanawha County Circuit Clerk's Office in Case No. 85-A-92.

Christine McConaha brought suit to partition the property set forth previously. Christine McConaha was appointed administratrix of the estates of James Vinton Slater and Mabel Florence Slater and as such filed the partition suit herein requesting that the Court partition the property in kind or by sale and to recover rents for the use of said property.

Christine McConaha alleges and testified that she had not been permitted on the property to fulfill her duties as administrator of the estates of James Vinton Slater and Mabel Florence Slater. She further testified that Jesse Edward Slater and Samuel Harrison were living on the property and had built homes on the most valuable pieces of the property and were utilizing the property exclusively for their own use.

Three of the heirs (Marvin Darrell Slater, Ethel Isabelle Slater Rust and Janet Evans Slater Burdette) had conveyed their interest in the property to their brother, Elvin D. Slater who then conveyed those interests to Jesse Edward Slater in return for Jesse building a house and work shop for him. A copy of the contract between Elvin and his brother Jesse was never produced. However, Jesse did receive three "Bills of Sale" from Elvin wherein Marvin Darrel Slater; Ethel Isabelle Slater Rust and Janet Evans Slater Burdette conveyed all their right, title and interest to said property and a Quit Claim Deed from Samuel Webster Harrison conveying all of his interest in said property to Jesse Edward

Slater except for his interest in two (2) acres surrounding the house and workshop.

Elvin D. Slater did not record the "Bills of Sale" he received from his brother and sisters. However, Jesse Edward Slater recorded two of the "Bills of Sale" and the Quit Claim Deed conveying all of Samuel Harrison's interest in the property to Jesse Edward Slater, upon the advice of his counsel, after the institution of this action. Christine McConaha produced a letter which was allegedly written by Elvin D. Slater explaining that his payments of money to his brother and sisters were not intended to take away their rights to the property. The money was given to them just to help them out. However, this letter was allegedly written three (3) years or more before Elvin D. Slater entered into the contract with Janet Evene Slater Burdette and he had not given Janet Burdette any money on the date the letter was allegedly written. Further, an original of the letter was never located and the circuit court did not permit the letter to be entered as evidence.

Marvin Slater and Ethel Rust testified that they did not understand that they were divesting themselves of title to their interest in the property. Janet Burdette testified that she understood that she was conveying her interest in the property and further that she would sign a deed conveying her interest at any time.

This matter was referred to Special Commissioner John Charnock who found the following:

1. No bill of sale was recorded until after the institution of the action.

2. Janet Burdette did not have her signature notarized on the bill of sale she signed and therefore could not be properly recorded.

3. The bills of sale did not transfer ownership, however, should the property be sold, the ones who had received compensation should reimburse the estate of Elvin Slater.

4. The quitclaim deed signed by Samuel Harrison is void and of no effect because it tries to reserve a portion of property subject to an undivided interest.

5. Ownership at the time the complaint was filed had not changed. The seven children have seven undivided interests.

Ethel Rust and Marvin Slater did not answer their subpoenas to appear and testify at the Special Commissioner's hearing.

Appellee, Jesse Edward Slater, filed objections to the Special Commissioner's ruling and Judge Stucky had a hearing on the objections. At said hearing before Judge Stucky, Ethel Rust and Marvin Salter again refused to answer subpoenas to appear. Judge Stucky inquired of their whereabouts and informed Ethel Rust's daughter, who was present at the hearing, that she could go get them or he would send the Sheriff to bring them to the hearing, after which Ethel Rust and Marvin Slater appeared and testified. Judge Stucky found that two of the "Bills of Sale" were a valid transfer of property interests while the third had the attributes of a deed. Judge Stucky also took into consideration the intent of Samuel Harrison to divest any and all interest he had in the property to Jesse Edward Slater, except for his interest in the house and two acres. Counsel

proffered to the circuit court that it was Jesse Edward Slater's intent to convey his one seventh (1/7th) interest in the two acres to Samuel Harrison. As a result, Jesse Edward Slater would receive a total of five-sevenths (5/7ths) interest in the property excepting the two acres surrounding the house and workshop and that Samuel Harrison would receive five-sevenths (5/7ths) interest in the two acres surrounding the house and workshop.

During the hearing in front of Judge Stuckey, the parties arrived at a settlement of the issues in which Christine McConaha, after conferring with both of her attorneys, agreed to take a ten (10) acre parcel of real estate on which she had previously graded off a house seat, as her fair share of the property. This previous grading of a house seat established that Christine McConaha had access to the property and that Jesse Edward and Samuel Harrison were not using the whole property for their own use.

ASSIGNMENT OF ERROR RELIED UPON AND THE MATTER

DECIDED IN THE CIRCUIT COURT

Appellant assigns the following grounds as error:

1. The circuit court erred in recognizing the transfer of property interests where no deed was delivered, recognizing the transfer of a specific piece of the property when other parties held an undivided interest in the same, and failing to account between the co-tenants for the use by one of the whole, or more than his share, of the common property.

2. The circuit court erred by recognizing the "Bills of Sale" as effective transfers of real estate, where there was no delivery or acceptance.

3. The circuit court erred by recognizing either the quitclaim deed, which improperly conveys a distinct portion of the property, or any other agreement that would achieve the same result.

4. The circuit court erred by failing to account for rents owed to the co-tenants by co-tenants who were using the whole, or more than their fair share, of the common property.

ARGUMENT

1. Appellant complains that the circuit court erred by recognizing the "Bills of Sale" as effective transfers of real estate, where there was no delivery or acceptance.

Appellant is relying on the premise that West Virginia law only permits conveyance of real property by deed or will and that delivery is an essential element to a deed's validity. Appellee agrees that delivery is an essential element to a deed's validity but does not agree with the premise that real property can only be conveyed by deed or will *per se*.

Appellant fails to take into consideration West Virginia Code §36-3-1 *et seq* which sets forth the form and effect of deeds and contracts. W. Va. Code §36-3-4 states, "All distinctions in legal effect between deeds of grant, deeds of bargain and sale, deeds of lease and release, and deeds of covenant to stand seized, are hereby abolished. Any instrument which shows on its face a present

intent to pass the title to, or any interest, present or future, in real property, shall, if properly executed and delivered, be given effect according to its manifest intent. No instrument purporting to convey land, or any interest therein, shall fail of effect merely for lack of conformity with the language of sections five, six, seven, eight or nine of this article."

A. The Appellant has stated that acceptance and delivery, which are premised on the intent of the grantor and grantee, are essential elements of a valid deed transfer and may be proved or disproved by the circumstances.

Appellant seems to be giving some credence to the fact that the "Bills of Sale" conveying interest in the real property which is the subject of this suit, are in fact valid documents conveying an interest in real property. However, Appellant seems to have an issue with the circuit court failing to make a specific finding that the "Bills of Sale" were delivered.

This Court has stated "[E]ffective delivery of a deed must include (1) transfer of possession of a valid deed satisfying all required formalities, and (2) intent of the grantor to divest himself of title." Walls v. Click, 209 W.Va. 627, 550 S.E. 2d 605 (2001). This Court went on to say in Walls, "[n]o particular form of delivery is required. A deed may be manually given by the grantor to the grantee, yet this is not necessary. The real test of delivery is did the grantor, by his acts or words, or both, intend to divest himself of title? If so, the deed is delivered." (internal citations omitted) The Court in Walls, citing Evans v. Bottomlee, 150 W.Va. 609, 148 S.E.2d 712 (1966), said "Possession of a deed

executed and acknowledged with all formalities is prima facie evidence of delivery."

Appellant cites the case of French v. Dillon, 120 W.Va. 268, 197 S.E. 725 (1938), in support of his premise on delivery and recording of a deed. However, there is a major distinction between French, and the case at hand. In French, the deeds were still in the possession of the grantor at the time of his death. In this case, Appellee, Mr. Jesse Slater, had in his possession three bills of sale that had been executed by Marvin Darrel Slater, Ethel Isabelle Slater Rust and Janet Evene Slater Burdette to Elvin D. Slater. In order for Mr. Jesse Slater to have these "Bills of Sale" in his possession, they had to have been "delivered" to Elvin D. Slater. Possession being prima facie evidence of delivery, this Court can determine that the "Bills of Sale" conveying the interests of Marvin Darrel Slater, Ethel Isabelle Slater Rust and Janet Evans Slater Burdette to Elvin D. Slater, were in fact delivered, thus satisfying the delivery requirement of a deed. This Court went on to state in French that "The intent of the grantor may be shown by circumstances. Among the circumstances admissible are "the subsequent possession of the premises" and "the subsequent conduct of the parties" (internal citations omitted). The grantee, Elvin D. Slater, had possession of the premises and conducted himself in a manner becoming a person who has ownership as a tenant in common of a parcel of real estate. The grantors, Marvin Darrell Slater, Ethel Isabelle Slater Rust and Janet Evene Slater Burdette thereafter did not conduct themselves as owners of the property. Therefore, it

would appear that the intent of the grantors is in fact shown by the circumstances as set forth by this Court in French.

B. The Appellant further states that the Court either relied on the form of the "Bills of Sale" and did not find an effective delivery and acceptance or found such delivery and acceptance against the clear weight of the evidence when ruling that a transfer of property occurred.

It has long been established that property can be conveyed by any writing which sells land for valuable consideration. This Court stated in Waldron v. Pigeon Coal Co., 61 W.Va. 280, 56 S.E. 492 (1907), "Any writing, signed and sealed, by which for valuable consideration one person sells land to another described therein, is a deed of bargain and sale, passing legal title under the statute of uses; found in Code 1899, c. 71, § 14, Code 1906, § 3033.". The Court went on to say in Waldron, "Though chapter 72 gives a form of deed, it was not designed to abolish other modes of conveyance, but was only remedial, intending to make the word "grant" pass real estate, which it could not do before the adoption of the Code of 1849."

This Court stated in Parsons et al v. Baltimore Building & Loan Ass'n. et al, 44 W.Va. 335, 29 S.E. 999, 67 Am.St.Rep. 769 (1898), "To make a good deed, a writing need not be in any particular form or words, so the intention thereof is clear, and it is signed, sealed, and delivered. Recordation under certain circumstances is a sufficient delivery." "The matter written must be legally and

orderly set forth; that is, there must be words sufficient to specify the agreement and bind the parties, which sufficiency must be left to the courts of law to determine; for it is not absolutely necessary in law to have all the formal parts that are usual drawn out in deeds, so as there be sufficient words to declare clearly and legally the parties' meaning." "In a deed "it is not even necessary to use the technical operative words of any kinds of conveyance, although it is advisable to do so, in order to remove every doubt of the validity of the conveyance. Any words will be sufficient if they clearly manifest the intention to transfer the estate." (internal citations omitted)

The circuit court examined the three (3) "Bills of Sale" herein and determined that two of the "Bills of Sale" met all of the requirements of a deed and that all of said "Bills of Sale" did in fact transfer the estate. Each "Bill of Sale" clearly shows: (1) the intention of the parties, to-wit: "...we hereby grant, bargain, sell and convey..."; (2) clearly describes the real property and/or interest in real property that is to be sold, to-wit: incorporates a legal description of the subject real estate which appears to be copied from a deed conveying the property to James V. Slater, the deceased father of the Appellant and Appellees herein; (3) is clearly binding upon the parties, to-wit: each "Bill of Sale" was signed by the parties; and (4) clearly shows that the party of the first part received compensation from the party of the second part for the real estate conveyed therein.

The "Bills of Sale" between Ethel Rust and Elvin D. Slater; Janet Burdette and Elvin D. Slater and Marvin Slater and Elvin D. Slater, clearly show all of the

above. However, the "Bill of Sale" between Burdette and Slater, was not acknowledged, but this is of minor significance considering Janet Burdette's testimony that she intended to sell. Furthermore, this Court has recognized in Jones v. Wolfe, 203 W.Va. 613, 509 S.E. 2d 894 (1998), that "The law in this State is rather clear that a deed takes effect from its actual or constructive delivery. See Parrish v. Pancake, 158 W.Va. 842, 215 S.E.2d 659 (1975), and Bennett v. Neff, 130 W.Va. 121, 42 S.E.2d 793 (1947). **Recording of the deed is not critical and acknowledgment is not essential to its validity.** As stated in McElwain v. Wells, 174 W.Va. 61, 64, 322 S.E.2d 482, 485 (1984): "Acknowledgment is a prerequisite for recording, W. Va. Code, 39-1-2, but adds nothing to the validity of a deed as between the parties and others who know about it. **A defect in acknowledgment 'does not detract from the force of the deed in making effective the conveyance intended to be made thereby.'** State v. Armstrong, 134 W.Va. 704, 61 S.E.2d 537, 539 (1950)." (emphasis added) Therefore, even though the "Bill of Sale" was not acknowledged, it is still an effective conveyance of the subject interests in real estate. This Court states in McElwain v. Wells, 174 W.Va. 61, 64, 322 S.E.2d 482, 485 (1984), "Even unrecorded deed is good against grantor and heirs."

In light of the foregoing arguments and case law, the Appellee believes this Court must find that the "Bills of Sale" are valid transfers of interests in the subject real estate.

C. Appellant has presented the premise that the evidence showed that no delivery or acceptance occurred.

Appellant states that "Based upon the evidence presented, the clear preponderance of evidence showed that neither the grantors intended to divest themselves of title, nor did the grantee intend to accept title."

Appellee believes the evidence shows the exact opposite. The parties who conveyed their one/seventh interest in the subject real estate to Elvin Slater, had full knowledge that they were conveying their interest in the estate. Each "Bill of Sale" states very clearly that the grantor did grant, bargain, sell and convey to Elvin D. Slater their respective heirship in the property or farm of the late James V. Slater located at Route 5, Box 333 Charleston, WV 25312. Said "Bills of Sale" further stated that each grantor relinquished any and all rights and claims, present or future to the aforesaid property or in the case of one of the "Bills of Sale" it was stated that the grantor hereby covenants and agrees to surrender all title and claims whatsoever to the aforesaid real property. Further, Mrs. Janet Burdette, a grantor on one of the "Bills of Sale" testified in the circuit court at a hearing held before the Honorable James C. Stucky on the 20th day of April 2000 that her intention was to sell her interest in the property to Elvin D. Slater and that she would willingly sign a deed conveying that interest (Court transcript, April 20, 2000, pages 6 & 7).

The argument that the grantors did not intend to divest themselves of their title to the property is not credible. The grantors not only signed the "Bills of Sale" but they accepted substantial sums of money in return for their

respective interest. If one of the grantors understood that she was selling her interest in the subject real estate, it is inconceivable that the other two grantors did not have the same understanding at the time they signed the "Bills of Sale" and accepted the monetary consideration in return. Interestingly, the Appellant again cites French in an effort to show that Elvin D. Slater never intended to accept delivery of the other heirs' interest because he did not record the "Bills of Sale". This is interesting because the facts in the French case show that the grantor held the deed and did not record it nor was there any real evidence that he delivered the deed. In this case, it is the grantee who has the deeds and did not record them. This in no way shows that the "Bills of Sale" were not delivered. In fact, this shows that the "Bills of Sale" were delivered, as this Court has stated in Heck v. Morgan et al, 88 W.Va. 102, 106 S.E. 413 (1921), "Possession by the grantee of a deed or instrument conveying an interest in real estate is prima facie evidence of its delivery."

2. Appellant claims that the circuit court erred by recognizing either the quitclaim deed, which improperly conveys a distinct portion of the property, or any other agreement that would achieve the same result.

The Appellant cites Mauzy v. Nelson, 147 W.Va. 764, 131 S.E. 2d 389 (1963), to support her argument that Samuel Harrison could not execute a quitclaim deed conveying his interest in the subject real estate to Jesse Edward Slater. Mauzy does not prevent a tenant from reserving his undivided interest in

a specific piece of property described by metes and bounds, or from transferring his remaining undivided interest in the property.

This Court has held that "A co-tenant may convey at his pleasure his undivided interest in all the lands held in common without the knowledge or consent of his companions in interest; and the effect of the deed is to make the grantee a tenant in common in the land with all the rights and obligations with reference thereto to his grantor." Worthington v. Staunton, 16 W.Va. 208, 1880 WL 4002 (W.Va.) (1880). This Court went on to say in Worthington, that "A deed from a co-tenant of a part of the land held in common, describing it by metes and bounds, cannot in any way operate to the prejudice of the other tenants in common. They have the right to have the land partitioned unaffected by such deed."

Samuel Harrison conveyed all the right, title, interest, claim and demand which he had or was entitled to in the subject real estate as a result of being the heir of Elvin D. Slater in the aforementioned quitclaim deed subject to and excluding an approximate two acre parcel of real estate. A house and workshop is located on said two acre parcel of real estate. The quitclaim deed from Samuel Harrison to Jesse Slater does not convey or reserve any specific part of the property to the detriment of any other co-tenants. It does not convey in such a manner as to compel other co-tenants to take their shares in several distinct parcels, and it does not deprive any other heirs of their right to enter and occupy every portion of the common estate. The two acres reserved and excepted for Samuel Harrison would not equal the value of the share of the

estate that he would have inherited from his father, Elvin Slater. It has been alleged that Samuel Harrison was never adopted by Elvin Slater. Samuel Harrison was adopted by order of the Kanawha County Circuit Court entered on the 8th day of November 1985 in case number 85-A-92. Therefore, Samuel Harrison is an heir to the estate of Elvin Slater and does in fact have the right to convey his interest in said estate to a third party.

3. Appellant believes the circuit court erred by failing to account for rents owed to the co-tenants by co-tenants who were using the whole, or more than their fair share of the common property.

The issue of rents owed to co-tenants as well as the issue of Jesse Edward Slater paying taxes and making improvements to the property was not taken into account by the circuit court due to the hearing being concluded by an agreement between the parties before the issue could be addressed. Appellant, with the advice of competent counsel, informed the court that she was satisfied with the disbursement of the property and that she was receiving her one seventh (1/7th) interest in the subject real estate (i.e. The parcel of real estate that she chose for a house site). Appellant states that she was not advised that the circuit court was proceeding under an erroneous legal theory and therefore accepted the circuit court's offered resolution to partition the property. Appellee does not believe the circuit court was operating under an erroneous legal theory and believes that the Appellant should be required to comply with the agreement entered into between the parties. It is well established that "A meeting of the

minds of the parties is a sine qua non of all contracts." Triad Energy Corporation of West Virginia, Inc. vs. Renner et al, 215 W.Va. 573, 600 S.E.2d 285 (2004).

This Court went on to say in Triad, that "Settlement agreements are to be construed as any other contract." The parties in this matter reached an agreement that was ratified and approved by the circuit court.

Appellee does not contest the fact that the issue of reasonable rent is a well settled principle. However, Appellee does disagree with the Appellant when she states that she was not permitted to be on the property. Appellant was ordered off of the property when she demanded to inspect the contents of Appellee's home while allegedly pursuing her duties as administratrix of James Vinton Slater's estate.

Appellant did not assume the duties of administratrix of said estate until some forty (40) years after James Vinton Slater's death. Appellant had chosen a parcel of the property as her portion and went so far as to have a house seat prepared on said parcel of property. This is the same parcel that she was awarded pursuant to the agreement of the parties. The Appellant could not have prepared a house seat if she had been "ousted" from the property.

This Court has stated in Summers v. Bennett, 68 W.Va. 157, 69 S.E. 690 (1910), "In a suit by one co-tenant against another co-tenant of land acquired and held for sale and profit, for an accounting of the proceeds of sales made, and of rents, issues and profits, the statute of limitations begins to run from the time plaintiff had right to demand payment." The Court went on to say, "We think this the correct rule to apply here, and that the accounting for receipts and

disbursements from sales and from rents and profits should be limited to the period of five years next before the institution of this suit." The maximum amount of rent and proceeds the Appellant could claim in this matter would be one seventh (1/7th) of the whole from five years prior to the institution of this action. And then said rent would be offset by any improvements made and/or real estate taxes paid by the Appellee. Appellee has not utilized the entire property for his own use nor has the Appellant been ousted from her portion of the property.

4. Appellant states that partition by sale would be appropriate.

It is easy for Appellant to state that the sale of the property would be the appropriate remedy. However, there are two people who have lived on this property practically all their lives and this is their home. This property is easily divided as is shown by the agreement of the parties that was ratified and approved by the circuit court.

CONCLUSION

WHEREFORE, based upon the foregoing arguments, the Appellee requests that this Court uphold the ruling of the circuit court; that the agreement of the parties be enforced; that this Court deny the Appellant's claim to rent and proceeds, taking into consideration, the Appellant's one seventh (1/7th) interest in the property, the improvements made to the property by the Appellee and the

statute of limitations thereon; and such other, further and general relief as may seem proper to this Court.



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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

CHRISTINE McCONAHA, Individually
And In Her Capacity As Administratrix
Of The Estates Of
JAMES VINTON SLATER and
MABEL FLORENCE SLATER,
Plaintiff/Appellant,

vs.

Appeal No. 32726
(From the Kanawha County Circuit
Court, Civil Action No. 99-C-2207)

ETHEL ISABELLE RUST, JANET EVENE
BURDETTE, MARVIN DARRELL SLATER,
JESSE EDWARD SLATER, JESSE EDWARD
SLATER, JR., ROBERTA I. KINTZ,
SAMUEL WEBSTER HARRISON, JR. and
GEORGE HARRISON,
Defendants/Appellees.

CERTIFICATE OF SERVICE

I, Kevin W. Hughart, hereby certify that I have served the BRIEF OF
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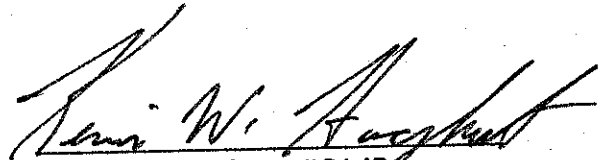
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