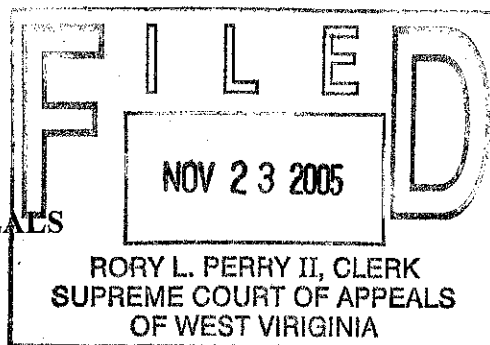


Appeal No. 32726

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.

**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.

**ON APPEAL FROM THE CIRCUIT COURT OF
KANAWHA COUNTY, WEST VIRGINIA
(CIVIL ACTION NO. 99-C-2207)**

**REPLY OF APPELLANT TO BRIEFS OF APPELLEES, JESSE EDWARD
SLATER AND JESSE EDWARD SLATER, JR., AND APPELLEE, SAMUEL
WEBSTER HARRISON, JR.**

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TABLE OF CONTENTS

	PAGE
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES.....	ii
I. INTRODUCTORY STATEMENT TO THE REPLY BRIEF.....	1
II. REPLY REGARDING BOTH BRIEFS.....	4
A. Appellee Harrison’s brief fails to address the prejudice caused by conveyance of distinct portion of the estate.....	5
B. Appellees Slaters’ brief fails to satisfactorily address the prejudice caused by the conveyance of a distinct portion of the estate.....	5
III. REPLY REGARDING BRIEF OF THE SLATERS.....	6
A. The Slaters are not entitled to charge improvements against the other cotenants...6	
B. The Slaters fail to acknowledge that the presumption of delivery is rebuttable.8	
IV. REPLY REGARDING BRIEF OF HARRISON.....	10
A. Appellant’s standing to challenge the ruling of the court conveying heirship interests to Appellees is clear.....	10
B. The selective quoting of the Appellant misrepresents the record and the errors of the court preceded any potential waiver of appellate rights or entry of additional evidence regarding rents owed.....	12
V. REGARDING THE REQUEST FOR THE REMEDY OF PARTITION BY SALE.....	16
CONCLUSION.....	17

TABLE OF AUTHORITIES

	PAGE(S)
CASES	
<u>French v. Dillon</u> , 120 W.Va. 268, 197 S.E. 725 (1938)	9
<u>Latimer v. Mechling</u> , 171 W.Va. 729, 301 S.E.2d 819, 826 (1983).....	11-12
<u>Little v. Little</u> , 184 W.Va. 360, 400 S.E.2d 604 (1990)	7
<u>Mauzy v. Nelson</u> , 147 W.Va. 764, 131 S.E.2d 389 (1963).	4, 11
<u>Sally-Mike Properties v. Yokum</u> , 175 W.Va. 296, 300, 332 S.E.2d 597 (1985).....	6
<u>Williamson v. Jones</u> , 27 S.E. 411, 421 (1897).....	7
SECONDARY SOURCES	
14 Am. Jur. § 86, <u>Cotenancy</u>	4
STATUTES	
W.Va. Code § 36-1-1	8
W.Va. Code § 36-3-4.....	8

I. INTRODUCTORY STATEMENT TO THE REPLY BRIEF

As the Appellees have raised several issues based on similar flawed reasoning and in the interest of judicial economy, the Appellant, Christine McConaha (hereinafter “Appellant” or “McConaha”), replies to both briefs by the submission of this Reply of Appellant to Briefs of Appellees, Jesse Edward Slater and Jesse Edward Slater, Jr. (hereinafter “Appellees” or “the Slaters”), and Appellee, Samuel Webster Harrison, Jr. (hereinafter “Appellee” or “Harrison”). The Appellant will first address issues raised by the Appellees’ briefs jointly, as there are common flaws with the two. The Appellant will then address the briefs individually. Finally, the appellant will address the request for the remedy of partition by sale. A more detailed discussion of these issues, with points of authority, follows in the subsequent sections.

With respect to the briefs jointly, both Appellees have failed to satisfactorily address the circuit court’s error regarding the conveyance of specific and distinct portions of the property between Jesse Edward Slater and Samuel Harrison. As the errors below are interwoven, it is impossible to understate the significance of that error with respect to the other issues raised by the Appellant. As will be discussed, the concerted actions of the Appellees to increase the weight of their interests in distinct portions of the most valuable pieces of the subject property significantly prejudiced the rights of the Appellant with respect to the partition of the common estate. This error was plain and neither of Appellees’ briefs has sufficiently explained why this court should not find that such error occurred.

With respect to the brief of the Slaters, individually, the arguments against the Appellant’s position must be similarly discounted. The Slaters contend that, in any

calculation of rents owed or interests valued, the value of improvements made must be charged against the cotenants. The court below adopted this position as well. This is clearly erroneous under West Virginia law, where the improver has made no mistake of fact regarding the common ownership of the property in question. This is especially significant due to the concerted efforts of the Appellees to increase the weight of their interests in the specific portions of the common estate where the improvements were made, as the other tenants-in-common were prejudiced with respect to the most valuable pieces of the property during the partition in kind. With regard to the validity of the "Bills of Sale," the Slaters rely solely on a prima facie presumption and do not overcome the evidence admitted to rebut such presumption.

With respect to the brief of Harrison, individually, the Appellee's arguments also fail. The standing of McConaha is clear, as the errors below flowed from the concerted actions of the Appellees to disadvantage McConaha, individually, and, additionally, implicated McConaha's responsibility as a fiduciary of the other heirs. Based on the Appellees' plan to exchange specific portions of the most valuable pieces of the common estate to advantage their interests during the partition, each additional share of the property taken from the other heirs and given to the Appellees would make a fair partition impossible. Therefore, McConaha clearly had standing to protect her own interest in a fair partition, where she had significant evidence that delivery of those interests never occurred and where various elements of the allegations of Jesse Edward Slater appeared to be lacking.

Further, Appellee Harrison has misrepresented nearly every exchange quoted in his brief to support a waiver argument. No waiver occurred. The Appellee's argument

that McConaha waived her right to appeal by her reluctant, if not actually pressured, acceptance of the court's offered partition following a myriad of errors that significantly prejudiced her interests, without knowledge or advice from her counsel that the court was proceeding under an erroneous legal theory, is without merit. Similarly, the allegation that evidence regarding rents due was not entered is without merit, where the court's error had, in the mind of the Appellant, extinguished the rights of the heirs to whom she owed a fiduciary duty. The errors of the court made the pursuit of such interests moot. These errors and the prejudice that flowed from them are inseparably interwoven.

With regard to the request for the remedy of partition by sale, McConaha believes that the record clearly shows the concerted efforts of the Appellees in securing for themselves the most valuable pieces of the common estate. The common estate has proved to be difficult to divide fairly, as evidenced by the record below. Additional attempts to partition in kind are not likely to result in a practical or just resolution and will only result in continued expense and frustration for the Appellant. The attitude of the Appellees regarding the interests of the other tenants-in-common is made clear by their language, as they simply do not accept that the other tenants have an undivided interest in the whole property. As such, Appellant believes a market solution is desirable, where partition in kind is impractical, if not impossible. Such a solution will not prejudice the Appellees, since they may purchase the property that they desire. Further, this is the most likely remedy to result in the other cotenants being fairly compensated for their property interests.

II. REPLY REGARDING BOTH BRIEFS

The Appellees acted in concert in the proceedings below to convey to each other distinct portions of the common estate, which is clearly impermissible under West Virginia law. As discussed in Appellant's opening brief, one cotenant has no right, as against his associates, to convey to a third person any specific or distinct portion of the common estate. Mauzy v. Nelson, 147 W.Va. 764, 131 S.E.2d 389 (1963). This Court explained:

...it is a general rule that one cotenant has no right, as against his associates, to convey to a third person any specific or distinct portion of the common estate...The reason is obvious. The grantor's title is to an undivided share of the whole, and he is not authorized to carve out his own part, nor to convey in such a manner as to compel his cotenants to take their shares in several distinct parcels such as he may please; and since a grantor himself has no right, on a partition, to select any particular portion of the land and to insist that his moiety, or any part of it, be set off in that specific portion, so he cannot convey such a right to his grantee. If this were not admitted to be the established law, the cotenants not assenting to such a sale might, without any fault of their own, be deprived of their right to enter and occupy every portion of the common estate, and to have any portion of it, thus conveyed, assigned to them on a partition of the common estate."

Mauzy, at 768, quoting, 14 Am. Jur. § 86, Cotenancy.

The attempt of Appellees to exchange distinct portions of the common estate resulted in the exact prejudice that this Court discussed in Mauzy, i.e. that a cotenant, through no fault of their own, would be deprived of their right to have any portion of the common estate assigned to them on a partition of the common estate. The court's recognition of this arrangement as legitimate forced the court's hand in partition of the estate, as one cotenant was held to own a five-sevenths interest in the most valuable

distinct portion of the common estate. The end result was that Appellees were able to select the particular portions of the land that would be transferred on partition. This fundamental error, combined with the other errors of the court, resulted in prejudice against the Appellant. It is, therefore, notable that both Appellees have completely failed to explain why this Court should not find that such error occurred.

A. Appellee Harrison's brief fails to address the prejudice caused by the conveyance of a distinct portion of the estate.

Appellee Harrison fails to address the conveyance of a distinct portion of the estate in any manner. As this Court held in Mauzy, such a conveyance operates to prejudice a cotenant's rights during partition. The significance of this error cannot be understated, as it was key to the injustice that was done in the court below. The failure of Appellee to even address this error is noteworthy. As will be shown below, this error, in combination with the court's other errors, caused significant prejudice to the Appellant and to those heirs to whom she owed a fiduciary duty.

B. Appellees Slaters' brief fails to satisfactorily address the prejudiced cause by the conveyance of a distinct portion of the estate.

The Slaters' brief does include a section that purports to address this error. However, the Slaters misstate Appellant's argument, ignore the conveyance of a distinct portion of the common estate, and, instead, construct a straw man argument not presented by the Appellant.

The Appellees do make some reference to the ability of a tenant to "reserve his undivided interest in [the] estate that he would have inherited from his father." Brief of Appellees, Jesse Edward Slater and Jesse Edward Slater Jr., pg. 19. What that has to do with conveying specific portions of the common estate is unclear. In the court below,

counsel for the Slaters argued that Sam Harrison was not conveying a distinct portion of the estate, but was conveying his entire interest with the reservation of the 2 acres surrounding the house and workshop. Whether a cotenant conveys a specific portion or conveys their entire interest while reserving all other areas but the specific portion in question is a distinction without a difference. See Sally-Mike Properties v. Yokum, 175 W.Va. 296, 300, 332 S.E.2d 597 (1985) (Manifest intent of parties to a deed supersedes commonly ignored technical differences between a “reservation” and an “exception.”) The end result is the same and would be similarly impermissible under the Mauzy precedent.

III. REPLY REGARDING BRIEF OF THE SLATERS

In addition to failing to address the argument regarding the conveyance of a specific portion of the property, the brief of the Slaters raises additional issues worthy of discussion.

A. The Slaters are not entitled to charge improvements against the other cotenants.

The Slaters raise an issue within their brief that deserves attention, as it illustrates an additional error of the circuit court and the fact that Christine McConaha was not aware that the court was proceeding under an erroneous legal theory.

Within their discussion of the calculation of any rents due, the Slaters contend that any rents owed would have to be offset by the value of improvements made to the common estate. This position was also presented in the court below. Not only is this position contradictory to the factual scenario proffered by the Appellee¹ regarding the

¹ Appellee Slater argued that improvements were made in exchange for property interests. Now, he takes the position that improvements were made at his own expense.

alleged contract between Jesse Slater and Elvin Slater, since it presumes that Jesse Slater was not compensated for those improvements, it is also erroneous as a matter of law.

Even where one joint tenant or tenant in common, not claiming the whole makes permanent improvements, without his fellow's consent, he cannot charge him, nor hold exclusive possession until reimbursed by rents and profits. Williamson v. Jones, 27 S.E. 411, 421 (1897), *see also* Little v. Little, 184 W.Va. 360, 400 S.E.2d 604 (1990) (life tenant's surviving spouse did not reasonably believe that she and her husband owned land improved by them and, therefore, was not entitled to recover value of improvement benefiting surviving life tenant and remainderman, even if surviving spouse reasonably believed that remainderman would convey property to husband). Nor will it alter the case that the co-tenant knew that the buildings were being erected and made no objection. Williamson, at 422. Where one is acquainted with his rights, or has the means of becoming so, and willfully undertakes to proceed in expending money on the land of another, one acts at their own peril. Id., at 422.

This is significant, because the Court, prior to making its erroneous rulings regarding the disposition of the property, made the same error. Transcript of 5/19/04 Hearing, pgs. 112-113, OR at 55. While the Court was pressuring Ms. McConaha to accept the ten acre portion and without the advice of counsel that the court was proceeding under an erroneous legal theory, the following exchange occurred:

MS. CHRISTINE McCONAHA: May I try to explain?

(No verbal response.)

MS. CHRISTINE McCONAHA: My understanding is that I own a one-seventh interest –

THE COURT: (Interposing.) Correct.
MS. CHRISTINE McCONAHA: -- in the entire real property --
THE COURT: (Interposing.) Correct.
MS. CHRISTINE McCONAHA: --which also includes the improvements.
THE COURT: Not correct.

Id., at pgs. 112-113.

Ms. McConaha would later testify that she believed that 85-90 percent of the value of the real property was in the areas around the houses that Jesse Slater and Samuel Harrison were living in. Id., at pgs. 120. Therefore, it was no surprise to Appellant that the Appellees would want to advantage themselves with regard to that specific portion of the property during the partition. By the court's erroneous theory about the value of improvements, Appellant and the other cotenants were further prejudiced by reducing the value of their shares of the common estate. This plain error affected the court's valuation of the various one-seventh shares, as cotenants were entitled to one-seventh of the value of the entire property, including fixtures and improvement placed upon the land.

B. The Slaters fail to acknowledge that the presumption of delivery is rebuttable.

The Slaters' brief states that they do not agree with the premise that real property can only be conveyed by deed or will *per se*.² Appellees go on to state that possession of a deed is prima facie evidence of delivery. Throughout their argument, the Slaters never acknowledge that significant evidence was entered to rebut that presumption. Instead, they rely on mere possession of the "Bills of Sale" by Jesse Edward Slater, the language

² Appellees cite W.Va. Code § 36-3-4 for this proposition, noting that formalities between differing types of deeds have been abolished in West Virginia. This is not so. West Virginia law clearly requires either deeds or wills to transfer property interests. W.Va. Code § 36-1-1. Irregardless, Appellees recognize that delivery is an essential element to a deed's validity.

of the "Bills of Sale," and the fact that Elvin Slater, who already lived on the property prior to the creation of the "Bills of Sale" and was already a tenant in common, continued to live on the property and conducted himself as if he were a tenant in common after their creation.

This ignores the court's language in French v. Dillon, wherein this Court explained that handing the deed to the grantee without the intent to presently vest in the grantee the estate purportedly conveyed does not amount to an effective delivery.³ French v. Dillon, 120 W.Va. 268, 197 S.E. 725 (1938). It ignores the testimony of two of the grantors who testified that they retained a right to recall the instrument on the repayment of the payment for forbearance of use of the property; that they did not intend to convey their interest; that they did not understand that they were delivering their interests at the time the "Bills of Sale" were created based on both their and the grantees words and acts; and that they believed that still had an interest in the property. It also ignores the conduct of the grantee, Elvin Slater, who did not record these "Bills of Sale" during his lifetime.

Appellees make one reference to the testimony of Janet Burdette, stating that she sold her interest to Elvin Slater. However, her testimony that Elvin Slater told her he didn't want a deed made; her testimony that she understood that a deed needed to be made to transfer property; her testimony that she didn't want to be a part of the litigation; and her subsequent execution and delivery of a deed conveying her interest to Roberta Kintz are noteworthy. Appellees further state that Mrs. Burdette's testimony is somehow

³ "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." Brief of Appellees, Jesse Edward Slater and Jesse Edward Slater, Jr., pg.12. This conclusion does not follow from the premise, as "delivery" in this context is legal term of art.

controlling over the understandings and intentions of Marvin Slater and Ethel Rust. The flaw in that contention is plain on its face.

IV. REPLY REGARDING BRIEF OF HARRISON

In addition to failing to address the argument regarding the conveyance of a specific portion of the property, the brief of the Appellee, Samuel Harrison, also raises additional issues worthy of discussion.

A. Appellant's standing to challenge ruling of court conveying heirship interests to Appellees is clear.

Appellee Harrison argues that Christine McConaha has no standing to challenge the findings of fact regarding the effect of the "Bills of Sale." The flaw of Harrison's argument is that it analyzes the effect of that ruling in a vacuum. The error relating to the "Bills of Sale" was inseparably interwoven with the errors regarding the conveyance of a specific portion of the property and the ruling that cotenants were not entitled to their interest in the value of the improvements to the land. The Appellees acted in concert to advantage themselves during the partition with respect to the specific portion of the property considered most valuable. Each additional share of the property that the Appellees could apply to their proposed cross-conveyance of portions of the property prejudiced McConaha and the other heirs with respect to the most valuable piece of the property and improvements. Essentially, each additional share increased the Appellee's interest in the most valuable piece of the property, through their improper arrangement, increasing the pressure on the court below to partition that specific portion to Appellee Harrison. In addition, based on the arguments of Appellee Jesse Slater and, later, on the courts ruling that the value of the improvements were not part of the common estate, each

additional share in the specific portion of the property where the improvements were made removed value from the other cotenants.

As this Court held in Mauzy, *infra.*, each cotenant of an undivided interest has an equal right to the whole of the property and to have any portion of that property assigned to them during partition. Mauzy, at 768. Each additional share assigned to the Appellees, who were arguing that they could convey specific portions of the property to each other, made a fair partition of the property more and more difficult, increasing the prejudice to McConaha and other heirs. Therefore, based on the position taken by the Appellees, McConaha had an interest in the determination of the validity of the challenged "Bills of Sale." As such, McConaha had standing to challenge the effect of the "Bills of Sale" where the Appellees concerted action to advantage themselves in the partition prejudiced McConaha, where McConaha had evidence that the "Bills of Sale" were not intended to transfer those interests to the Appellees, based on her own knowledge and the testimony of the alleged grantors, and "but for" the challenged transfers, McConaha would have been less prejudiced. See Latimer v. Mechling, 171 W.Va. 729, 301 S.E.2d 819, 826 (1983)(Bidder on estate property who was not a beneficiary or distributee of the estate had sufficient interest in property to maintain suit where breach of fiduciary duty denied bidder interest in property).

On top of Appellant's personal standing, Appellant appeared in the court below in an additional capacity, i.e., as executor of the subject estate. As the executor of the estate, Appellant has a fiduciary duty to the heirs of the estate. This court stated:

Personal representative of estate of deceased acts in fiduciary capacity and his duty is to manage estate under his control to advantage of those interested in it and to act on their behalf; in discharge of his duty, executor or

administrator is held to highest degree of good faith and is required to exercise the ordinary care and reasonable diligence which prudent persons ordinarily exercise, under like circumstances, in their own personal affairs.

Latimer, at 822. Although the heirs who entered the arrangement with Elvin Slater did not obtain representation, they did testify as to their understanding of the arrangement. Despite Appellee Harrison's contention that those heirs forfeited their rights by failing to answer the complaint or appeal, this did not extinguish Appellant's fiduciary duty to those heirs. Where similar reasoning demonstrates that other heirs were prejudiced by the same mechanism and may have had rights to rents that were decreased as a result of that prejudice, McConaha submits that the fiduciary duty of the executor raises an additional interest, above and beyond her personal and familial interest, in the effect of the rulings on the "Bills of Sale."

B. The selective quoting of the Appellant misrepresents the record and the errors of the court preceded any potential waiver of appellate rights or entry of additional evidence regarding rents owed.

The Appellee has misrepresented nearly every exchange quoted within his brief, in support of his argument that McConaha cannot challenge the Final Order of the court below based on her acceptance. It will be worthwhile to examine those statements herein:

Appellee Harrison's Brief:

When asked, "Do you consider that the ten acre property ... piece of property that you negotiated with previously as being a fair one seventh of the total property, she replied: "I wouldn't argue over it, no." - Brief of the Appellee Samuel Harrison, Jr., pg. 16.

What actually occurred:

THE COURT: Okay? Do you consider that ten acre property – piece of property that you negotiated with previously as being a fair one-seventh of the total property?

MS. CHRISTINE McCONAHA: I wouldn't argue over it, no.

THE COURT: So the question – my answer – your answer to my question is “Yes”?

MS. CHRISTINE McCONAHA: I guess the only way I could answer that, you know, is I don't have any idea what the property is worth.

THE COURT: Well, you own it.

MS. CHRISTINE McCONAHA: **I mean, if you would consider – Okay, compare it to the section that they are claiming for Roberta Kintz, okay, the bottom land, if you compare it to that section, I know that there was an offer made for around \$50,000 back well before Elvin died, just for that.**

The property above the road, even at this point, wouldn't be worth that. Do you see what I'm saying? So I don't know how to do that.

Transcript of 5/19/04 Hearing, pgs. 103-104, OR at 55 (emphasis added).

Appellee Harrison's Brief:

Judge Stucky continued with this line of questioning about whether the ten acres would be fair, and again she answered: “Yes, it seems so.” And, “That acreage would be fine with me.” - Brief of the Appellee Samuel Harrison, Jr., pg. 16-17 (citation omitted).

What actually occurred:

THE COURT: Okay. Eight acres would be one-seventh. So you're getting two more acres. The reason would be that – that those acres aren't as valuable as some other acres, as you indicated – of Ms. Kintz', I guess, property, correct?

MS. CHRISTINE McCONAHA: Uh-huh, (yes).

THE COURT: Okay. So –

MS. CHRISTINE McCONAHA: (Interposing.) It seems so.

THE COURT: Right. So you get two more acres, because your acres aren't as nice or as valuable as the other acres.

Now – And my question is: Do you think that that ten acres in your fair share, or do you think that you need 12 acres, or 14 acres to equal your fair share, or, you know, acres someplace else?

MS. CHRISTINE McCONAHA: That acreage would be fine with me. **I would say, however, that that ten acres would not be worth what, you know, one or two acres would be on the other side.**

So it would take more than ten acres, probably, to even it out to a fair share, because that really is the steepest part of the property.

THE COURT: Okay.

MS. CHRISTINE McCONAHA: **And probably the least usable part of the property.**

Transcript of 5/19/04 Hearing, pgs. 107-108, OR at 55 (emphasis added).

Appellee Harrison's Brief:

The Court summarized, speaking of Christine McConaha's intended share: "She said that she would be happy with it, she'd be satisfied with that ten acres for her share." - Brief of the Appellee Samuel Harrison, Jr., pg. 17.

What actually occurred:

THE COURT: (Interposing.) She said that she would be happy with it, she'd be satisfied with that ten acres for her share.

MR. ANDREWS: Okay. **But, your Honor, I think she also said it wasn't quite a one-seventh interest.** She said if it was equal to one-seventh, she would be happy –

THE COURT: (Interposing.) That's not what she said. She said that she would be satisfied with the ten acres to represent her one-seventh interest.

MS. CHRISTINE McCONAHA: **No. I said what you (Andrews) said. At least I was trying to say what he's saying.**

Transcript of 5/19/04 Hearing, pg. 110, OR at 55.

In each of these instances, the Appellee brief has selectively quoted portions of the record to misrepresent what actually occurred. None of these statements amount to an acceptance by McConaha.

Following these exchanges, the court made a series of rulings which significantly changed the landscape before McConaha. The court ruled that the cotenants were not entitled to the value of improvements placed on the land, that the "Bills of Sale" were effective transfers of property, and that the cross-conveyance of specific portions of the property between the Appellees that advantaged them during the partition was valid. Only then, having been prejudiced by the court's ruling, with the court threatening to levy costs against McConaha if she continued to argue that the ten acres was not a fair allotment, and without advice of counsel that the court was proceeding under an erroneous theory of law, did McConaha reluctantly accept the allotment. If such a series of facts would bar a party from appeal, then the right of appeal would be essentially meaningless, no matter the extent of the errors that occurred below. Such a result would be absurd and this Court should dismiss Appellee's arguments that McConaha has no right to appeal these errors.

In addition, it is important to note that Appellee's argument that an accounting for rents was unsupported by evidence ignores testimony by Christine McConaha regarding her ouster from the property; regarding the use of the whole property by Jesse Slater; and testimony regarding the use of hay collected from the property by Jesse Slater, etc. Further, once the errors of the circuit court had significantly reduced the value of the property that could be considered for an accounting of rents by eliminating the cotenants' rights to the improvements on the property; had advantaged the Appellees with regard to

the most valuable piece of the common estate; and had eliminated heirship interests that would be entitled to rents, there were significantly fewer reasons to enter additional evidence regarding such an accounting. Again, this error is interwoven with the other errors and cannot be considered in a vacuum.

V. REGARDING THE REQUEST FOR THE REMEDY OF PARTITION BY SALE

In good faith, Appellant McConaha attempted to partition the property in kind in the proceedings below. It is now apparent that a vast majority of the value of the property exists in a few specific areas, making equitable division difficult, if not impossible. A market solution would guarantee that all of the heirs would receive their fair value for their interests in the land.

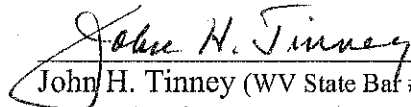
Appellees contend that the emotional interests of the Appellees in living on the land must overcome the difficulty in dividing equitable shares of this common property. The solution that they offer, however, favors only themselves and prejudices the other heirs' rights to their family property. There is an emotional interest in the heirs of James and Mabel Slater in receiving their fair heirship interests. The argument of Appellees discounts the fact that other family members have an undivided interest in the whole of the property. The language of their briefs exposes their disregard for those interests, i.e. that they know where their parcel lies or that it is undisputable that houses belong to the Appellees. Their attempt to advantage each other during the partition with respect to the most valuable pieces of property sought the disadvantage of the other heirship cotenants. The record below shows the contentious nature of the proceedings. Therefore, Appellant believes that partition by sale would solve these issues where the partition in kind could not be conveniently made below.

CONCLUSION

WHEREFORE, the Appellant Christine McConaha requests that the Court overturn the ruling of the circuit court and hold that each of the heirs maintains a one-seventh interest in the subject property, remand this action with an Order for the circuit court to oversee the sale of the property and division of proceeds among the proper interest holders and the accounting of reasonable rent owed to the co-tenants from those co-tenants who have used all, or more than their share, of the common property upon the grounds set forth in the Brief of the Appellant and this Reply of Appellant to Briefs of Appellees, Jesse Edward Slater and Jesse Edward Slater, Jr., and Appellee, Samuel Webster Harrison, Jr., and such other, general and further grounds as may be apparent to the Court.

CHRISTINE McCONAHA

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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,

v.

Appeal No. 32726
(From the Circuit of Kanawha
County, 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, John H. Tinney, counsel for Plaintiff/Appellant, hereby certify that on the 23rd day of November, 2005, the foregoing **“Reply of Appellant to Briefs of Appellees, Jesse Edward Slater and Jesse Edward Slater, Jr., and Appellee, Samuel Webster Harrison, Jr.”** was served upon the parties by depositing a true copy thereof in United States first-class mail, postage prepaid, and addressed as follows:

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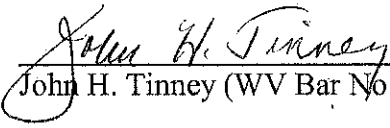
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