

15-0972

**IN THE CIRCUIT COURT OF MONROE COUNTY, WEST VIRGINIA**

**THE BOARD OF EDUCATION  
OF THE COUNTY OF MONROE,  
a statutory corporation,  
Plaintiff,**

v.

**Civil Action No.: 14-C-26**

**GARY D. HOKE and  
BARBARA M. HOKE,  
Defendants.**

FILED IN MONROE COUNTY  
CIRCUIT COURT  
2015 AUG 28 AM 10:37

**ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

On April 6, 2015, a hearing was held on the Plaintiff's Motion for Summary Judgment. The Plaintiff appeared by counsel, Justin St. Clair, and the Defendants appeared by counsel, Barry Bruce. Upon reading the parties' briefs, listening to parties' arguments, and consulting the proper legal authorities, it is the order and judgment of this Court that the Plaintiff's motion for Summary Judgment should be granted.

**FACTS**

This dispute arises from the sale of the Board of Education's property commonly known as the "Second Creek School," [hereinafter referred to as "School"]. The School is particularly described as follows:

Beginning at a gum near the branch N 15 E 206 ft. to a fence post by a driveway and with the same S 65 ½ E 160 ft. to a point in the middle of draft road and with the same S 8 ½ W 191 ft. to a point near the left hand side of the same and leaving the road N. 81 ½ W 137 ft. to a stake on the bank of the above named branch and with the same N 47 W 50 ft. to the beginning, containing 8/10<sup>th</sup> of an acre.

At the time of sale, the Monroe County School Board [Board] held undisputed possession of the School. On May 4, 2011, the Board sold the property to the Defendants for the sum of Two Hundred and One Dollars (\$201.00), by private sale, and not by public auction.

Sometime thereafter, the Board recognized that the conveyance was conducted in an improper manner and that the sale of the School to the Defendants was void. The Board offered to refund the purchase price and any recording fees or other costs, together with interest, in return for a re-conveyance of the School. After the Defendants refused to re-convey the School to the Board, so that it could be disposed of in a lawful manner, the Board filed this suit. This matter is now before the Court on the Board's motion for summary judgment.

#### LAW

Under Rule 56(c) of the *West Virginia Rules of Civil Procedure* “[a] motion for summary judgment should be granted only when it is clear that there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to clarify the application of the law.” Syl. Pt. 1, *Williams v. Precision Coil, Inc.*, 194 W. Va. 52, 459 S.E.2d 329 (1995)(internal citations and quotations omitted).

“If the moving party makes a properly supported motion for summary judgment and can show by affirmative evidence that there is no genuine issue of a material fact, the burden of production shifts to the nonmoving party who must either (1) rehabilitate the evidence attacked by the moving party, (2) produce additional evidence showing the existence of a genuine issue for trial, or (3) submit an affidavit explaining why further discovery is necessary as provided in Rule 56(f) of the *West Virginia Rules of Civil Procedure*.” Syl. Pt. 3, *Williams v. Precision Coil, Inc.*, 194 W. Va. 52, 459 S.E.2d 329 (1995).

A “genuine issue” exists when there is sufficient evidence for a reasonable jury to return a verdict in favor of the non-moving party. Syl. Pt. 5, *Jividen v. Law*, 194 W. Va. 705, 461 S.E.2d 451 (1995)(quoting in part). “A material fact is one that has the capacity to sway the outcome of the litigation under the applicable law.” *Id.* Further, a circuit court’s role at summary judgment “is not to weigh evidence and determine the truth of the matter, but is rather to determine whether there is a genuine issue for trial.” Syl. Pt. 3, *Painter v. Peavy*, 192 W.Va. 189, 451 S.E.2d 755 (1994)(quoting in part).

### ANALYSIS

**A. The Board is entitled to Summary Judgment because the Board had no power to convey the Second Creek School without a public auction.**

The board of education is a corporation created by statute, and can only act within its powers expressly given by statute. *Dooley v. Board of Education*, 93 S.E. 766, 80 W. Va. 648 (1917). It can only act in the mode proscribed by statute, and only with its power expressly conferred by statute. *Id.* Chapter 18, article 5 of the West Virginia State Code governs the board of education. W. Va. Code § 18-5-1 *et seq.*

Under article five, “[t]he county board shall have title to any land or school site which for five years has been in the undisputed possession of the county board or any board of education . . . and to which title cannot be shown by any other claimant.” W. Va. Code § 18-5-6 [Undisputed Possession Statute]. A Board may sell its property,

if at any time a county board determines that any building or any land is no longer needed for school purposes, the county board may . . . **sell the land on which it is located at public auction, after proper notice and on such terms as it orders, to the highest responsible bidder.**

W. Va. Code § 18-5-7(a) (emphasis added). Notwithstanding this public auction requirement,

in rural communities, the grantor of the lands or his or her heirs or assigns has the right to purchase at the sale, the land, exclusive of the buildings on the land and the mineral rights, at the same price for which it was originally sold: Provided, That the sale to the board was not a voluntary arms length transaction for valuable consideration approximating the fair market value of the property at the time of the sale to the board.

W. Va. Code § 18-5-7(b).

There is no genuine issue of material fact in this case. The Board has title to the School because it has held undisputed possession of the property and title cannot be shown by any other claimant. When the Board conveyed the School to the Defendants on May 4, 2011, it did so through private sale to the Defendants, and not in the manner contemplated by W. Va. Code § 18-5-6. A deed made in violation of W. Va. Code § 18-5-6 is void. *See Dooley* at 768 (“It follows from what we have said that the transactions between Lawrence and the board of education were in violation of law and are void, and the deed made in pursuance thereof is void and of no effect.”)

The Defendants are not heirs of the original grantor who conveyed the School to the Board. By statute, the Board lacks the power to make a private sale of school property to a party other than to the original grantor, or his heirs or assigns. Therefore, as a matter of law, the Board’s private sale of the School to the Defendants violated W. Va. Code § 18-5-7(a), and the sale is void. There is no genuine issue because no evidence exists which would allow a reasonable jury to rule in favor of the Defendants, and so the Board is entitled to summary judgment in its favor.

**B. The Defendants’ counterargument is without merit because the School holds title to the property under W. Va. Code § 18-5-6.**

Although the Defendants agree that the private sale exceeded the school’s authority and is therefore void, they argue that they hold title to the School because the Board cannot present

a recorded deed. The Defendants' counterargument is without merit because the Board clearly holds title to the School under the Undisputed Possession Statute.

The Board came into possession of the School property on or around 1940. The prior owner of the School property was J. E. Hogshead. J. E. Hogshead conveyed property situate around the School property to Aubrey F. Reed by deed dated July 1<sup>st</sup>, 1940, [the Hogshead-Aubrey Deed]. In the Hogshead-Aubrey Deed, J.E. Hogshead explicitly excepted and did not convey several pieces of land. The School property was one such property excepted from the conveyance:

There is excepted and not conveyed by this deed the following lots, tracts or parcels of land heretofore sold and conveyed by the party of the first part as follows . . .

FIFTH: That certain lot or parcel of land conveyed, by the party of the first part to the Board of Education of Monroe County, by deed bearing date the \_\_\_\_ day \_\_\_\_\_, 19\_\_\_\_, and not yet of record and containing Eight Tenths (8/10) of an acre and bounded and described as follows . . .

Beginning at a gum near the branch N 15 E 206 ft. to a fence post by a driveway and with the same S 65-½ E 160 ft. to point in the middle of the draft road and with the same S 8-½ W 191 ft. to a point near the left hand side of the same and leaving the road N 81-½ W 137 ft. to a stake on the bank of the above named branch and with the same N 47 W 50 ft. to the beginning.

The Deed clearly manifests both an intent to convey the disputed School property to the Board, and the intent to except the property from the Hogshead-Aubrey conveyance.

The Defendants argue that the lack of dates in the above provision, and the absence of a deed recorded to substantiate J.E. Hogheads's conveyance to the Board, amount to a nullification of the above provision, which excepts the property from the Hogshead-Aubrey conveyance. The Defendants postulate that the School property transferred from Hogshead to Reed, and never to the Board. The Defendants further argue that when they purchased the real

property from Reed's estate, that they became the owners of the School. In summation, the Defendants argue that, although the deed between the Board and themselves is void, they are the rightful owners of the school.

The Defendants are incorrect because the Hogshead-Aubrey Deed unequivocally excepted the School property from the conveyance. Without regard to whether J. E. Hogshead properly conveyed the School property to the Board, Aubrey Reed never had any interest in the property. In effect, the Court agrees with the Defendants that the Hogshead-Aubrey Deed does not establish title in favor of the Board. The Court disagrees with the Defendants' assertion that the lack of dates in the exception, and the absence of a recorded deed in favor of the Board invalidate the clear exception in the Hogshead-Aubrey Deed.

J. E. Hogshead manifested the intent to convey the property to the Board, but there is no recorded deed formalizing such a transaction. The Board's title in the School does not derive from a deed, but rather, from the Undisputed Possession Statute. W. Va. Code § 18-5-6. The Board holds title to property when it can show that it has held undisputed possession of the property for at least five years . . . and title cannot be shown by any other claimant. W. Va. Code § 18-5-6. The Board has held undisputed title to the School for more than five years. The Defendants are unable to show title to the School. Therefore, the Board holds title to the School.

### CONCLUSION

The Board may only exercise powers expressly granted by statute. The Board exceeded its authority when it attempted to convey the School through private sale. Because the Board attempted to sell property through private sale to the Defendants, that deed is void. It is hereby **ORDERED and ADJUDGED** as follows:

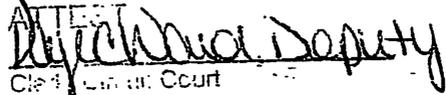
1. The Plaintiff's Motion for Summary Judgment is **GRANTED**.

2. The Deed from the Board of Education of Monroe County, to the Defendants, Gary Hoke and Barbara M. Hoke, dated May 4, 2011, of record in the office of the Clerk of the Monroe County Commission in deed book 266 at page 417, is hereby declared to be **VOID**, of no legal effect, and the same is hereby set aside. A copy of this order shall be placed of record in the aforesaid Clerk's Office, appropriately indexed, and referred to in the records, in such a manner, as to give notice to the general public, that the aforesaid deed has been declared void.
3. The Defendant's Motion for Summary Judgement is **DENIED**.
4. This is a final order and the Circuit Clerk is directed to remove this matter from the active docket of Court.
5. The Clerk is directed to provide a copy of this order to the parties, counsel of record and the office of the Clerk of the Monroe County Commission.

DATED: August 26, 2015.

  
**ROBERT A. IRONS, CIRCUIT JUDGE**

A TRUE COPY

~~ATTEST~~  
  
Deputy Clerk  
Circuit Court  
Monroe County, W.Va.