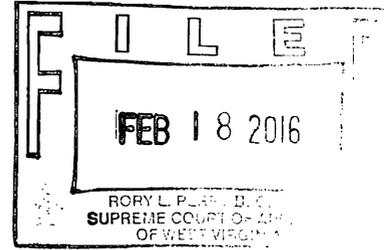


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Case No. 15-0972

**GARY D. HOKE AND BARBARA M. HOKE,
Defendants Below, Appellant**



v.

**THE BOARD OF EDUCATION OF THE COUNTY OF MONROE,
Plaintiff Below, Appellee**

**Appeal from the Circuit Court of Monroe County
The Honorable Robert Irons, Judge
Civil Action No. 14-C-26**

**APPELLANT'S REPLY BRIEF TO APPELLEE'S
SUMMARY RESPONSE TO THE APPELLANT'S BRIEF
AND ASSIGNMENTS OF ERROR**

Counsel for Appellant:

Barry L. Bruce (WV Bar No. 511)
Barry L. Bruce and Associates, L.C.
101 W. Randolph St.
P.O. Box 388
Lewisburg WV 24901
(304) 645-4182
(304) 645-4183 (Fax)
E-mail: bbruce@blblaw.org

Now come the Appellants, Gary D. Hoke and Barbara M. Hoke, by Counsel, Barry L. Bruce, Barry L. Bruce and Associates, L. C., and for their Reply Brief to Appellee's Response to Appellants' Brief and Assignments of error, state as follows:

1. The Appellee completely misses the Appellants' point as to the Deed from Hogshead to Appellant's uncle, Aubrey F. Reed. The point being there has never been produced by Appellee a Deed from Hogshead to the Appellee. The West Virginia Supreme Court of Appeals held in *Walls v. Clark*, 209 W. Va. 627, 550 S.E.2d 605(2001) at 612, quoting *Carnes v. Keener*, 48 W. Va. 56 (1900),

**Thus effective 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.**

The Court in *Clark, supra*, at 612, quoting *Evans v. Bottomlee*, 150 W. Va. 609 at 623, (1966) stated:

**Possession of a deed executed with all formalities is
prima facie evidence of delivery.**

The Appellee never presented any evidence that a deed was ever executed with any formalities and delivered to Appellee.

2. Without any evidence that a deed had been drafted, executed and delivered by Mr. Hogshead, the language of the deed to Mr. Aubrey Reed must be examined carefully as to what Mr. Hogshead's intent was in his conveyance to Mr. Reed. Two facts as to Mr. Hogshead's intent are readily discernible in the subject deed:

(a) Mr. Hogshead intended to convey all his land to Mr. Reed by the boundary,

Quoting from the second item , first paragraph, last sentence: “There being conveyed by this deed all of the land owned by the parties of the first part in Monroe County and conveyed as a boundary and not by acre.”

(b) The land excepted and not conveyed as indicated in the deed provided as stated by Appellee in his brief at page 3, line (1) had to be “heretofore conveyed.”

It is a fact that the only tract of the list not heretofore conveyed is the Board of Education tract.

3. The intent of Mr. Hogshead was to sell Mr. Reed all his property in Monroe County by the boundary. Mr. Hogshead’s intent was clearly stated the property that was excepted was conditioned on it being conveyed before the property was conveyed to Mr. Reed. The issue is not only the facts the Board of Education property did not list the date and year in the deed, that same was not recorded and never presented in any form. Therefore, the clear intent of Mr. Hogshead was to sell all his land to Mr. Reed that was not heretofore conveyed.

4. Since the Appellee has never produced a deed to the subject property nor produced any evidence of any payment for said property, Appellants held the property under West Virginia Code §18-5-6, which gives them claim to the property (unless title can be shown by any other claimant besides Appellants and there are none), which as stated above Appellants are a claimant under West Virginia Code §18-5-6.

5. The Appellee and the lower court misconstrue the legal significance of the 1983 lease among the Appellant’s uncle, the Appellee, and the Monroe County Commission dated the 14th day of June, 1983.

A. Obviously, the Appellee in 1983 wanted to relinquish the subject property to the

Monroe County Commission as a polling place because it had stopped being used for some time as a school and was vacant (See Lease at third Whereas).

B. It was noted the deed was not found in the Monroe County Clerk's office nor produced by Appellee.

C. Also, in the third Whereas to said lease, the Monroe County Board of Education desired to convey "any interest", emphasis added, it might have to the Monroe County Commission.

D. Explicated in said lease, the Board of Education and Monroe County Commission are acknowledging that Aubrey Reed was the owner/claimant to said property under West Virginia Code §18-5-6.

E. By signing the lease under all necessary formalities, the Monroe County Board of Education and Monroe County Commission are acknowledging that Appellants as heirs to Reed are the rightful owners of the property under West Virginia Code §18-5-7.(b) because the Appellees cannot prove they purchased the property or paid any monies for said property. The Appellees in the lease with Reed agreed to release any claim to the property if Reed would lease it to the Monroe County Commission for a polling place for \$1.00 in hand paid, which Reed did in said lease. The Appellees used the property since 1940 until 1983 without paying any known consideration. West Virginia Code §18-5-7.(b) provides that the Monroe County Board of Education may transfer the land to the original owner for the price it paid. Since the Appellee could not prove it paid anything, they were within their statutory right to agree to transfer their interest in the property to Reed.

F. The Appellee under §18-5-7.(f) , may "sell, lease or otherwise dispose of its property"

for a public use to the Monroe County Commission for an adequate consideration without considering the market value of the property. Since the subject vacant school property had no purchase price nor rent paid, it had no actual book value to the Appellee. Thus, a transfer to the Monroe County Commission was completely legal under these facts.

G. Certainly the three-party lease is completely enforceable because

(a) It recognized Appellees right to the property under §18-5-6;

(b) Acknowledged Appellant was the fee owner of the property under his uncle's estate;

(c) Provided for the transfer to the Monroe County Commission as long as it was being used for public purposes, and they returned it to Mr. Reed or his heirs when no longer used for public purposes. The property has not been used for public purposes since May 9, 2000. See Public Notice, Joint Exhibit, page 53.

H. Under operation of a valid lease agreement, the subject real property reverted to the Appellant as agreed to by the parties in said lease which is provided under West Virginia Code §18-5-7.(b).

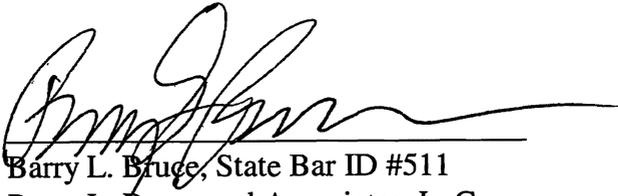
CONCLUSION

The Circuit Court erred in finding the subject property was conveyed to the Monroe County Board of Education or purchased by same. Said Court also erred in not considering the 1983 lease agreement among the Monroe County Board of Education, Monroe County Commission, and Mr. Reed, Appellant's predecessor in title (uncle). Said lease agreement is an attempt to rectify years of continuing a wrong by the parties to said lease. The lease agreement being a binding contract among the parties because each gave up legal rights as consideration for

executing same. This Court should remand this case back to the Circuit Court ordering same to consider the 1983 lease agreement as controlling.

APPELLANTS

BY COUNSEL

A handwritten signature in black ink, appearing to read 'Barry L. Bruce', written over a horizontal line.

Barry L. Bruce, State Bar ID #511
Barry L. Bruce and Associates, L. C.
P. O. Box 388
Lewisburg WV 24901
Tel. 304 645 4182 - Fax 304 645 4183

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

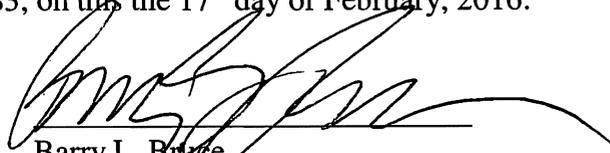
**GARY D. HOKE AND BARBARA M. HOKE,
APPELLANTS**

V. CASE NO. 15-0972

**THE BOARD OF EDUCATION OF COUNTY OF MONRE,
APPELLEES**

CERTIFICATE OF SERVICE

I, Barry L. Bruce, Barry L. Bruce and Associates, L. C., Counsel for Appellants, certify that I have on this date served upon Justin R. St. Clair, Prosecuting Attorney for Monroe County, a true and correct copy of the foregoing Appellants' Reply Brief to Appellee's Summary Response to Appellant's Brief and Assignments of Error, by U. S. Mail, first-class, postage prepaid to P. O. Box 740, Union WV 24983, on this the 17th day of February, 2016.



Barry L. Bruce
Barry L. Bruce and Associates, L. C.
P. O. Box 388
Lewisburg WV 24901
Tel. 304 645 4182
Fax 304 645 4183
e.mail bbruce@blblaw.org