

# SUPREME COURT OF APPEALS OF WEST VIRGINIA

## Hopkins v. DC Chapman Ventures, Inc.

228 W. Va. 213 (2011) · Decided November 10, 2011

### SUMMARY

The West Virginia Supreme Court of Appeals affirmed an order requiring the petitioners to obtain a new survey resolving a disputed property boundary. The court held that the circuit court had clarified, rather than modified, its prior final order and that any potential error was invited by the petitioners' request for greater specificity. The court also rejected the petitioners' argument that the respondent waived its objection to the later survey.

### CASE DETAILS

|                    |                                                                                                                                                                                                                                            |
|--------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT              | Supreme Court of Appeals of West Virginia                                                                                                                                                                                                  |
| JURISDICTION       | West Virginia                                                                                                                                                                                                                              |
| DECIDED            | November 10, 2011                                                                                                                                                                                                                          |
| DISPOSITION        | affirmed                                                                                                                                                                                                                                   |
| PROCEDURAL POSTURE | Petitioners appealed a circuit court order requiring them to obtain a new survey identifying the portion of disputed property they had acquired through adverse possession.                                                                |
| STANDARD OF REVIEW | The final order and ultimate disposition are reviewed for abuse of discretion; findings of fact are reviewed under a clearly erroneous standard; conclusions of law and questions involving statutory interpretation are reviewed de novo. |
| PRECEDENTIAL VALUE | published precedential opinion                                                                                                                                                                                                             |
| PARTIES            | J.D. Hopkins, David Hopkins v. DC Chapman Ventures, Inc.                                                                                                                                                                                   |

### TOPICS

adverse possession

title disputes

appellate procedure

waiver

civil procedure

### PRACTICE AREAS

real estate

civil procedure

appellate procedure

### QUESTIONS PRESENTED

1. Whether the circuit court lacked jurisdiction to enter its July 9, 2010 order clarifying the area previously determined to have been adversely possessed.
2. Whether the respondent waived its right to object to the petitioners' December 2, 2009 survey by failing to challenge the petitioners' interpretation during earlier appellate proceedings.

## HOLDINGS

1. The circuit court did not alter its prior findings or conclusions; it permissibly clarified and enforced its earlier orders by rejecting a survey that did not conform to those orders and by providing additional specificity at the petitioners' request. In any event, the petitioners invited any alleged error and waived their right to challenge the court's authority to provide the clarification.
2. The respondent did not waive its right to challenge the survey because the survey was not completed until after the earlier appellate proceedings ended, and the respondent objected promptly when the survey was later presented as inconsistent with the circuit court's prior orders.

## KEY QUOTATIONS

*“A party cannot invite the court to commit an error, and then complain of it.”* (228 W. Va. at 219)

*“A litigant may not silently acquiesce to an alleged error, or actively contribute to such error, and then raise that error as a reason for reversal on appeal.”* (228 W. Va. at 219)

*“Invited error is a cardinal rule of appellate review applied to a wide range of conduct.”* (228 W. Va. at 219)

*“Consequently, the petitioners waived any right to claim that the circuit court lacked jurisdiction when it entered the July 9, 2010, order.”* (228 W. Va. at 220)

## FACTUAL BACKGROUND

The parties owned adjoining property and disputed the location of their boundary line. The petitioners operated a motel building known as the 40s Building and claimed ownership of, or adverse-possession rights in, land surrounding it; the parties' surveys disagreed about the boundary. Following a bench trial, the circuit court accepted the respondent's survey, found that the petitioners had adversely possessed a limited portion of the property, and later determined that the petitioners' survey improperly expanded that area.

## PROCEDURAL HISTORY

DC Chapman Ventures sued the petitioners for trespass arising from a disputed property boundary. After a five-day bench trial, the Circuit Court of Nicholas County entered a December 5, 2007 order accepting the respondent's survey as the most accurate and finding that the petitioners had adversely possessed part of an encroachment tract. After petitioners sought clarification and unsuccessfully appealed, their surveyor completed a survey that the respondent disputed. The circuit court then entered a July 9, 2010 order requiring a new survey, which the Supreme Court of Appeals affirmed.

## DISPOSITION

affirmed

#### CASES CITED

- Burgess v. Porterfield, 196 W. Va. 178, 469 S.E.2d 114 (1996)
- Chrystal R.M. v. Charlie A.L., 194 W. Va. 138, 459 S.E.2d 415 (1995)
- Lambert v. Goodman, 147 W. Va. 513, 129 S.E.2d 138 (1963)
- Maples v. West Virginia Department of Commerce, 197 W. Va. 318, 475 S.E.2d 410 (1996)
- State v. Riley, 151 W. Va. 364, 151 S.E.2d 308 (1966)
- Proudfoot v. Dan's Marine Service, Inc., 210 W. Va. 498, 558 S.E.2d 298 (2001)
- State v. Johnson, 197 W. Va. 575, 476 S.E.2d 522 (1996)
- State v. Crabtree, 198 W. Va. 620, 482 S.E.2d 605 (1996)
- Shamblin v. Nationwide Mutual Insurance Co., 183 W. Va. 585, 396 S.E.2d 766 (1990)
- In re Tiffany Marie S., 196 W. Va. 223, 470 S.E.2d 177 (1996)
- Comer v. Ritter Lumber Co., 59 W. Va. 688, 53 S.E. 906 (1906)
- McElhinny v. Minor, 91 W. Va. 755, 114 S.E. 147 (1922)
- Smith v. Bechtold, 190 W. Va. 315, 438 S.E.2d 347 (1993)
- Young v. Young, 194 W. Va. 405, 460 S.E.2d 651 (1995)
- State v. Bowman, 155 W. Va. 562, 184 S.E.2d 314 (1971)
- State v. Swims, 212 W. Va. 263, 569 S.E.2d 784 (2002)
- State v. Carey, 210 W. Va. 651, 558 S.E.2d 650 (2001)
- State v. McIntosh, 207 W. Va. 561, 534 S.E.2d 757 (2000)
- Kester v. Small, 217 W. Va. 371, 618 S.E.2d 380 (2005)
- State v. Grimmer, 162 W. Va. 588, 251 S.E.2d 780 (1979)
- State v. Petry, 166 W. Va. 153, 273 S.E.2d 346 (1980)
- Wimer v. Hinkle, 180 W. Va. 660, 379 S.E.2d 383 (1989)
- State v. LaRock, 196 W. Va. 294, 470 S.E.2d 613 (1996)