

# SUPREME COURT OF APPEALS OF WEST VIRGINIA

## Smith v. Smith, 219 W. Va. 619

639 S.E.2d 711 (2006) · No. No. 33063 · Decided December 1, 2006

### SUMMARY

The Supreme Court of Appeals of West Virginia addressed a challenge to a deed conveying property and reserving the grantors' right to use a parking lot. The court held that parol evidence may establish mutual mistake even when a deed is clear and unambiguous, but affirmed denial of reformation because the evidence did not clearly and convincingly prove a mutual mistake. The court also interpreted the parking-lot reservation as ambiguous and limited the grantors' use to ingress and egress, occasional parking, and an annual apple butter festival subject to stated limitations.

### CASE DETAILS

|                       |                                                                                                                                                                                                                                           |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Appeals of West Virginia                                                                                                                                                                                                 |
| WRITING FOR THE COURT | Benjamin, Justice                                                                                                                                                                                                                         |
| JURISDICTION          | West Virginia                                                                                                                                                                                                                             |
| DECIDED               | December 1, 2006                                                                                                                                                                                                                          |
| DOCKET                | No. 33063                                                                                                                                                                                                                                 |
| DISPOSITION           | other                                                                                                                                                                                                                                     |
| PROCEDURAL POSTURE    | Appeal from an order entered after a bench trial in which the Circuit Court of Summers County denied reformation of a deed and limited the appellants' reserved use of a conveyed parking lot to ingress, egress, and occasional parking. |
| STANDARD OF REVIEW    | The final order and ultimate disposition after a bench trial are reviewed for abuse of discretion, underlying factual findings are reviewed for clear error, and questions of law are reviewed de novo.                                   |
| PRECEDENTIAL VALUE    | Published, precedential opinion of the Supreme Court of Appeals of West Virginia                                                                                                                                                          |
| PARTIES               | John Smith, Katherine Sue Smith v. Irma Smith                                                                                                                                                                                             |

### TOPICS

[reformation](#)[deeds](#)[real estate](#)[equitable relief](#)[appellate procedure](#)

## PRACTICE AREAS

real estate

property law

equitable remedies

appellate procedure

## QUESTIONS PRESENTED

1. Whether parol evidence may be admitted to establish mutual mistake and reform a clear and unambiguous deed.
2. Whether the appellants proved by the required heightened standard that the deed resulted from a mutual mistake concerning the property's boundaries.
3. Whether the deed's reservation of the appellants' right 'to use the parking lot' included uses beyond ingress, egress, and occasional parking, particularly an annual apple butter festival and continued bus parking.

## HOLDINGS

1. Parol evidence is admissible to establish and correct a mutual mistake in a clear and unambiguous deed because the parol evidence rule does not apply to evidence offered for that purpose.
2. To reform a clear and unambiguous deed for mistake, the mistake must be one of fact, mutual and common to both parties, the deed must fail to express the parties' obvious intention, and the mistake must be proved by strong, clear, unequivocal, and convincing evidence. The appellants failed to meet that burden.
3. The reservation is ambiguous and must be construed to allow the appellants' preexisting ingress-and-egress use, occasional parking, and a limited annual three-day apple butter festival, but not continued parking of their bus.

## KEY QUOTATIONS

*"We hold that to justify the reformation of a clear and unambiguous deed for mistake, the mistake must be one of fact, not of law; the mistake must be mutual and common to both parties to the deed; the unambiguous deed must fail to express the obvious intention of the parties; and the mutual mistake must be proved by strong, clear and convincing evidence."* (639 S.E.2d at 717-18)

*"Being so, the deed reservation is to be strictly construed against the grantors and in favor of the grantee and is to be clarified by resort to the intention of the parties ascertained from the deed itself, the circumstances surrounding its execution, as well as the subject matter and the parties' situation at the time of the execution of the deed."* (639 S.E.2d at 719)

## FACTUAL BACKGROUND

The appellants conveyed the Sewell Valley Bank Building property to Irma Smith by an August 22, 2001, deed containing a metes-and-bounds description and reserving the appellants' right to use the parking lot. The appellants later claimed that they and Irma had mutually misunderstood the property's boundaries, but the evidence showed that the deed description had been read at closing, the appellants had not clearly communicated a different boundary, and Irma understood that she was acquiring the parking lot. The parties also disagreed

about the scope of the parking-lot reservation, including the appellants' continued use for ingress and egress, occasional parking, a bus, and an annual apple butter festival.

### PROCEDURAL HISTORY

John and Katherine Smith sued to reform an August 22, 2001, deed based on alleged mutual mistake concerning the conveyed property's boundaries. Irma Smith denied mutual mistake and sought a declaratory judgment limiting the deed's parking-lot-use reservation. After a bench trial, the circuit court denied reformation, ruled that parol evidence of mutual mistake was inadmissible because the deed was unambiguous, and limited the parking-lot reservation to ingress, egress, and occasional parking. The Supreme Court of Appeals affirmed the reformation ruling and most of the reservation ruling, but reversed insofar as the order barred an annual three-day apple butter festival.

### DISPOSITION

other

### CASES CITED

- Trimboli v. Board of Education, 167 W. Va. 792, 280 S.E.2d 686 (1981)
- Public Citizen, Inc. v. First National Bank in Fairmont, 198 W. Va. 329, 480 S.E.2d 538 (1996)
- Edmiston v. Wilson, 146 W. Va. 511, 120 S.E.2d 491 (1961)
- Donato v. Kimmins, 104 W. Va. 200, 139 S.E. 714 (1927)
- Farabaugh v. Rhode, 305 Mich. 234, 9 N.W.2d 562 (1943)
- Koen v. Kerns, 47 W. Va. 575, 35 S.E. 902 (1900)
- Johnston v. Terry, 128 W. Va. 94, 36 S.E.2d 489 (1946)
- Estate of Tawney v. Columbia Natural Resources, L.L.C., 219 W. Va. 266, 633 S.E.2d 22 (2006)
- Meadows v. Belknap, 199 W. Va. 243, 483 S.E.2d 826 (1997)