

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Jannetta Cook, Administratrix of the Estate of Jackie Epperson,  
deceased v. Charmco Riverside, Inc.; Sherri Yearego Gilkeson; and  
Jime Gilkeson

Cook v. Charmco Riverside · No. No. 15-0187 · Decided January 11, 2016

SUMMARY

The Supreme Court of Appeals of West Virginia affirmed summary judgment for the defendants in an action concerning an alleged ownership interest in real property. The Court held that the circuit court properly exercised jurisdiction, and that the plaintiff’s claim was barred by the Statute of Frauds because no written instrument established the decedent’s ownership interest.

CASE DETAILS

|                       |                                                                                                                                                                                          |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Appeals of West Virginia                                                                                                                                                |
| WRITING FOR THE COURT | Chief Justice Menis E. Ketchum; Justice Robin Jean Davis; Justice Brent D. Benjamin; Justice Margaret L. Workman; Justice Allen H. Loughry II                                            |
| JURISDICTION          | West Virginia                                                                                                                                                                            |
| DECIDED               | January 11, 2016                                                                                                                                                                         |
| DOCKET                | No. 15-0187                                                                                                                                                                              |
| DISPOSITION           | affirmed                                                                                                                                                                                 |
| PROCEDURAL POSTURE    | Petitioner appealed the Circuit Court of Greenbrier County's order granting respondents' motion for summary judgment.                                                                    |
| STANDARD OF REVIEW    | Summary judgment is reviewed de novo. Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. |
| PRECEDENTIAL VALUE    | Memorandum decision; no substantial question of law and no prejudicial error identified.                                                                                                 |
| PARTIES               | Jannetta Cook, Administratrix of the Estate of Jackie Epperson, deceased v. Charmco Riverside, Inc., Sherri Yearego Gilkeson, Jime Gilkeson                                              |

TOPICS

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## PRACTICE AREAS

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## QUESTIONS PRESENTED

1. Whether the circuit court lacked jurisdiction or otherwise improperly considered the action because the estate was probated in Nicholas County.
2. Whether summary judgment was proper where the estate offered only oral testimony and no writing to establish Epperson's alleged ownership interest in real property.

## HOLDINGS

1. The circuit court properly exercised jurisdiction; its reference to Nicholas County concerned the proper venue for matters pertaining to the estate, not a lack of subject matter jurisdiction.
2. Summary judgment for respondents was proper because the estate produced no writing signed by the party to be charged that evidenced Epperson's alleged ownership interest in the real property.

## KEY QUOTATIONS

*“Jurisdiction deals with the power of the court, while venue deals with the place in which an action may be tried.” (at 2)*

*“Summary judgment is appropriate if, from the totality of the evidence presented, the record could not lead a rational trier of fact to find for the nonmoving party, such as where the nonmoving party has failed to make a sufficient showing on an essential element of the case that it has the burden to prove.” (at 3)*

## FACTUAL BACKGROUND

The Estate of Jackie Epperson was offered for probate in Nicholas County, West Virginia. The administratrix claimed that the estate owned a one-half interest in real property located in Greenbrier County, with respondents owning the other half. The estate produced oral testimony and an affidavit supporting the claimed ownership but no written contract, lease, deed, or other instrument evidencing Epperson's ownership interest.

## PROCEDURAL HISTORY

The estate was offered for probate in Nicholas County. The administratrix filed an action in Greenbrier County claiming that the estate owned a one-half interest in real property there. After discovery, respondents moved for summary judgment, arguing that the claim was barred by the Statute of Frauds because no written contract, lease, or other instrument evidenced the alleged ownership interest. The circuit court granted summary judgment, also commenting that Greenbrier County was an improper forum for matters pertaining to the estate. The Supreme Court of Appeals affirmed.

## DISPOSITION

affirmed

#### CASES CITED

- Painter v. Peavy, 192 W.Va. 189, 451 S.E.2d 755 (1994)
- Fleet v. Webber Springs Owners Ass'n, Inc., 235 W.Va. 184, 772 S.E.2d 369 (2015)
- Aetna Cas. & Sur. Co. v. Federal Ins. Co. of New York, 148 W.Va. 160, 133 S.E.2d 770 (1963)
- Hansbarger v. Cook, 177 W.Va. 152, 157, 351 S.E.2d 65, 70 (1986)
- Williams v. Precision Coil, Inc., 194 W.Va. 52, 459 S.E.2d 329 (1995)

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