

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Alan Reed Talbott v. John David Talbott

No. 17-0832 (W. Va. June 8, 2018) · No. No. 17-0832 · Decided June 8, 2018

SUMMARY

The West Virginia Supreme Court of Appeals affirmed an order denying Alan Reed Talbott’s Rule 59(e) motion to alter or amend an \$85,000 judgment and an award of attorney’s fees and costs. The court held that Talbott waived his statute-of-limitations argument by failing to renew it after the amended complaint or request a related jury instruction, and it declined to consider inadequately supported arguments concerning the setting aside of deeds and successor-in-interest liability. The underlying jury verdict found tortious interference with an expected inheritance and breach of fiduciary duties involving the parties’ mother’s deeds, will, and power of attorney.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Chief Justice Margaret L. Workman; Justice Robin Jean Davis; Justice Menis E. Ketchum; Justice Allen H. Loughry II; Justice Elizabeth D. Walker
JURISDICTION	West Virginia
DECIDED	June 8, 2018
DOCKET	No. 17-0832
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petitioner appealed the Circuit Court of Upshur County's order denying his West Virginia Rule of Civil Procedure 59(e) motion to alter or amend a judgment entered after a jury trial.
STANDARD OF REVIEW	An appeal from a Rule 59(e) motion to alter or amend a judgment is reviewed under the same standard applicable to the underlying judgment.
PRECEDENTIAL VALUE	Unpublished memorandum decision; the opinion states that it is issued under Rule 21 and finds no substantial question of law.
PARTIES	Alan Reed Talbott v. John David Talbott

TOPICS

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QUESTIONS PRESENTED

1. Whether petitioner preserved a statute-of-limitations challenge after respondent filed an amended complaint alleging concealment and delayed discovery.
2. Whether petitioner adequately supported his challenge to setting aside the deeds under West Virginia Rule of Appellate Procedure 10(c)(7).
3. Whether petitioner adequately supported his argument that liability concerning the power of attorney and misuse of funds could be asserted only by Santee's successor in interest.
4. What standard of review applies to an appeal from denial of a Rule 59(e) motion to alter or amend a judgment.

HOLDINGS

1. Petitioner waived the statute-of-limitations issue by failing, after the amended complaint was filed, to move to dismiss the amended complaint or request a jury instruction concerning the statute of limitations.
2. The court declined to consider petitioner's challenge because he failed to support it with specific citations to the record and failed to request a statute-of-limitations jury instruction.
3. The court declined to address the merits because petitioner failed to comply with Rule 10(c)(7) and failed to cite legal authority supporting his successor-in-interest argument.
4. An appeal from denial of a Rule 59(e) motion is reviewed under the same standard applicable to the underlying judgment.

KEY QUOTATIONS

“Because petitioner failed to raise this issue following the filing of the amended complaint, we find that he waived any such alleged error.” (3)

“A skeletal ‘argument’, really nothing more than an assertion, does not preserve a claim. . . . Judges are not like pigs, hunting for truffles buried in briefs.” (4)

FACTUAL BACKGROUND

Betty June Talbott Santee, who had been diagnosed with short-term memory loss and moderate dementia, executed deeds conveying her real estate and mineral interests to petitioner Alan Reed Talbott and executed a will favoring him in August 2011. Petitioner also became her attorney-in-fact and allegedly concealed the deeds and will from respondent John David Talbott until after their mother's death in 2014. A jury found that petitioner tortiously interfered with respondent's expectation of inheritance and breached fiduciary duties, and the circuit court set aside the deeds and will.

PROCEDURAL HISTORY

Respondent sued petitioner to invalidate deeds and a will allegedly procured through undue influence, duress, and fraud, and asserted tortious interference with an inheritance and breach of fiduciary duties. After a three-day jury trial, the circuit court entered judgment awarding respondent \$85,000, ordering petitioner to turn over \$75,000 to the estate, setting aside the deeds and August 2011 will, and directing probate of an earlier will. The circuit court denied petitioner's Rule 59(e) motion, concluding that he had waived the statute-of-limitations defense and determining that respondent was a successor in interest; the Supreme Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Wickland v. American Travellers Life Ins. Co., 204 W. Va. 430, 513 S.E.2d 657 (1998)
- James M.B. v. Carolyn M., 193 W. Va. 289, 456 S.E.2d 16 (1995)
- Dunn v. Rockwell, 225 W. Va. 43, 689 S.E.2d 255 (2009)
- Gaither v. City Hosp., Inc., 199 W. Va. 706, 487 S.E.2d 901 (1997)
- State v. Guthrie, 205 W. Va. 326, 344, 518 S.E.2d 83, 101 (1999)
- Wimer v. Hinkle, 180 W. Va. 660, 663, 379 S.E.2d 383, 386 (1989)
- State v. LaRock, 196 W. Va. 294, 316, 470 S.E.2d 613, 635 (1996)
- Rodriguez v. Consolidation Coal Co., 206 W. Va. 317, 327, 524 S.E.2d 672, 682 (1999)
- United States v. Dunkel, 927 F.2d 955, 956 (7th Cir. 1991)
- Teague, 35 F.3d at 985 n. 5
- State v. Honaker, 193 W. Va. 51, 56 n. 4, 454 S.E.2d 96, 101 n. 4 (1994)
- State, Dep't. of Health and Human v. Robert Morris N., 195 W. Va. 759, 765, 466 S.E.2d 827, 833 (1995)