

IN THE CIRCUIT COURT OF WAYNE COUNTY, WEST VIRGINIA

DONALD GENE MAYNARD,

PLAINTIFF,

v.

**DONALD MAYNARD and
SANDY MARIE MAYNARD,
CHERRY LYNN STEPHENS,
AND SANTANA MARIE MAYNARD,
CO-GUARDIANS and CO-CONSERVATORS
OF DONALD MAYNARD,**

DEFENDANTS.

Civil Action No.: 19-C-66

Judge: James H. Young, Jr.

FINAL ORDER

This case came on for bench trial beginning on September 20, 2021 and continuing on November 15, 2021, before the honorable James H. Young, Jr. Present at the trial were Plaintiff, Donald Gene Maynard, present in person and by Counsel, Cayman Jarrell; Defendant, Donald Maynard (Father), not appearing in person but present by Counsel Michael S. Bailey; Defendants Cherry Maynard, Sandy Maynard, and Santana Maynard, in person and by Counsel, Michael S. Bailey; Defendants Sandy Maynard and Santana Maynard were also represented at the trial by Gary A. Matthews, Esquire. Due to the similarity of the names of the Plaintiff and Defendant, Donald Maynard, Plaintiff will be hereinafter referred to as "Plaintiff" or "Donald Gene Maynard (Son)," and the Defendant will be hereinafter referred to as "Donald Maynard (Father)."

The parties, by counsel, proceeded with opening statements, followed by the presentation of evidence on behalf of Plaintiff in his case in chief. The Plaintiff called the following witnesses: Plaintiff, Donald Gene Maynard (Son), Cherry Stephens, and Mason Stephens. At the

close of this testimony, Plaintiff rested his case. Defendants moved the Court for judgment as a matter of law both after the Plaintiff's testimony, which was denied as premature, and at the close of the Plaintiff's evidence on the grounds that Plaintiff had failed to establish a prima facie claim, which motion was denied.

The Defense did not call any witnesses or present any evidence and then rested. The Defendant again moved the Court for judgment as a matter of law. The Court again denied such motion and instructed the parties to submit proposed Findings of Fact and Conclusions of Law within 10 days.

The Court having reviewed the submissions of the parties, heard the arguments and testimony in this case, and having received and considered the evidence submitted, and being further advised in the premises, finds and concludes as follows:

FINDINGS OF FACT

1. The Findings of Fact found upon the testimony of witnesses and evidence produced by Plaintiff are uncontroverted, as Defendants presented no evidence.
2. Defendant Donald Maynard (Father) has been deemed and declared a protected person lacking capacity by Order of this Court entered on or about May 22, 2018 (Civil Action No. 18-G-8) and remains as such at the time of these proceedings. Accordingly, this case is prosecuted through his co-conservators, Sandy Maynard, Santana Maynard, and Cherry Stephens. Defendant Donald Maynard (Father) is Plaintiff's father. Sandy Maynard, Santana Maynard, and Cherry Stephens are Plaintiff's sisters.
3. The litigation pertains to a dispute over the legal and equitable interests in real property located in Wayne County, West Virginia. Plaintiff argues that Defendant Donald Maynard (Father), gave title to the property to Plaintiff as a gift by deed in 2012. In the alternative, Plaintiff claims that he has adversely possessed all or part of the property since 1990. If title did not transfer to him, Plaintiff claims that he made improvements to the property for which Defendant Donald

Maynard (Father) has been unjustly enriched.

4. On or about February 9, 1989, Plaintiff acquired land, which is of record in the Office of the Clerk of Wayne County in Deed Book 524 at Page 738, adjoining Defendant Donald Maynard's (Father) property. The land did not provide access to any improved roadway. Defendant Donald Maynard (Father), expressed to Plaintiff that he would give Plaintiff land adjacent to Plaintiff's property. This is the property in question in the present matter.
5. Relying on Defendant Donald Maynard's (Father) assurances that the property in question was Plaintiff's, Plaintiff has made improvements to the land.
6. In or around 1989, Plaintiff began construction to develop a road on the property in question. The construction included clearing trees, setting off dynamite, and extensive gravel fill-ins and was paid for by the Plaintiff. Additionally, Plaintiff has continued to maintain the road since it was constructed.
7. In or around 1990, Plaintiff fenced in the property in question, including three gates, which restricted others from accessing the road Plaintiff constructed on the property. The costs for the fencing and gates were paid for by Plaintiff.
8. In or around 1997, Plaintiff paid for the construction of three relay stations on the property in question to allow for city water to be pumped onto the property.
9. In or around 1997, Plaintiff paid for preparations on the land necessary to run electricity to the property, including clearing 10 feet of trees that run along each side of the road on the property.
10. In or around 2008, Plaintiff paid approximately one hundred ten thousand dollars (\$110,000.00) to have a home built for his daughter on the subject property.
11. In 2012, Donald Maynard (Father) signed a deed regarding the subject property. Donald Maynard (Father) hired True Line Surveying, Inc. to survey the subject property. Donald Maynard (Father) walked the subject property with Plaintiff, driving stakes into the ground. Wayne County Surveyor, Randy Thompson, acknowledged the survey. Donald Jarrell, Attorney

at Law, prepared a deed conveying the real estate, which is the subject of this litigation, from Donald Maynard (Father) unto Plaintiff. (See Plaintiff's Exh. #5).

12. A deed substantively identical to the first deed prepared by Donald Jarrell was prepared by David Lycans, Attorney at Law. This deed was signed by Donald Maynard (Father). David Lycans's secretary, Pilar Harrison offered to record the deed for Plaintiff. Plaintiff paid David Lycans's office for the recording and filing fees of the deed. The deed was never recorded. Plaintiff paid for the preparation of the deed prepared by David Lycans, along with the recording cost.
13. Prior to the recording of the deed, Sandy Maynard and Cherry Lynn Stephens retrieved the deed from Pilar Harrison at David Lycans's office.
14. The executed deed from Donald Maynard (Father) to Plaintiff is now missing.
15. Prior to the drafting and execution of the deed, Plaintiff had actual and exclusive possession of the subject property.
16. After the drafting and execution of the deed, Plaintiff had actual and exclusive possession of the subject property.
17. The draft of the deed prepared by Attorney, Donald Jarrell, contains the language "EXCEPTING and RESERVING, however, unto Donald Maynard a life estate of the real estate hereby conveyed, for and during DONALD MAYNARD'S lifetime. This is a will deed and this deed will not be in effect while Donald Maynard, party of the first part is living." The Court additionally finds that this language is inconsistent in that it excepts and reserves a life estate and then, expresses "will deed" language. This particular language in the deed does not show a clear intention to create a "will deed." This deed was not recorded.
18. Donald Maynard (Father) executed two deeds to two of Plaintiff's children, Jeremy Maynard and Tiffany Brunty. These deeds were recorded. Both deeds reserved a life estate to Plaintiff, Donald Gene Maynard (Son).

19. In or around 2014, Donald Maynard (Father) had a Last Will and Testament prepared. This is the last known Will of Donald Maynard (Father), who is still living. Donald Maynard (Father), is now incapacitated due to dementia.
20. Donald Maynard (Father), discussed his Last Will and Testament with Plaintiff. Plaintiff was asked what property Plaintiff would like to receive in Donald Maynard's (Father), Will. Plaintiff, knowing he was already deeded the subject property, told Donald Maynard (Father), he would like the Mathis Ridge Property.
21. Cherry Stephens was present when Donald Maynard (Father) and Plaintiff discussed ownership of the real estate in question, and Donald Maynard (Father) expressed he had conveyed the real estate unto Plaintiff.
22. Cherry Stephens saw the executed deed that had been prepared by David Lycans.
23. At a later Guardianship proceeding, Michael S. Bailey, Attorney at Law, read the Last Will and Testament of Donald Maynard (Father). When Plaintiff realized there was no mention of the deed conveying him the subject property, which was supposed to be held with the Last Will and Testament, Plaintiff commenced this action. Plaintiff has requested the deed executed by Donald Maynard (Father), be produced by Defendants, but said deed has not been produced.
24. The Pleadings in this matter asserted causes of action for unjust enrichment and adverse possession.
25. Though not expressly mentioned in the Pleadings, Plaintiff presented evidence under the theory of a lost document at trial. The Defendants did not offer any evidence to contradict this evidence or object to the presentment of this evidence.

CONCLUSIONS OF LAW

Amendments to Conform to the Evidence

1. Rule 15(b) of the Rules of Civil Procedure states:

(b) Amendments to Conform to the Evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be

treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice the party in maintaining the party's action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

2. The failure to amend a pleading "does not affect the result of the trial of these issues" has generally been interpreted, in West Virginia and nationwide, to mean that appellate courts will deem the pleadings amended to conform to the evidence. In Syllabus Point 4 of *Floyd v. Floyd*, 148 W.Va. 183 (1963), the Court said (with emphasis added):

Under both the old trial procedure in effect in West Virginia prior to July 1, 1960, and the new procedure in effect on and after that date as Rules of Civil Procedure, pleadings could be amended under control of the court during the trial of a case to encompass an issue raised by the evidence although not in the pleadings; but if an issue is so raised in trial and trial by consent of the parties without such amendment, it is treated as if it had been raised in the pleadings and the failure to amend will not affect the verdict.

3. Rule governing amendments to conform pleadings to the evidence is to be liberally construed. *Holiday Plaza, Inc. v. First Federal Sav. and Loan Ass'n of Clarksburg*, 1981, 168 W.Va. 356 (1981).
4. The Plaintiff's pleadings set forth his case on theories of adverse possession and unjust enrichment. However, during the trial, a significant portion of Plaintiff's evidence was presented to establish that the deed conveying the subject property from Donald Maynard (Father) to Plaintiff was lost or stolen.
5. The Defendants did not object to the entry of the evidence presented on the lost or stolen deed. Additionally, the Defendants did not present any evidence to controvert the evidence of Plaintiff regarding the lost or stolen deed.
6. The issue of a lost or stolen document was tried by the implied consent of the parties.

Therefore, the lost document theory shall be treated in all respects as if it had been raised in the pleadings.

Lost Document

1. W. Va. Code § 36-1-1, commonly referred to as the “Statute of Frauds,” requires a deed or will to create any estate of inheritance or other interest in real estate.
2. Deed: Any instrument which shows on its face a present intent to pass the title to, or any interest, present or future, in real property, shall, if properly executed and delivered, be given effect according to its manifest intent. W. Va. Code § 36-3-4.
 - a. Written Instrument: In order to pass title to an estate by deed, there must be operative words which manifest intent to transfer the property described in the instrument, and the intent must be disclosed by language of the deed and not by the mere act of the parties. *Erwin v. Bethlehem Steel Corp.*, 134 W.Va. 900 (1950).
 - b. Adequate Description of the Land: A deed of conveyance, in order to pass title, must contain description of property being conveyed which sufficiently identifies the land, either by language of granting clause itself or by reference to extrinsic facts which render the description certain, and same rule applies to exceptions from granting clause of deed. *Sally-Mike Properties v. Yokum*, 175 W.Va. 296 (1985).
 - c. Executed by the Grantor
 - d. Delivery: Delivery of a deed by the grantor with intent that it take effect as his deed and its acceptance, either express or implied, by the grantee are essential to its validity. 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. *Walls v. Click*, 209 W. Va. 627 (2001).
3. For parol testimony to establish title to land through an alleged lost instrument, proof of its execution, contents, and loss must be conclusive. *Drake et al. v. Parker et al.*, 122 W. Va. 145

(1940).

4. To establish or set up a lost instrument rising to the dignity and importance of a muniment of title, the evidence of its former existence, loss, and contents must be clear, strong, and conclusive. *Telluric Co. v Bramer et al.*, 76 W. Va. 185 (1915).
5. Equity will entertain the suit of a grantee of real estate to establish a lost deed, when such relief is necessary for the protection of his rights in respect to the land granted, although no other relief be demanded by his bill. *Cartwright v. Cartwright et al.*, 70 W. Va. 507 (1912).
6. Delivery of a deed is an essential element of its due execution; and the burden is on him who claims title under a lost deed to prove its delivery. But it may be established by proof of the grantor's declarations and admissions. *Id.*
7. If delivery of a deed to the grantee is fully proven by other competent witnesses, the grantee is then competent to prove its subsequent loss. *Id.*
8. Plaintiff testified that he went to Donald Jarrell, Attorney at Law to have him prepare a deed for the subject property, conveying the property from his Donald Maynard (Father) to Plaintiff. The deed was prepared (See Plaintiff's Exh. 5). After preparation of the deed but prior to execution, Plaintiff's family requested the deed be prepared and executed at Attorney David Lycans's office. Plaintiff agreed. There is sufficient testimony establishing that the deed was prepared by Attorney David Lycans, and that the deed conveyed, from Donald Maynard (Father) to Plaintiff, the same property description as the deed prepared by Attorney Donald Jarrell.
9. The property description was the description that was drafted by Randy Thompson, Wayne County Surveyor (See Plaintiff's Exh. 6). The property description was drafted from the survey done on the property by True Line Surveying, Inc. (See Plaintiff's Exh. 4). The survey was done by following the stakes placed in the ground by Donald Maynard (Father) to show the surveyor. Cherry Stephens testified that she was present when Donald Maynard

(Father) and Plaintiff discussed ownership of the real estate in question, and Donald Maynard (Father) expressed he had conveyed the real estate unto Plaintiff.

10. Cherry Stephens testified that she saw the executed deed, signed by the Grantor, Donald Maynard (Father).
11. Plaintiff paid Attorney David Lycans for the preparation of the deed, as well as a recording fee to have David Lycans office record the deed for Plaintiff. Plaintiff paid the fee to have the deed recorded and left the executed deed with Pilar Harrison at David Lycans office. The Plaintiff had possession of the executed deed and left it with his attorney, after paying the attorney to record the deed for him.
12. Cherry Stephens testified that Pilar Harrison called to tell Sandy Maynard and/or Cherry Stephens that the subject deed was at David Lycans's office. Cherry Stephens testified that she and Sandy Maynard drove to David Lycans's office to retrieve the deed before it could be recorded. The deed has not been seen by Plaintiff since he left it at the attorney's office. Plaintiff has requested that Defendants produce the deed, but the deed has not been produced.
13. Any transfer on death deed properly recorded in an office of the clerk of a county commission before the effective date of this article containing language that shows a clear intent to designate a transfer on death beneficiary shall be liberally construed to do so. W. Va. Code § 36-12-15. The subject deed does not meet the requirements of the Uniform Real Property Transfer on Death Act, as it is not properly recorded and does not show a clear intent. The subject deed was executed prior to the Act becoming effective; therefore, W. Va. Code § 36-12-15, requiring a recording and clear intent to designate a transfer on death beneficiary, is applicable. The deed is not on record in the Wayne County. Additionally, the language contained in the deed is inconsistent. It excepts and reserves a life estate to the Grantor and states that the deed is a "will deed and this deed will not be in effect while Donald Maynard, party of the first part is living." The evidence produced at trial clearly

shows the intention of Defendant, Donald Maynard (Father) to grant title to the land to Plaintiff at the time the deed was executed. The evidence included, but is not limited to:

- a. Plaintiff having actual and exclusive possession of the property since 1989, to the detriment of Grantor.
- b. Testimony from Cherry Stephens that she was present when Defendant Donald Maynard (Father) expressed that he had already conveyed the subject property to Plaintiff.
- c. Defendant Donald Maynard (Father) conveyed other property to his grandchildren (Plaintiff's children) reserving a life estate for Plaintiff.

14. A transfer on death deed: (1) Except as otherwise provided in subdivision (2) of this section, must contain the essential elements and formalities of a properly recordable inter vivos deed; (2) Must state that the transfer to the designated beneficiary is to occur at the transferor's death; and (3) Must be recorded before the transferor's death in the office of the clerk of the county commission in the county where the property is located: Provided, That, notwithstanding section two, article twenty-two, chapter eleven of this code, a transfer on death deed is exempt from the payment of excise tax on the privilege of transferring real estate for the reason that no interest in the property is at the time of recording being passed to the beneficiary and the deed remains revocable until the death of the transferor. W. Va. Code § 36-12-15. The subject deed was not recorded. The Defendant Donald Maynard (Father) is still living, but incapacitated due to dementia.

15. The language of the deed "EXCEPTING and RESERVING, however, unto Donald Maynard a life estate of the real estate hereby conveyed, for and during DONALD MAYNARD'S lifetime. This is a will deed and this deed will not be in effect while Donald Maynard, party of the first part is living." does not show clear intent. It is inconsistent and goes against the evidence of intent presented in this matter at trial.

Accordingly, Plaintiff has established the execution, contents, and loss of the deed conclusively. The evidence was clear and strong on all of the required elements. Additionally, the Defendants did not present any witnesses or evidence to contradict Plaintiff's evidence. Defendants did not object to the presentment of this evidence by Plaintiff. Therefore, the Court FINDS that Plaintiff is GRANTED title to the subject property under the theory of lost document.

Adverse Possession

1. Under West Virginia law, "[t]he burden is upon the party who claims title by adverse possession to prove by clear and convincing evidence all elements essential to such title." Syl. Pt. 2, *Brown v. Gobble*, 196 W. Va. 559 (1996).
2. Further, "[o]ne who seeks to assert title to a tract of land under the doctrine of adverse possession must prove each of the following elements for the requisite statutory period: (1) That he has held the tract adversely or hostilely; (2) That the possession has been actual; (3) That it has been open and notorious . . . ; (4) That possession has been exclusive; (5) That possession has been continuous; [and,] (6) That possession has been under a claim of title or color of title. *Brown v. Gobble*, 196 W. Va. 559, 566.
3. The requisite statutory period is ten (10) years. W. Va. Code § 55-2-1.
4. In order to prove the first element of "adverse" or "hostile", the person claiming adverse possession must prove that his possession of the property was against the right of the true owner and is inconsistent with the title of the true owner. *Somon v. Murphy Fabrication & Erection, Co.*, 160 W. Va. 84, 90 (1977). Where one by mistake occupies land up to a line beyond his actual boundary, believing it to be the true line, such belief will not defeat his right to claim that he holds such land adversely or hostilely under the doctrine of adverse possession. *Id.* Since 1990, the Plaintiff has had a fence surrounding the subject property, including three gates that excluded others from using said property. The Plaintiff had actual and exclusive possession to the detriment of the Defendant Donald Maynard (Father). Plaintiff did so under a mistaken belief

that his father's word was sufficient to ensure the land was Plaintiff's.

5. For "actual possession", there must be an exercising of dominion over the property and the qualities of the acts of dominion are governed by the location, conditions, and reasonable uses which can be made of the property. *Id.* The Plaintiff has exercised dominion over the subject property for himself and his children, including construction and maintenance, to the exclusion of the Defendants for the statutory time period. The Plaintiff fenced in the subject property, which included three gates. The Plaintiff has paid for electric lines to be run to the property. The Plaintiff has constructed three relay stations to have water pumped to the property. The Plaintiff has done so for the benefit of himself and his children.
6. For adverse possession of property to be "open and notorious," it is generally meant that the acts asserting dominion over the property must be of such a quality as to put a person of ordinary prudence on notice of the fact that the disseisor is claiming the land as his own, and proof of actual knowledge on the part of the true owner is ordinarily not required. *Somon v. Murphy Fabrication & Erection, Co.*, 160 W. Va. 84 (1977). The Plaintiff has constructed structures, power lines, a road, and placed a fence all around the subject property. This would be open and notorious for all to see.
7. In respect to the doctrine of adverse possession, the element of "exclusive" possession relates to the fact that the disseisor must show that others do not have possession, although this does not mean that sporadic use by others defeats this element since it only need be the type of possession which would characterize an owner's use; exclusivity has also been applied to the concept of dominion over the entire tract, but this may not in all circumstances be essential. *Somon v. Murphy Fabrication & Erection, Co.*, 160 W. Va. 84 (1977). There is no evidence that anyone other than Plaintiff and his children have possessed any portion of the subject property.
8. For adverse possession to be "continuous" is merely to state that it must last for the statutory period, which is the fundamental basis for the doctrine of adverse possession. *Somon v. Murphy*

Fabrication & Erection, Co., 160 W. Va. 84 (1977). Plaintiff's claim to the subject property has been continuous since, at least, 1990 when the Plaintiff constructed the fence around the subject property. The Plaintiff has continued to improve and maintain the subject property since that time.

- 9 While the courts, in respect to adverse possession, have not been entirely consistent in observing the distinction between the concepts of claim of right and color of title, there is a generally recognized difference: a claim of title has generally been held to mean nothing more than that the disseisor enters upon the land with intent to claim it as his own, whereas color of title imports there is an instrument giving the appearance of title but which instrument in point of law does not. *Somon v. Murphy Fabrication & Erection, Co.*, 160 W. Va. 84 (1977). The Plaintiff has claimed the subject property as his own since 1989. Plaintiff has shown intent by his development, improvement, and maintenance of the land, as well as placing a fence with restrictive gates around the subject property. He ensured utilities were run to the property for the use of himself and his children. The evidence is clear that Plaintiff had a claim of title to the subject property. Additionally, Plaintiff has shown by clear and convincing evidence that a deed from his father was prepared, executed, and delivered, although it is now lost.

Accordingly, Plaintiff has proven all elements to establish a claim under Adverse Possession. Therefore, the Court FINDS that Plaintiff is GRANTED title to the subject property under the theory of adverse possession.

Unjust Enrichment

1. Regarding the elements of a claim for unjust enrichment, under West Virginia law with respect to real property, the West Virginia Supreme Court has held as follows:

"The law of unjust enrichment indicates that if one person improves the land of another either through the direction of services to the land, or through the affixation of chattels to the land, that person is entitled to restitution for the improvements if certain other circumstances are present. See, Restatement, Restitution § 53 (1937). The Court has also indicated that if benefits have been received and retained under such circumstance that it would be inequitable and unconscionable to permit the party receiving them to avoid payment therefore, the law requires the party receiving the benefits to pay their reasonable value."

Realmark Developments v. Ranson, 208 W. Va. 717, 721-22 (2000) (quoting *Copley v. Mingo County Board of Education*, 195 W. Va. 480 (1995)).

2. A viable unjust enrichment claim is applicable where a person who acquires an interest in land, as a result of an agreement with the owner, under a mistake of law is entitled to restitution for improvements he places on the land as a result of the mistake. *Realmark Developments, Inc. v. Ranson*, 214 W. Va. 161, 722 (2000).
3. The measure of damages in an unjust enrichment claim is the greater value of either the enhanced market value of the property or the cost of the improvements to the property. *Realmark Developments, Inc. v. Ranson*, 214 W. Va. 161, 722 (2000).
4. Plaintiff has not offered any reliable or admissible evidence in the record that can establish either the cost or the value of any such improvements including for the creation and maintenance of the road, utilities, or fencing.

Accordingly, there is no evidence by which this Court can award any amount of monetary damages. Therefore, the Court FINDS that Plaintiff's claim of unjust enrichment lacks merit.

It is, therefore, **ADJUDGED, ORDERED and DECREED** that the Plaintiff, Donald Gene Maynard (Son) be, and he hereby is, declared the owner in fee of all of the property, and all appurtenances situate and described as follows: to wit:

All that certain tract or parcel of property on State Route #37, Newcomb Creek Road and Big Branch in Stonewall District of Wany County, West Virginia being more particularly bound and described as follows:

Beginning at a point at the east right of way line of Newcomb Creek Road at the end of an old fence line and the west corner of Jennings Pack (DB 421 PG 65); Thence leaving Newcomb Creek Road and running up the hill with the line of Pack,
South 49-51-02 East 800.32 feet to two poplars (called for) in a field;
South 27-41-57 East 330.00 feet to four chestnuts (called for) on the ridge; Thence continuing with the line of Pack,
South 85-10-57 East 161.70 feet to a black oak (called for);
North 87-49-03 East 165.00 feet to a stake (called for);

North 81-02-03 East 152.40 feet to a chestnut oak (called for);
North 69-30-00 East 396.00 feet to a point; Thence continuing with the line of Pack and Donald Gene Maynard (DB 575 PG 501),
North 76-21-27 East 169.88 feet to a chestnut oak on the ridge (called for) at a corner of Donald Gene Maynard (DB 524 PG 738); Thence running with the line of Donald Gene Maynard,
South 15-45-06 West 170.00 feet to a stake (called for);
South 41-44-54 East 550.00 feet to a hickory (called for);
South 39-14-54 East 55.00 feet to a maple (called for);
South 44-14-54 East 163.00 feet to a hickory (called for);
South 45-13-04 East 168.82 feet to a gum stump (found);
South 56-29-54 East 181.00 feet to a rebar and cap (set) near Big Branch at the call of a cucumber at the North corner of John Heft (DB 663 PG 742); Thence leaving Donald Gene Maynard (DB 524 PG 738) and running down and near Big Branch with the west line of Heft,
South 27-26-09 West 135.02 feet to a rebar and cap (set) in a beech stump on the west bank of the branch;
South 35-38-53 West 80.21 feet to a rebar and cap (set) on the west bank of the branch;
South 44-42-08 West 131.92 feet to a rebar and cap (set) by a flat rock on the west bank of the branch;
South 14-09-00 West 162.79 feet to a rebar and cap (set) near the branch;
South 30-41-22 West 98.97 feet to a rebar and cap (set) in a beech stump on the west bank of the branch;
South 34-52-32 West 175.83 feet to a rebar and cap (set) in an old fence line on a bank at the west side of an old dirt road; Thence leaving the branch and running around a hillside near an old fence and continuing with the line of Heft,
South 25-42-45 West 296.36 feet to a rebar and cap (set) at the northeast corner of Helen Bailey (DB 354 PG 45); Thence leaving Heft and running around the hill with the line of Bailey,
South 53-39-47 West 91.24 feet to a rebar and cap (set) by a small buckeye;
South 56-54-22 West 70.23 feet to a two inch iron pipe (found);
South 68-16-36 West 153.12 feet to a rebar and cap (set); Thence continuing around the hillside with the line of Bailey and Toney Watts (DB 394 PG 432),
South 49-08-15 West 247.10 feet to a rebar and cap (set) by a steel post (found) at the northeast corner of Tosha Schill (DB 642 PG 598); Thence leaving Watts and running around the hillside with the line of Schill,
South 49-46-46 West 289.75 feet to a rebar and cap (set) by a steel post (found) at the northeast corner of Chris Swimm (DB 639 PG 650); Thence leaving Schill and running around the hill with the line of Swimm,
South 36-26-21 West 281.00 feet to a rebar and cap (set) at the corner of Zelma Brumfield (WB 50 PG 494); Thence leaving Swimm and running up a small drain with the line of Brumfield,
North 42-54-49 West 146.55 feet to a rebar and cap (set); Thence leaving the drain and running around the hillside with the line of Brumfield,
South 36-26-21 West 158.00 feet to a three inch iron pipe (found) at the northeast corner of Jesse Sutherland (DB 674 PG 538); Thence leaving Brumfield and running around the hillside with the line of Sutherland,
North 44-47-42 West 210.23 feet to a sixteen inch marked white oak (found);
North 50-31-03 West 112.42 feet to a ten inch marked white oak (found) at the northeast corner of Morris B. Smith (DB 608 PG 152); Thence leaving Sutherland and running around the hillside with the line of Smith,
North 48-17-49 West 157.16 feet to a sixteen inch marked white oak (found) in the east line of Hercie Maynard (DB 580 PG 259); Thence leaving Smith and running up the hill with the east line of Hercie Maynard,

North 39-26-21 East 287.00 feet to a fallen beech (called for),
North 28-26-21 East 437.00 feet to a white oak (called for);
North 20-33-39 West 288.00 feet to a stake on a ridge (called for); Thence continuing with the line of Hercie Maynard along the ridge,
North 45-51-04 East 629.00 feet to a point;
North 26-56-21 East 136.00 feet to a rebar and cap (set) at a fence corner at the south corner of Jeremy H. Maynard (1.307 Acre Tract); Thence running around said tract,
North 42-17-21 East 470.28 feet to a rebar and cap (set);
North 51-13-47 West 141.26 feet to a rebar and cap (set);
South 38-40-59 West 425.50 feet to a sixteen inch white oak in the line of Hercie Maynard (DB 580 PG 259); Thence leaving Jeremy H. Maynard and running down the hill with the line of Hercie Maynard,
North 29-27-26 West 261.02 feet to a twenty six inch white oak by Barn Hollow at the southeast corner of Tiffany Brunty (8.588 Acre Tract); Thence leaving Hercie Maynard and Barn Hollow, running up the hill with the east line of Brunty,
North 13-28-18 West 266.34 feet to a rebar and cap (set) on the south side of a private road; Thence continuing with Brunty along the south side of said road,
South 83-04-50 West 111.42 feet to a point;
South 70-28-16 West 136.54 feet to a point;
South 63-25-55 West 574.83 feet to a point;
South 57-24-02 West 319.56 feet to a rebar and cap (set); Thence continuing with Brunty, leaving the private road and running down the hill,
South 10-51-52 East 332.70 feet to a fourteen inch poplar (marked) at Barn Hollow in the line of Hercie Maynard (DB 580 PG 259); Thence leaving Brunty and continuing down Barn Hollow with the line of Hercie Maynard,
Westerly direction 345 feet more or less to a point at the northwest corner of Hercie Maynard (DB 580 PG 259); Thence leaving Barn Hollow,
South 13-42-03 West 80.39 feet to a point; Thence leaving Hercie Maynard and running thru the property of Donald Maynard (DB 379 PG 416),
North 74-15-03 West 291.82 feet to a rebar and cap (set) on the south bank of a branch; Thence continuing thru the property of Donald Maynard,
North 63-13-17 West passing a steel bolt (set) at the top of a bank at 461.11 feet, in all 468.01 feet to a point at the east right of way line of Newcomb Creek Road; Thence running with said right of way line along the arc of a curve to the right having a radius of 212.73 feet and a chord which bears,
North 16-49-24 East 97.87 feet to a point of tangent;
North 24-51-05 East 124.02 feet to a point of tangent;
North 28-49-19 East 308.09 feet to a point of curve; Thence continuing with said right of way line along the arc of a curve to the left having a radius of 315.46 feet and a chord which bears,
North 13-30-04 East 125.20 feet to a point of reverse curve; Thence running along the arc of a curve to the right having a radius of 762.66 feet and a chord which bears,
North 11-50-55 East 281.49 feet to a point of compound curve; Thence continuing with said right of way line along the arc of a curve to the right having a radius of 1315.90 feet and a chord which bears,
North 25-52-39 East 228.60 feet to a point of compound curve; Thence running with the arc of a curve to the right having a radius of 748.23 feet and a chord which bears,
North 43-03-41 East 353.39 feet to a point of tangent;
North 59-31-24 East 232.67 feet to the point of beginning containing Ninety Two and Fifty Eight Thousandths (92.058) Acres more or less.

This property was surveyed on the ground only to the extent shown on the accompanying plat of survey. Lines not surveyed were taken from existing deeds or calculated.

Being all of the property conveyed to Donald Maynard from Nesba Smith by deed dated January 24, 2008 and recorded in the office of the Wayne County, West Virginia, Court Clerk in Deed Book #656 at Page #797. Also being part of the property conveyed to Donald Maynard and Hercie Maynard from Imogene Vaughan, Thomas Vaughan and others by deed dated July 30, 1968 and recorded in Deed Book #379 at Page #416.

All Accordingly ORDERED and DECREED.

/s/ James H Young Jr.

Circuit Court Judge

24th Judicial Circuit

Note: The electronic signature on this order can be verified using the reference code that appears in the upper-left corner of the first page. Visit www.courtswv.gov/e-file/ for more details.