

**STATE OF WEST VIRGINIA  
SUPREME COURT OF APPEALS**

**Craig Erhard and Paula Erhard,  
Plaintiffs Below, Petitioners**

**vs) No. 11-1595** (Marion County 08-P-93)

**David Helmick and Kevin Helmick,  
Defendants Below, Respondents**

**FILED**

October 19, 2012  
RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

**MEMORANDUM DECISION**

Petitioners Craig and Paula Erhard, by counsel Stephen S. Fitz, appeal from the Circuit Court of Marion County’s “Opinion/Order” entered on June 22, 2011, following a bench trial in this action involving what is essentially a boundary dispute. The circuit court entered judgment in favor of petitioners, in part, and in favor of respondents, David and Kevin Helmick, in part. Respondents, who are represented by counsel Philip C. Petty, have filed cross-assignments of error.

This Court has considered the parties’ briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

Petitioners and respondents are next-door neighbors in the George D. Boyd Subdivision, also known as “Fairmont Farms,” located in the City of Fairmont, West Virginia. Petitioners acquired their property in 2004, and respondents acquired their property in 1983. Petitioners originally sought injunctive relief against respondents in relation to respondents’ construction of a fence, but the litigation expanded to include what the parties refer to as the “Northerly Road,” the “Westerly Road,” and the “Pig Trough.” Respondents filed a counterclaim seeking, among other things, damages for the destruction of trees on their property.

During the course of the bench trial, the circuit judge visited the subject property in the presence of the parties. Following the parties’ presentation of evidence and their submission of proposed findings of fact and conclusions of law, the circuit court entered its “Opinion/Order” on June 22, 2011. The circuit court found in favor of respondents in relation to the “Northerly Road” and in favor of petitioners in relation to the “Pig Trough.” As to the “Westerly Road,” the circuit court directed that the parties share that road with its northern boundary being that as delineated on the 1960 Boyd-Collins Plat (an exhibit below). With respect to respondents’ construction of a fence, the circuit court ruled that any such fence should follow the boundary

line delineated in the 1960 Boyd-Collins Plat but not cross the “Pig Trough” and, instead, to follow the line created by the northerly edge of petitioners’ raised patio ending at the northern drive bordering the next lot in the subdivision. The parties assign as error those portions of the circuit court’s “Opinion/Order” not in their favor.

When reviewing a circuit court’s judgment reached following a bench trial, this Court has previously held that:

In reviewing challenges to the findings and conclusions of the circuit court made after a bench trial, a two-pronged deferential standard of review is applied. The final order and the ultimate disposition are reviewed under an abuse of discretion standard, and the circuit court’s underlying factual findings are reviewed under a clearly erroneous standard. Questions of law are subject to a *de novo* review.

Syl. Pt. 1, *Public Citizen, Inc. v. First Nat’l Bank in Fairmont*, 198 W.Va. 329, 480 S.E.2d 538 (1996). The circuit court’s “Opinion/Order” summarizes the evidence presented by the parties below and addresses the parties’ respective legal arguments. We have reviewed the parties’ briefs and legal arguments concerning the assignments of error that each have raised, as well as the appendix record. We have also reviewed the circuit court’s judgment utilizing the standard of review set forth above and find that there is no clear error in the circuit court’s findings of fact and no abuse of discretion in its ultimate disposition. Accordingly, we incorporate and adopt the circuit court’s findings and conclusions as to the assignments of error raised in this appeal. The Clerk is directed to attach a copy of the circuit court’s “Opinion/Order” entered on June 22, 2011, to this memorandum decision.

For the foregoing reasons, we affirm.

Affirmed.

**ISSUED:** October 19, 2012

**CONCURRED IN BY:**

Chief Justice Menis E. Ketchum  
Justice Robin Jean Davis  
Justice Margaret L. Workman  
Justice Thomas E. McHugh

**DISSENTING:**

Justice Brent D. Benjamin