

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

**Alston Blankenship and Ruby Burns,
Plaintiffs Below, Petitioners**

vs) **No. 11-1136** (Greenbrier County 10-C-15)

**Stephanie Mendelson, Jessica Mendelson,
and Noah Mendelson, Defendants Below,
Respondents**

FILED

June 22, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

The petitioners, Alston Blankenship and Ruby Burns, by counsel Barry L. Bruce and Jesseca R. Church, appeal the order of the Circuit Court of Greenbrier County entered July 20, 2011, granting summary judgment to the respondents. The respondents filed a response by their counsel, William D. Turner. The petitioners have filed a reply.

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.

This appeal involves allegations of restriction of access to and desecration of an alleged cemetery. The petitioners assert that several relatives were buried more than fifty years ago on land now owned by the respondent Stephanie Mendelson. According to the petitioners, the graves were once marked by field stones which are no longer present. Petitioner Alston Blankenship who had been granted oral permission to visit the graves by Respondent Stephanie Mendelson, had a grave monument made and placed it on the site. Upon discovery of the monument, Stephanie Mendelson revoked the oral permission to visit the property. After notifying Blankenship to remove the monument, Mendelson had the monument removed. The petitioners brought suit against the respondents seeking a declaratory judgment as to their right of access, as well as damages due to the removal of the monument. The circuit court entered summary judgment in favor of the respondents.

The standard of review of a circuit court's entry of summary judgment is *de novo*. Syl. Pt. 1, *Painter v. Peavy*, 192 W.Va.189, 451 S.E.2d 755 (1994). Further, this Court has recognized:

“Summary judgment is appropriate where the record taken as a whole 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.” Syllabus point 4, *Painter v. Peavy*, 192 W.Va. 189, 451 S.E.2d 755 (1994).

Syl. Pt. 2, *Minshall v. Health Care & Retirement Corp. of America*, 208 W.Va. 4, 537 S.E.2d 320 (2000).

The Court has fully reviewed the issues raised by the petitioners. The Court concludes that the circuit court’s entry of summary judgment, under the facts and circumstances of this case, was proper. The Court adopts and incorporates by reference the well-reasoned final order granting summary judgment that is attached hereto.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: June 22, 2012

CONCURRED IN BY:

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