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Compendium of Essential Legal Principles From His
Opinions as a Justice on the West Virginia Supreme
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different findings or draw contrary inferences.”²⁶⁹ The opinion concluded,

[i]f a circuit court believes a family law master failed to make findings of fact essential to the proper resolution of a legal question, it should remand the case to the family law master to make those findings. If it is of the view that the findings of fact of a family law master were clearly erroneous, the circuit court may set those findings aside on that basis. If it believes the findings of fact of the family law master are unassailable, but the proper rule of law was misapplied to those findings, the circuit court may reverse. However, a circuit court may not substitute its own findings of fact for those of a family law master merely because it disagrees with those findings.²⁷⁰

VII. PROPERTY LAW

A. *Government Sale of Property*

The sale of property by the division of highways pursuant to W. Va. Code section 17-2A-19 was the subject in *Mills v. Van Kirk*.²⁷¹ Justice Cleckley’s interpretation of the statute provided:

Applying the plain language of the statute, abutting landowners must receive preferential treatment when purchasing state property pursuant to W.Va. Code, 17-2A-19 (1988). Under this statutory scheme, the Commissioner has the right to decide whether turnpike and railway property will be useful in the present or foreseeable future. Once this decision is made, the statute directs the Commissioner to first offer the property to the abutting landowners for fair market value.²⁷²

²⁶⁹ *Id.* at Syl. Pt. 3.

²⁷⁰ *Id.* at Syl. Pt. 4.

²⁷¹ 453 S.E.2d 678 (W. Va. 1994).

²⁷² *Id.* at Syl. Pt. 3.

B. *Easement*

Abandonment of an easement through prescription was the subject in *Strahin v. Lantz*.²⁷³

Abandonment of an easement by prescription is a question of intention that may be proved by nonuse combined with circumstances which evidence an intent to abandon the right. It is the burden of the party asserting the absence of an easement by prescription to prove abandonment by clear and convincing evidence.²⁷⁴

C. *Landlord-Tenant*

In *Murphy v. Smallridge*,²⁷⁵ the court held, “[a] residential tenant may state an affirmative cause of action for retaliatory eviction if the landlord’s conduct is in retaliation for the tenant’s exercise of a right incidental to the tenancy.”²⁷⁶ The opinion also held that “[a] residential tenant does not have to continue living on the leased premises to preserve a cause of action for retaliatory eviction.”²⁷⁷

D. *Adverse Possession*

Justice Cleckley set out the burden of proof on a claim of adverse possession in *Brown v. Gobble*.²⁷⁸ Cleckley stated, “[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.”²⁷⁹

The decision in *Brown* discussed the law of tacking:

²⁷³ 456 S.E.2d 12 (W. Va. 1995).

²⁷⁴ *Id.* at Syl. Pt. 2.

²⁷⁵ 468 S.E.2d 167 (W. Va. 1996).

²⁷⁶ *Id.* at Syl. Pt. 1.

²⁷⁷ *Id.* at Syl. Pt. 2.

²⁷⁸ 474 S.E.2d 489 (W. Va. 1996).

²⁷⁹ *Id.* at Syl. Pt. 2.

In order to permit tacking of successive adverse possession claims, the ultimate fact to be established is the intended and actual transfer or delivery of possession to the grantee as successor in ownership of such area not within the premises, as described in the calls of a deed, but contiguous thereto. Privity means privity of possession. It is the transfer of possession, not title, which is the essential element.²⁸⁰

VIII. JUVENILE DELINQUENCY LAW

A. *Questioning a Juvenile*

Interrogation of a juvenile was the subject of *State v. Sugg*.²⁸¹ *Sugg* stated, “[t]he absence of a parent or counsel when a juvenile waives his rights is not necessarily a bar to a voluntary Miranda waiver and ultimately a confession.”²⁸² Justice Cleckley held,

[w]here neither legal counsel nor the parents are present during interrogation, the greatest care must be taken by the trial court to assure that the statement of the juvenile is voluntary, in the sense not only that it was not coerced or suggested, but that it was not the product of ignorance of rights or of adolescent fantasy, fright, or despair.²⁸³

Moreover, “[t]he validity of a juvenile’s waiver of his or her rights should be evaluated in light of the totality of the circumstances surrounding the waiver, and the presence or absence of the parents is but one factor to be considered in reaching this determination.”²⁸⁴ Finally, it was said that

[t]he appropriate inquiry in regard to parental notification is whether, after a careful review of the record in its entirety, the reasons underlying the delay in notifying the parents, as agreed to

²⁸⁰ *Id.* at Syl. Pt. 3.

²⁸¹ 456 S.E.2d 469 (W. Va. 1995).

²⁸² *Id.* at Syl. Pt. 3.

²⁸³ *Id.* at Syl. Pt. 2.

²⁸⁴ *Id.* at Syl. Pt. 1.