

INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

ICA EFiled: Feb 02 2024
10:17AM EST
Transaction ID 71934858

**BETHANN CORNETT SPEARS,
Defendant Below, Petitioner**

v.)

**No. 23-ICA-478 (Appeal from Raleigh
County Circuit Court Case No. 22-C-161)**

**DREMA ANN SPEARS,
Plaintiff Below, Respondent**

PETITIONER'S BRIEF

**BETHANN CORNETT SPEARS,
Defendant Below, Petitioner,
By Counsel,**

/s/Joshua T. Thompson
JOSHUA T. THOMPSON, ESQ.
Thompson & Spolarich, PLLC
P.O. Box 5097
Beckley, WV 25801

Table of Contents

Table of Authorities	3
I. Assignment of Error	4
II. Statement of the Case	5
III. Summary of Argument	7
IV. Statement Regarding Oral Argument	8
V. Standard of Review	9
VI. Argument	10
A. In contravention of longstanding West Virginia law, the Circuit Court committed reversible error by failing to interpret the underlying issue in this matter though the framework articulated in <i>Young v. McIntyre</i> , 223 W.Va. 60, 672 S.E.2d 196 (2008).	
VII. Conclusion	12
Certificate of Service	
Appendix	

Table of Authorities

West Virginia Cases

<u>Chrystal R.M. v. Charlie A.L.</u> , 194 W.Va. 138, 459 S.E.2d 415 (1995)	9
<u>Young v. McIntyre</u> , 223 W.Va. 60, 672 S.E.2d 196 (2008)	6, 7, 10, 11

I. ASSIGNMENT OF ERROR

- A. In contravention of longstanding West Virginia law, the Circuit Court committed reversible error by failing to interpret the underlying issue in this matter though the framework articulated in *Young v. McIntyre*, 223 W.Va. 60, 672 S.E.2d 196 (2008).

II. STATEMENT OF THE CASE

The narrow issue in this appeal relates solely to the Circuit Court's interpretation of the underlying facts of this matter through the framework articulated in *Young v. McIntyre*, 223 W.Va. 60, 672 S.E.2d 196 (2008).

On September 30, 1996 Paul Randall Spears and Drema Ann Spears were divorced in the Circuit Court of Raleigh County, West Virginia. Spears-Appx. P.00009-00015. On January 12, 1999 the same parties appeared in Raleigh County, West Virginia Circuit Court to determine the title to the couple's former marital domicile, described as: 0.25 acres, more or less, and an easement, situate on the waters of Sand Lick Creek, Slab Fork District, Raleigh County, West Virginia. The Court ordered that Paul Randall Spears was awarded sole and exclusive title and ownership of the former marital domicile. Spears-Appx. P.00004-00005.

Paul Randall Spears attempted to correct the deed of the former marital domicile on at least one occasion but was unsuccessful. Spears-Appx. P.00039-00041. Paul Randall Spears resided in the former marital residence continuously from 1998 until his death on May 11, 2021. Paul Randall Spears paid the property taxes on the former marital residence from 1998 until his death. Spears-Appx. P.00045-00068. Plaintiff/Respondent failed to visit the property for over twenty years, failed to pay for maintenance of the property, and failed to pay property taxes on the property. Spears-Appx. P.00089. Defendant/Petitioner Bethann Cornett Spears was appointed administrator of Paul Randall Spears's Estate on June 30, 2021. Spears-Appx. P.00043.

On May 17, 2022, the Plaintiff/Respondent, filed her *Action for Quiet Title and for Partition* in the Circuit Court of Raleigh County, West Virginia. Spears-Appx. P.00001-00003. Numerous pleadings and memoranda were filed by both parties, and a bench trial was held on August 21, 2023.

On October 3, 2023, the Circuit Court of Raleigh County entered an Order Granting Judgment of Plaintiff, awarding sole possession of the former marital domicile to Plaintiff/Respondent. Spears-Appx. P.00086-00089.

Defendant/Petitioner Bethann Cornett Spears is seeking the proper legal interpretation of the law as it applies to the facts in this matter though *Young v. McIntyre*, 223 W.Va. 60, 672 S.E.2d 196 (2008), and the reversal of the October 3, 2023 Order Granting Judgment to Plaintiff.

III. SUMMARY OF THE ARGUMENT

The Circuit Court failed to apply the ruling in *Young v. McIntyre*, 223 W.Va. 60, 672 S.E.2d 196 (2008) to the facts of this matter and because of this erroneously granted the property at the heart of this matter to the Plaintiff/Respondent.

IV. STATEMENT REGARDING ORAL ARGUMENT

Oral argument is appropriate under the criteria of W.Va. App. P. 19 as it would aid in the decisional process and the time permitted is sufficient. This case is appropriate for Rule 19 oral argument because it involves an assignment of error in the application of settled law and involves a narrow issue of law.

V. STANDARD OF REVIEW

“Where the issue on an appeal from circuit court is clearly a question of law or involving an interpretation of a statute, we apply a de novo standard of review.” Syl. Pt. 1, *Chrystal R.M. v. Charlie A.L.*, 194 W.Va. 138, 459 S.E.2d 415 (1995).

VI. ARGUMENT

A. In contravention of longstanding West Virginia law, the Circuit Court committed reversible error by failing to interpret the underlying issue in this matter though the framework articulated in *Young v. McIntyre*, 223 W.Va. 60, 672 S.E.2d 196 (2008).

The former marital home at the heart of this matter was erroneously granted to Plaintiff/Respondent because of an incorrect interpretation of settled West Virginia case law.

The Circuit Court stated in its Order Granting Judgment to Plaintiff that: “A divorce decree, alone, does not cause a severance of a joint tenancy. The right of survivorship of a joint tenant does not arise out of the marriage relationship. Absent either an express intent to sever or conduct inconsistent with the continuation of the joint tenancy, the right of survivorship will continue after dissolution of the marriage of joint tenants.” Syl. Pt. 7, *Young v. McIntyre*, 223 W.Va. 60, 672 S.E.2d 196 (2008). The Defendant/Petitioner agrees that a divorce decree alone does not sever a joint tenancy; however, conduct inconsistent with the continuation of a joint tenancy, does sever. The Circuit Court completely ignored Syl. Pt. 8, *Young v. McIntyre* (2008), which states: “In circumstances of divorce, joint tenants can agree to hold as tenants in common and thus sever the joint tenancy. Such an agreement can be express or implied from conduct of the parties inconsistent with holding in joint tenancy.”

In its order, the Circuit Court of Raleigh County stated: “The severance of a joint tenancy requires that one of the coparceners take positive action to do so or to act in a manner inconsistent with the continuation of the joint tenancy. It is not severed passively or by inattention.” Spears-Appx. P.00089. This reasoning is incorrect for two reasons.

First, the record is clear that Plaintiff/Respondent was more than just inattentive. Not only did she fail to visit the property for over twenty years, fail to pay for maintenance of the property, and fail to pay property taxes on the property, but the testimony of Adam Taylor, Esq. at the bench

trial shows that she actively went out of her way to quash attempts by Paul Randall Spears to correct the deed in this matter to comport with the January 12, 1999 Order. Spears-Appx. P.00111-00120.

Second, nowhere in either Syl. Pts. 7 or 8 in *Young v. McIntyre* (2008) does it state that conduct required to sever a joint tenancy must be aggressive or straight forward. Conduct inconsistent with the continuation of the joint tenancy and/or conduct of the parties inconsistent with holding in joint tenancy is what controls, not whether a party's conduct is passive or inattentive.

The record of this matter is clear. Plaintiff/Respondent failed to visit the property for over twenty years, failed to pay for maintenance of the property, and failed to pay property taxes on the property, and went out of her way to stop Paul Randall Spears from entering a corrective deed to the former marital home. This conduct is exactly the type of conduct the Supreme Court had in mind when it ruled in *Young v. McIntyre* (2008). The former marital home was awarded to Paul Randall Spears and the facts of this matter show that it should be part of his estate because the joint tenancy with his former wife was severed by her conduct over the last twenty plus years.

Paul Randall Spears was awarded the former marital residence in 1998 and lived there continuously. He paid all taxes and maintained the property. Plaintiff/Respondent, his former wife, had zero contact with the property. Once he discovered the deed to the property needed corrected, he attempted to do so, but was stopped by Plaintiff/Respondent. Paul Randall Spears then perished. Now the Plaintiff/Respondent wants to come back and lay claim to the former marital home. Adopting the Circuit Court's interpretation is contrary to the well settled law of the State of West Virginia, would set a dangerous precedent, and would result in a windfall to the Plaintiff/Respondent.

VII. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court vacate and reverse the October 3, 2023 Order Granting Judgment to Plaintiff.

BETHANN CORNETT SPEARS,
Defendant Below, Petitioner,
By Counsel,

/s/Joshua T. Thompson
JOSHUA T. THOMPSON, ESQ.
Thompson & Spolarich, PLLC
P.O. Box 5097
Beckley, WV 25801

INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA

**BETHANN CORNETT SPEARS,
Defendant Below, Petitioner**

v.)

No. 23-ICA-478

**DREMA ANN SPEARS,
Plaintiff, Respondent**

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of February, 2024, I served Petitioner's Brief upon counsel for Respondent Drema Ann Spears, by depositing a true copy thereof in the United States

Mail, postage prepaid, addressed as follows:

John H. Shumate, Esq.
Post Office Drawer 231
Mount Hope, WV 25880

/s/Joshua T. Thompson
JOSHUA T. THOMPSON, ESQ.
Thompson & Spolarich, PLLC
P.O. Box 5097
Beckley, WV 25801