

**INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA**

**BETHANN CORNETT SPEARS,**

**Defendant Below, Petitioner.**

**ICA EFiled: Mar 20 2024  
02:42PM EDT  
Transaction ID 72566423**

**v.**

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

**DREMA ANN SPEARS,**

**Plaintiff Below, Respondent.**

---

**RESPONDENT'S BRIEF**

---

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

s/s John H. Shumate Jr.  
John H. Shumate, Jr. (WVSB # 3392)  
Post Office Drawer 231  
Mount Hope, West Virginia 25880  
(304) 877-5516

**TABLE OF CONTENTS**

**I. Table of Authorities ..... 3**

**II. Summary of Argument ..... 4**

**III. Statement Regarding Oral Argument ..... 5**

**IV. Argument ..... 6**

**V. Conclusion ..... 8**

**Certificate of Service ..... 9**

I. **TABLE OF AUTHORITIES**

1. *Burby on Real Property*  
§ 213 ff (1943) ..... 7

2. Corpus Juris Secundum  
48 C.J.S. *Joint Tenancy* § 4, 928 (1947) ..... 7

3. *Tehnet v. Boswell*,  
554 P.2d 330 (Cal. 1976) ..... 7

4. *Young v. McIntyre*,  
223 W.Va. 60, 672 S.E. 2d 196 (2008) ..... 4, 6, 7

## **II. SUMMARY OF THE ARGUMENT**

The Circuit Court correctly applied the ruling in *Young v. McIntyre*, to the facts of this matter, finding that the subsequent conduct of the parties was consistent with the holding that the joint tenancy created by the deed of the parties was not severed and properly granted ownership of the real property to the Respondent. *Id.* 223 W.Va. 60, 672 S.E. 2d 196 (2008).

### **III. STATEMENT REGARDING ORAL ARGUMENT**

Oral argument is appropriate under the criteria of West Virginia Rules of Appellate Procedure Rule 19 because this case involves an assignment of error in the application of settled law.

#### IV. ARGUMENT

The Circuit Court correctly interpreted and applied the framework established by the West Virginia Supreme Court in Syllabus Points 7 and 8 in *Young v. McIntyre*, 223 W.Va. 60, 672 S.E. 2d 196 (2008).

By Deed and Deed of Assumption, dated August 3, 1988, Randy Spears and Drema Spears, his wife, were granted title to a 0.25 acre tract of land on the waters of Sand Lick Creek, Trap Hill District, Raleigh County, West Virginia, as joint tenants with rights of survivorship. Which deed is of record in the Office of the Clerk of the County Commission of Raleigh County, West Virginia, in Deed Book 736, at page 149.

The Circuit Court stated in its Order Granting Judgement to Plaintiff that:

“There is no dispute that the deed created a joint tenancy with the right of survivorship. As noted above, the divorce decree entered October 1, 1996, directed that the property be sold, and the subsequent order of January 12, 1999, awarded the title to that property to Paul Randall Spears. As subsequently explained in *Young v. McIntyre*, 223 W.Va. 60 (2008), *syll.* 7,

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 a dissolution of the marriage of joint tenants.

It is not within a divorce court’s power or jurisdiction to sever a joint tenancy by decree, and so the 1999 order had no effect on the operation of the joint tenancy. Title, as noted in *Young* is governed by deed with particular reference to a joint tenancy created by a deed.” Spears-Appx. P. 00088.

The Petitioner contends that the joint tenancy was severed because there was conduct of the parties inconsistent with the continuation of the joint tenancy. Thus, the Circuit Court completely ignored Syllabus Point 8 in *Young v. McIntyre*, 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 the conduct of the parties inconsistent with the holding in joint tenancy.”

In *Young*, the Court found that: “The language in the property settlement agreement and the action of the parties immediately hereafter evinces an agreement to dissolve the joint tenancy as they agreed to repair the real estate, list it, sell it and split the proceeds when sold... The conduct of the parties plainly evidenced their intention to sever the joint tenancy with the right of survivorship and held their property as tenants in common.” *Id.* at 66. Moreover, the *Young* Court found that an express property settlement agreement of the parties was sufficient to sever the joint tenancy and did not have to find conduct which would impliedly sever the joint tenancy. The Court opined “the usefulness of the unities is better determined on a case-by-case basis.” *Id.* at 67.

Other jurisdictions follow the logic of *Tehnet v. Boswell*, which held “... [B]ecause a joint tenancy may be created only by express intent, and because there are alternative and unambiguous means of altering the nature of that estate...” *Id.* 554 P.2d 330 (Cal. 1976). To sever a joint tenancy, there must be clear and unambiguous conduct of one of the parties to sever the joint tenancy or a course of dealing between the parties sufficient to indicate that all parties mutually treated their interests in the property as belonging to them in common. 48 C.J.S. *Joint Tenancy* § 4, 928 (1947).

Here, the Circuit Court correctly noted, “While the failure of a joint tenant to contribute to property taxes and general maintenance may support a civil action by the other joint tenant for contribution, it does not directly affect the structure of the title as created in the deed. See generally, *Burby on Real Property* § 213 ff (1943). Additionally, either party could have severed the joint tenancy by an action for partition pursuant to W.Va. Code § 37-4-1, *et. seq.*, but neither did so.” Spears-Appx. P. 00088.

The Respondent contends that the Circuit Court’s ruling in this case should be upheld because the Circuit Court’s reasoning is sound and supported by the Supreme Court’s holding in *Young v. McIntyre*. The Circuit Court stated: “The survivorship effect of the joint tenancy was established

in the deed. Neither joint tenant was required to do anything else for the joint tenancy to exist or to function upon the death of one of the joint tenants, and neither engaged in conduct which was inconsistent with a joint tenancy. The operation of the joint tenancy was not a windfall to the plaintiffs because that asset was already hers by operation of the deed.” Spears-Appx. P. 00089.

**V. CONCLUSION**

For the foregoing reasons, Respondent respectfully requests that the Court affirm the October 3, 2023, Order Granting Judgement to the Plaintiff.

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

s/s John H. Shumate Jr.  
John H. Shumate, Jr. (WVSB # 3392)  
Post Office Drawer 231  
Mount Hope, West Virginia 25880  
(304) 877-5516

**INTERMEDIATE COURT OF APPEALS OF WEST VIRGINIA**

**BETHANN CORNETT SPEARS,**

**Defendant Below, Petitioner.**

**v.**

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

**DREMA ANN SPEARS,**

**Plaintiff Below, Respondent.**

**CERTIFICATE OF SERVICE**

I, John H. Shumate Jr., counsel for the Plaintiff/Respondent, do hereby certify that on the 20<sup>th</sup> day of March, 2024, served true and accurate copies of the foregoing, **Respondent's Brief**, upon counsel for the Petitioner, Bethann Cornett Spears, by depositing a copy of the via File and Serve Express E-File and the United States Mail, addressed as follows:

Joshua T. Thompson, Esq.  
Thompson & Spolarich, PLLC  
P.O. Box 5097  
Beckley, WV 25801

s/s John H. Shumate Jr.  
John H. Shumate, Jr. (WVSB # 3392)  
Post Office Drawer 231  
Mount Hope, West Virginia 25880  
(304) 877-5516  
Counsel for the Plaintiff/Respondent