

RENDERED: JUNE 24, 2011; 10:00 A.M.
TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-001733-MR

WANDA LEE HUMPHREY;
LESTER HUMPHREY;
PATSY SUE WINSTEAD; AND
CURTIS WINSTEAD

APPELLANTS

APPEAL FROM MCLEAN CIRCUIT COURT
v. HONORABLE DAVID H. JERNIGAN, SPECIAL JUDGE
ACTION NO. 09-CI-00063

LOUIS BLACKFORD;
KENNETH BLACKFORD; AND
JANET GAIL BLACKFORD

APPELLEES

OPINION AFFIRMING

** ** *

BEFORE: NICKELL AND VANMETER, JUDGES; SHAKE,¹ SENIOR JUDGE.

¹ Senior Judge Ann O'Malley Shake sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

SHAKE, SENIOR JUDGE: Wanda Humphrey, Lester Humphrey, Patsy Sue Winstead, and Curtis Winstead (Appellants) appeal from a McLean Circuit Court summary judgment in favor of Louis Blackford, Kenneth Blackford, and Janet Gail Blackford (Appellees). The Appellants claim the trial court's decision was erroneous on two grounds: (1) the Appellants inherited a valid dower interest in property; and (2) there is a factual dispute concerning intent to relinquish dower rights. A review of the record and applicable caselaw indicates that James Blackford (Blackford) and Mary Lou Blackford Havener (Havener) made an unambiguous conveyance of property to a W.E. Quisenberry, Sr., trustee. The trust provided Havener with a life estate in the property with the remaining interest given to Blackford, his heirs, or assigns. Havener relinquished her dower interest by executing the deed. Therefore, we affirm the McClean Circuit Court summary judgment.

This appeal concerns a 150-acre tract of land in McLean County, Kentucky. In 1961, Blackford initially acquired a fee simple title to the property by virtue of a deed transferred from his parents. On March 20, 1982, Blackford married Havener. On September 21, 1982, Blackford and Havener executed a deed conveying the property to W.E. Quisenberry, Sr., to hold as trustee. The deed provided in part:

That for and in consideration of [ten dollars], cash in hand paid and the further consideration of the love and affection that the First Parties and Fourth Party have for each other, the Parties of the First Part hereby grant, bargain, sell and convey unto the Party of the Second

Part as Trustee for the express and sole purpose of reconveying said property to the Parties of the Third Part for the life of Mary Lou Blackford with remainder to James Blackford, his heirs or assigns. The property to be conveyed is located on Highway 140 approximately five (5) miles west of Calhoun, Kentucky. . . .

Less than one year later Blackford died intestate on March 25, 1983.

He was survived by Havener who later remarried. Upon Blackford's death, title to the vested remainder passed to Blackford's sister, Mae Catherine Whittington, and Blackford's brother, Louis Blackford.

Until her death, on November 2, 2008, Havener maintained her life estate in the property. In Havener's will, she bequeathed her one-half interest in the 150-acre tract of property to her daughters, Humphrey and Winstead.

On May 14, 2009, the Appellees petitioned the McLean Circuit Court for a Declaration of Rights and to Quiet Title. Subsequently, the Appellees moved for summary judgment. Then Appellants moved for summary judgment to be granted in their favor.

On August 20, 2009, the McClean Circuit Court granted summary judgment in favor of the Appellees and denied the summary judgment motion filed by the Appellants. The Appellants now appeal from the trial court's judgment.

When reviewing a trial court's decision on a motion for summary judgment, appellate courts must ask "whether the trial court correctly found there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law." *Hallahan v. The Courier-Journal*, 138

S.W.3d 699, 704 (Ky. App. 2004). In its decision, the trial court must view all evidence in the light most favorable to the nonmoving party and resolve all doubts in his favor. *Id.* at 705. Appellate courts need not defer to the court's decision. *Id.* Because legal conclusions are involved and findings of fact are not at issue, appellate review shall be conducted under a *de novo* standard. *Id.*

First, the Appellants claim that summary judgment should have been granted in their favor because Haverner maintained a valid dower interest at the time of her death. The Appellants argue that the dower interest was based upon the fee simple title to the property that Blackford maintained at the time of his death.

KRS 392.020 provides surviving spouses certain dower interest:

After the death of the husband or wife intestate, the survivor shall have an estate in fee of one-half (1/2) of the surplus real estate of which the other spouse or anyone for the use of the other spouse, was seized of an estate in fee simple at the time of death, and shall have an estate for his or her life in one-third (1/3) of any real estate of which the other spouse or anyone for the use of the other spouse, was seized of an estate in fee simple during the coverture but not at the time of death, unless the survivor's right to such interest has been barred, forfeited or relinquished. The survivor shall also have an absolute estate in one-half (1/2) of the surplus personalty left by the decedent. Unless the context otherwise requires, any reference in the statutes of this state to "dower" or "curtesy" shall be deemed to refer to the surviving spouse's interest created by this section.

KRS 392.020.

The Appellants claim that Blackford maintained a fee simple in the property at the time of his death. According to their argument, this alone entitled

Havener to one-half of the property interest. However, the status of Blackford's interest is irrelevant.

As KRS 392.020 provides, a dower interest may be relinquished. Havener relinquished any dower interest of which she may have been entitled when she executed the deed of conveyance for the property to be held in a trust. In exchange for her relinquished dower interest, she was able to enjoy the use of the property as a whole for her life rather than being given a share of the property upon Blackford's death.

In the alternative, the Appellants argue that summary judgment in favor of the Appellees was inappropriate because genuine issues of material of fact existed concerning Havener's intent to relinquish her dower interest. When interpreting a trust, trial courts must look at the "four corners" of the document and determine the trustor's intent. *Department of Revenue v. Kentucky Trust Co.*, 313 S.W.2d 401, 404 (Ky. 1958). Based upon the four corners of the deed of conveyance, Havener's intent to relinquish her dower interest is not a genuine issue of material fact rendering summary judgment inappropriate. The terms of the deed show that Havener intended to convey her interest in the property in exchange for a life estate. Because Blackford died prior to Havener, his interest solely vested in his heirs at the time of his death, subject only to Havener's life estate. The terms of the deed are unambiguous and do not require extrinsic evidence for interpretation.

Accordingly, the McLean Circuit Court Summary Judgment is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANTS:

Donna M. Dant
Calhoun, Kentucky

BRIEF FOR APPELLEES:

Ed Hodskins
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