

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2007-CA-001645-MR

JAMES WRIGHT

APPELLANT

v. APPEAL FROM FLOYD CIRCUIT COURT  
HONORABLE DANNY P. CAUDILL, JUDGE  
ACTION NO. 07-CI-00059

BARBARA CALDWELL

APPELLEE

OPINION  
AFFIRMING

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BEFORE: DIXON, LAMBERT AND STUMBO, JUDGES.

DIXON, JUDGE: Appellant, James Wright, appeals from a judgment of the Floyd Circuit Court settling a dispute over the burial arrangements of his decedent wife. Finding no abuse of discretion, we affirm.

Appellant and Jeanette Wright were married for over forty years.

Appellee, Barbara Caldwell, is Jeanette's daughter and Appellant's stepdaughter.

When Jeanette died on November 3, 2006, she was buried in a "family cemetery"

owned by Appellee and others unnamed in this action, located in Floyd County, Kentucky. Thereafter, a dispute arose between the parties when Appellant sought to place a joint monument on his wife's grave, so that upon his death, the two could be buried side by side. Appellee objected to the placement of a joint monument until and unless Appellant was eventually buried on the same site.

On January 19, 2007, Appellant filed a petition for injunctive relief, requesting, "that he be allowed to be buried next to his wife upon his death, and to place a joint monument on her grave, or in the alternative, that the Court Order James to be allowed to move Jeanette's remains to another cemetery." Appellee responded that although she owned the property on which the cemetery was located, it was not a designated "family cemetery." Further, Appellee stated, she "ha[d] no objection to [Appellant] being buried next to his wife (her mother) upon his death, and at that time to have a joint monument placed on their grave." However, Appellee did object to Appellant moving her mother's remains to another cemetery.

Appellant subsequently filed a motion for a judgment on the pleadings, seeking an order "giving [Appellee] ten days in which to enter into an agreement to have the monument placed on Jeanette Wright, or after the expiration of that time, Order that her remains may be moved to a suitable resting place which would allow the monument's placement." The motion was initially noticed for hearing on March 16, 2007, re-noticed three additional times, and was ultimately heard by the trial court on June 15, 2007. The trial court entered a judgment on

July 11, 2007, ruling that “a judgment on the pleadings as sought by [Appellant] is appropriate.” The judgment provided in relevant part:

- (1) The petitioner, James Wright, as the spouse of the Decedent, Jeanette Wright, has the right to establish the burial arrangements of his spouse. See *Haney v. Stamper*, 125 S.W. 2d [761] (Ky. 1939).
- (2) The Respondent shall notify the Petitioner, in writing, of her intention to allow the placement of a joint monument, at the present resting place of Jeanette Wright, within ten days of the date of Entry of this Order.
- (3) The Petitioner is granted the right to move the remains of Jeanette Wright to a cemetery of his choosing, should the permission not be given by the Respondent as set out in paragraph #2.
- (4) The Petitioner is granted the right to place a single headstone of his choosing on the existing gravesite, at his expense, should he decide not to move the remains of Jeanette Wright.

When Appellee did not grant permission for the joint monument within the ten-day period, Appellant retained new counsel and filed a motion to set aside the judgment. Attached to the motion was Appellant’s affidavit wherein he claimed that he was not present during the hearing on the motion and he did not consent to the terms of the judgment, nor did he authorize his attorney to enter into such judgment by agreement. The trial court denied the motion to set aside and this appeal followed.

Appellant inexplicably argues to this Court that the trial court erred in denying his motion for judgment on the pleadings. In fact, the record is clear that the trial court granted exactly the relief Appellant sought in the motion.

Nevertheless, Appellant argues that in his original petition for injunctive relief he sought to “place a joint monument on [Jeanette’s] grave immediately,” and Appellee had no objection to such. Accordingly, he believes that the trial court erred in granting Appellee the option of refusing the joint monument. We disagree.

First, in her response to the motion for injunctive relief, Appellee specifically stated that she had no objection to Appellant being buried next to his wife upon his death, and *at that time*, to have a joint monument placed on *their* grave. She did, in fact, object to the immediate placement of a joint monument and to Appellant removing her mother’s remains to another cemetery.

Second, and more importantly, Appellant’s motion for a judgment on the pleadings did not request the immediate placement of the joint monument but rather, as previously noted, an order giving Appellee ten days in which to enter into an agreement to have the monument placed on Jeanette’s grave, or after the expiration of that time, an order that the Appellant could remove her remains to a suitable resting place which would allow the monument’s placement. The trial court’s order granted the sought-after relief verbatim.

Finally, we agree with Appellee that the trial court could not have granted Appellant the right to immediately place a joint monument on Jeanette’s grave site. The law simply does not allow a court to dictate to a landowner that they must allow another body to be buried on one’s private premises. *See Grinestaff v. Grinestaff*, 318 S.W.2d 881 (Ky. 1958).

Next, Appellant contends that the trial court erred in denying his motion to set aside judgment on the grounds that he was not present at the June 15, 2007, hearing and did not consent to the terms of the judgment. Appellee, on the other hand, maintains that not only was Appellant present at that hearing, but that during the subsequent hearing on the motion to set aside, even the trial court recalled Appellant being present at the June 15<sup>th</sup> hearing.

This Court takes notice that on November 28, 2007, Appellant designated the entire record, including “all pleadings, orders, motions, depositions, memorandums, videos, and any and all other documents making up the original record.” Nonetheless, the record is devoid of any videotapes or transcripts of the hearings in this matter. We presume that the parties were aware of this fact because neither cited to the record in their briefs to this Court. It is the responsibility of parties to ensure that all parts of the record they rely upon are properly prepared and certified by the circuit court clerk. CR 75.

Notwithstanding, Appellant’s reliance on *McCutcheon’s Administrator v. Dean*, 54 S.W.2d 926 (Ky. 1932), is misplaced. *Dean* held that the party had a right to be present for a trial, not a hearing on a motion. *Id.* Appellant’s self-serving claim that he was not aware of the hearing and did not authorize his attorney to agree to the judgment is not supported by the record.

Finally, Appellant relies upon the decision in *Haney v. Stamper*, 125 S.W.2d 761 (Ky. 1939), to argue that the trial court denied him the right to choose

the burial arrangements of his spouse. We disagree. In *Haney*, the Court noted that,

in the absence of the expressed wishes of the deceased, the surviving spouse, where the parties have been living in the normal relations of marriage, has the paramount right not only to the custody of the dead body, but also to determine the time, manner, and place of burial. The right of the surviving spouse to prescribe the time and manner of burial necessarily excludes the rights of others even though they be the next of kin.

*Id.* at 762. (Citations omitted).

Clearly, a surviving spouse has the right, as Appellant claims, to determine burial rights. However, such must be done within the confines of the law. And one cannot take private property from another to fulfill the burial wishes of a deceased spouse. *See Grinestaff, supra; Haney, supra.* To follow Appellant's argument to its logical end would have an absurd result. Here, Appellee owns the property on which Jeanette's grave is located. She simply cannot be forced to place a joint monument on a grave located on her private property. Thus, the trial court properly ordered that if Appellee did not grant permission for the joint monument then Appellant had the right to remove Jeanette's remains to another location.

Appellant was granted precisely the relief he sought in his motion.

The judgment of the Floyd Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

Larry D. Brown  
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