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 NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2007-CA-000518-MR

BRANDY KINSER

APPELLANT

APPEAL FROM EDMONSON CIRCUIT COURT
v. HONORABLE RONNIE C. DORTCH, JUDGE
ACTION NO. 06-CI-00145

BRYAN THOMSON

APPELLEE

OPINION
AFFIRMING

*** * * * *

BEFORE: COMBS, CHIEF JUDGE; ACREE AND THOMPSON, JUDGES.

THOMPSON, JUDGE: This is an action to quiet title brought by Brandy Kinser against Bryan Thomson. Because we conclude that Brandy has no property interest in the disputed property, we affirm the circuit court's summary judgment entered in Thomson's favor.

This is the second action between the Kinser family and Thomson involving the disputed property. The first, filed in 2003, was initiated by Thomson

who asserted ownership by deed of the disputed property between his property and the Kinser property. Theodore and Carolyn Kinser were originally named as the defendants; subsequently, however, Thomson learned that Theodore had transferred a one-half interest to his son, William Joshua (Josh) Kinser. Thomson's motion to join Josh as a party was granted.

Prior to the conclusion of the litigation, Josh married Brandy. However, the complaint was not amended to include Brandy; thus, she was not a party to the action. Ultimately, the court found that the boundary line specified in the parties' deeds was as alleged by Thomson and judgment was entered accordingly. No appeal was taken from that judgment.

One year after the finality of the first action, on August 18, 2006, Brandy filed the present action claiming a dower interest in the identical property that was the subject of the first action. Thomson moved for summary judgment alleging that, as a matter of law, Brandy could not prevail on her claim because her husband was not seized of the property during the marriage. We agree with the circuit court that Thomson's contention is without flaw and is supported by rudimentary property law.

A spouse's dower interest is defined in KRS 392.020.

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.

KRS 392.020. The present statute retains the basic premise of statutory dower that the spouse must be seized of the real property during coverture or at death. In the infancy of our jurisprudence, the Court in *Butler v. Cheatham*, 8 Bush 594, 595, 71 Ky. 594, 595, 1872 WL 6785 (Ky. 1871), emphasized the seizin requirement when it stated:

By the common law the wife was not entitled to dower unless the estate held by the husband was one of inheritance, an entire estate, and one of which he might have corporal seizin, or a right to such seizin during coverture. (1 Washburn's Real Property, side-page 154.) The Virginia statute of 1705 (Morehead & Brown's Statute Laws, 572), which was continued in force in this state, was but declaratory of this common law rule; and in our opinion the section of the Revised Statutes heretofore quoted does not change such rule in so far as it requires an actual seizin, or the right to an actual seizin, of lands by the husband during the coverture to entitle the widow to dower.

Although we write in a much different era than the *Butler* Court, its expression of the law is no less viable: If the spouse was never seized of the property in dispute, there can be no dower interest.

Since the prior action established that Brandy's husband, Josh, never acquired an interest in the property involved in this dispute, it is axiomatic that she has no dower interest. Her claim, being dependent on a statutory dower interest,

fails as a matter of law; therefore, Thomson was properly granted summary judgment.

The judgment of the Edmonson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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