

STATE OF MICHIGAN
COURT OF APPEALS

JOHN AL BINION,

Plaintiff-Appellee,

v

ALBERTA BINION,

Defendant-Appellant.

UNPUBLISHED

September 16, 1997

No. 170900

Wayne Circuit Court

LC No. 92-228437-CH

Before: Markey, P.J., and Neff and Smolenski, JJ.

MEMORANDUM.

By leave granted, defendant appeals the order granting summary disposition in favor of plaintiff in this action to quiet title. We affirm.

Upon the death of his first wife, Carrie Binion, Willie Binion became the owner in fee simple absolute of the property in question. While yet a widower, Willie Binion deeded the property to himself and plaintiff John Al Binion as joint tenants with rights of survivorship. Subsequently, Willie Binion married defendant Alberta Binion and deeded title in the land to himself and defendant as joint tenants. Upon Willie Binion's death, these parties disputed ownership of the property.

Defendant's reliance on *Smith v Smith*, 290 Mich 143, 156; 287 NW 411 (1939), for the proposition that "the joint tenancy between father and son was severed when the father deeded to his wife, the defendant herein" is misplaced. That statement was in the context of the court having previously quoted from *Midgley v Walker*, 101 Mich 583; 60 NW 296 (1894), where our Supreme Court held that a joint estate may be severed by the act of the parties, including a conveyance by either party. However, such severance remains subject to the original condition, namely, the right of survivorship, which takes precedence. Only when the joint tenant who has in this fashion severed the joint tenancy by conveying his interests to a third party proves to be the survivor of the original joint tenancy does the third party obtain actual title. Where, as here, and as in *Smith v Smith, supra*, the grantor, one of the original joint tenants, is not the surviving joint tenant, the third party grantee, the wife, obtains only a life estate which expires with the original joint tenant's death, and no rights of dower

attach. *Smith, supra* at 155. The trial court therefore correctly ruled that plaintiff obtained fee simple title upon the death of Willie Binion.

Affirmed.

/s/ Jane E. Markey

/s/ Janet T. Neff

/s/ Michael R. Smolenski