

HELEN LORETTA MCINTYRE v. LEON BENNETT MCINTYRE
5-4051 410 S. W. 2d 117

Opinion delivered January 23, 1967
[Original opinion delivered December 12, 1966, p. 623.]

APPEAL & ERROR—DETERMINATION & DISPOSITION OF CAUSE—AMENDMENT OF ORIGINAL OPINION UPON DENIAL OF REHEARING.—
Where appellee's present possession of the property should not be interrupted on the basis of the matter before the Supreme Court, and appellant did not object, the original opinion amended to direct that appellee's possession (instead of appellant's) be not disturbed prior to sale of the property.

Appeal from Pulaski Chancery Court. Third Division *Murray O. Reed*, Chancellor; rehearing denied. Opinion amended.

PER CURIAM. Rehearing is denied, but an examination of the record and the opinion rendered on December 12, 1966, reveals that certain statements in the opinion are, perhaps, erroneous. The original opinion seems to assume that appellant continues in possession of the real property in question. The record, however, reveals that the appellant was given possession of this real estate on which the home of the parties was located by the original decree, based on the agreement of the parties, only until appellee finished paying for certain American Telephone and Telegraph Company stock.

It is undisputed that appellant had already vacated the property by the time the stock was paid for; that appellee then took possession and lived in the home intermittently until he married his present wife and since that marriage he has lived there most of the time. Appellant testified that, under their agreement appellee wanted to live there, that it was fair for him to have the house to live in, and that if he still wanted to live in it and use it, she had no objection.

The present possession of the property should not be interrupted on the basis of the matter now before the court, so we amend the original opinion to direct that appellee's possession (instead of appellant's) be not disturbed prior to sale of the property.