

Joint Tenancy in Jeopardy: Did the Kansas Court of Appeals Go Too Far in *Clark v. McKee*?

A Warning for Farm Families Using Survivorship Deeds

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Overview

The Kansas Court of Appeals recently issued a significant property-law decision in *Clark v. McKee*¹ involving a 40-acre Jefferson County farm and the severance of a joint tenancy with rights of survivorship. The court reached a result that may strike some as equitable under the facts. But in doing so, it may also have weakened longstanding property-law formalities that exist to protect certainty in land ownership.

At its core, *Clark* raises a fundamental question: Can survivorship rights in jointly owned property disappear without any completed conveyance of title? The appellate court answered “yes.” Whether Kansas property law should move that far is another matter.

The Facts

The farm originally belonged to Adalee Moffitt, who deeded the property in 2011 to herself, her son Carrol Clark, and her partner Norman McKee as joint tenants with rights of survivorship. When Moffitt died in 2018, Clark and McKee remained joint tenants. That meant when one died, the survivor would automatically own the property outright.

But shortly before McKee died in 2021, he signed an installment contract for deed with Steven and Brent Sandgren purporting to sell the entire property. The contract acknowledged Clark’s joint-tenancy interest but asserted Clark had abandoned the farm. McKee also vacated the property, gave the Sandgrens keys and garage door openers, and reportedly stated that he wanted to move to Colorado and “be done with the property.”

After McKee died, Clark sued to quiet title, arguing that because the joint tenancy had never been severed, he became sole owner automatically by survivorship.

The trial court disagreed. So did the appellate court.

The Court’s Reasoning

The appellate court held that McKee had severed the joint tenancy before his death because his conduct demonstrated an intent to terminate the survivorship arrangement. Importantly, McKee never actually conveyed

¹ No. 128,581, 2026 Kan. App. LEXIS 17 (Kan. Ct. App. May 8, 2026).

title before he died. No deed transferred his interest. No partition action occurred. Clark remained a record joint tenant the entire time.

Nevertheless, the court concluded that McKee's execution of the contract for deed, recording of an affidavit of equitable interest, surrender of possession, transfer of keys, and statements about leaving the property collectively constituted sufficient "intent plus effective action" to sever the joint tenancy. As a result, the survivorship feature disappeared before McKee's death, and the property became a tenancy in common between Clark and Brent Sandgren.

Why the Decision Matters

The most significant aspect of *Clark* is not the outcome itself - it is the court's methodology. Historically, joint tenancy law depended on objective acts affecting title. Traditional doctrine required destruction of one of the "four unities" of time, title, interest, or possession before survivorship rights could be terminated. Kansas courts have relaxed strict adherence to those formalities in recent years. But even modern cases generally retained some connection between severance and legally operative conduct affecting ownership rights. That connection appears weaker in *Clark*. McKee never completed a conveyance. Instead, the court treated an executory and potentially unenforceable contract as sufficient to destroy survivorship rights. That is a substantial doctrinal shift.

Did the Court Really Follow Kansas Precedent?

The appellate court relied heavily on *Nicholas v. Nicholas*² and *Reicherter v. McCauley*.³ But those cases may not support the broad rule the court adopted in *Clark*. In *Nicholas*, the Kansas Supreme Court emphasized "intent coupled with effective action," but the case arose in a divorce context and involved concrete legal actions altering ownership expectations. Similarly, *Reicherter* involved an actual conveyance by a joint tenant to a third party.

That distinction matters. Both cases still involved legally operative conduct affecting title or ownership rights. *Clark*, by contrast, treated preliminary conduct and evidence of future plans as sufficient to terminate survivorship rights even though no conveyance ever occurred. The result is a doctrine that begins to look less like "intent plus effective action" and more like "intent plus some conduct."

The Marketable Title Problem

Another troubling aspect of the opinion is the court's treatment of the underlying contract itself. McKee purported to sell the entire 40-acre farm despite owning only a joint-tenancy interest. The contract also contained language stating that if merchantable title could not be furnished, the agreement would become null and void. The court largely dismissed that issue as irrelevant. But if the contract was incapable of performance because McKee could not convey merchantable title, its ability to serve as the operative act necessary to sever the tenancy becomes highly questionable.

² 277 Kan. 171 (2004).

³ 47 Kan. App.2d 968 (2012).

The opinion therefore creates an odd result - the contract may have lacked sufficient legal force to transfer title but still possessed enough legal significance to destroy survivorship rights. That is difficult to reconcile with traditional conveyancing principles.

Why This Matters for Agriculture

The implications of *Clark* may be especially significant in farm and ranch succession planning. Joint tenancy and survivorship deeds are widely used in agriculture because they provide a relatively inexpensive and predictable mechanism for transferring property at death without probate complications. Farm families depend on that predictability. Lenders, title insurers, and estate planners also rely on clear ownership structures when evaluating financing, collateral, and transition planning.

But agricultural operations often involve informal arrangements - possession changes hands without documentation; family members rely on oral understandings; and operational control shifts gradually over time. Under *Clark's* reasoning, those ordinary rural practices may now become fertile ground for litigation over whether a deceased owner's conduct or statements implicitly severed survivorship rights long before death. That uncertainty creates risk not only for families, but also for title examiners, creditors, and future purchasers.

Conclusion

To be sure, some jurisdictions recognize equitable severance doctrines involving executory land-sale contracts. But those cases typically involve enforceable agreements or completed equitable transfers. *Clark* goes further. McKee never conveyed his interest before death, and the contract itself may have been incapable of performance because he purported to transfer more than he owned. Yet the court still treated the failed or incomplete transaction as sufficient to destroy survivorship rights. Few modern cases appear to extend intent-based severance doctrine this far.

The danger is not merely the outcome in this particular dispute. The danger is the broader doctrinal shift. Property law has long relied upon formal conveyancing requirements because certainty matters. Clear title rules reduce fraud, promote notice, and avoid postmortem litigation over what a deceased owner supposedly intended. *Clark* moves Kansas law away from those formal title-based rules and toward increasingly subjective judicial inquiries into intent.

If future courts expand the decision beyond its unusual facts, survivorship rights in Kansas may no longer depend primarily on recorded conveyances and objective title events. Instead, they may depend on after-the-fact litigation over conversations, possession changes, and incomplete transactions.

At some point, a property system that permits title interests to be altered without a conveyance risks ceasing to be a system of formal property rights at all.

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