

COPY



STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON)

Civil Action No. 2013-CP-32-01201

WILMA SPIKES,)

FILED

Plaintiff,)

JAN 29 P 4: 12

vs.)

J. A. CARRIGG
CLERK OF COURT
LEXINGTON SC

ORDER OF JUDGMENT

ROY STEVEN CUNNINGHAM, and)
ROY CHESTER CUNNINGHAM,)

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Defendants.)

FEB 23 2015

90 Court of Appeals

The above matter came on for trial before this Court on September 29, 2014. The plaintiff was represented by Brian P. Robinson of the Richland County Bar, and the defendants were represented by S. Jahue Moore of the Lexington County Bar. After a full trial on the merits, this Court makes the following findings of fact and conclusions of law.

WPC
#1

FINDINGS OF FACT:

1. The plaintiff is Wilma Spikes.
2. Spikes originally sued Roy Steven Cunningham on September 16, 2010.
3. Spikes effected service on Roy Steven Cunningham on September 20, 2010.
4. Roy Steven Cunningham ("Steven") owned property referred to hereinafter as Lot 7 in fee simple on September 20, 2014.
5. Steven executed a quit claim deed transferring Lot 7 to his father, Roy Chester Cunningham ("Chester") on December 25, 2010 for a recited consideration of \$1.00.
6. This Court issued an order of judgment against Steven on February 25, 2011 which was filed on March 11, 2011 in favor of Spikes.

7. Spikes sued Steven and Chester in the instant action on April 4, 2013, alleging violation of the Statute of Elizabeth with respect to the Lot 7 transfer.

8. The complaint in this matter mis-identified the address of the property at issue as 112 Harmon Creek Drive, Lexington, South Carolina.

9. The deed to Lot 7 was attached to the complaint as Exhibit "A."

10. Spikes moved to conform the pleading to the evidence, which motion this Court granted.

11. The defendants conceded that they were not surprised by the motion to conform the pleading to the evidence.

12. Spikes introduced into evidence a copy of the deed to lot 7, the original Spikes complaint against Steven (Pl. Exhibit 1), an affidavit of service of the original summons and complaint upon Steven filed with the Clerk of Court on September 24, 2010 (Pl. Exhibit 2), a Certified True Copy of the deed to Lot 7 from Steven to Chester filed in the Register of Deeds office on January 6, 2011 (Pl. Exhibit 3), a plat of the property showing lots A through G (Pl. Exhibit 4), and a deed transferring Lot 7 from Kimberley (Charles's daughter) and Norman Lloyd to Steven filed in the Register of Deeds office on March 26, 2009 (Pl. Exhibit 5).

13. Spikes also introduced a transcript of a hearing in supplemental proceeding in front of the Honorable James O. Spence on June 13, 2012 in which Steven was the witness.

14. Charles testified that he transferred lots shown on the Pl. Exhibit 4 plat to his children.

15. Charles testified that he told his children at the time he transferred the property that the property was "family property" and that they should transfer it back to him if they decided not to live on the property.

16. No such qualification appears in the deed entered as Pl. Exhibit 3 or the deed entered as Pl. Exhibit 5.

17. Steven testified that Charles told him when Charles transferred property to him that the property was family property and Steven should transfer it back to him if he should decide not to live on it.

18. Charles testified that he did not know when Steven moved off the property, it could have been anytime between 2006 and 2009.

19. Steven testified that he moved off the property in 2007.

20. Steven testified that he swapped his interest in lot D with his sister for her interest in Lot F.

21. Steven also testified the he did not know he owned Lot F until he got a tax bill for the 2010 property taxes.

22. Steven testified under oath in the supplemental proceeding hearing that he transferred Lot 7 to his father because his mother had contracted cancer and his father would need to sell the lot to help cover her hospital bills.

23. Spikes testified that she has not received any payment on the judgment at all.

24. THE CONFLICTING REASONS GIVEN BY STEVEN AS TO BASIS FOR THE TRANSFER MAKES THAT TESTIMONY NOT CREDIBLE. THE TRANSFER WAS TO DEFRAUD CREDITORS. (WPM)

CONCLUSIONS OF LAW

1. The Statute of Elizabeth, § 27-23-10(A), reflects public policy that one should not transfer property for no value in an attempt to defraud one's creditors.

2. Under the Statute of Elizabeth "conveyances may be set aside under two conditions: first, where the transfer is made by the grantor with the actual intent of defrauding his creditors where that intent is imputable to the grantee, even though there is a valuable

consideration; and, second, where a transfer is made without actual intent to defraud the grantor's creditors, but without valuable consideration.” Albertson v. Robinson, 371 S.C. 311, 316, 638 S.E.2d 81, 83 (S.C.App. 2006).

3. In this matter, I conclude that only the second condition is relevant, as the property was transferred without valuable consideration, the deed reciting only nominal consideration of \$1.00.

4. “Where a transfer is made without valuable consideration being exchanged, the transfer will be set aside only when the creditor establishes the following: (1) the grantor was indebted to the creditor at the time of the transfer; (2) the conveyance was voluntary; and (3) the grantor failed to retain sufficient property to pay his indebtedness to the creditor in full, not merely at the time of transfer, but in the final analysis when the creditor seeks to collect the debt.” Albertson at 317, 638 S.E.2d at 84.

WPK
HY

5. “It is only necessary that the debt should have been in existence or the right of action have accrued at or before the time of the transfer. It may be reduced to judgment at a later date. To determine whether a person is such an existing creditor as can invoke the protection of the statute the inception of the debt or obligation is the time which controls; and not the date of the subsequent entry of judgment.” Albertson 317-318, 638 S.E.2d at 84.

6. The testimony and Pl. Exhibit 1 establish that the Steven owed a debt to Spikes no later than September 16, 2010 when Spikes sued Steven. I conclude that this establishes the first element required under the Statute of Elizabeth as a matter of law.

7. Both Steven and Chester testified that the property was transferred to Chester by Steven because it was “family property” and there was an agreement that, if Steven decided to move from the property, he would transfer the property back to his father. However, Steven

previously testified that he transferred the property to his father because his mother contracted cancer and his father would need to sell the property to pay hospital bills. Whichever of these stories is true, or if the truth lies elsewhere, the evidence is clear and convincing that the transfer was voluntary. I conclude that this establishes the second element required under the Statute of Elizabeth as a matter of law.

8. Spikes testified that Steven has not paid any amount at all on the debt established by the Order of Judgment filed on March 11, 2011 and attached to the complaint in this matter. Steven did not contradict Spikes' testimony regarding non-payment. The transcript of the supplemental proceeding indicates that Spikes was attempting to collect the debt at least as early as June 13, 2012. I conclude that this testimony, combined with the transcript, establishes the third element required under the Statute of Elizabeth as a matter of law.

WAC #5
9. I conclude as a matter of law that the deed transferring Lot F from Steven to Chester is void as fraudulent.

ORDER

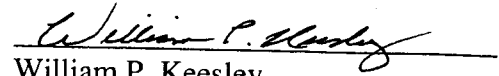
IT IS ORDERED that the deed, filed in Deed Book 14664, page 342 in the Lexington County Register of Deeds office is void.

IT IS FURTHER ORDERED that the Register of Deeds for Lexington County mark the deed filed in Deed Book 14664, page 342 in the Lexington County Register of Deeds office 'Void'.

IT IS FURTHER ORDERED that Roy Steven Cunningham not transfer or attempt to transfer the property at issue here unless or until he has been ordered to do so by either the

Lexington County Court of Common Pleas or by the Lexington County Master-in-Equity.

AND IT IS SO ORDERED.



William P. Keesley
Chief Administrative Judge
Eleventh Judicial Circuit

Lexington, South Carolina

^{JAN.}
October 29, 2015 *WPK*

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SC Court of Appeals

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF LEXINGTON
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2013CP3201201

Wilma Spikes

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 FEB 23 2015
SC Court of Appeals

Roy Steven Cunningham Roy Chester
 Cunningham Jr
 Roy Chester
 Cunningham

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

1/30/2015

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on **1/29/2015**, and a copy mailed first class or placed in the appropriate attorney's box on **1/30/2015**, to attorneys of record or to parties (when appearing pro se) as follows:

Brian Pratt Robinson, Esq.
Post Office Box 61110
Columbia, SC 29260

S. Jahue Moore, Esq.
Post Office Box 5709
West Columbia, SC 29171

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg

Court Reporter

Beth A. Carrigg - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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