

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Garland Malone,)
)
 Plaintiff,)
)
 vs.)
)
 Melvin Malone, Robin Strange,)
 and Donna Malone,)
)
 Defendants.)
 _____)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

**ORDER GRANTING PLAINTIFF'S
 MOTION FOR SUMMARY JUDGMENT**

Case No.: 2015-CP-42-02254

RECEIVED

JUL 22 2016

SC Court of Appeals

This matter came before the Court on a motion for summary judgment filed by Plaintiff pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. A hearing was held on May 13, 2016. Present at the hearing was Mark A. Nowell, attorney for Plaintiff, and Defendants, Robin Strange and Donna Malone, who were unrepresented by counsel.

For the reasons set forth herein, the Court hereby grants Plaintiff's motion for summary judgment.

PROCEDURAL HISTORY

Plaintiff filed this action on May 19, 2015, seeking a declaration from this Court for the correct legal description of a certain piece of real property, as well quieting the title to the same real property.

The three Defendants were properly served with the Summons and Complaint. Only two of the Defendants, Robin Strange and Donna Malone, responded to the Summons and Complaint. These Defendants filed similar handwritten answers to the lawsuit stating they "strongly disagree with the statements and accusations made in the following lawsuit," they requested to be advised of any future court proceeding, and that they were "looking forward to my day and say in court on this

FILED
 CLERK OF COURT
 2016 JUN 22 PM 9:38
 HOPE BLACKLEY

matter.”

Plaintiff filed the present motion for summary judgment on March 2, 2016, and properly served all three Defendants with the same on March 4, 2016. The motion was supported by an affidavit signed by the Plaintiff. No responsive affidavit or other documents was submitted by any of the Defendants.

STANDARD OF REVIEW

Where “plain, palpable, and indisputable facts exist on which reasonable minds cannot differ,” summary judgment is proper. *Carolina Alliance for Fair Employment v. S.C. Department of Labor, Licensing, and Regulation*, 523 S.E.2d 795, 799 (S.C. Ct. App. 1999) (quoting *Rothrock v. Copeland*, 409 S.E.2d 366, 368 (S.C. 1991)). Summary judgment should therefore be granted when the “pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits” show that there is “no genuine issue” as to any material fact and that the moving party is “entitled to judgment as a matter of law.” *Connor Holdings, LLC v. Cousins*, 644 S.E.2d 58, 60 (S.C. 2007).

DISCUSSION

Plaintiff’s father, Charles T. Malone, Sr., a resident of Spartanburg County, South Carolina died intestate on August 8, 2005. He was survived by Charles T. Malone, Jr., son; Plaintiff, son; Robin Strange (f/k/a Robin Malone), daughter; and Melvin Malone, son. Charles T. Malone, Jr., died on September 5, 2012, survived only by his wife, Donna Malone (n/k/a Donna Rollins), who inherited all of his property interests.

The estate of Charles T. Malone, Sr. is currently being administered in the Spartanburg County Probate Court (Case No. 2013-ES-42-1683), and the Plaintiff is serving as the personal representative.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2016 JUN 22 PM 3:38
M. HOPE BRADLEY

Charles T. Malone, Sr. owned the house and lot located at 675 Hammett Store Road, Lyman, South Carolina 29365 (the "Real Property") and as shown as tax map number 5-06-00-057.00. He inherited the Real Property from Theron E. ("T. E.") Rector (Spartanburg County Probate Court File No. 237026). T. E. Rector died on September 18, 1981. T. E. Rector was deeded the Real Property by James Foster on February 13, 1981 and recorded in Deed Book 47-Z at Page 608 on February 13, 1981 in the Register of Deeds for Spartanburg County, South Carolina.

Before his death, Charles T. Malone, Sr. deeded the Real Property to Plaintiff, but reserved and retained unto himself a life estate interest. The deed was recorded on May 20, 2005 in Deed Book 83-B at Page 288 in the Register of Deeds for Spartanburg County, South Carolina.

At the motion hearing, Plaintiff's counsel argued that the life estate deed contained an inaccurate legal description of the Real Property, even though the tax map number was stated correctly. More specifically, counsel argued that the individual who prepared the life estate deed failed to include one of the course and directions in the metes and bounds description, as well as misstated the acreage of the property. As a result, the legal description of the Real Property is incorrect.

In addition to relying on the supporting affidavit of his client, Plaintiff's counsel performed a title search on the Real Property and provided the Court with a copy of the deed from James Foster to T. E. Rector dated February 13, 1981 and recorded in Deed Book 47-Z at Page 608. In the legal description of the 1981 deed, there is a course and direction in the metes and bound description that is missing in the legal description of the life estate deed (S. 45-45 E. 11.30 chs. to iron pin). Also, the acreage of the Real Property in the 1981 deed is stated as "14 acres more or less", but is stated as "1 acre, more or less" in the life estate deed. Except for these two differences, the legal description contained in the life estate deed is identical to that of its predecessor deed. Consequently,

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2016 JUN 23 PM 3:38
M. HOPE BLANKLEY

Plaintiff's counsel argued that these differences were merely a byproduct of a scrivener's error, and the Court should clarify and correct the error in the property description.

After Plaintiff's counsel's presentation, both Defendants were given an opportunity to address the Court. Both Defendants simply stated they disagreed with Plaintiff's position and provided nothing further to oppose Plaintiff's motion or present an issue of fact.

"Rule 56(e), SCRCF, requires that when a motion for summary judgment is made and supported as provided by the rule, an adverse party may not rest upon the mere allegations or denials of his pleadings. The adverse party's response, including affidavits or as otherwise provided by the rule, must set forth specific facts showing there is a genuine issue for trial." *Hoard v. Roper Hospital, Inc.*, 387 S.C. 539, 549, 694 S.E.2d 1, 6 (2010). Since the Plaintiff met his initial burden of showing the absence of a genuine issue as to any material fact, and the Defendants failed to come forward with specific facts showing there is a genuine issue for trial, the Court finds that the Plaintiff has established his entitlement to summary judgment relief.

IT IS HEREBY DECLARED, ORDERED, AND DECREED that Plaintiff's motion for summary judgment is granted.

IT IS FURTHER ORDERED that the following is the correct legal description of the Real Property at issue in this case:

All that certain, piece, parcel or tract of land, with improvements thereon, or to be constructed thereon, in the State of South Carolina, County of Spartanburg, Beech Springs Township, and having the following metes and bounds to-wit:

BEGINNING at an iron pin near road and running thence N. 12-00 W. 13.30 chs. to St. C. on branch; thence S. 63-45 E. 4.35 chs. to stake on branch; thence S. 53-30 E. 3.12 chs. to dead poplar; thence S. 45-45 E. 11.30 chs. to iron pin; thence S. 58-00 E. 8.23 chs. to iron pin on road; thence S. 82-20 W. 2.96 chs. to iron pin in road; thence N. 85-00 W. 5.90 chs. to iron pin on road; thence N. 67-50 W. 10.08 chs. to the beginning corner, containing 14 acres more or less, according to plat of the T. E. Rector place, Spartanburg County, South Carolina, made and platted by W. A.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2016 JUN 22 PM 3:38
M. HOE BLACKBERRY

Christopher, Surveyor, October 1, 1922. Less 6/10 of an acre sold to the Pacific Mills Co.

LESS, HOWEVER:

All that piece, parcel or lot of land located, lying and being situate in the County of Spartanburg, State of South Carolina, near Holly Springs Baptist Church, and runs along Hammett Store Rd., Ben Hurt Rd. and Goodjoin Rd. (S.C. Hwy. 357) as shown on survey for Charles Malone, Jr., made by Wolfe & Huskey, Inc., Engineering and Surveying, dated June 1, 1993, containing 2.92 acres, more or less, said plat to be recorded herewith. Reference is made to said plat for a more particular description

LESS, HOWEVER:

All that certain piece, parcel or lot of land, lying, located, and being situate in the County of Spartanburg, State of South Carolina, located off Hammett Store Road, known as 2.24 acres, more or less, of 17.65 acres. For a more complete description of said property, refer to Plat Book 6 at Page 2 in the RMC Office for Spartanburg County, South Carolina. The plat of the 2.24 acres is shown on a Plat by Souther Land Surveying and named Carlos Tucker and Amy White, dated June 9, 2003, and recorded herewith.

IT IS FURTHER ORDERED that any and all right, title, and interest of the Defendants, devisees, heirs, and assigns or anyone or anything in the whole world claiming under them, irrespective of the nature of that interest, or of any other persons unknown, claiming any right, title, estate, interest in or lien upon the Real Property, in and to the Real Property, is hereby terminated.

IT IS SO ORDERED.

J. Mark Hayes

J. Mark Hayes, II *Shana Cousino, DC*
Seventh Judicial Circuit

Date: June 22, 2016
Spartanburg, SC

A CERTIFIED COPY
M. Hope Blackley

CLERK OF COURT
SPARTANBURG COUNTY
BY *Shana Cousino, DC*
DATED 6-22-2016

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2016 JUN 22 PM 3:38