

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS
Docket No. 2020-CP-04-00337

Frances K. Chestnut, Elizabeth Diane Keese,
Sylvester Keese, Arthur B. Keese and Mary
K. Taylor,

Plaintiffs,

vs.

Florence Keese, Marcy Keese, Margo Keese
and Marshall Keese,

Defendants.

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SC Court of Appeals
ORDER

THIS MATTER IS BEFORE THE COURT on the Plaintiffs Summons and Complaint filed on February 20, 2019. The Summons and Complaint were served upon the Defendant Marshall Keese by personal service on April 10, 2019. The Defendants Florence Keese, Marcy Keese, Margo Keese and Marshall Keese (Jr.) were served by personal service on April 5, 2019. An Affidavit of Default as to the Defendants was filed in the Court record on May 17, 2019.

Plaintiffs brought this quiet title action asking the Court to rule that the conveyance made in the Deed of September 21, 1992 and recorded September 22, 1992, in the Office of the Register of Deeds for Anderson County, South Carolina, in Book 1465 at Page 38. TMS No.: 062-00-02-006 was null and void with regard to the conveyance to Marshall Keese (Sr.) who was deceased on the date of the conveyance. The Deed conveyed property from Minnie Keese to Frances K. Chestnut, James Keese, Jr., Sylvester Keese, Marshall B. Keese (Sr.)(deceased), Arthur B. Keese and Mary K. Taylor. The Order of Default Judgment was signed by the Court on July 1, 2019 granting the Plaintiffs prayer for relief thereby declaring the conveyance to the deceased Marshall Keese null and void, and quieting title in the subject property in the names of the Plaintiffs.

To set aside the entry of the default judgment, the Defendants, who are the widow and children (heirs at law) of Marshall Keese (Sr.) must show there is good cause to set aside the default, and if so, there is a meritorious defense to be raised to this Complaint.

The Court finds that the Defendants consulted Attorney Richard Margolis of Philadelphia, Pennsylvania. As shown in the Affidavit the Defendants filed in their behalf, although Mr. Margolis was not licensed in South Carolina, he informed the Defendants of the necessity of answering this matter. The Defendants did not answer and had no contact was made with the Plaintiffs' attorney other than an initial contact wherein no request was

made of her.. As stated in the case, Williams v. Vanvolkenburg, 440 SE 2d 408, 409 (S.C.APP 1994), the Defendants are accountable for the actions of their attorney, and his failure to act is not an excuse for their inaction. The Defendants understood or are chargeable with the knowledge that an answer was necessary to prevent a default in this action, and no attempt was made to answer or otherwise respond to the pleadings.

Further, the Court finds that even if the Default were to establish good cause, to set aside the entry of the Default there must be a showing that meritorious defense exists to the Plaintiffs' Complaint. The Court finds that there is no meritorious defense in this case. The Default Judgment found the conveyance to Marshall Keese (Sr.) to be null and void based on the undisputed fact that he was dead at the time of conveyance, and thus not a person in being at the time of the conveyance. The Grantee in a Deed must be a person in being that is either a natural living person or a legal entity in existence at the time of the conveyance. As stated in Gifford V. Linnell, 579 S.E.2d 440, 441 (N.C. App 2003)

“At the time the plaintiff executed the Deed the... Family Trust did not exist and, therefore, the grantee of said deed was not a legal entity and the deed, therefore, could not operate to convey title to the defendants either individually or as trustees.”

No argument exists that Marshall Keese (Sr.) deceased at the time was a person in being on the date of the conveyance.

This Court, based on the finding that there is neither good cause to set aside the Default Order nor a meritorious defense to the Complaint, concludes that the Order of Default shall remain the Order of this Court and thus the relief requested in the Complaint is granted..

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

R. Scott Sprouse, Judge, Court of Common Pleas

Anderson, SC

_____, 2020