



# In the Missouri Court of Appeals Eastern District

## DIVISION FOUR

GWEN MARIE SPICER,	)	No. ED93371 & ED93529
	)	
Appellant,	)	Appeal from the Circuit Court
	)	of St. Louis County
v.	)	
	)	Case Number: 2107CC-03416-01
DONALD N. SPICER	)	
REVOCABLE LIVING TRUST,	)	
ET AL.,	)	Honorable John A. Ross
	)	
Respondents.	)	Filed: June 15, 2010

## Introduction

Gwen Marie Spicer (Wife) appeals from the trial court's judgment in favor of the Donald N. Spicer Revocable Living Trust, Steven G. Spicer, Debra Pauli, and Robert Spicer (collectively referred to as Respondents). We remand the cause and order the trial court to reinstate its January 22, 2008 judgment, which is now final, and to vacate its other orders entered thereafter.

## Factual and Procedural Background

On or about August 21, 2007, Wife filed a Petition to Quiet Title against the Donald N. Spicer Revocable Living Trust (Trust), alleging that Wife was the fee simple owner of the marital home purchased by Wife and her deceased husband Donald N. Spicer (Husband), and asking the court to cancel a General Warranty Deed, executed on

May 31, 2007, purportedly conveying Husband's ½ interest in the marital home to the Trust. Counsel entered and filed an Answer on the Trust's behalf on September 27, 2007. In its Answer, Trust admitted that Wife and Husband purchased the marital home as husband and wife, and that the trial court had jurisdiction over the subject matter and the parties, but averred that Husband unilaterally terminated the parties' joint tenancy in the property by obtaining a mortgage without Wife's consent and by conveying his interest by the May 31, 2007 General Warranty Deed to the Trust.

Thereafter, on November 19, 2007, Wife moved for summary judgment, arguing that Husband and Wife had purchased the marital home as tenants by the entirety and that Wife became the fee simple owner of the home upon Husband's death. The Trust failed to file a response to Wife's summary judgment motion until January 22, 2008<sup>1</sup>; that same date, the trial court granted Wife's motion and entered summary judgment in her favor, declaring any transfers of the marital property that were not jointly transferred by Wife and Husband to be cancelled.

On February 7, 2008, counsel for Steven G. Spicer, the Trust's trustee (Steven G. Spicer also referred to as Trustee), specially entered and moved to set aside the summary judgment and to dismiss the cause for lack of jurisdiction. In this motion, Trustee argued that the Trust was not a legal entity and that Trustee was the legal owner of trust property. Trustee contended that the court should dismiss the cause for lack of jurisdiction, because trustees and beneficiaries are necessary parties in suits involving trust property, yet Wife had not named either as parties. On February 25, the trial court granted the motion to set

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<sup>1</sup> In this belated response, Trust also requested a continuance "in order to obtain additional research to support the right to unilaterally cancel joint tenancy and obtain new counsel to further that end."

aside the summary judgment, but denied the motion to dismiss and gave Wife leave to amend her pleadings within 10 days to add Trustee as a party.

Wife filed an Amended Petition on February 29, 2008, naming the Trust, Steven G. Spicer, Debra Pauli, and Robert Spicer as defendants (collectively referred to as Defendants). Robert Spicer and Debra Pauli were served on April 16, 2008; the Trust and Steven Spicer were served on April 22, 2008. Defendants failed to respond to the Petition. The trial court entered an Interlocutory Order of Default on May 27, 2008, setting the cause for hearing on June 23, 2008. On June 9, Trustee's counsel entered its appearance for Steven G. Spicer and Debra Pauli, and was granted an additional twenty days to file an Answer. On June 19, 2008, Wife again filed a motion for summary judgment. On July 14, 2008, Trustee filed a Motion to Dismiss. Defendants filed a joint Motion to Dismiss on July 31, 2008. That same date, Steven G. Spicer filed a separate Motion to Dismiss.

Wife's motion for summary judgment was called for hearing on August 18, 2008; Defendants failed to appear, despite having proper notice. Over Wife's objection and on the court's own motion, the trial court reset the hearing on Wife's summary-judgment motion for August 22, 2008. On August 22, the trial court denied Wife's motion for summary judgment and Defendants' motions to dismiss.

On October 30, 2008, Trustee filed cross-claims to Wife's Amended Petition. Wife filed another motion for summary judgment, and an Answer to Trustee's cross-claims on January 5, 2009. Defendants filed a Motion to Strike Plaintiff's Second Summary Judgment Motion on January 16. The parties engaged in a settlement conference on February 2, and Defendants were ordered to file a response to Wife's

summary judgment motion by February 6, 2009, unless the time was otherwise extended by agreement of the parties during settlement negotiations. Defendants filed their response, and an Answer to Wife's Amended Petition on February 6. On February 20, 2009, the trial court entered an Order requiring the parties to appear on March 6 to advise whether the case had been settled.

On March 6, 2009, Defendants filed a motion for summary judgment. That same date, settlement positions were discussed with the trial court and the cause was continued to March 9; the parties were ordered to advise the court orally if they had settled prior to March 9.

Subsequently, Wife's original counsel withdrew and new counsel entered on her behalf. On April 2, 2009, Wife thereafter responded to Defendants' summary judgment motion and filed a Motion to Reconsider the Court's Setting Aside of Summary Judgment in Favor of [Wife]. On April 8, Defendants filed a Motion to Enforce Settlement, and on April 14, Wife filed an Amended Motion to Reconsider Court's Setting Aside of Summary Judgment for [Wife]. On April 22, Wife filed a Motion for Judgment on Pleadings on Defendants' Motion to Enforce Settlement Agreement. On April 27, Defendants responded to Wife's Motion for Judgment on the Pleadings, and Wife filed a Memorandum on the Power to Reconsider Prior Orders and a Motion to Quash a Subpoena Duces Tecum directed to her former counsel. That same day, the trial court denied Wife's Motion for Judgment on the Pleadings and set Defendants' Motion to Enforce Settlement for hearing on May 19.

Wife's Motion to Quash Subpoena was granted in part and denied in part on May 19, 2009. Evidence adduced at a May 22 hearing on Defendants' Motion to Enforce

Settlement included testimony by Wife's former counsel, Wife, and counsel for Trustee. The trial court granted Defendants' Motion to Enforce on June 24, 2009. On July 23, 2009, Wife filed a Motion for New Trial and to Amend the Judgment. Subsequently, the trial court amended its judgment in part, to correct an inaccurate date and fractional references, but denied all other relief.

This appeal follows.

### Discussion

Procedurally, this case presents several jurisdictional issues, including whether the trial court's judgment granting Defendants' motion to enforce settlement is a final, appealable judgment. See e.g., St. Louis Union Station v. Discovery Channel Store, 272 S.W.3d 504, 505 (Mo. App. E.D. 2008); Bauman v. Monia, 905 S.W.2d 127, 128 (Mo. App. E.D. 1995). However, we need not make this determination, as Wife's first of five points on appeal has merit and is dispositive. In her first point, Wife claims, among other things, that the trial court erred in setting aside its January 22, 2008 grant of summary judgment to Wife on her Petition to Quiet Title, because Trustee's motion was not an authorized post-trial motion and Trustee lacked standing to bring the motion. We agree, and conclude the trial court lost jurisdiction on the matter prior to its order granting Defendants' motion to enforce.

Pursuant to Rule 75.01,<sup>2</sup> a trial court only retains authority to vacate, reopen, correct, amend, or modify its judgment for thirty days following its entry. This thirty-day period corresponds with the finality provisions of Rule 81.05(a)(1), which provides that a judgment becomes final thirty days after entry if no timely, authorized after-trial motions

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<sup>2</sup> All rule citations are to Mo. R. Civ. P. (2010).

are filed. Accordingly, in the absence of an authorized after-trial motion, the trial court loses jurisdiction at the end of this time period. Rules 75.01, 81.05(a)(1).

Here, the trial court entered its judgment granting Wife's summary judgment motion on January 22, 2008. Subsequently, Trustee, *a non-party to the judgment entered*, filed a "Motion of Trustee, Appearing by Special Appearance, to Set Aside Judgment and to Dismiss for Lack of Jurisdiction." Prior to the trial court's entry of judgment, Trustee was never made, nor had he sought to be, a party to Wife's matter. Trustee did not move to intervene in the matter before its conclusion; nor did Trustee so move before filing his motion to set aside and to dismiss after the judgment was entered.

As a non-party, Trustee cannot appeal from the trial court's order; consequently, his motion is not an authorized after-trial motion that would extend the trial court's jurisdiction beyond the thirty days following its entry of judgment. Wolfner v. Dalton, 955 S.W.2d 928, 929-31 (Mo. banc 1997) (non-parties to suit who did not effectively apply for intervention until after judgment became final could not seek to set aside judgment; power of trial court to do anything in lawsuit after all issues have been resolved is limited to thirty days, as set out in Rule 75.01); In re Voehl, 783 S.W.2d 532 (Mo. App. S.D. 1990) (non-party cannot appeal from trial court's order); see also Rule 75.01 (trial court retains control over judgment during 30-day period after its entry); Rule 81.05(a)(1) (judgment becomes final at expiration of 30 days after entry if no timely authorized after-trial motion filed). Because no timely, authorized after-trial motion was filed by a party to the action, the trial court's grant of summary judgment to Wife became final on February 22, 2008, and the trial court thereafter lost jurisdiction over the judgment and had no authority to take further action. State ex rel. Nixon v. Bowers, 221

S.W.3d 463, 465-66 (Mo. App. W.D. 2007). Judgments entered without jurisdiction are void. Id. at 466.

Accordingly, the trial court's February 25, 2008 judgment setting aside the grant of summary judgment is void. Therefore, the January 22, 2008 judgment is the final judgment in this case, and the cause is remanded with directions to the trial court to vacate any orders entered after January 22, 2008. See Martin, Malec & Leopold, P.C. v. Dennen, 285 S.W.3d 383, 389 (Mo. App. E.D. 2009) (appellate court has jurisdiction of appeal to confine trial court to its jurisdiction and to adjudicate whether a judgment is invalid; appellate court's jurisdiction does not extend to determination of appeal's merits unless trial court had jurisdiction to determine issues presented on their merits).

We are cognizant of Trustee's argument that the trust was not a legal entity and that, as legal owner of trust property, he was a necessary party to Wife's action. Trustee is the legal owner of the trust property; consequently, he is a proper party against whom suit may be filed and judgment affecting title to trust property may be entered. McBee v. Gustaff Vandecnocke Revocable Trust, 986 S.W.2d 170, 172-73 (Mo. banc 1999) (trustee as legal owner of trust property is proper party against whom suit may be filed; plaintiff's failure to name trustee in caption did not divest trial court of jurisdiction where petition, taken as whole, identified trustee as party in interest, and trustee was personally served, defended on merits and suffered no prejudice). The sole ground set forth by Trustee in his motion to set aside the judgment and to dismiss Wife's action was that the trial court lacked jurisdiction because the trust was a non-legal entity. The status of a person or group as an entity that can be sued is referred to as capacity to be sued. Trustees for Indian Springs Owners Ass'n. v. Greeves, 277 S.W.3d 793, 797-98 (Mo.

App. E.D. 2009). When a person desires to raise an issue as to the legal existence of any party, or the capacity of a party to be sued in a representative capacity, the individual shall do so by specific negative averment. Id. at 798 n.4; Rule 55.13. Here, counsel for Trust entered its appearance and defended against Wife’s claim. Yet, Trust failed to raise any claim that Trust did not have the capacity to be sued, choosing instead to wait until after Wife obtained a judgment before raising the issue. Consequently, Trust waived this claim. Id. at 799.

Although Trustee and the Trust beneficiaries were not made parties, their interests were adequately protected by the Trust’s representation, as Trustee’s and the beneficiaries’ interests were identical to that of the Trust in opposing Wife’s action; consequently, we find that the doctrine of virtual representation applies. In Estate of Remmele, 853 S.W.2d 476, 481-82 (Mo. App. W.D. 1993). Because Trust had a sufficient interest to represent Trustee’s and beneficiaries’ interests, a valid judgment adjudicating Wife’s cause can be effectively rendered without their presence as parties. Id. Rule 84.14 grants this Court the authority to “give such judgment as the court ought to give.” Accordingly, pursuant to the authority provided by Rule 84.14, the trial court’s January 22, 2008 judgment is hereby modified to enter judgment against Trustee.

#### Conclusion

The cause is remanded with directions to the trial court to reinstate its January 22, 2008 judgment, and to vacate any orders entered after January 22, 2008 judgment.

Kurt S. Odenwald, P. J., concurs.  
George W. Draper III, J., concurs.

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Gary M. Gaertner, Jr., Judge