

Summary of SC91117, *Gwen Marie Spicer v. Donald N. Spicer Revocable Living Trust, et al.*
Appeal from the St. Louis County circuit court, Judge John A. Ross
Argued and submitted Feb. 8, 2011; opinion issued March 29, 2011

Attorneys: Gwen Spicer was represented by Ron Ribaldo of The Ron Ribaldo Law Firm in Valley Park, (636) 485-8252; and the trust and trustee were represented by Gregory G. Fenlon, a solo practitioner from Clayton, (314) 862-7999.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A woman appeals a second judgment in a case involving the title to real property. In a unanimous decision written by Chief Justice William Ray Price Jr., the Supreme Court of Missouri dismissed the appeal. The trial court lost jurisdiction over the case 30 days after it entered its first judgment, in January 2008. As such, it had no jurisdiction to vacate the first judgment and enter a second judgment, nor does this Court have jurisdiction over the appeal.

Facts: Gwen Spicer's husband executed a deed in May 2007, while the couple was living separately due to marital difficulties, purporting to convey to his living trust a one-half undivided interest in real property the couple owned in St. Louis County. He died a little more than a month later, while he and Spicer still were married. In August 2007, Spicer filed a petition to quiet (establish) title to the property, naming the trust as the sole defendant; she later moved for summary judgment. On January 22, 2008, the circuit court entered judgment (Judgment I) granting the motion, ordering that the deed be canceled, and crossing out the provision in the judgment awarding attorney's fees and court costs. Sixteen days later, the trustee – who was not named in the lawsuit – moved to set aside the judgment. On February 25, 2008 – 34 days after Judgment I was entered – the court set aside that judgment and ordered Spicer to amend her pleadings to include the trustee. She did so, and before trial was to begin, the parties engaged in a series of settlement negotiations. Although the attorneys reached a purported settlement, Spicer denied its validity. The trustee moved to enforce the alleged settlement. After an evidentiary hearing, the court in June 2009 determined the parties had reached a valid settlement and ordered the parties to sign a consent order and judgment. The consent judgment has not yet been signed. Spicer appeals.

DISMISSED.

Court en banc holds: (1) Judgment I was a final judgment. Under Rule 75.01, a trial court retains jurisdiction over judgments for 30 days after entering judgment and may vacate or modify its judgments within that time period. Pursuant to Rule 81.05, after those 30 days have expired, the judgment becomes final and the trial court loses jurisdiction unless a party timely files an authorized after-trial motion. Here, Judgment I disposed of all the issues and parties in the action, leaving nothing more for the trial court to do. The trial court chose not to award attorney's fees or court costs, so noted by crossing out that provision in the judgment and placing the judge's signature next to it. As such, Judgment I formed a final disposition of Spicer's suit.

(2) Because Judgment I was a final judgment, the trial court lost jurisdiction 30 days after it was entered January 22, 2008. It had no authority, then, on February 25 (34 days after the judgment was entered), to set aside the judgment. The motion filed by the trustee to set that judgment aside did not extend the time because Rule 81.05(a)(2) is limited to parties, and the trustee was not a party. Because the trial court was divested of jurisdiction before it attempted to enter its February 25 order and judgment, that order and judgment are void. Further, because the notice of appeal was filed more than a year after Judgment I became a final, appealable judgment, it was untimely, and this Court lacks jurisdiction and must dismiss the appeal.