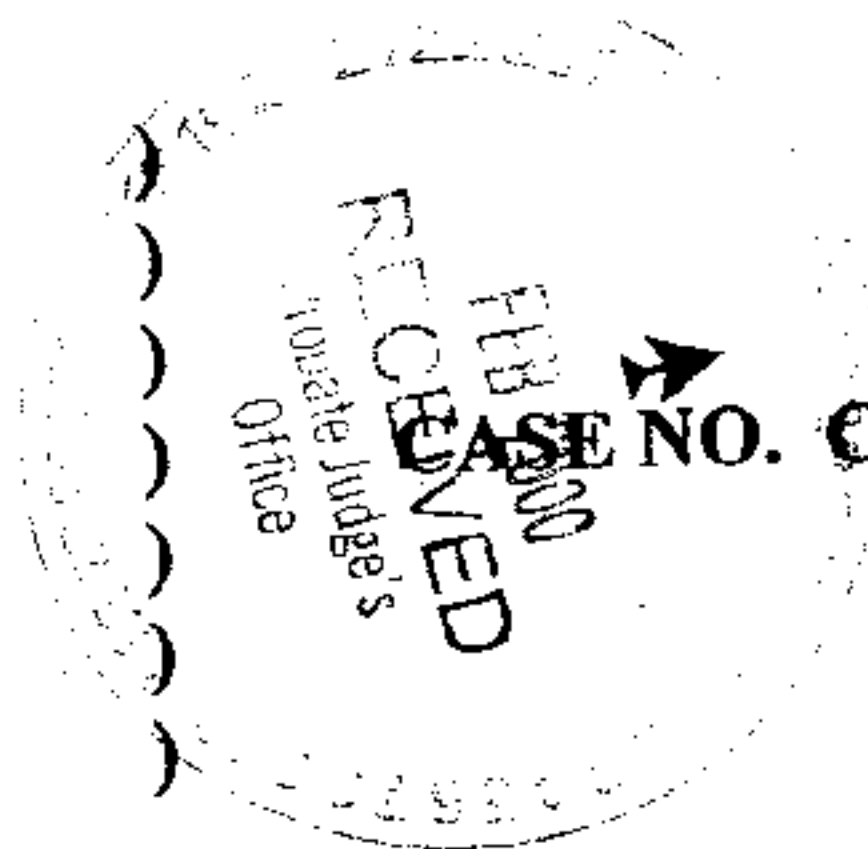


IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA

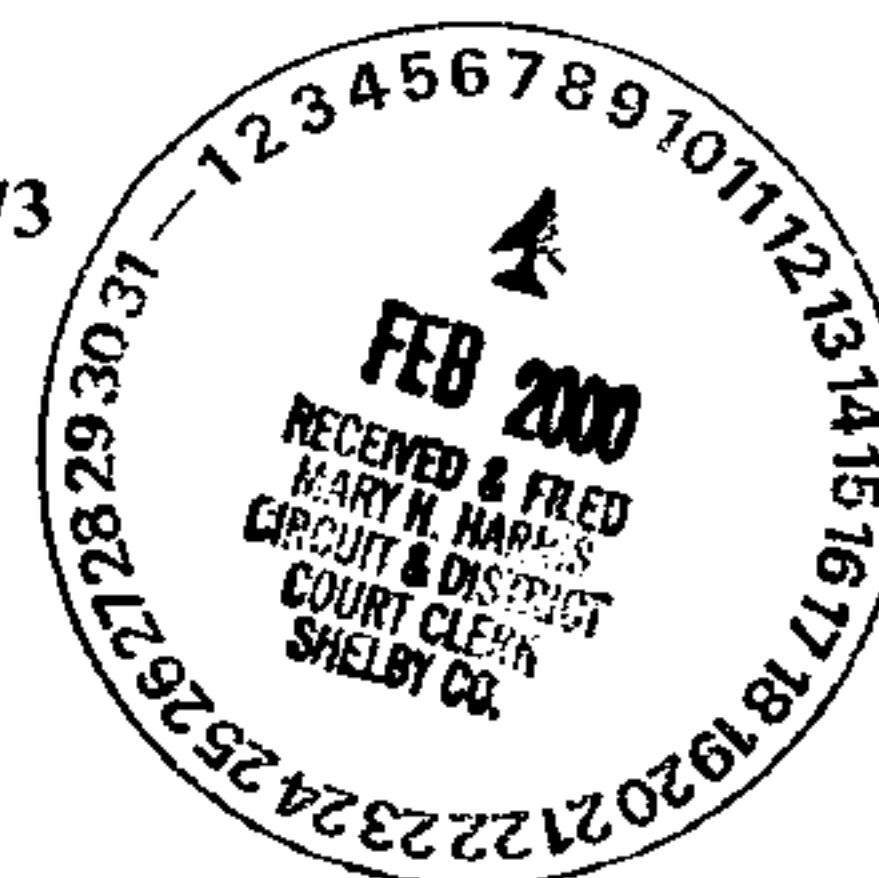
MARY SPAIN, et al.,
PLAINTIFFS

v.

WILLIAM HAROLD SPAIN, et al.,
DEFENDANTS



CASE NO. CV-99-173



FINAL ORDER

THIS CAUSE came on to be heard on January 31, 2000 upon the Complaint of Mary Spain (Ms. Spain) and her attorney, Steve Arnold. They allege fraudulent conveyance of real estate by Defendant, William Harold Spain (Mr. Spain).

Ms. Spain and Mr. Spain were divorced by way of Final Judgment of Divorce entered on October, 1997 by the undersigned Judge after having heard two days of testimony. Paragraphs 4 and 13 of the said Final Judgment of Divorce provided:

"4. That the Plaintiff (Ms. Spain) shall have the sole use and occupancy of the homeplace of the parties located at 5417 Caldwell Mill Road, Shelby County, Alabama beginning January 1, 1998 through the year 2002. Beginning January 1, 2003 the said homeplace shall be put up for sale and shall be sold within one hundred and eighty (180) days at a private sale and the net proceeds therefrom, after costs of sale are deducted, shall be divided equally between the parties. During the pendency of the sale, the Plaintiff shall continue to have the sole use and occupancy of said residence until the said residence is sold. That in the event the said residence is unsold at the end of the said 180 days, the Registrar of this Court shall hold a public sale upon affidavit by either party that said residence is unsold, and each party hereto shall be a competent bidder at same. The net proceeds,

after the deduction of costs for said sale, shall be divided equally between the parties. The Defendant (Mr. Spain) shall pay one-half of all taxes and insurance on the said homeplace of the parties until the said homeplace is sold. Further, the Defendant shall pay and be responsible for one half of the costs of all interior and exterior maintenance and repairs, including the heating and air conditioning systems."

"13. That the Defendant shall pay to Plaintiff's attorney, Stephen Arnold, the sum of \$9,000.00 for his services and expenses in representing the Plaintiff in this cause. The Defendant shall be permitted to pay the said \$9,000.00 at the rate of \$200.00 per month until the said \$9,000.00 is paid in full."

Within thirty (30) days of the date of the said Final Judgment of Divorce, Mr. Spain knew of the provisions of said Final Judgment of Divorce. Notwithstanding the Court's order for Mr. Spain to vacate the former residence before January 1, 1998, Mr. Spain stayed in said residence. On December 1, 1997, Mr. Spain also conveyed his interest in the said residence to his two children. Mr. Spain continued living in the residence necessitated her filing another proceeding leading to an order by the undersigned Judge on August 14, 1998 which stated, inter alia, that "...Defendant did not allow Plaintiff the sole and exclusive possession of the said homeplace until late July, 1998." This Court awarded Ms. Spain a judgment against Defendant for \$4,665.00 and ordered Mr. Spain to pay Steve Arnold an additional \$3,000.00 for his services.

It is the conveyance of Mr. Spain's interest in the residence to his children that is the subject of this cause. In the case of Varner v. Varner, 662 So.2d 273 (Ala.Civ.App. 1994) where a husband in a divorce action transferred \$20,000.00, the customer list, and accounts receivable from his corporation to a corporation owned by his mother and his step-father. Our Court of Civil Appeals

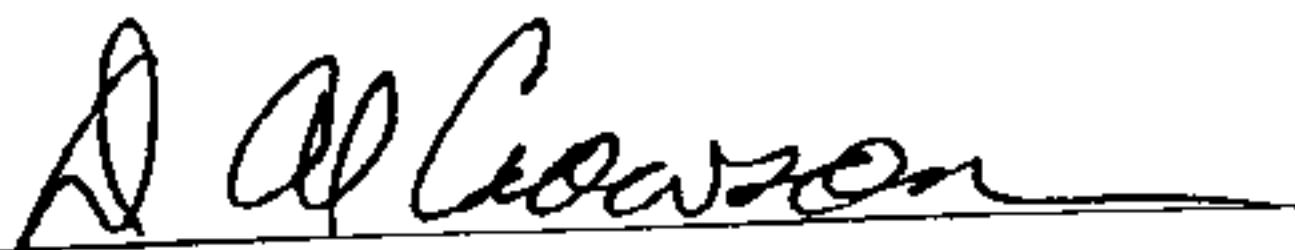
cited McPherson v. Massey, 643 So.2d 595 (Ala. 1994) which stated that where a transfer was made by a debtor "to a family member in the face of a creditor's potential claim, the grantor's interest warrants especially careful scrutiny."

The deed conveyance Mr. Spain's interest says it was made for "one dollar (\$1.00)", cash in hand paid and other good and valuable consideration. Mr. Spain says the conveyance of the residence to his children was for an antecedent debt owed to his children, and also some consideration was future support of Mr. Spain by the children. Mr. Spain produced no note given to his children for those antecedent debts and the only evidence was testimony which the Court does not find credible.

Mr. Spain has not paid Mr. Arnold the attorneys fees awarded to him, nor has he paid Ms. Spain the \$4,665.00 awarded to her. The judgments of these awards were recorded in the Shelby County Probate Court on March 4, 1998 and October 8, 1998.

The Court finds that Mr. Spain's conveyance of December 1, 1997 was fraudulent and made to avoid his creditors. Accordingly, it is **ORDERED** and **ADJUDGED** that the purported conveyance of real estate made by Defendant, William Harold Spain to Defendants, Daniel Harold Spain and Amanda Anne Spain on December 1, 1997 be and is hereby set aside and held for naught, said real estate being: Lot 4, according to Dogwood Meadow Subdivision as shown by plat recorded in Map Book 5, Page 117, in the Probate Office of Shelby County, Columbiana, Alabama.

DONE and ORDERED this 8th day of February, 2000.


D. Al Crowson
Circuit Judge

Inst # 2000-06137