IN THE COURT OF APPEALS OF IOWA

No. 7-060 / 06-0241
Filed March 28, 2007

UNION PLANTERS, NA., As Executor of the Estate of C. VIOLA SANFORD, a/k/a CARRIE VIOLA SANFORD,
Plaintiff-Appellant,

vs.

PAULINE FITZPATRICK, Individually and as Executor of the Estate of GEORGE SANFORD, MICHAEL FITZPATRICK, JERILYN PROVIN, CLEO PROVIN, SANDRA SLOAN and VALERIE SLOAN,
Defendants-Appellees.

Appeal from the Iowa District Court for Black Hawk County, K.D. Briner, Judge.

The plaintiff appeals the district court's orders granting leave to amend the defendants' answer and dismissal of the petition as brought beyond the statute of limitations for the plaintiff's claims. **AFFIRMED.**

Larry Cohrt of L.J. Cohrt Law Firm, Waterloo, for appellant.

D. Raymond Walton of Beecher Law Offices, Waterloo, for appellees.

Heard by Vogel, P.J., and Vaitheswaran and Eisenhauer, JJ.

VOGEL, P.J.

Union Planters, as plaintiff and executor of the estate of C. Viola Sanford (Viola), appeals from: (1) the district court's order that allowed the defendants to add a statute of limitations defense just prior to trial; and (2) the subsequent dismissal of Union Planters' claims following a bench trial on the basis that the limitation period had run. We affirm.

I. Background Facts and Proceedings.

As the district court noted, the history of the Sanford family is both troubled and troubling. We therefore recite here only the facts and proceedings pertinent to the dispositive issues on appeal. Viola and George Sanford were married for over sixty years but did not live together after 1993. They had four children: Pauline (Fitzpatrick), Jerilyn (Provin), Sandra (Sloan), and Layne. Viola, through various gifts and inheritances, had amassed a savings of approximately $230,000. In February 1995, Viola transferred $90,000 to an account in Reno, Nevada, to be held jointly with her daughter, Pauline.[1] Viola suffered a stroke and was hospitalized in August 1996. During her hospitalization, Viola executed a general power of attorney in favor of Pauline to handle her financial affairs and later went to Reno with Pauline to recuperate.[2]

[1] Conflicting evidence was presented as to how much money was moved to the out-of-state accounts, when it was transferred, and who actually transferred the funds.

[2] Viola later revoked this general power of attorney when, in mid-November 1996, she attempted to execute a living trust benefitting Layne and another document appointing Layne as her agent under a power of attorney. Viola later revoked both the trust and this power of attorney, executing a final power of attorney on December 5, 1996, appointing Pauline, solely to make healthcare decisions.

George filed a petition in November 1996 to establish an involuntary guardianship and conservatorship over Viola, to appoint himself as guardian and conservator, and listed Viola's personal property as valued at $230,000. In late December 1996 and before the hearing on the petition, Viola's funds in the joint account with Pauline were transferred to another account, with only Pauline and George as joint tenant owners. George was appointed guardian and conservator of Viola by stipulation of the parties in January 1997. Sometime after his appointment George obtained the proceeds of a matured $10,000 certificate of deposit owned by Viola at the John Deere Community Credit Union and the cash value of a life insurance policy also owned by Viola. George's initial report and inventory as conservator filed in April 1997 listed Viola's total assets of $13,758.12, failing to account for over $200,000 which in recent months had been transferred out of Viola's name. The inventory also failed to detail the discrepancy between these limited assets and those previously listed in the petition for guardianship and conservatorship. As a result of these discrepancies, Viola, with the assistance of her attorney, became suspicious of George's actions and filed an application on October 15, 1997, to remove him as guardian and conservator. The application alleged George's transfer of Viola's funds to the joint account of George and Pauline and alleged additional misuse of Viola's funds by George or by others with George's consent. On December 14, 1998, George filed a petition for dissolution of marriage. Viola died on January 2, 1999.

No hearing on the application to remove George as guardian and conservator was ever held and no accounting of Viola's missing funds was ever

made. A final report was submitted on the conservatorship in July 1999 by Cleo Provin, Jerylin's husband and George's attorney-in-fact, which was objected to by the executor of Viola's estate on the same basis that the report did not account for the missing funds. No hearing on the objection was requested or held, nor was the objection and request for an accounting of the conservatorship pursued in Viola's estate. *See In re Guardianship of Pappas*, 174 N.W.2d 422, 425-26 (Iowa 1970). In March 2001, George died and Union Planters, as executor of Viola's estate, filed a $300,000 claim in George's estate in May 2002. George's executors neither allowed nor disallowed the claim. Union Planters did not request a hearing on or otherwise pursue the claim in George's estate. *See generally* Iowa Code §§ 633.438-633.489 (2001). On January 6, 2003, Union Planters filed this action in equity against the defendants, requesting an accounting of Viola's conservatorship funds and alleging fraudulent conveyance, conversion, breach of fiduciary duty, and conspiracy to commit fraud and conversion. The defendants originally answered the petition, denying Union Planters' claims.[3] In March 2003, Union Planters amended the petition, adding a claim for breach of contract against Pauline individually stemming from her use of the general power of attorney executed by Viola in August 1996. Represented by new counsel, the remaining defendants filed an amended answer in mid-May 2003, denying the claims. They also asserted an affirmative defense that a claim for fraudulent conveyance by George was barred by the statute of limitations because the claim was not made in George's estate.

[3] Union Planters dismissed defendants Michael Fitzpatrick and Valerie Sloan from the suit in February 2003.

Just before trial was to begin in late August 2004, the defendants moved to again amend the answer with the addition of a general statute of limitations defense based upon the five-year period prescribed by Iowa Code Section 614.1(4). Over Union Planters' objection, the district court allowed the amendment and the case proceeded to trial. In an October 2005 ruling, the district court determined that the claims were barred by the five-year statute of limitations because Viola and her attorney were aware of some of her family members' manipulation of her monies no later than October 15, 1997, with the filing of the application to remove George as guardian and conservator. The district court also denied, as unsupported by Iowa law, Union Planters' breach of contract argument based on George's conservator's oath of office and Pauline's authority under a general power of attorney, claiming each to be written contracts subject to a ten-year limitation. The district court denied the motions for reconsideration and new trial. Union Planters appeals.

II. Scope and Standards of Review.

The district court's dismissal, based upon the running of the limitation period, is reviewed for correction of errors. Iowa R. App. P. 6.4; *Clark v. Miller,* 503 N.W.2d 422, 423 (Iowa 1993). The district court's findings are binding if supported by substantial evidence. *Clark,* 503 N.W.2d at 423 (citing *Meyers v. Delaney,* 529 N.W.2d 288, 289-90 (Iowa 1995)).

We review a motion for leave to amend pleadings for an abuse of discretion. *Bailiff v. Adams County Conference Bd.*, 650 N.W.2d 621, 626 (Iowa 2002).

III. Motion to Amend the Answer.

Union Planters argues that the district court abused its discretion by allowing the defendants to assert a last-minute statute of limitations defense. While leave to amend a pleading should be freely given, a decision to deny such a request is reversed only upon a showing that the district court clearly abused its discretion. *Grace Hodgson Trust v. McClannahan*, 569 N.W.2d 397, 399 (Iowa Ct. App. 1997). Such a motion should not be granted in close proximity to trial if it will substantially alter the issues. *Britt Tech Corp. v. American Magnetics Corp.*, 487 N.W.2d 671, 674 (Iowa 1992). The statute of limitations was already asserted as an affirmative defense by the defendants to the fraudulent conveyance claim and therefore would not have substantially altered the issues to be litigated at trial. We find no abuse of discretion and affirm the allowance of the amendment.

IV. Running of the Limitation Period.

Union Planters contends that the limitation period did not accrue until revelations were made during the January 2002 trial to contest Viola's will. The statute of limitations on actions based on fraud is five years. Iowa Code § 614.1(4) (1997). Iowa Code section 614.1(4) explicitly states that the cause of action will not be deemed accrued until the fraud complained of is discovered by the injured party. The discovery rule tolls the statute of limitations until the plaintiff has discovered "the fact of the injury and its cause" or by the exercise of reasonable diligence should have discovered these facts. *Hallett Const. Co. v. Meister*, 713 N.W.2d 225, 231 (Iowa 2006) (quoting *K & W Elec., Inc. v. State*, 712 N.W.2d 111, 116 (Iowa 2006)); *see also Nixon v. State*, 704 N.W.2d 643,

646 (Iowa 2005) (applying the discovery rule to a claim of fraudulent misrepresentation). Once a fraud claimant learns information that would inform a reasonable person of the need to investigate, the claimant is on inquiry notice of all facts that would have been disclosed by a reasonably diligent investigation. *Meister*, 713 N.W.2d at 231. A claimant can be on inquiry notice without knowing "'the details of the evidence by which to prove the cause of action.'" *Id.* (quoting *Vachon v. State*, 514 N.W.2d 442, 446 (Iowa 1994)).

The core of the actions complained of by Union Planters and the basis for the request for an accounting, the fraudulent conveyance, conversion, breach of fiduciary duty, and conspiracy to commit fraud and conversion claims are rooted in the fraud perpetrated against Viola by various family members before her death. As noted above, as early as April 1997, George filed the inventory in Viola's conservatorship, claiming only minimal assets owned by Viola. It is very clear from the record that Viola and her attorney had actual knowledge of this activity no later than October 15, 1997 when Viola filed her action to have George removed as guardian and conservator. Therefore, as the district court found, Viola's cause of action (now held by Union Planters) accrued no later than October 15, 1997. While she had actual knowledge of the fraudulent activities of George, Pauline, and Jerilyn, we also conclude that this put Viola on inquiry notice as to the involvement of others as additional conspirators or later recipients of her funds. The lapse in time from the application to remove the conservator and the petition in this case was five years and eighty-three days.

The district court properly determined that the five-year period had run.[4] We affirm as to this issue.

Union Planters lastly argues that George's conservator's oath of office and the general power of attorney granting Pauline authority to act as Viola's agent should both be construed as written contracts and thereby governed by the ten-year limitation under section 614.1(5). Union Planters advances no authority for this premise, and we decline to make such a determination. Regardless of the label placed on a claim, the underlying facts giving rise to the claim determine its actual basis and consequential limitation period:

> We think the actual nature of this claim is one of fraud and not of breach of a written contract. As we have noted in the past, a claim is not founded on a written contract "'merely because [the claim] is in some way remotely or indirectly connected with [a written] instrument or because the instrument would be a link in the chain of evidence establishing the cause of action.'" Here, the lease is merely part of the context within which Hallett's alleged fraud occurred. The Meisters do not seek damages for breach of the written contract; they seek damages for the alleged fraudulent representation made by Hallett. Clearly the core of the claim made in count IV is fraud. Therefore, the applicable statute of limitations is the five-year period for fraud actions contained in Iowa Code section 614.1(4).

Meister, 713 N.W.2d at 230 (citations omitted). We conclude the breach of contract claims are simply restatements of the fraudulent activities alleged in the petition and likewise limited to a five-year period.

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[4] We conclude Union Planters' argument that filing the claim in probate against George's estate and the executor's failure to act on the claim somehow tolled the limitation period, or that this case is a direct extension that should relate back to the filing in probate, as unsupported by law and without merit. We are also unpersuaded by the equitable estoppel and fraudulent concealment argument due to Viola's demonstrated actual knowledge of George's actions placing her on inquiry notice as to the extent of the transactions involving her funds.

In conclusion, we find no abuse of discretion in allowing the defendants' amendment to add a statute of limitations defense. As the district court noted, while many questionable activities appear to have occurred among some family members, the Iowa Code provides a limited period of time in which to bring such claims. We affirm the dismissal of Union Planters' claims as beyond the five-year limitation period.

AFFIRMED.