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STATE OF MICHIGAN

COURT OF APPEALS

In re DECEMBER 23, 2002 RESTATEMENT OF THE VIVIAN STOLARUK LIVING TRUST

A. SULLIVAN and S. STOLARUK,

Appellants,

v

JULIUS H. GIARMARCO, Trustee of the STEVE STOLARUK LIVING TRUST, and SAINT JOSEPH MERCY OAKLAND,

Appellees.

UNPUBLISHED
April 22, 2021

No. 352064
Oakland Probate Court
LC No. 2019-387099-TV

Before: BECKERING, P.J., and FORT HOOD and RIORDAN, JJ.

RIORDAN, J. (*dissenting*).

I respectfully dissent. The trial court did not err by granting summary disposition in favor of appellees because, for the reasons explained below, they were entitled to summary disposition on the basis of laches.[1] Accordingly, I would affirm.

"The term 'laches' involves the idea of negligence,–a neglect or failure to do what ought to be done under the circumstances to protect the rights of the parties to whom it is imputed, or involving injury to the opposite party through such neglect to assert rights within a reasonable time." *Ripley v Seligman*, 88 Mich 177, 198; 50 NW 143 (1891). "If a plaintiff has not exercised reasonable diligence in vindicating his or her rights, a court sitting in equity may withhold relief on the ground that the plaintiff is chargeable with laches." *Knight v Northpointe Bank*, 300 Mich

[1] I acknowledge that the trial court granted summary disposition in favor of Saint Joseph Mercy Oakland (SJMO) on the basis of the statute of limitations. However, "[a] trial court's ruling may be upheld on appeal where the right result issued, albeit for the wrong reason." *Gleason v Dep't of Trans*, 256 Mich App 1, 3; 662 NW2d 822 (2003).

App 109, 114; 832 NW2d 439 (2013). "[W]hen considering whether a plaintiff is chargeable with laches, we must afford attention to prejudice occasioned by the delay." *Lothian v City of Detroit*, 414 Mich 160, 168; 324 NW2d 9 (1982). "The application of the doctrine of laches requires the passage of time combined with a change in condition that would make it inequitable to enforce the claim against the defendant." *Yankee Springs Twp v Fox*, 264 Mich App 604, 612; 692 NW2d 728 (2004).

Here, petitioners possessed copies of the Vivian Stolaruk Living Trust (VSLT), which was drafted in 2002, no later than 2009. Yet they did not initiate the instant action to reform the VSLT until 2019.[2] Such a delay of at least 10 years, in specific analogous contexts, would itself be dispositive of the action. See MCL 600.5807(9) (six-year statute of limitations for a breach of contract); MCL 700.7604(1)(a) (two-year statute of limitations to contest the validity of a trust after the settlor's death); MCL 700.7604(1)(b) (six-month statute of limitations to contest the validity of a trust after the trustee sends notice to the person challenging its validity). Thus, I question whether the majority properly disregards such statutes to rely exclusively on principles of equity. See *Lothian v Detroit*, 414 Mich 160, 170; 324 NW2d 9 (1982) ("[I]n equity cases in which corresponding relief is available at law, the existence of laches generally will be ascertained with reference to an analogous statute of limitations."). Arguably, these analogous statutes of limitations should apply here to the question of laches, given that petitioners ultimately seek monetary relief through reformation of the VSLT, which is indicative of an action at law. See *Wright v Genesee Co*, 504 Mich 410, 421; 934 NW2d 805 (2019) ("Claims of law included actions seeking a money judgment, such as for money had and received, money paid, quantum meruit, and quantum valebat.").

Regardless, even exclusively applying principles of equity, appellees were entitled to summary disposition on the basis of laches. The VSLT, as allegedly understood by petitioners since 2002, provided for a multimillion-dollar inheritance upon the death of their parents. In my view, "reasonable diligence" by petitioners for such an important matter would have included either reading the VSLT for themselves or hiring an attorney to read the VSLT at that time. Yet petitioners did not do so even after obtaining copies of the VSLT by 2009. Such disinterest by petitioners in their anticipated inheritance cannot be characterized as "reasonable diligence."[3]

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[2] An action to reform a trust is equitable in nature. See *Detroit v Detroit United Ry*, 226 Mich 354, 361; 197 NW 697 (1924) (noting that "equity has power to construe the instrument by which the trust is created [or] to reform the instrument in such a manner as to carry out the intentions of the settlor").

[3] It is well-recognized in Michigan that a person "is presumed to have knowledge of the terms of his [or her] contract . . . ." *Geraghty v Washtenaw Mut Fire Ins Co*, 145 Mich 635, 639; 108 NW 1102 (1906). Of course, the same principle does not necessarily apply to trusts because the beneficiary need not even be aware of the trust when it is created. *City of Marquette v Wilkinson*, 119 Mich 413, 418-419; 78 NW 474 (1899). Nonetheless, it is odd that, as the majority implicitly holds, a party would be presumed to be aware of the terms of a contract in his or her possession but not the terms of a trust in his or her possession.

The majority excuses this lack of diligence by reasoning that petitioners relied on a flowchart drafted by respondent Giarmarco in 2002 in which there was no explicit indication that they could be disinherited. But the flowchart only was a brief summary of the VSLT that could not reasonably be understood as encompassing all of its pertinent terms. Further, there is no indication that Giarmarco purported to be petitioners' attorney at the time, such that petitioners could reasonably believe that he was acting on their behalf to protect their anticipated inheritance. Additionally, there is no suggestion that he committed fraud by drafting the flowchart as a simple tool to explain how the trusts operated. In light of these facts, I find the flowchart almost irrelevant. It certainly does not excuse years of inaction by petitioners.

I also would conclude that Giarmarco and SJMO have shown prejudice. First, the individual who was likely best-situated to identify Vivian's intent with respect to the VLST—her husband, Steve Stolaruk—is now deceased. Had petitioners timely maintained their action to reform the VLST, he would have been alive and thus capable of providing evidence of her intent. But by delaying their action, petitioners are now able to avoid his evidence in that regard. See *German American Seminary v Kiefer*, 43 Mich 105, 111; 4 NW 636 (1880) ("[I]t would be the height of injustice to permit complainant, with full knowledge of the facts, to delay suit while the persons who were familiar with the facts were one by one passing away, and at last bring suit under circumstances which at the best must leave the court in doubt whether the remaining evidence does not disclose a partial, defective and misleading case."). Second, as the trial court explained, Steve's estate plan would be "overthrown" because, now that he is deceased, he is unable to at least diminish the inheritance provided to his children if the VSLT is reformed. For instance, if petitioners had timely maintained their action and the VSLT was reformed, Steve could have made lifetime gifts to SJMO from some of his trust's assets—which were, in turn, partially derived from the VSLT assets—that would have reduced the money available to petitioners following his death. Yet petitioners' ultimate inheritance may now be substantially *enhanced* because they failed to inform themselves of the terms of the VSLT and maintain a timely action for reformation. That is, petitioners may be affirmatively rewarded for their lack of diligence. Equity neither requires nor permits such a result.

Because the equitable defense of laches applies in this case, I would affirm the trial court.

/s/ Michael J. Riordan