

[Cite as *Jackson v. PNC Bank, N.A.*, 2017-Ohio-9180.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 105842

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**DELORES JACKSON**

PLAINTIFF-APPELLANT

vs.

**PNC BANK, N.A.**

DEFENDANT-APPELLEE

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**JUDGMENT:**  
AFFIRMED

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Civil Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CV-16-861775

**BEFORE:** Boyle, P.J., S. Gallagher, J., and Jones, J.

**RELEASED AND JOURNALIZED:** December 21, 2017

**ATTORNEY FOR APPELLANT**

Richard A. Oviatt  
55 Public Square, Suite 2100  
Cleveland Ohio 44113

**ATTORNEYS FOR APPELLEE**

Lisa Babish Forbes  
Lindsay Doss Spillman  
Vorys, Sater, Seymour & Pease, L.L.P.  
200 Public Square, Suite 1400  
Cleveland, Ohio 44114

MARY J. BOYLE, P.J.:

{¶1} Plaintiff-appellant Delores Jackson appeals the trial court's grant of defendant-appellee PNC Bank N.A.'s motion to dismiss for failure to state a claim. On appeal, she raises the following for review:

1. Whether Plaintiff Jackson is contesting the validity of a trust.
2. Whether filing a motion for leave to amend her complaint to include a cause of action for fraud extends the statute of limitations to four years and thereby brings Jackson within the time constraints for filing her lawsuit.

{¶2} Finding no merit to her appeal, we affirm.

### **I. Procedural History and Factual Background**

{¶3} On April 12, 2016, Jackson filed a complaint against PNC seeking funds allegedly owed to her as a beneficiary of the Malcolm Zucker trust. In her complaint, Jackson alleged that she was a housekeeper for Zucker and his family for over 30 years and that prior to her retirement, Zucker provided her with a single page of his trust instrument that indicated Jackson was a beneficiary and would receive \$150,000 upon his death. Zucker died on October 18, 2013. Jackson attempted to contact Zucker's children after his death concerning her interests in the trust, but received no response. Jackson then contacted PNC, the trustee, who informed Jackson that the trust instrument had been amended and that she was no longer a beneficiary. Jackson asked PNC for a copy of the amended trust instrument. PNC informed Jackson that it would provide her an opportunity to view the instrument, but required her to sign a confidentiality agreement beforehand. Jackson refused to sign the agreement, and as a result, PNC

refused to give Jackson a copy of the instrument. Jackson then filed this suit.

{¶4} On May 12, 2016, PNC moved to dismiss Jackson's complaint under Civ.R. 12(B)(6), claiming that she failed to set forth a claim upon which relief could be granted because the statute of limitations barred her suit. Specifically, PNC alleged that Jackson's claim contested the validity of the trust and that claim was not timely filed within two years of Zucker's death.

{¶5} During this time, Jackson sought a copy of the amended trust instrument from PNC through the discovery process. In response, PNC objected and sought a protective order, requiring Jackson to keep the information within the trust document confidential.

{¶6} On November 4, 2016, Jackson moved the court for leave to file an amended complaint pursuant to Civ.R. 15, including a second cause of action for fraud.

{¶7} On May 1, 2017, the trial court granted PNC's motion to dismiss without ruling on any of the other motions made by the parties. It is from this judgment that Jackson now appeals.

## **II. Law and Analysis**

### **A. Motion to Dismiss**

{¶8} In her first assignment of error, Jackson argues that the court improperly dismissed her original complaint because her first cause of action did not contest the validity of the trust and therefore was not barred by R.C. 5806.04's two-year statute of limitations.

{¶9} We review a trial court’s grant of a motion to dismiss under Civ.R. 12(B)(6) de novo. *Perrysburg Twp. v. Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362, 814 N.E.2d 44, ¶ 5.

{¶10} When reviewing a Civ.R. 12(B)(6) motion to dismiss, we are “confined to the allegations contained in the complaint” and may not consider evidence outside the four corners of the complaint. *Allstate Ins. Co. v. Electrolux Home Prods.*, 8th Dist. Cuyahoga No. 97065, 2012-Ohio-90, ¶ 7, citing *McGlone v. Grimshaw*, 86 Ohio App.3d 279, 620 N.E.2d 935 (4th Dist.1993). “[A]ll the factual allegations of the complaint must be taken as true and all reasonable inferences must be drawn in favor of the nonmoving party.” *Byrd v. Faber*, 57 Ohio St.3d 56, 60, 565 N.E.2d 584 (1991), citing *Mitchell v. Lawson Milk*, 40 Ohio St.3d 190, 532 N.E.2d 753 (1988). “Unsupported conclusions of a complaint[,] [however,] are not considered admitted and are not sufficient to withstand a motion to dismiss.” *State ex rel. Hickman v. Capots*, 45 Ohio St.3d 324, 324, 544 N.E.2d 639 (1989), citing *Schulman v. Cleveland*, 30 Ohio St.2d 196, 283 N.E.2d 175 (1972), and *Mitchell*. An action is properly dismissed if it appears “beyond doubt that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to the relief sought.” *Savoy v. Univ. of Akron*, 10th Dist. Franklin No. 11AP-183, 2012-Ohio-1962, ¶ 5, citing *O’Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242, 327 N.E.2d 753 (1975).

{¶11} “[I]n determining what causes of actions a plaintiff has alleged in a complaint, the courts are required to look to the ‘actual nature or subject matter pleaded

in the complaint,’ rather than ‘labels’ used to identify a particular cause of action.” *McDougal v. Vecchio*, 8th Dist. Cuyahoga No. 100850, 2014-Ohio-4472, ¶ 31, quoting *Blackburn v. Am. Dental Ctrs.*, 10th Dist. Franklin No. 10AP-958, 2011-Ohio-5971.

{¶12} In her complaint, Jackson states that “she questions why Malcolm Zucker would change [the] trust provision and not include her when he continued to provide her with monthly personal checks up until he passed on October 18, 2013,” and “she believes and therefore alleges that she remains a beneficiary and that for some undisclosed reasons she is being denied this gift.” Jackson’s allegations plainly contest the validity of the amended trust instrument. We cannot find another cognizable cause of action on the face of Jackson’s complaint.

{¶13} We now turn to PNC’s affirmative defense, statute of limitations, which were the grounds for dismissal in the lower court. While the affirmative defense of statute of limitations is generally not appropriate to raise in a Civ.R. 12(B)(6) motion to dismiss, a court may dismiss a complaint under the rule where the complaint itself conclusively establishes that the action is time-barred. *Sheldon v. Burke*, 8th Dist. Cuyahoga No. 103576, 2016-Ohio-941, ¶ 7, citing *PNC Bank, N.A. v. J & J Slyman, L.L.C.*, 8th Dist. Cuyahoga No. 101777, 2015-Ohio-2951, and *Does v. Archdiocese of Cincinnati*, 109 Ohio St.3d 491, 2006-Ohio-2625, 849 N.E.2d 268.

{¶14} R.C. 5806.04 states that any action contesting the validity of a trust or an amendment to a trust “shall be commenced by the earlier of the date that is two years after the date of the death of the settlor \* \* \* or that is six months from the date on which

the trustee sends the person bringing the action a copy of the trust instrument[.]”

{¶15} Consequently, under R.C. 5806.04’s plain language, Jackson was required to file her first cause of action within two years of Zucker’s death. Jackson’s complaint states that Zucker passed on October 18, 2013, and that Jackson filed her complaint on April 12, 2016, which was 2 years, 5 months, and 26 days after Zucker’s death. Jackson’s complaint conclusively establishes that she has failed to abide by either the 2-year or 6-month limitation set forth in R.C. 5806.04. Therefore, we find that PNC’s statute of limitations defense was appropriately raised in its Civ.R. 12(B)(6) motion and proper grounds for dismissal. Accordingly, her first assignment of error is overruled.

#### **B. Motion for Leave to Amend**

{¶16} In her second assignment of error, Jackson argues that the trial court abused its discretion when it failed to rule on and grant her motion for leave to amend her complaint and dismissed her case against PNC. She additionally argues that, had the trial court properly ruled on her motion for leave to amend, the statute of limitations would have been extended to four years and, therefore, the court’s dismissal of her claims as untimely was improper.

{¶17} A party may amend its complaint after a responsive pleading is filed only with the opposing party’s consent or the court’s leave, which must be granted when justice so requires. Civ.R. 15(A). In the instant case, Jackson had the opportunity to amend her complaint prior to May 12, 2016, which is the date on which PNC filed its Civ.R. 12(B)(6) motion to dismiss. According to Civ.R. 15(A), Jackson could only file

an amended complaint after May 12, 2016, with the court's leave or PNC's consent. PNC did not consent, and because the court did not rule upon her motion requesting it, Jackson did not have the court's leave to amend her complaint. *See Edwards v. Lopez*, 8th Dist. Cuyahoga Nos. 97917 and 98510, 2013-Ohio-571, ¶ 12 (holding that a court impliedly denies a motion by not ruling upon it); *Fitworks Holdings, L.L.C. v. Pitchford-El*, 8th Dist. Cuyahoga No. 88634, 2007-Ohio-2517, ¶ 9 (holding that the trial court impliedly denied the party's motion for leave).

{¶18} “[T]he grant or denial of a leave to amend a pleading is within the sound discretion of the trial court[.]” and therefore, we review the trial court's denial of Jackson's leave to amend for an abuse of discretion. A trial court abuses its discretion when its decision is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). “A motion for leave to amend should be granted absent a finding of bad faith, undue delay or undue prejudice to the opposing party.” *Hoover v. Sumlin*, 12 Ohio St.3d 1, 6, 465 N.E.2d 377 (1984).

{¶19} Nevertheless, as we previously stated, “in determining what causes of actions a plaintiff has alleged in a complaint, the courts are required to look to the ‘actual nature or subject matter pleaded in the complaint,’ rather than ‘labels’ used to identify a particular cause of action.” *McDougal*, 8th Dist. Cuyahoga No. 100850, 2014-Ohio-4472, at ¶ 31, quoting *Blackburn*, 10th Dist. Franklin No. 10AP-958, 2011-Ohio-5971. Here, while Jackson alleges that her second cause of action is for fraud, attempting to qualify for a fraud claim's four-year statute of limitations period, the



actual nature of her claim is contesting the trust's validity. Jackson cannot circumvent R.C. 5806.04's statute of limitations period through semantic deception. Therefore, we cannot say that the trial court's implied denial of her motion to amend was an abuse of its discretion. Accordingly, Jackson's second assignment of error is overruled.

{¶20} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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MARY J. BOYLE, PRESIDING JUDGE

SEAN C. GALLAGHER, J., and  
LARRY A. JONES, SR., J., CONCUR