ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
SARAH J. HEFFLEY, JUDGE

DIVISION I

CA 07-89

September 26, 2007

E. CLINT ALLEN AND RICHARD S. ALLEN
APPELLANTS

V.

JAMES H. LEGGETT, JR.
APPELLEE

APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, SIXTEENTH DIVISION
[NO. CV-06-10154]

HONORABLE ELLEN BASS BRANTLEY, JUDGE

AFFIRMED

Appellants E. Clint Allen and Richard S. Allen appeal the dismissal of their complaint for declaratory judgment against their uncle, appellee James H. Leggett, Jr. The trial court dismissed the complaint on appellee's motion after concluding that appellants' claim was barred by the statute of limitations. Appellants raise four issues on appeal. They contend that: (1) the trial court erred by considering matters outside the pleadings in granting appellee's motion to dismiss; (2) the trial court erred by failing to properly consider alleged facts of a fiduciary and trust relationship; (3) the trial court failed to properly consider alleged facts of concealment that tolled the statute of limitations; and (4) the trial court erred by failing to recognize that, regardless of concealment, the statute of limitations did not commence because of the alleged fiduciary relationship, or that appellee was estopped from asserting the statute of limitations as a defense. We affirm.

Appellants brought this declaratory judgment action on September 5, 2006. According to the complaint and supporting documents, in 1986 appellee owned 58% of the stock of Griffin-

Leggett, Inc., and he was the corporation's president, CEO, and chairman of the board. Appellee's sisters, Nancy Rorex and B.J. Chick, were minority stockholders, with Ms. Rorex owning 10.58% of the shares.

In January 1988, the corporation adopted a "Plan and Agreement of Corporate Recapitalization." The plan created shares of preferred stock that were non-voting and paid no dividends. The corporation retained the option to redeem the preferred stock at $500 per share during a five-year period after the stock was issued. The holders of preferred stock were also given the option to redeem their shares at the same price, beginning five years after the preferred stock was issued. The plan further provided that, if the shares of preferred stock were redeemed in a sixty-six month period after the stock was issued, the holder of that stock would be issued one special preferred stock right (SPSR) per share of preferred stock. The holder of any SPSR was entitled to participate in the proceeds of any "liquidation, merger, consolidation, sale, lease, or exchange of all or substantially all of the corporation's assets during the term of the SPSR" up to a maximum of $247 per SPSR. As for the term of the SPSR, the plan stated:

> Any SPSR issued shall, lapse, terminate, and expire worthless, without value, to their holders upon the first to occur of the following:
>
> (i) if the Corporation calls the Preferred shares for redemption, before the last day of the sixtieth (60th) month following the month in which the Preferred shares are issued, at 11:59 p.m. on the date that is one hundred eighty (180) days after the date of the Corporation's call for redemption; or
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> (ii) if the Corporation redeems the Preferred shares at the shareholder's notice of election, at 11:59 p.m. on the date that is one hundred eighty (180) days after the Corporation receives the Preferred shareholders' notice of election to redeem, reduced by the number of days that elapse between the last day of the sixtieth (60th) month following the month in which Preferred shares are issued and the date the Corporation receives the Preferred shareholder's notice of election to redeem.

In the complaint, appellants alleged that Ms. Rorex's stock was redeemed[1] and that subsequently in 1993 Griffin-Leggett, Inc. was sold to Stewart Enterprises, Inc. Appellants further alleged that appellee negotiated the sale during the term of the SPSR and that appellee intentionally concealed the negotiations from Ms. Rorex in breach of his fiduciary duty, so as to deny her the compensation payable under the SPSR when the corporation was sold. Appellants' prayer for relief asked the trial court to "assess, settle, and determine the rights, status, and legal relations of the respective parties, concerning various matters related to the minority interest of former shareholder Nancy Rorex in Griffin-Leggett, Inc." Appellants based their ability to pursue this matter on a March 1, 2006, assignment to them from Ms. Rorex, their mother.

Appellee moved to dismiss the complaint, asserting that the appellants' claim was barred by the three-year statute of limitations found at Ark. Code Ann. § 16-56-105 (Repl. 2005), which is applicable to claims for the breach of a fiduciary duty,[2] and additionally, that appellants lacked standing to pursue the claim. At the hearing held on appellee's motion, the trial court focused on the statute-of-limitations issue and concluded that appellants' complaint was time-barred. The trial court reasoned that, although appellants contended that appellee's fraudulent concealment of the negotiations tolled the statute of limitations, the limitations period commenced when Ms. Rorex had notice of the sale of the corporation, as being the time when the cause of action should have been discovered by reasonable diligence.

Appellants argue on appeal that the trial court erred by considering matters outside the pleadings as to when Ms. Rorex had notice of the sale. In addition, they contend that the trial court

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[1] The complaint did not state when the redemption occurred or whether it was at the behest of the corporation or Ms. Rorex.

[2] *See Smith v. Elder,* 312 Ark. 384, 849 S.W.2d 513 (1993); *Jamison v. Estate of Goodlett,* 56 Ark. App. 71, 938 S.W.2d 865 (1997).

failed to take into account the fiduciary relationship existing between appellee and Nancy Rorex and that the trial court erred by not ruling that the statute of limitations had been tolled by appellee's fraudulent concealment. Appellants also cite cases from other jurisdictions for the proposition that, in cases alleging fraudulent concealment on the part of a fiduciary, only the actual discovery of the fraud commences the running of the statute of limitations. Appellants further contend that, as a fiduciary, appellee is estopped from asserting the statute of limitations as a defense. Appellee responds to these arguments, but he also asserts that appellants lack standing to litigate this matter. Conspicuously absent from appellants' reply brief is any mention of the standing issue. From our de novo review, we must agree with appellee that appellants are not entitled to declaratory relief because they have no legal interest in the controversy.

We treat the question of standing to sue as a threshold issue. *Farm Bureau Ins. Co. of Arkansas, Inc. v. Running M Farms, Inc.,* 366 Ark. 480, ___ S.W.3d ___ (2006). It is fundamental in American jurisprudence that in order to bring a lawsuit against an opposing party, one must have standing to do so. *Id.* Without standing, a party is not properly before the court to advance a cause of action. *Id.* This is an issue we may address for the first time on appeal. *Ramage v. State,* 61 Ark. App. 174, 966 S.W.2d 267 (1998). This is so because we will affirm the ruling of a trial court if it reached the right result, even though it may be for a different reason. *Moore v. Wallace,* 90 Ark. App. 298, 205 S.W.3d 824 (2005).

The Declaratory Judgment Act, found at Ark. Code Ann. § 16-11-101 *et seq.* (Repl. 2006), is remedial, and its purpose is to afford relief from uncertainty and insecurity by declaring "rights, status, and other legal relationships whether or not further relief is or could be claimed." Ark. Code Ann. §§ 16-111-102 and 103. *Hardy v. United Services Automobile Ass'n.,* 95 Ark. App. 48, ___ S.W.3d ___ (2006). Declaratory relief lies only where four requisite conditions are met: (1) there

is a justiciable controversy; (2) it exists between parties with adverse interests; (3) *those seeking relief have a legal interest in the controversy*; and (4) the issues involved are ripe for decision. *Dukes v. Norris,* ___ Ark. ___, ___ S.W.3d ___ (May 3, 2007) (emphasis supplied). We review these questions de novo on the record of the trial court. *See Jegley v. Picado,* 349 Ark. 600, 80 S.W.3d 332 (2002); *Farm Bureau Inc. Co. of Arkansas, Inc. v. Running M Farms, Inc., supra.*

In this case, appellants have brought this action in the place of Ms. Rorex. They base their entitlement to do so on an assignment they received from her, which stated:

> This Assignment is executed and delivered pursuant to an Agreement between the respective interested parties, Nancy Rorex, Clint Allen and Rick Allen.
>
> The Assignor hereby transfers and assigns to the Assignees all of her rights, title and interest arising from or related to a certain claim made against Griffin-Leggett and/or its shareholders or any other interested party *in the matter of the National Investor Life Stock Redemption* to Rick Allen and Clint A

Although this assignment purports to assign appellants any rights Ms. Rorex may have had against Griffin-Leggett and its shareholders, it is plainly restricted to claims involving the "National Investor Life Stock Redemption." However, the complaint in this case pertains only to the rights Ms. Rorex may have had with regard to the corporate recapitalization plan of Griffin-Leggett, not the stock redemption of National Investor Life, nor does the complaint reveal any connection between the two. The assignment, therefore, confers no right in appellants to pursue the matter at hand. Consequently, appellants do not have standing or a legal interest in this controversy.

We also agree with appellee that the claim presented by appellants was one in tort and was thus not capable of being assigned. In Arkansas, tort claims cannot be assigned. *Mallory v. Hartsfield, Almand & Grisham, LLP,* 350 Ark. 304, 86 S.W.3d 863 (2002); *Midwest Mutual Ins. Co. v. Arkansas Nat'l Co.,* 260 Ark. 352, 538 S.W.2d 574 (1976); *Southern Farm Bureau Casualty Ins. Co. v. Wright Oil Co.,* 248 Ark. 803, 454 S.W.2d 69 (1970). In evaluating the true nature of a lawsuit, we

determine the real character of the action by its principal purpose or object and by the principal right being asserted. *See Mallory v. Hartsfield, Almand & Grisham, LLP., supra.* Here, there was no contract between appellee and Ms. Rorex, and appellants' principal claim was the alleged breach of a fiduciary duty appellee owed Ms. Rorex. As such, the complaint is grounded in tort, and even if the assignment had covered this matter, it would have been invalid under our established precedent that tort claims may not be assigned.

Affirmed.

GLOVER and VAUGHT, JJ., agree.