

Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANTS:

ATTORNEY FOR APPELLEES:

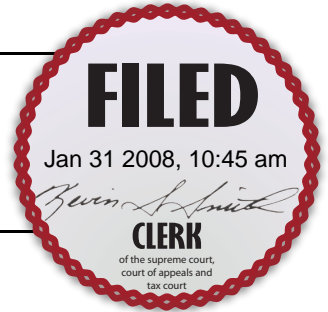
KEVIN R. PATMORE

Santa Claus, Indiana

MARK EVERETT WATSON

Terre Haute, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**



CAROLYN S. GWALTNEY,)
VINCENT B. GWALTNEY,)

Appellants-Defendants,)

vs.)

No. 87A01-0703-CV-110

ROGER D. GWALTNEY,)
ELBERFELD STATE BANK,)
MARGARET LOUISE ELPERS,)
TREASURER OF WARRICK COUNTY)
and BONNIE GWALTNEY,)

Appellees-Plaintiffs.)

APPEAL FROM THE WARRICK CIRCUIT COURT
The Honorable David O. Kelley, Judge
Cause No. 87C01-0304-PL-143

JANUARY 31, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBERTSON, Senior Judge

STATEMENT OF THE CASE

Plaintiff-appellant Carolyn S. Gwaltney, successor trustee of the Vincent B. Gwaltney Primary Trust, and third-party defendant-appellant Vincent B. Gwaltney appeal the trial court's judgment in favor of defendant-appellant Roger D. Gwaltney on Roger's counterclaim and third-party complaint alleging promissory estoppel and fraud. We reverse.

ISSUE

The dispositive issue is whether Roger's counterclaim and third-party complaint are time-barred.

FACTS AND PROCEDURAL HISTORY

In 1980, Millard and Bessie Gwaltney executed a trust agreement, which established the Bessie Pauline Gwaltney Trust, (the BPG Trust). Pursuant to the terms of the BPG Trust, Millard and Bessie's sons, Vincent and Roger, were contingent beneficiaries who were to share equally in the trust following the death of their parents.

In 1988, Roger became embroiled in a contentious divorce with Bonnie Gwaltney. Four years later, the dissolution court issued a decree ordering Roger to pay Bonnie \$75,000.00 as well as \$850.00 per month in child support. On October 8, 1992, the court issued an order freezing Roger's assets after he fled to Arkansas.

That same day, after learning that Roger was in trouble and fearing that Bonnie might be able to attach the family's property, Bessie asked Vincent to take her to an

attorney's office where she signed an amendment to the BPG Trust that removed Roger from the trust and left Vincent as the sole beneficiary. Later that year, Vincent told Roger about the amendment. Also in 1992, Roger transferred his residence in Haubstadt to Bessie "to defeat . . . Bonnie's judgment." Tr. at 220.

When Bessie died in 1996, Vincent administered the estate. As the successor trustee of the BPG Trust, Vincent conveyed all of the real estate owned by the Trust to himself. In 1998, Vincent met with an attorney to discuss the best way to transfer family assets to Roger. That same year, Vincent sold the Haubstadt house and placed the proceeds into a T.D. Waterhouse account. In 2000, Vincent and Carolyn transferred all of their real estate, including the real estate received from the BPG Trust, to the Vincent B. Gwaltney Primary Trust (the Vincent Trust). Vincent was subsequently removed from the Vincent Trust because of health issues, and Carolyn became the successor trustee.

In February 2001, Vincent advised Roger that Vincent could transfer assets to Roger via a limited partnership agreement. Roger declined the offer because he believed that, pursuant to the terms of the partnership agreement, Vincent would maintain too much control over both Roger and the money. Several months later, in October 2001, Vincent's attorney sent Roger a copy of the original trust agreement as well as a copy of the 1992 trust amendment. An accompanying letter explained that Roger could maintain the T.D. Waterhouse account if he would waive all claims to their parents' properties. Roger rejected this proposal as well.

In 2002, Roger filed a bankruptcy petition, which did not include any claims against Carolyn or Vincent. The following year, officials from the Warrick County

Redevelopment Commission approached Carolyn about purchasing property owned by the Vincent Trust. Because Roger had made public comments implying that he had an interest in the property, the officials refused to purchase the property unless Carolyn filed a quiet title action.

Carolyn complied with the officials' request and, on April 4, 2003, filed a complaint to quiet title wherein she asked the court to issue a judgment declaring that she was the owner of the property. Roger responded with both a counterclaim against Carolyn and a complaint against Vincent wherein he alleged that Carolyn and Vincent committed fraud when they made false representations to Bessie and unduly influenced her to sign the 1992 amendment with the intent of obtaining the Trust property and that Vincent had promised to give him funds from the sale of the Haubstadt residence.

Pursuant to Carolyn's request, the trial court entered the following relevant findings and conclusions after a two-day bench trial:

10. In assessing the accrual of a cause of action under IC 34-11-2-7,¹ the discovery rule is applicable. *Reasor v. Putnam County*, 615 N.E.2d 131, 138 n. 1 (Ind. Ct. App. 1993), *vacated on other grounds*, 635 N.E.2d 153 (Ind. 1994), *reh. denied*, (citing *Habig v. Bruning*, 613 N.E.2d 61 (Ind. Ct. App. 1993), *trans. denied*).
11. The cause of action and the statute of limitations begins to run when the plaintiff knew, or in the exercise of ordinary diligence, could have discovered that an injury had been sustained as a result of a tortious act of another. *INB Nat's Bank v. Moran Electric Service, Inc.*, 608 N.E.2d 702, 708 (Ind. Ct. App. 1993), *trans. denied*.

¹ IC 34-11-2-7 provides that an action for relief against fraud must be commenced within six years after the cause of action accrues.

* * * * *

13. Promissory estoppel requires (1) a promise by the promisor, (2) made with the expectation that the promisee will rely thereon, (3) which induces reasonable reliance on the promise; (4) of a definite and substantial nature, and (5) injustice can be avoided only by enforcement of the promise. *Brown v. Branch*, 758 N.E.2d 48, 52 (Ind. 2001).

* * * * *

15. Roger D. Gwaltney proved by a preponderance of the evidence that Vincent B. Gwaltney made repeated promises to Roger D. Gwaltney concerning the transfer of assets to him and that he relied on them. . . .
16. Laches is comprised of three (3) elements: (1) inexcusable delay in asserting a right, (2) an implied waiver resulting from a knowing acquiescence in existing conditions, and a change in circumstances.
18. In the case at bar the statute of limitations for Defendant/Third-Party Plaintiff's fraud claim did not begin to run until the Defendant received a letter from Vincent B. Gwaltney's attorney dated October 9, 2001, advising of the abrogation of the initial division of the property between defendant and Vincent B. Gwaltney pursuant to the amendment of the Bessie Pauline Gwaltney Trust dated October 8, 1992. *Wilbur v. KeyBank Nat'l Ass'n.*, 962 F.Supp. 1122 (N.D. Ind. 1997).
19. Vincent B. Gwaltney's fraudulent concealment of the Amendment of his Mother's trust prevented Carolyn S. Gwaltney and Vincent B. Gwaltney from asserting the statute of limitations. Fraudulent Concealment is an equitable doctrine which operates as a bar to . . . a claim when the defendant by his own actions, prevents the plaintiff from obtaining the knowledge necessary to pursue a claim. *Doe v. Shults-Lewis Child & Family Servs.*, 718 N.E.2d 738, 744 (Ind. 1999). The doctrine is available to the plaintiff when the defendant "has either by deception or by violation of a duty, concealed from the plaintiff material facts thereby

preventing the plaintiff from discovering a potential cause of action. *Id.* at 744-45. (quoting *Fager v. Hundt*, 610 N.E.2d 24, 25 (Ind. 1993). “When this occurs, equity will toll the statute of limitations until the equitable grounds cease to exist to operate as a reason for delay.” *Doe*, 718 N.E.2d at 745.

20. Roger D. Gwaltney presented valid family considerations that mitigate a finding of laches. He was related to Vincent B. Gwaltney and did not impliedly waive his rights as he was engaged in negotiations with Vincent B. Gwaltney from January 1998 up to October 9, 2001. Roger D. Gwaltney never agreed to release or discharge Vincent B. Gwaltney from liability for breach of trust. Roger D. Gwaltney’s delay in asserting his rights, under the circumstances, was reasonable due to the ongoing settlement negotiations and the family relationships within the transaction.

Appellant’s Appendix at 23-24.

The court imposed a constructive trust in favor of Roger and also awarded him a \$159,000.00 judgment representing the proceeds from the sale of the Haubstadt house. Vincent and Carolyn appeal.

DISCUSSION AND DECISION

Carolyn requested special findings of fact and conclusions of law pursuant to Ind. Trial Rule 52(A). Our standard of review is therefore two-tiered. *See Briles v. Wausau Insurance Companies*, 858 N.E.2d 208, 212 (Ind. Ct. App. 2006). We determine whether the evidence supports the trial court’s findings, and whether the findings support the judgment. *Id.* at 205. We will not disturb the trial court’s findings or judgment unless they are clearly erroneous. *Id.* Findings of fact are clearly erroneous when the record lacks any reasonable inference from the evidence to support them. *Id.* A judgment is

clearly erroneous when a review of the record leaves us with a firm conviction that a mistake has been made.

I. Statute of Limitations

Carolyn and Vincent argue that the trial court erred in entering judgment in favor of Roger because Roger's counterclaim and third-party complaint alleging fraud are time barred. The Indiana General Assembly has made a policy determination that a claim for fraud is to be brought within six years of the accrual of that claim. *See* Ind. Code Sec. 34-11-2-7. The general purpose of such a statute of limitation is to encourage the prompt presentation of claims. *Russo v. Southern Developers, Inc.*, 868 N.E.2d 46, 48 (Ind. Ct. App. 2007). It is a practical and pragmatic device to spare courts from litigation of stale claims. *Id.*

As a preliminary matter, we note that the trial court found that Carolyn and Vincent's fraudulent concealment of the amendment prevented them from asserting the statute of limitations defense. The doctrine of fraudulent concealment is an equitable remedy that operates to bar a defendant from asserting the statute of limitations as a defense. *Palmer v. Gorecki*, 844 N.E.2d 149, 155 (Ind. Ct. App. 2006), *trans. denied*. Pursuant to this doctrine, a defendant who prevented a plaintiff from discovering an otherwise valid claim, by violation of duty or deception, is estopped from raising a statute of limitations defense. However, our review of the evidence reveals that Vincent did not prevent Roger from discovering an otherwise valid claim. Rather, Vincent told Roger about the amendment to the trust the same year his mother signed it. In addition, Vincent

did not prevent Roger from learning that Vincent received all of the trust property when their mother died. The doctrine of fraudulent concealment does not apply in this case.

Because the doctrine of fraudulent concealment does not apply, we turn to the merits of Vincent and Carolyn's statute of limitations claim. Ind. Code 34-11-2-7 is a discovery-based statute. A claim for fraud therefore accrues, and the statute begins to run, when the injured party knows or, in the exercise of ordinary diligence, could have known, that he sustained an injury. *Russo*, 868 N.E.2d at 48. Here, the trial court found that the fraud claim did not begin to run until October 2001 when Roger received the letter from Vincent's attorney. However, our review of the evidence reveals that Vincent told Roger about the amendment in 1992. In addition, Roger would also have learned about the amendment in 1996 when his mother died and Vincent received all of the trust property. At the time Roger learned about the amendment, he knew or could have known that he sustained an injury. His claim for fraud therefore accrued at the latest in 1996, and had to have been filed by 2002. Roger did not file his complaint until 2003, seven years after his claim accrued. The trial court's conclusion that the statute began to run when Roger received the letter from Vincent's attorney in 2001 is clearly erroneous. Roger's claim is time-barred.

II. Laches

The trial court found that even if the statute of limitations time barred Roger from filing his claim, the equitable remedy of promissory estoppel saves it. Vincent responds that the doctrine of laches also precludes Roger's claim.

Laches is an equitable defense that may be raised to stop a person from asserting a claim that he would normally be entitled to assert. *Indiana Real Estate Commission v. Ackman*, 766 N.E.2d 1269, 1273 (Ind. Ct. App. 2002). It is neglect for an unreasonable length of time, under circumstances permitting diligence, to do what in law should have been done. *In re Paternity of P.W.J.*, 846 N.E.2d 752, 759 (Ind. Ct. App. 2006), *clarified on rehearing on other grounds*. The doctrine of laches consists of three elements: (1) inexcusable delay in asserting a known right; (2) an implied waiver arising from a knowing acquiescence in existing conditions; and (3) a change in circumstances resulting in prejudice to the adverse party. *Id.* The rationale behind the doctrine of laches is that a person who, for an unreasonable length of time, has neglected to assert a claim against another waives the right to assert his claim when this delay prejudices the person against whom he would assert it. *Id.*

The question of laches is one to be determined by the court in the exercise of its discretion. For a decision to be reversed on appeal, an abuse of discretion must be clearly demonstrated. *Id.* An abuse of discretion occurs where the trial court's conclusion and judgment is clearly against the logic and effect of the facts and circumstances before the court.

Here, the trial court concluded that laches did not bar this action because based upon the circumstances, including the ongoing settlement negotiations and the family relationships within the transaction, Roger's delay in asserting his rights was not unreasonable. However, we find that conclusion to be clearly erroneous.

The general doctrine of laches is well established and has long recognized that courts of equity uniformly decline to assist a person who has slept upon his rights and shows no excuse for his laches in asserting them. *SMDfund, Inc. v. Fort Wayne-Allen County Authority*, 831 N.E.2d 725, 731 (Ind. 2005), *cert. denied*, 546 U.S. 1093 (2006). Here, Vincent told Roger about the trust amendment in 1992. In addition, Roger transferred his residence in Haubstadt to Bessie in 1992. When Bessie died in 1996, Roger knew that Vincent administered the trust and transferred all of the property to himself.

Four years later, Vincent transferred all of the real estate from the BPG trust into the Vincent trust. It was not until five years after Bessie's death, and nine years after the trust had been amended that Vincent proposed transferring some of the assets to Roger through the use of a limited partnership agreement. Although Roger declined the offer, he did nothing to pursue any right he may have had to the trust property.

Six months later, in October 2001, Vincent told Roger he could maintain the T.D. Waterhouse account if he waived his claim to the trust property. Roger again failed to pursue any rights he may have had to this property. In 2002, Roger did not list any claims against Vincent or Carolyn in his bankruptcy petition. In 2003, seven years after Bessie's death, Carolyn filed a complaint to quiet title to the property. At this point, for the first time, Roger alleged that Vincent and Carolyn committed fraud when they unduly influenced Bessie to sign the 1992 trust amendment with the intention of obtaining the trust property. Based upon the facts and circumstances of this case, we find that Roger's delay was unreasonable.

We further find that Carolyn and Roger were prejudiced by this delay. As early as 1992, Roger was aware that the trust had been amended. However, he failed to assert his rights until eleven years after the amendment was signed and seven years after Bessie's death, thereby adversely affecting Carolyn and Vincent and their ability to defend against Roger's claim. We therefore find that the doctrine of laches precludes Roger's claim and reverse the trial court.

CONCLUSION

Roger's counterclaim and third-party complaint alleging fraud are time-barred by the statute of limitations and laches.

Reversed.

MAY, J., and CRONE, J., concur.