

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2013-CA-002136-MR

WENDELL HONEYCUTT

APPELLANT

v. APPEAL FROM BARREN CIRCUIT COURT  
HONORABLE KEN M. HOWARD, SPECIAL JUDGE  
ACTION NO. 13-CI-00345

T.J. SAMSON COMMUNITY  
HOSPITAL; AND T.J.  
REGIONAL HEALTH, INC.

APPELLEES

OPINION  
AFFIRMING

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BEFORE: DIXON, J. LAMBERT, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Wendell Honeycutt brings this appeal from a December 19, 2013, judgment of the Barren Circuit Court dismissing Honeycutt's Petition for Declaration of Rights. We affirm.

On August 9, 2013, Honeycutt filed an Intervening Petition for Declaration of Rights<sup>1</sup> against T.J. Samson Community Hospital and T.J. Regional Health, Inc. In the petition, Honeycutt claimed:

6. This is an action seeking Declaratory Judgment that, pursuant to the Articles of Incorporation of the Hospital, a newly constituted Board of Trustees has been duly and validly elected by the surviving heirs to the original stock subscribers to the Hospital.

7. The aforementioned subscribers, including [Honeycutt], conducted and participated in an annual meeting and elected a slate of Trustees on May 25, 2013. The Trustees so elected were D.T. Froedge, Randall Curry, DeWayne Hatcher, Wendell H. Honeycutt, Lyon Hutcherson, and Curtis Peil. Subsequent to the election, Lyon Hutcherson stated that he did not realize nor did he intend that his name be submitted for consideration or election as a trustee. Accordingly, the Court should recognize these elected Trustees, exclusive of Lyon Hutcherson, as the true and actual Board of Trustees for the Hospital. A copy of the Minutes from such meeting is attached hereto as Exhibit "1."

8. On or about December 8, 1926, Articles of Incorporation were filed with the Kentucky Secretary of State to create a corporation to be known as "The Community Hospital." A copy of The Articles of Incorporation is attached hereto and incorporated herein as Exhibit "2." Among other things the forth Articles provide that "the amount of capital stock is to be one hundred and ninety five thousand dollars (\$195,000.00) of which the Commonwealth Fund of New York contributes one hundred and thirty thousand dollars (\$130,000.00) and sixty-five thousand dollars

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<sup>1</sup> Originally, Board of Trustees of T.J. Samson Community Hospital f/k/a The Community Hospital (Board of Trustees) filed a Petition for Declaration of Rights against T.J. Samson Community Hospital on June 6, 2013. By Order entered August 2, 2013, the circuit court concluded that the Board of Trustees did not have the capacity to sue or be sued. So, the court gave the "plaintiff" ten days to file another petition. On August 9, 2013, Wendell Honeycutt filed an Intervening Petition for Declaration of Rights.

(\$65,000.00) to be contributed by the voluntary contribution of the citizens residing in a radius of thirty five (35) miles of Glasgow, Barren County, Kentucky . . .  
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. . . .

10. On or about January 17, 1927, the Hospital filed with the Kentucky Secretary of State Amended Articles of Incorporation. A copy of the 1927 Amended Articles of Incorporation is attached hereto and incorporated herein as Exhibit “3.”

11. The first section of the 1927 Amended Articles of Incorporation provides that the Board shall conduct the affairs of the corporation and be constituted of not less than five (5) nor more than nine (9) Trustees. The Board was granted the right to replace a Trustee upon the death, resignation or removal from the thirty-five (35) mile radius around Glasgow and to fill the vacancy until successors shall be elected and qualified.

12. The 1927 Amended Articles of Incorporation specifically provided that:

“All persons who may subscribe to the capital stock of this corporation for the purpose of raising the sixty five thousand dollars (\$65,000.00) by a voluntary contribution, who shall subscribe to more than twenty-five dollars (\$425.00) [sic] shall have issued to them a certificate showing the amount of the contribution but shall not receive any dividends in the same, but shall have the right to vote in an election to be held for the purpose of electing Trustees to conduct the business of said hospital.”

. . . .

15. On or about March 11, 1968, the T.J. Samson Community Hospital filed Amended Articles of Incorporation with the Kentucky Secretary of State. The Amended Articles of Incorporation provided that in accordance with KRS [Kentucky Revised Statutes]

273.050, the affairs of the corporation were to be conducted by a Board of Trustees consisting of not less than six (6) nor more than nine (9) members, which should be self perpetuating. It further provided that in Article I that “the T.J. Samson Community Hospital of Glasgow, Kentucky, shall continue to be a non-profit, charitable organization and shall henceforth be a non-stock corporation.” A copy of the 1968 Amended Articles of Incorporation is attached hereto as Exhibit “5.”

16. The purported effect of the 1968 Amendment to the Articles of Incorporation was to disenfranchise the stock subscribers to the Hospital and to insulate it from community participation, which had been the stated purpose of the Community Hospital in 1926 and 1927. Such interpretation, if permitted, will effectively insulate it from accountability to the community and allow it to breach its promise and grant of property rights to those citizens upon whom it had relied for its very existence by subscribing to its stock and providing the financing for its construction.

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1. That the Court declare that the citizen subscribers who voted on May 25, 2013, at the annual meeting of the Hospital are vested with subscribers’ rights to vote their interest for a Board of Trustees for T.J. Samson Community Hospital and that either such voting rights nor property rights have been usurped by subsequent actions of T.J. Samson Community Hospital or its Board of Directors, who have effectively made themselves self perpetuating and non-accountable to the community after relying upon these citizens and their ancestors for their very existence.

2. That the Court approve the actions taken by such subscribers at the annual meeting on May 25, 2013[,] and consider the Board of Trustees, which they elected to be the duly and properly elected Board of Trustees of T.J. Samson Community Hospital and that such Board of

Trustees be installed immediately as the proper Board of Trustees of T.J. Samson Community Hospital.

3. That the Court establish procedures and guidelines for the qualification of all the subscribers and their heirs to be able to vote their rights as granted herein for a Board of Trustees of the Hospital.

The circuit court heard the matter without a jury under Kentucky Rules of Civil Procedure (CR) 52.01. By Findings of Fact, Conclusions of Law and Judgment, the circuit court concluded:

Taking all of the evidence into account, the Court finds that the Hospital was originally organized as a non-stock charitable institution. . . . The Hospital's actions during its history demonstrate that the incorporators' original intent was to provide charitable medical services. The undercurrent of all of the Articles, Amended Articles and tax filings is that the Hospital has considered itself a charitable institution for its entire eighty-seven year history.

Since the Hospital was originally organized as a non-stock charitable institution, the claims of Honeycutt must fail. The Hospital validly amended its charter in 1968 by a vote of two-thirds of the Directors. The subscribers lost any right to vote when the 1968 and 1974 Amended and Restated Articles were enacted. The subscribers' heirs lost any rights they may have as well.

The circuit court held that T.J. Samson Community Hospital (Hospital) was organized as a non-stock charitable corporation and that the subscribers to capital stock did not possess any vested rights therein. This appeal follows.

Honeycutt contends that the circuit court erred by concluding the heirs to the original subscribers of capital stock did not possess the right to vote for trustees to the Board governing the Hospital as provided for in the 1927 Amended Articles of

Incorporation. Honeycutt asserts that he was an heir to an original subscriber of capital stock and that the true Board of Trustees for the Hospital was elected on May 25, 2013, by six “heirs” to the original subscribers of capital stock.<sup>2</sup>

Honeycutt maintains that “the slate of directors elected by the heirs of the subscribers of the capital stock of The Community Hospital should be recognized as the proper and valid Board of Directors of T.J. Samson Community Hospital and should be installed immediately.” Honeycutt Brief at 19.

As the circuit court heard this matter without a jury, our review proceeds under CR 52.01 and is limited. The circuit court’s findings of fact are disturbed only if clearly erroneous, and issues of law are reviewed *de novo*. We may affirm a decision of the circuit court upon any basis in the record. *Fischer v. Fischer*, 348 S.W.3d 582 (Ky. 2011).

In this case, the uncontroverted facts reveal that the Hospital filed Amended Articles of Incorporation in March 1968, which stated in relevant part:

ARTICLE I: The T.J. Samson Community Hospital of Glasgow, Barren County, Kentucky, shall continue to be a nonprofit, charitable organization and shall henceforth be a **non-stock corporation**. (Emphasis added.)

Then again, in August 1974, the Hospital filed Amended Articles of Incorporation.

The 1974 Amended Articles of Incorporation restated that the Hospital was a “nonstock, nonprofit, charitable corporation.”

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<sup>2</sup> Although the January 17, 1927, Amended Articles of Incorporation set forth that certificates were to be issued to the subscribers of capital stock, Wendell Honeycutt failed to introduce into evidence such certificate issued to any subscriber of capital stock.

The original subscribers to the capital stock and any “heirs” thereof were certainly put on notice by the 1968 Amended Articles of Incorporation that the Hospital would “henceforth be a non-stock corporation.” And, the practice of the Board thereafter evidenced that the Hospital was operating as a non-stock charitable corporation. Thus, any cause of action possibly raised by the subscribers to the capital stock or their heirs accrued in 1968. We cannot fathom, and Honeycutt has not demonstrated, a single cause of action surviving the forty-five years between the filing of the 1968 Amended Articles of Incorporation and the filing of the instant action in 2013.

Even if this Court were to construe the original arrangement for the formation of this hospital in 1926 as contractual in nature between “stockholders,” any cause of action arising from a breach of said contractual arrangement most certainly occurred not later than March 11, 1968. The most lenient or favorable statutory limitation for appellant is KRS 413.090, which requires that an action be filed not later than fifteen years after the action has accrued, which did not occur in this case.<sup>3</sup>

We also note that the petition in this case fails to set forth why no action was taken by the petitioner or his predecessors for forty-five years. There are no allegations of fraud, deceit, or intentional misconduct against anyone who purportedly dispossessed appellant of his alleged ownership interest in the Hospital. In *Potter-Matlock Trust Co. v. Myers*, 239 S.W.2d 949

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<sup>3</sup> This statute was amended effective July 2014, which is not applicable to this cause of action.

(Ky. 1951), Kentucky’s highest Court defined laches as “the neglect, for an unreasonable and unexplained length of time under circumstances permitting diligence, to do what in law should have been done.” *Id.* at 951. In this case, appellant waited an unreasonable length of time to assert a claim regarding the capital stock of the Hospital, without any legal excuse. The prejudice and harm to sustain the petition greatly outweighs any harm that could be demonstrated by appellant.

Hence, we conclude that Honeycutt’s Petition for Declaration of Rights was time-barred and affirm the circuit court’s decision albeit upon different grounds.

*See Fischer*, 348 S.W.3d 582.

For the foregoing reasons, the judgment of the Barren Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

B. Alan Simpson  
Bowling Green, Kentucky

BRIEF FOR APPELLEES:

R. Gregg Hovious  
Mary E. Eade  
Louisville, Kentucky

H. Jefferson Herbert, Jr.  
Glasgow, Kentucky