STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2247

Irene McCarthy,
Appellant,

vs.

Revocable Trust Agreement of Thomas J. McCarthy, et al.,
Respondents.

Filed August 19, 2013
Affirmed
Ross, Judge

Morrison County District Court
File No. 49-CV-12-1037

George L. May, Law Office of George L. May, Woodbury, Minnesota (for appellant)

Francis J. Rondoni, Jeffrey D. Bores, Gary K. Luloff, Chestnut Cambronne, PA, Minneapolis, Minnesota (for respondents)

Considered and decided by Bjorkman, Presiding Judge; Ross, Judge; and Willis, Judge.[*]

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D   O P I N I O N

ROSS, Judge

In this fraudulent-transfer dispute, Irene McCarthy challenges the district court's dismissal of her claims against the trustees and beneficiaries of a trust created by her deceased ex-husband, Thomas McCarthy, allegedly to avoid his written promises to pay her $500,000. Irene asserts that her fraudulent-transfer claim should survive the trustees and beneficiaries' motion to dismiss for failure to state a claim because she alleged sufficient facts to demonstrate a fraudulent transfer, because Thomas and his estate are not necessary parties to this action, and because fraudulent-transfer actions should be treated as tort claims excluded from the probate code's statute of limitations. Because Irene was not a creditor and had no claim to the $500,000 at the time she filed her claim, we affirm.

FACTS

Irene and Thomas McCarthy were married in 1956 and divorced in 1973. *See McCarthy v. McCarth*y, 301 Minn. 270, 271, 222 N.W.2d 331, 332 (1974). Irene filed a civil suit alleging that she contracted with Thomas in March 1973 in contemplation of their divorce trial. Under the alleged contract, Irene agreed not to call certain witnesses that would describe his conduct during a business trip to Las Vegas and whose testimony might cost him his job. Irene alleges that, in exchange, Thomas agreed to bequeath $500,000 to her, or, if she predeceased him, to their two children. The money would be due sooner than Thomas's death if Thomas lost his monetary interest in Cahill Land Company.

Irene alleges that she and Thomas entered into a second contract soon after their divorce. She alleges that Thomas reiterated his previous commitment to pay the $500,000 on the same terms as before but that Irene additionally agreed not to maintain a lawsuit against Thomas for assaulting her. This contract again provided for an earlier payment obligation once Thomas no longer had a monetary interest in Cahill Land Company. And Irene alleges that she orally agreed not to disclose certain illegal tax activities that she asserts Thomas engaged in, and that she upheld her end of all the agreements.

Twenty-seven years after the divorce, in November 2001, Thomas created a revocable trust in which he named himself as the trustor and trustee. He designated his beneficiaries to be his extant wife Linda McCarthy, his brother Keith McCarthy, and Linda McCarthy's three children and two grandchildren. Without alleging what property specifically was transferred into the trust, Irene alleges that Thomas transferred "all, or most of his assets into the [t]rust." Around the same time, Thomas executed a will that did not include Irene or his children.

Thomas died on May 24, 2006. Irene does not allege that the estate knew about the alleged agreements, and the estate did not pay the $500,000 that Thomas allegedly promised to Irene. Irene never requested any of this money from the estate. Instead, nearly six years after Thomas died, she filed the current civil action on May 14, 2012, against Linda McCarthy and the beneficiaries of Thomas's revocable trust. She claimed that Thomas's transfer of his assets into the revocable trust in 2001 was a fraudulent transfer and that she is entitled to $50,000 or more and a constructive trust to be reimbursed by the respondents with any distributions they received from the trust.

The respondents moved to dismiss under rule 12.02(e) of the Rules of Civil Procedure. The district court granted the motion. The district court reasoned that the first contract between Thomas and Irene was void on public policy grounds because it was a contract under an agreement to protect an alleged guilty person from criminal prosecution or to conceal a crime. It deemed the second contract similarly void to the extent it depended on the consideration of Irene's promise not to disclose Thomas's allegedly illegal tax activities.

The district court did find the second written promise enforceable to the extent it settled Irene's civil claims arising from the alleged assault. But the district court held that Irene was not entitled to relief because she did not establish herself as a creditor under Minnesota's Fraudulent Transfer Act. *See* Minn. Stat. § 513.41(4) (2010) (defining creditor). And because the statute of limitations under Minnesota Statutes section 524.3-803 (2010) for claims against a probate estate had already run, the district court rejected Irene's fraudulent-transfer claim.

This appeal follows.

D E C I S I O N

On appeal from a district court's dismissal of a case for failure to state a claim under rule 12.02(e), we review de novo whether the complaint sets forth a legally sufficient claim for relief. *Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 553 (Minn. 2003). We consider only the facts alleged in the complaint and accept them as true, and we construe all reasonable inferences in favor of the nonmoving party. *Id.* Dismissal is fitting "when it is clear and unequivocal from the face of the complaint that the statute of limitations has run on all the claims asserted." *Jacobson v. Bd. of Trs. of the Teachers Ret. Ass'n.*, 627 N.W.2d 106, 109 (Minn. App. 2001), *review denied* (Minn. Aug. 15, 2001).

Irene McCarthy argues that she has alleged sufficient facts to demonstrate a fraudulent transfer and that the district court erred by dismissing her complaint for failure to state a claim. She alleges specifically that when Thomas McCarthy placed "all, or most of his assets" into a revocable trust in 2001 with the intent to escape his liability on his two written contracts with Irene for $500,000, the transfer was fraudulent because Thomas made it without consideration and because he knew that he would incur debts exceeding his ability to pay the $500,000 by other means. The brief alleges that she learned of the trust only after Thomas's death and the complaint alleges that the transfer demonstrated proof of Thomas's intent to defraud her.

We accept Irene's factual allegations as true and determine whether they form the basis of a claim under Minnesota's Uniform Fraudulent Transfer Act (MFTA), codified as Minnesota Statutes sections 513.41–.51 (2010). The MFTA prohibits a debtor from transferring property with intent "to hinder, delay or defraud any creditor." Minn. Stat. § 513.44(a)(1). Under the act, a transfer is fraudulent with respect to a creditor whose claim arose before the transfer "if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or . . . became insolvent as a result of the transfer or obligation." Minn. Stat. § 513.45(a). A transfer made by a debtor is fraudulent as to a creditor, whether the claim arose before or after the transfer was made, if the debtor made the transfer with intent to hinder, delay, or defraud any creditor, or without receiving a reasonably equivalent value in exchange for the transfer. Minn. Stat. § 513.44(a).

The district court correctly held that Irene is no longer a creditor to Thomas's estate. The MFTA requires that the party seeking relief be a "creditor" and possess a "claim." *Id.* The statute defines a creditor as someone who has a "claim" and defines a "claim" as a "right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." Minn. Stat. § 513.41(3)(4). The only "right to payment" that Irene alleges stems from her $500,000 contracts with Thomas. Thomas died in 2006. Minnesota Statutes section 524.3-803(a) establishes a maximum period of one year to present a claim arising before a decedent's death. Irene did not file a claim in probate or otherwise attempt to enforce her alleged contracts within a year after Thomas's death. And she also did not file a fraudulent-transfer claim against Thomas's estate or the trust beneficiaries during that time. Even during the years of litigation between Irene and Thomas's estate, she never attempted to assert any rights under the contracts.

When the right to collect money from a contract accrues at death, section 524.3-803(a) applies and the money due is a debt of the estate. *See In re Estate of Hadaway*, 668 N.W.2d 920, 921–22 (Minn. App. 2003). Irene's right, if any, to collect on Thomas's breach in failing the bequeath the contract funds accrued at his death. Her alleged right to payment on the alleged contract breach therefore expired one year after Thomas's death.

She was therefore no longer a "creditor" when she filed the complaint here, five years too late. Irene is correct that a suit against only the beneficiaries of the trust arises only under the MFTA, Minn. Stat. § 513.48(b), but she must still qualify as a creditor with a right to payment. Because the district court correctly held that no such right to payment existed when Irene commenced this action, she fails to state a claim for which relief can be granted.

Irene argues for a different result on the theory that the statute of limitations that applies to probate actions under the Minnesota Probate Code should not apply here because she brought her claim as a tort rather than as a probate claim. *See* Minn. Stat. § 524.1-201(8) (defining "claims" under the probate code as "liabilities of the decedent whether arising in contract or otherwise and liabilities of the estate which arise after the death of the decedent including funeral expenses and expenses of administration. The term does not include . . . tort claims."). Irene asserts that her fraudulent-transfer action, properly classified as a tort claim rather than a probate claim, is subject to the six-year statute of limitations under Minnesota Statutes section 541.05, subdivision 1(6) (2010).

We need not decide whether fraudulent-transfer claims qualify as tort claims, which appears to be a matter of some disagreement among various jurisdictions and an unaddressed question in Minnesota. Even if claims under the MFTA qualify as tort claims, the transfer of Thomas's assets into the trust would be fraudulent only to the extent it prevented Irene from obtaining the money she was owed under her contracts. But the complaint asserts that Thomas retained possession and control of his assets and could have amended the revocable trust or made other arrangements to pay the debt. She does not allege that she was unable to collect the funds owed to her if she had presented her claims to the estate. Thomas's creation of a revocable trust did not itself, according to the complaint, end his ability to satisfy his contract debt. Irene was not injured by the Thomas's 2001 transfer of assets into a revocable trust. For these reasons, the district court did not err by holding that Irene's complaint failed to state a claim for which relief can be granted.

Affirmed.