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SUPREME COURT OF ALABAMA

SPECIAL TERM, 2023

SC-2023-0191

Christopher S. Chiepalich

v.

Stephen W. Chiepalich

Appeal from Mobile Circuit Court (CV-20-902364)

MITCHELL, Justice.

When Jayne Chiepalich ("Jayne") died, she left part of her estate to her two sons, Christopher S. Chiepalich ("Chip") and Stephen W.

Chiepalich ("Steve"). Chip sued Steve in the Mobile Circuit Court, alleging that Steve had wrongfully prevented him from inheriting assets in two bank accounts owned by Jayne. Steve filed a motion for summary judgment, which the circuit court granted. Chip appealed. We affirm the judgment.

Facts and Procedural History

Jayne and her husband had two sons: Chip and Steve. Jayne's husband died in 1957 and she never remarried.

In 2003, Jayne executed a will. At the time, she owned two bank accounts that are relevant to this appeal: (1) a cash-management account with Merrill Lynch ("the Merrill Lynch account"), of which she was the sole owner, and (2) a checking account with Trustmark Bank ("the Trustmark account"), which she and Steve owned jointly with right of survivorship. Although Jayne's will did not specifically address the disposition of either account, it said that Chip and Steve would receive equal shares of the "rest, residue, and remainder" of her estate.

Garner Jeffery became Jayne's financial advisor at Merrill Lynch around 2008. As part of their relationship, Jeffery made investment recommendations to Jayne. Eventually, Jayne asked Jeffery to consult

Steve for advice on those recommendations. By 2011, Jayne had asked Jeffery to consult directly with Steve and had given her advance approval to any investment decisions that Steve made.

In 2011, Jayne met with Jeffery and another Merrill Lynch employee, John Ferguson, to discuss putting the Merrill Lynch account in Steve's name and making him the owner. According to Jeffery's notes from the meeting, Jayne said that she wanted to "'move the assets to Steve'" because she did not "'want to deal with any financial decisions'" and that she "'trust[ed] Steve completely.'" "At the beginning of [the meeting]," the notes say, "[Jeffery] explained that [his] priority was to protect her [and] make sure that she understood her options [and the] ramifications of [her] decision." Jeffery documented that Jayne "understood that the account/assets would no longer be owned by her but instead by Steve" and that Jeffery "explained that at her death, her will would no longer direct these assets -- Steve's will would." Jeffery noted that he "was very direct [and] clear about this point -- that at her death 1/2 of the assets would not go to her son Chip." Jeffery wrote: "She said that she had not thought about it but that it did not concern her. Again, she trusted her son Steve to work that part out."

Jeffery also documented that he and Ferguson "were very clear with [Jayne] when discussing the alternative options." Those alternatives consisted of (1) a "trust [with] Steve as Trustee [and] [Jayne] sole beneficiary"; (2) a power of attorney in favor of Steve where Jayne "would still be owner," combined with a transfer on death; or (3) a "jointly held [account] [with] Steve." Jeffery testified that Jayne "could [have been] involved" in some financial decision-making under a power of attorney or a jointly held account. In his notes, he wrote that he and Ferguson were also "very clear with [Jayne] when discussing ... that this transfer was irrevocable [and] that the assets would no longer be in her estate or directed by her will [at] her death." According to Jeffery's notes, "she understood completely," and he testified that he would not have allowed the transfer if he or Ferguson "had any question at all about whether this was her own free, independent decision to transfer this account." He explained that Jayne was "ad[amant] and decisive" in her decision to retitle the account in Steve's name.

Steve testified that, on the day of the meeting, he understood the transfer to have been a gift. The day after the meeting, Steve drafted a memorandum to "document[] [Jayne's] transfer of her primary savings

account into [his] name." He explained that "[t]he overriding purpose of such transfer [was] to preserve the account so that there [would] be adequate funds to provide for [Jayne's] care for the rest of her life." He stated that he had "been [Jayne's] financial and tax advisor for many years (responsible for investment decisions, having her annual tax returns prepared, paying her bills, etc.)." He wrote: "To effectively prevent further invasion of [Jayne's] savings account ... [Jayne] has transferred such account into my name. She has done so after separate, independent consultations with myself and Merrill Lynch representatives."

In 2012, Steve called Jeffery. According to Jeffery's notes about the call, Steve "inquired about [Steve's] plan to raise $50m in cash" to "open a [money purchase] plan." He planned to "use the cash raised in [the Merrill Lynch account] to fund the newly opened [money purchase] plan." After the call, Jeffery spoke with Ferguson and other Merrill Lynch employees and "reviewed the retitling of [Jayne's] account to [Steve]." Jeffery called Steve back and told him that, to his recollection, the Merrill Lynch account "was to be used for the benefit of [Jayne] [and] that [he] had concerns about [Steve's] request." According to Jeffery's notes, Steve

said that "nothing has changed -- those funds are to be used for the benefit of [Jayne] [and] to supplement her income when needed." He said that "[h]e wanted to keep the money purchase account [at Merrill Lynch] with [Jeffery's] team [and] would use <u>those</u> funds if necessary to take care of her." "[Steve] also stated," Jeffery wrote, "that he would be responsible for the taxes due to distribution if it came to that." Jeffery said that he reiterated to Steve "[his] concern [and] view that the money was to be used for [Jayne] [and] that was the view/intent of all parties involved when the account was transferred to him (single name)." Jeffery said that "[Steve] understood and completely agreed" and that Jeffery "commented that since the account [was] in [Steve's] name that [Jeffery's team] [would] comply with his request."

Also in 2012, John Shields, a certified public accountant, prepared Jayne's and Steve's 2011 tax returns. Shields testified that Steve was his sole contact regarding their returns. Shields prepared a federal gift-tax return for Jayne reporting that she had gifted a "Brokerage Account" to Steve on April 28, 2011. On the face of the return, a statement immediately above the "Signature of donor" line read: "Under penalties of perjury, I declare that I have examined this return, including any

accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct and complete." Jayne signed on the "Signature of donor" line in March 2012. Shields testified that, "as best [he] recall[ed], Steve was the owner of these assets [in the gifted account], and so the income was reported on his tax return for those [years] after the date of the gift."

Jayne died on November 24, 2018. After her death, Steve told Chip that the Merrill Lynch account had been retitled in Steve's name. Steve continued to maintain sole possession of both the Merrill Lynch account and the Trustmark account.

Exactly two years after Jayne's death, on November 24, 2020, Chip sued Steve in Mobile Circuit Court, claiming conversion, intentional interference with an expected inheritance, and negligence. He later added a claim of unjust enrichment. Steve moved to dismiss all claims against him, which the circuit court and the parties treated as a motion for summary judgment. The circuit court granted Steve's motion. Chip appealed.

Standard of Review

On appeal from a summary judgment, this Court applies de novo "'the same standard of review the trial court used in determining whether the evidence presented to the trial court created a genuine issue of material fact.'" American Liberty Ins. Co. v. AmSouth Bank, 825 So. 2d 786, 790 (Ala. 2002) (citation omitted). The initial burden is on the movant to establish that no genuine issue of material fact exists. Nationwide Prop. & Cas. Ins. Co. v. DPF Architects, P.C., 792 So. 2d 369, 372 (Ala. 2000). The burden then shifts to the nonmovant to present substantial evidence creating a genuine issue of material fact. Id. "[S]ubstantial evidence is evidence of such weight and quality that fair-minded persons in the exercise of impartial judgment can reasonably infer the existence of the fact sought to be proved." West v. Founders Life Assurance Co. of Florida, 547 So. 2d 870, 871 (Ala. 1989); see also § 12-21-12(d), Ala. Code 1975.

Analysis

Chip seeks to have his claims reinstated by raising three issues on appeal: (1) as to his conversion claim, he says that he provided substantial evidence that he had an interest in both the Merrill Lynch

account and the Trustmark account, which, he says, Steve converted; (2) as to his claims of intentional interference with an expected inheritance and of unjust enrichment, he says that he provided substantial evidence that Jayne's transfer of the Merrill Lynch account was due to fraud or undue influence by Steve; and (3) as to his negligence claim, he says that the statutory limitations period had not expired and that there was substantial evidence of negligence by Steve. We address each of these issues in turn.

A. Claim of Conversion

Chip begins by disputing the summary judgment on his conversion claim. Conversion is the wrongful exercise of dominion over the property of another person who has superior title or right of possession. See Goolesby v. Koch Farms, LLC, 955 So. 2d 422, 430 (Ala. 2006); see also § 6-5-260, Ala. Code 1975 (recognizing a cause of action for the "unlawful deprivation of or interference with" a property owner's possession); § 6-5-261, Ala. Code 1975 ("Mere possession of a chattel, if without title or wrongfully, will give a right of action for any interference therewith, except as against the true owner or the person wrongfully deprived of possession."). Chip argues that summary judgment was improper

because there was substantial evidence that he had an interest in both accounts. As we explain below, he has not shown an interest in either account.

1. The Merrill Lynch Account

In an attempt to show an interest in the Merrill Lynch account, Chip argues that "the 2011 transfer of the [Merrill Lynch] account was made in trust." Chip's brief at 35. An express trust can be created by the "transfer of property to another person as trustee during the settlor's lifetime." § 19-3B-401(1), Ala. Code 1975. "[A] trust need not be evidenced by a trust instrument, but the creation of an oral trust and its terms may be established only by clear and convincing evidence." § 19-3B-407, Ala. Code 1975. Accordingly, to survive a motion for summary judgment, the nonmovant must provide evidence that the fact-finder could reasonably find clearly and convincingly establishes the creation and terms of the trust. See Ex parte McInish, 47 So. 3d 767, 774 (Ala. 2008).

Creation of a trust is established by showing (1) that the settlor had the capacity to create a trust; (2) that the settlor intended to create a trust; (3) a definite beneficiary or the applicability of an enumerated

exception; (4) a trustee with duties to perform; and (5) that the same person is not the sole trustee and sole beneficiary. § 19-3B-402, Ala. Code 1975. Terms of a trust are established by "the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding." § 19-3B-103(19), Ala. Code 1975.

According to Chip, Jayne intended to create a trust when she retitled the account in Steve's name. Chip points to Jayne's statements to Jeffery and Ferguson that she did not "'want to deal with any financial decisions,'" that she "'trust[ed] Steve completely,'" and that she was "'ready to delegate.'" Chip's brief at 10. He also points to Steve's statements that "'the overriding purpose of such transfer [was] to preserve the account for [Jayne's] care for the rest of her life'" and "'that the funds were to be used for the benefit of [Jayne] and to supplement her income when needed.'" Id. at 29. Given these statements, Chip asserts that Steve held the account in trust and that, therefore, "[p]rior to [Jayne's] death, [Steve] had a fiduciary interest in the account and nothing more." Id. at 35. "As such," he says, the Merrill Lynch account "was an asset of [Jayne's] estate upon her death and was subject to

distribution in the manner she designated in her Will." Id. Chip concludes that he "obtained a possessory interest in one-half of the [Merrill Lynch account] ... when his mother died" and, thus, that Steve "committed the tort of conversion when he refused to divide the assets" according to the will. Id. at 35-36.

Jayne's and Steve's statements do not suffice to submit the issue of intent to a fact-finder. To begin, there is no dispute that, as Jayne's statements show, she sought to delegate financial decision-making over the account. And a more thorough review of the evidence shows that Jayne chose to do so by means of an outright transfer to Steve individually -- not by transferring the account to him in trust. When Jayne first met with Jeffery and Ferguson, she sought to "'move the assets to Steve'" because she did not "'want to deal with any financial decisions.'" Jeffery and Ferguson then presented numerous alternative ways for Jayne to delegate decision-making. The sole alternative presented that would allow her to fully delegate control in the same manner as an outright transfer of ownership was the creation of a trust. Despite Jeffery and Ferguson's presentation of a trust as an alternative means to achieve the same goal, the undisputed evidence shows that she

chose to transfer ownership of the account to Steve. Indeed, she later signed a gift-tax return "[u]nder penalties of perjury" reporting that, one day after her meeting at Merrill Lynch, she gifted a brokerage account to Steve -- not to a trust -- and there is no evidence that she signed the return involuntarily.

Nor does Steve's memorandum support finding that Jayne intended to create a trust. Although, as Chip highlights, Steve understood the purpose of the transfer to be the preservation and use of the assets for Jayne's benefit, it is undisputed that he also understood the transfer to have been a gift. And, because the statements in the memorandum highlight only the purpose of the transfer, they are consistent with any number of means to achieve that purpose -- including an outright gift to Steve. No reasonable fact-finder could find that this evidence clearly and convincingly established that Jayne intended to create a trust.

Chip likewise fails to provide clear and convincing evidence of the alleged trust's terms. Specifically, he has not established that Jayne intended the purported trust corpus -- the Merrill Lynch account -- to revert to her estate upon her death. To the contrary, the sole evidence of Jayne's intent to "distribute" the Merrill Lynch account upon her death

shows that the account would pass solely to Steve, not through the residuary clause of her will. Even if Jayne created a trust at the 2011 meeting with Jeffery and Ferguson, she did so on the express understanding "'that at her death, her will would no longer direct these assets -- Steve's will would'" -- and that "'1/2 of the assets would not go to her son Chip.'" Importantly, Chip has not provided any evidence to the contrary. Therefore, he has not shown a convertible interest in the Merrill Lynch account.

2. The Trustmark Account

Chip also argues that he had a one-half interest in the Trustmark account at Jayne's death. He concedes that the sole Trustmark documentation concerning ownership of the account lists "Jayne Chiepalich or S.W. [Steve] Chiepalich" as owner and describes the ownership as "Joint - with survivorship." And, "in the event it is stated in the instrument creating such [joint] tenancy that such tenancy is with rights of survivorship ..., then, upon the death of one joint tenant, his interest shall pass to the surviving joint tenant ...." § 35-4-7, Ala. Code 1975. Accordingly, the evidence indicates that Steve became the sole owner of the account upon Jayne's death.

Nonetheless, Chip maintains that he has an interest in the account because, he says, "[s]hortly after [Jayne's] death, [Steve] ... admitted [that Chip] is entitled to one-half of the Trustmark account." Chip's brief at 17. In making this argument, Chip appears to rely on an email that Steve sent to him after the dispute arose, in which Steve asked: "Do you believe an even split of the assets (adjusted for loans) as indicated in the will is fair?" But Chip does not explain how this question equates to an admission that Jayne intended anything; nor does he explain how it comes to bear on the evidence that Jayne and Steve held the Trustmark account jointly with right of survivorship. Therefore, Chip has not shown reversible error as to conversion of the Trustmark account.

B. Claims of Intentional Interference with an Expected Inheritance and Unjust Enrichment

Chip next argues that summary judgment was improper as to his claims of intentional interference with an expected inheritance[1] and unjust enrichment. He offers the same rationale for both claims -- he

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[1]This Court has never expressly stated whether a claim of intentional interference with an expected inheritance is a viable cause of action, see, e.g., Fitzpatrick v. Hoehn, 262 So. 3d 613, 630 (Ala. 2018), and it is not necessary for us to resolve that issue today.

says he produced substantial evidence that Steve obtained possession of the Merrill Lynch account from Jayne by fraud or by undue influence.

1. Fraud

Chip says that there was substantial evidence of fraud. To establish fraud, the plaintiff must show (1) a false representation by the defendant (2) of a material existing fact (3) reasonably relied on by the plaintiff (4) who, as a proximate consequence, suffered damage. Exxon Mobil Corp. v. Alabama Dep't of Conservation & Nat. Res., 986 So. 2d 1093, 1114 (Ala. 2007).

As evidence of fraud, Chip notes that Steve "represented to [Jayne] that transferring [the Merrill Lynch account] to him would not alter the terms of the Will." Chip's brief at 44. But this statement was true -- the transfer did not modify the terms of the will. And, as explained above, the undisputed evidence indicates that, when Jayne agreed to the transfer, she was aware that Steve's will -- not her will -- would control the assets. Accordingly, Chip has not shown that Steve made a misrepresentation to Jayne or that she relied on his statement in any event. In sum, Chip has not provided substantial evidence of fraud.

2. Undue Influence

Chip alternatively argues that his claims of intentional interference with an expected inheritance and unjust enrichment should be reinstated because, he says, there was substantial evidence that Steve unduly influenced Jayne's decision to transfer the Merrill Lynch account. At the summary-judgment stage, the party seeking to show that an inter vivos gift resulted from undue influence must provide substantial evidence (1) that the donor and donee were in a confidential relationship and (2) that the donee was the dominant party in that relationship. Mitchell v. Brooks, 281 So. 3d 1236, 1243-44 (Ala. 2019). The burden then shifts to the donee to either (1) show that the donee was not the dominant party in a confidential relationship or (2) present clear and convincing evidence that the gift was "'"fair, just, and equitable in every respect."'" Id. at 1244 (citations omitted).

The parent-child relationship is per se confidential. Furrow v. Helton, 13 So. 3d 350, 357 (Ala. 2008). And, in that relationship, the parent is presumptively the dominant party. Id. Here, the parties do not dispute that the relationship was confidential. Rather, Chip contends

that he rebutted the presumption that Jayne was the dominant party and thus shifted the burden to Steve, which, Chip says, Steve did not meet.

"It is well settled that one alleging dominance of a child over a parent must prove that 'time and circumstances have reversed the order of nature, so that the dominion of the parent has not merely ceased, but has been displaced, by subservience to the child.'" Wilson v. Wehunt, 631 So. 2d 991, 993 (Ala. 1994) (citation omitted). Accordingly, to shift the burden, the party seeking to establish undue influence must provide substantial evidence "that the parent's will has become subordinate to the will of the child." Id.; see also Furrow, 13 So. 3d at 354 ("[T]he circumstantial evidence offered to show dominance must nevertheless be substantial evidence.").

In an effort to show that Steve was the dominant party, Chip points to several pieces of evidence. He begins by noting that, "[b]y his own proclamation, [Steve] had been [Jayne's] financial and tax advisor for many years." Chip's brief at 32. He next asserts that Steve "gained and exercised complete control over [Jayne's] investments before the April 27, 2011 transaction." Id. Finally, he points out that Steve "had [Jayne's]

'complete trust' regarding her finances" and that Jayne "did whatever [Steve] told her to do, even if she did not agree with him." Id.

While Chip points to evidence indicating that Steve had significant influence over Jayne's finances, he has not provided substantial evidence that he had dominion over Jayne, such that her will was subservient to his manipulation and control. Chip highlights evidence that Jayne had complete trust in Steve, listened to his financial advice, and even delegated substantial decision-making to him. But he fails to show that she did so involuntarily. To the contrary, it is undisputed that Jayne's mental capacity was unimpaired and that she had an independent financial advisor -- Jeffery -- with whom she discussed the Merrill Lynch account outside of Steve's presence. Jayne voluntarily gave Steve "control" over investment decisions, which he undisputedly exercised in conjunction with Jeffery's recommendations. Chip has thus failed to rebut the presumption that Jayne was the dominant party and shift the burden to Steve.

C. Claim of Negligence

Finally, Chip attempts to have his negligence claim reinstated. Chip concedes that the transfer of Jayne's Merrill Lynch account to Steve

occurred in 2011 and that the statutory limitations period for his negligence claim is two years. But he argues that the limitations period was tolled because, he says, Steve fraudulently concealed "the 2011 transfer from [Chip] until after [Jayne's] death in 2018." Chip's brief at 44. Accordingly, he contends that the limitations period for his negligence claim did not begin until he discovered the transfer in 2018. By asserting his negligence claim within two years of his purported discovery of the transfer, Chip argues, that claim was timely.

As Chip correctly states, when the existence of a claim has been fraudulently concealed, the plaintiff is guaranteed two years from the date of discovery to bring the claim. Jett v. Wooten, 110 So. 3d 850, 854 (Ala. 2012); see also § 6-2-3, Ala. Code 1975 ("[T]he claim must not be considered as having accrued until the discovery by the aggrieved party of the fact constituting the fraud, after which he must have two years within which to prosecute his action."). Fraudulent concealment is established by showing (1) a duty on the defendant to disclose a material fact; (2) that the defendant concealed or failed to disclose that fact; (3) that the defendant's concealment or failure to disclose induced the plaintiff to act or to refrain from acting; and (4) that the plaintiff suffered

actual damage as a proximate result. Dodd v. Nelda Stephenson Chevrolet, Inc., 626 So. 2d 1288, 1293 (Ala. 1993). "'Generally, the question of when the statute of limitation begins to run is a question of fact for the jury.'" Ex parte Alabama Farmers Coop., Inc., 911 So. 2d 696, 700 (Ala. 2004) (citation omitted). But "'[w]hether there is a duty to the other to disclose the fact in question is always a matter for the determination of the court.'" State Farm Fire & Cas. Co. v. Owen, 729 So. 2d 834, 839 (Ala. 1998) (citation omitted). "A duty to disclose may arise from the particular circumstances of the case, from a confidential relationship, or from a request for information." Dodd, 626 So. 2d at 1293. Alternatively, "a defendant who has no duty to disclose arising from his relationship with the plaintiff or the special circumstances of the transaction may nevertheless be liable for fraudulent concealment if he knowingly takes action to conceal a material fact with the intent to deceive or mislead the plaintiff." Soniat v. Johnson-Rast & Hays, 626 So. 2d 1256, 1259 (Ala. 1993).

Chip does not argue or point to any evidence that Steve had a duty to disclose the transfer of the Merrill Lynch account. Nor does he show that Steve intentionally concealed the transaction to deceive or mislead

him. Rather, he asserts -- without evidence -- that Steve "fraudulently concealed the transfer of the [Merrill Lynch account] from [Chip] until after [Jayne's] death in 2018." Chip's brief at 46. Because Chip failed to provide substantial evidence of fraudulent concealment, he has not shown that the limitations period was tolled. Accordingly, his negligence claim was untimely.

Conclusion

Because Chip has failed to show that the circuit court erred by entering summary judgment in favor of Steve, we affirm that judgment.

AFFIRMED.

Parker, C.J., and Shaw, Bryan, and Mendheim, JJ., concur.