COURT OF APPEALS
OF THE
SHAKOPEE MDEWAKANTON SIOUX COMMUNITY

SMSC INDIAN RESERVATION STATE OF MINNESOTA

Lori Stovern,

Appellant

vs. Court File No. CTAPPP 041-15

Adam Dedeker,

Appellee.

MEMORANDUM DECISION AND ORDER

A. Summary.

On August 15, 2014, the Trial Court granted summary judgment to Adam Dedeker ("Dedeker"), in the amount of $492,000, on his claim that Lori Stovern ("Stovern"), his mother, had unjustly enriched herself from his funds during a period that she was his state-appointed conservator. On the same date, the Trial Court denied Dedeker's claim for costs and disbursements, and dismissed Stovern's defenses and counterclaims based on fraud and duress. Thereafter, on December 16, 2014, the Trial Court granted the Dedeker's motion for summary judgment on Stovern's counterclaims for costs that she asserted she had incurred while serving as his conservator.

Stovern timely appealed both Trial Court orders, and after briefing we heard oral argument on April 29, 2015. Today we affirm the Trial Court in all respects.

B. Factual Background

Stovern served as Dedeker's conservator from July, 2000 through September, 2004, pursuant to orders from the courts of the State of Minnesota. At some point thereafter, when the legal restrictions of his conservatorship had been lifted, Dedeker came to believe that Stovern had misappropriated as much as 1.5 million dollars of his money. The parties disagree as to some of the events that then unfolded: in

affidavit testimony to the Trial Court, Dedeker asserted that, when confronted with his suspicions, Stovern admitted malfeasance; but Stovern denies that, and contends merely that she did not have documents reflecting the legitimate uses, including cash payments made directly to Dedeker, to which the funds in question had been put. But the parties agree that, after Dedeker had raised the issue, the two of them met with an employee of the Shakopee Mdewakanton Sioux Community ("the Community"), and apparently with the employee's assistance, reached a settlement. Under the settlement agreement, Dedeker released his $1.5 million claim, and Stovern agreed to pay him, over time, a total of $750,000, from regular deductions to be taken from the *per capita* payments made to her by the Community. A written agreement to that effect was drafted by an attorney who had represented both parties in the past.

The parties agree that each of them then signed that document, but apparently neither of them now has a signed copy. An unsigned agreement, which the parties agree is an accurate copy of the document they signed, was presented to the Trial Court, as was a jointly-signed letter from them to the Community's Chairman and Business Council asking that $3,000 be deducted from each Community *per capita* payment to Stovern, and paid to Dedeker, until a total of $750,000 had been paid.

For three years after the submission of that letter to the Community officials, the parties' arrangement held. Under it, a total of $258,000 was paid to Dedeker by Stovern.

Late in 2013, however, at Stovern's direction, the deductions ceased; and in March, 2014, Dedeker filed a breach of contract action in the Trial Court.

Before the Trial Court, Stovern defended her action, and counterclaimed both for repayment of the $258,000 which Dedeker received, and for reimbursement of costs and fees that she contends she experienced during the period that she was his conservator, arguing that that she signed the settlement agreement while she was under duress, and that her signature was procured by fraud. Specifically, she asserted that before she signed the settlement agreement Dedeker had told her that if she did not settle with him he would bring criminal charges against her. She asserted to the Trial Court that she believed he could and would do so, and that she felt she had no choice but to sign. His statement, she says, and her belief, was that Dedeker himself could prosecute her, when of course the legal reality was that the most Dedeker could have done is file a complaint with appropriate authorities and hope that a prosecutor would initiate criminal proceedings.

In August, 2014, the Trial Court granted Dedeker's motion for summary judgment on his contract claim. The Trial Court analyzed Stovern's submissions and arguments in the light most favorable to her, and concluded that even if she could prove that Dedeker indeed had asserted he could and would prosecute her (which Dedeker denies), and if she could prove that he knew that the assertion was false and that he intended Stovern to rely upon his false assertion, and assuming that she actually did rely upon the false assertion -- even if all those things could be established at trial – the Trial Court noted

that Stovern could at any time have consulted with legal counsel concerning her options and her position, but instead signed the agreement, and then complied with it for several years. On that basis, the Trial Court concluded that her asserted belief was objectively unreasonable and therefore that no legal claim, either of fraud or duress, could properly be based upon it. .

Thereafter, in December, 2014, the Trial Court granted Dedeker's for summary judgment with respect to Stovern's counterclaim concerning expenses she claims she incurred on his behalf during the period from 2000 through 2004. The Trial Court held that although the Community has not adopted an applicable statute of limitations, still at this late date, more than ten years after the claim would have arisen, the doctrine of laches must, as a matter of law, bar Stovern's claims.

This appeal, from both Trial Court decisions, followed.

C. Standard of Review.

Under Rule 28 of the Rules of Civil Procedure of the Court of the Shakopee Mdewakanton Sioux Community, a grant of summary judgment is appropriate only when there are no genuine issues of material fact in dispute, and when the movant is entitled to judgment as a matter of law. Summary judgment should be granted only if, taking the record as a whole, and viewing the evidence in the light most favorable to the non-moving party, the Trial Court could not rationally find for the non-moving party. Anderson v. Performance Construction, LLC., 6 Shak. T.C. 42, at 46 (Aug. 9, 2013). But, in resisting a summary judgment motion a responding party must present enough evidence to show that there indeed is a genuine issue of material fact. Merely offering a scintilla of evidence, or creating some "metaphysical doubt" will not suffice. Little Six, Inc. v. Prescott and Johnson, 1 Shak. A.C. 157 (Feb. 1, 2000). The evidence must be such that it would permit the court, at trial, to find in the non-moving party's favor. Id.

On appeal, we review a grant of summary judgment as a question of law that is reviewed *de novo*. Id.

D. Analysis.

In her appeal, Stovern makes four arguments. First, she argues that there is a genuine issue of material fact as to whether the parties entered into a binding settlement agreement because there is no copy of the actual signed agreement. Appellant's Br. 2. Second, she argues that there is an issue of fact as to whether it was reasonable for her to believe that her son could criminally prosecute her if she did not enter into the settlement agreement, Id. at 3, and she asserts that she could prove the other necessary elements of a fraud or duress claim at trial. Id. at 4–5. Third, she maintains that the Trial Court looked to inadmissible evidence, specifically affidavits of a Community social worker and of the attorney who

drafted the settlement agreement, Id. at 5–6, despite the fact that the Trial Court expressly said that it was declining to consider those documents. And finally, she argues that her counterclaim for expenses incurred during the time she was Dedeker's conservator cannot be barred by laches because she was ignorant of the law, and because the Shakopee Community has not adopted an applicable statute of limitations. Id. at 7–8.

Having carefully considered these arguments we find none of them persuasive.

We think there is no dispute with respect to the existence and the essential terms of the parties settlement agreement. During oral argument on Dedeker's summary judgment motion, these colloquies occurred:

> THE COURT: Well, let me ask you this, because it's not clear to me either from the brief or from Ms. Stovern's affidavit. Does Ms. Stovern dispute that she signed a settlement agreement?
>
> MR. McGEE: No.
>
> June 11, 2014 Transcript, AT 14:17-21
>
> . . .
>
> THE COURT: Does Ms. Stovern dispute that she signed that letter to the business counsel [sic]?
>
> MR. McGEE: She does not.
>
> THE COURT: And does she dispute its accuracy in describing the settlement?
>
> MR. McGEE: Not to the essential terms ...
>
> Id., at 17:3-9.

The parties agree that Dedeker believed he was owed a sum of money; they agree that they reached a settlement of that claim; and they agree that the "essential terms" of that settlement obliged Stovern to pay him three thousand dollars from each of her *per capita* payments from the Community. Hence, there was the consideration that is necessary for the formation of a contract: Dedeker's agreement that he would forbear from seeking additional payments from Stovern. And in light of the parties' letter to the Community officials, the terms of their contract – that is, the amount that must be paid, the term within which it will be paid, and the source from which it is to be paid – can be ascertained. Under these circumstances, and given the fact that Stovern did perform under those "essential terms" for a period of years, the Trial Court properly concluded that there is no issue of material fact with respect to the formation and terms of the parties settlement agreement, and therefore that summary judgment clearly was appropriate as to that question.

Nor do we think things stand differently with respect to Stovern's claim that she entered into the agreement because Dedeker allegedly committed a fraud upon her, or because she was under undue

duress when she signed the agreement. A misrepresentation of law does not create a cause of action for fraud unless the person making the misrepresentation is either (1) learned in the field, such as a lawyer or an insurance claims adjuster, or (2) has a fiduciary duty or similar relationship of trust and confidence to the defrauded person. Northernaire Prods., Inc. v. Crow Wing Cnty., 244 N.W.2d 279, 280 (Minn. 1976); Stark v. Equitable Life Assur. Soc. of U.S., 285 N.W. 466, 469 (Minn. 1939). The simple justification for this rule is that "[o]rdinary vigilance will disclose the truth or falsehood of representations as to matters of law." State v. Edwards, 227 N.W. 495, 495 (Minn. 1929).

A statement of mixed fact and law can create a basis for a claim of fraud if it "'amounts to an implied assertion that facts exist that justify the conclusion of law which is expressed' and the other party would ordinarily have no knowledge of the facts." Hoyt Props., Inc. v. Prod. Res. Grp., *L.L.C.*, 736 N.W.2d 313, 318 (Minn. 2007) (quoting Miller v. Osterlund, 191 N.W. 919, 919 (Minn. 1923)). Examples of predominantly factual statements include the statement that one mortgage has priority over another, that a particular corporation has a right to do business in a state, *id.* (citing Restatement (Second) of Torts § 545 (1977)) or that a piece of land is free from a statutory reservation of minerals. Pieh v. Flitton, 211 N.W. 964, 965 (Minn. 1927). In these scenarios, the fraudulent misrepresentation is not the existence of a particular law, but the fact that one has complied with the requirements imposed by that law. The distinction is that "pure representations of law can be investigated by either party simply by reference to legal authority that is a matter of public record rather than requiring knowledge of information in the other party's possession." Lyon Fin. Servs., Inc. v. Ill. Paper & Copier Co., 732 F.3d 755, 760 (7th Cir. 2013) (applying Minnesota law).

But if Dedeker in fact did threaten to "prosecute" Stovern, his statement would be a simple misrepresentation of law – since one individual cannot criminally prosecute another – and therefore not actionable as fraud. If the threat was meant to refer to a civil lawsuit, the question of whether Dedeker had a valid cause of action would have been more of a mixed question of fact and law; but Dedeker possessed no facts relevant to such a lawsuit that were not also possessed by Stovern, and both parties had equal access to the applicable law and to lawyers. *See* Miller, 191 N.W. at 919 ("A misrepresentation of a matter of law . . . is not a representation on which the party to whom it has been made has a right to rely, for the law is presumed to be equally within the knowledge of both parties."); *see also* Edwards, 227 N.W. at 495. Clearly, settlements would have little meaning if they were voidable simply on the basis that one of the parties later came to question the merits of a threatened lawsuit.

Hence, even if Stovern were able to convince the Trial Court that Dedeker in fact did threaten to "prosecute" her, that would not be a material fact permitting the Court to find in Stovern's favor. Mr. Dedeker is not learned in the law, nor was he Ms. Stovern's fiduciary. To the contrary, Mr. Dedeker was allegedly threatening to prosecute or sue Ms. Stovern, and she claims that during the conservatorship he

attempted to hide money from his ex-wife. "Receiving repeated assurances from one who is believed to be dishonest provides no comfort and serves as an inadequate basis for any justifiable reliance." Burns v. Valene, 214 N.W.2d 686, 690 (Minn. 1974). Therefore, the circumstances that surrounded the alleged threats further weaken Stovern's argument for reasonable reliance.

As with fraud, so with duress. In order to successfully challenge a contract on the basis that it was formed under impermissible duress, a party must prove that he or she involuntarily executed the agreement because circumstances permitted no other alternative, and that those circumstances were the result of coercive acts by the other party. Oskey Gasoline & Oil Co., Inc. v. Continental Oil Co., 534 F.2d 1281 (8th Cir. 1976). Here, if indeed Dedeker threatened criminal prosecution, Stovern had several obvious choices available to her other than simply negotiating and signing the agreement. Most obviously, she could have consulted with legal counsel, as she had with respect to other matters in the past. We agree with the Trial Court that "[i]f all a contracting party had to do to assert a triable defense of duress was claim a misunderstanding of the law, or of existing facts, to relieve themselves of their duties, duress would be an issue in nearly every breach-of-contract case". Dedeker v. Stovern, SMSC Court File No. 785-14 (Aug. 15, 2014, at 10).

Nor is there any basis in the record for crediting Stovern's claim that the Trial Court impermissibly or inappropriately relied upon the affidavit of the Community employee whom the parties consulted before entering their agreement, and/or the affidavit of the attorney who drafted the agreement. The Trial Court expressly stated that it gave no weight to either affidavit, Id. at 3 – 4, n. 3 and n. 8, and nothing in the record suggests otherwise.

Finally, we affirm the Trial Court's conclusion that Stovern's claims for monies she allegedly paid for Dedeker's benefit during the years from 2000 to 2004 are time-barred. In doing so, we do not reach the question of whether Public Law 280, 28 U.S.C. §1360(a) (2012), imposes Minnesota's statute of limitations upon civil contracts between members of the Community. Instead, although we note Minnesota's statute in our discussion below, we conclude that whether or not any statute of limitations applies, under the facts here the equitable doctrine of laches clearly bars Stovern's claim.

Stovern argues that there are factual issues that should have precluded summary judgment on the laches defense, and it is true that laches can involve a fact-intensive inquiry. But such inquiry often is resolved on summary judgment when there are no genuine issues of material fact regarding the elements of the laches defense. 10B Charles Alan Wright et al., *Federal Practice and Procedure* § 2734 (3d ed.); *see also* Baskin v. Tennessee Val. Auth., 382 F. Supp. 641, 646 (M.D. Tenn. 1974) (citing decisions of several jurisdictions), *aff'd.*, 519 F.2d 1402 (6th Cir. 1975).

The party asserting the laches defense has the burden of establishing three things: (1) an unjustifiable delay in bringing a claim, (2) a lack of excuse for the delay, and (3) resulting evidentiary or

economic prejudice to the party against whom the claim has been made. Apotex, Inc. v. UCB, Inc., 970 F. Supp. 2d 1297, 1336 (S.D. Fla. 2013), 0*aff'd*, 763 F.3d 1354 (Fed. Cir. 2014); *see also* Martin v. Dicklich, 823 N.W.2d 336, 341 (Minn. 2012).

But a finding of laches is fundamentally based on the equities of a particular case. A trial court can make its ultimate determination notwithstanding the establishment of these three elements. Rather, the elements of laches lay the groundwork for the trial court's ultimate finding based on the equities. A.C. Aukerman Co. v. R.L. Chaides Const. Co., 960 F.2d 1020, 1036 (Fed. Cir. 1992) ("Laches is not *established* by undue delay and prejudice. Those factors merely lay the foundation for the trial court's exercise of discretion."). Because the doctrine of laches is so heavily founded on equities, a trial court is entitled to a great deal of discretion upon appellate review. Roederer v. J. Garcia Carrion, S.A., 569 F.3d 855, 858 (8th Cir. 2009) ("The determination of whether laches applies in the present case was a matter within the sound discretion of the district court, and we, accordingly, review the district court's application of laches for an abuse of discretion." (quoting Brown–Mitchell v. Kansas City Power & Light Co., 267 F.3d 825, 827 (8th Cir.2001)); Jackel v. Brower, 668 N.W.2d 685, 690 (Minn. Ct. App. 2003) ("[E]ven at summary judgment, the decision whether to apply laches lies within the district court's discretion and will be reversed only for an abuse of that discretion.").

Although delay is a component of laches, "it is generally agreed that delay alone does not constitute laches." 27A Am. Jur. 2d *Equity* § 129 (2015); *see also* Leimer v. State Mut. Life Assur. Co. of Worcester, Mass., 108 F.2d 302, 305 (8th Cir. 1940) ("it has been repeatedly held that mere lapse of time does not constitute laches."). But the United States Court of Appeals for the Eighth Circuit has held that an analogous statute of limitations may indicate that commencement of an action was unreasonably delayed. Reynolds v. Heartland Transp., 849 F.2d 1074, 1075–76 (8th Cir. 1988) ("[T]he period prescribed in an analogous statute of limitation is a rough rule of thumb in considering the question of laches, and constitutes a pertinent factor in evaluating the equities."); Minn. Mining & Mfg. Co. v. Beautone Specialties, Co., 82 F. Supp. 2d 997, 1004 (D. Minn. 2000) (finding that delay almost twice as long as the most applicable state statute of limitations was "strong evidence" that delay was unreasonable). Thus, in our view it is not inappropriate to note that Ms. Stovern's ten-year delay far exceeds the six-year statute of limitations that would have been imposed upon her had she brought her case in the courts of the State of Minnesota. Minn. Stat. § 541.05, subdiv. 1.

But although delay is a critical element of a laches defense, the reasonableness of the delay is a more important component of the analysis. Ms. Stovern correctly points out that some of the cases cited by the Trial Court did not specifically involve laches. *See* Albino v. Baca, 697 F.3d 1023, 1026 (9th Cir. 2012) (exhaustion of administrative remedies); Fisher v. Johnson, 174 F.3d 710, 711 (5th Cir. 1999) (statute of limitations); Iowa Beta Chapter of Phi Delta Theta Fraternity v. State, 763 N.W.2d 250, 264

(Iowa 2009) (failure to comply with statutory obligations). However, there is ample case law that establishes precisely the same principle in the context of laches. *See, e.g.*, Jeffries v. Chicago Transit Auth., 770 F.2d 676, 680 (7th Cir. 1985); Baskin v. Tennessee Val. Auth., 382 F. Supp. 641, 646 (M.D. Tenn. 1974) ("Plaintiffs' assertion that they were ignorant of their legal right to maintain an action in court for reinstatement is an insufficient defense to the charge oflaches."), *aff'd*, 519 F.2d 1402 (6th Cir. 1975); Marrero Morales v. Bull Steamship Co., 279 F.2d 299, 301 (1st Cir. 1960) ("[M]any cases have held that ignorance of one's legal rights does not excuse a failure to institute suit.").

In addition to the length of delay, and the reasonableness or unreasonableness of delay, the question of prejudice is of enormous importance in considering whether laches bars a claim. Factors that tend to establish evidentiary prejudice include the death of witnesses, the fading of witness' memories, and the destruction or loss of documents. *See, e.g.*, Serdarevic v. Advanced Med. Optics, Inc., 532 F.3d 1352, 1360 (Fed. Cir. 2008); Apotex, Inc. v. UCB, Inc., 970 F. Supp. 2d 1297, 1336 (S.D. Fla. 2013), *aff'd*, 763 F.3d 1354 (Fed. Cir. 2014); Adair v. Hustace, 640 P.2d 294, 300 (Haw. 1982). Here, the parties do not dispute that there now is apparently no documentation available regarding the accounting of conservatorship fees, so the principal evidence available is witness testimony, and one witness is deceased. Dedeker v. Stovern, SMSC Court File No. 785-14 (Dec. 16, 2014, at 12)(citing Dedeker's Mem. in Supp. of Second Mot. for Summ. J. at 6). And the memory of all other witnesses is over ten years old.

Taking all these factors together, we hold that Stovern's delay in asserting her claims -when she clearly could have done so at least in the context of the negotiations that led to the parties' settlement agreement, or at any time earlier -as a matter of law bars the assertion of the claims now, and the Trial Court properly awarded summary judgment to Dedeker on that question.

For all the foregoing reasons, thejudgment of the Trial Court is, in its entirety, AFFIRMED.

Dated: July 27, 2015

Judge John E. Jacobson

Judge Henry M. Buffalo, Jr.

Judge Terry Mason Moore