2019 IL App (1st) 182106-U

FIRST DIVISION
July 8, 2019

No. 1-18-2106

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

SUSAN STANN, Plaintiff-Appellant, v. SARA JEAN STANN TRUST, CHRISTOPHER LEONARD STANN, and SARA JEAN STANN, Defendants-Appellees.	))))))))))	Appeal from the Circuit Court of Cook County. No. 2018 CH 05455 Honorable Anna Helen Demacopoulos, Judge Presiding.

PRESIDING JUSTICE MIKVA delivered the judgment of the court.
Justices Pierce and Griffin concurred in the judgment.

O R D E R

¶ 1 *Held*: We affirm the trial court's denial of substitution of judge as of right and reverse its dismissal of plaintiff's complaint for an accounting and removal of defendant as trustee. The trial court erred in dismissing the complaint with prejudice and also erred in refusing to allow plaintiff an opportunity to amend her complaint. We remand to give plaintiff an opportunity to do so.

¶ 2 This case concerns a family dispute spanning more than three decades between plaintiff, Susan Stann, on the one hand and her mother Sara Stann and brother Christopher Stann on the other. The three are shareholders in a business and beneficiaries of a trust, both of which were created by Susan's late father, Leonard Stann, to protect the proceeds of the family's real estate

business. The trial court denied Susan's motion for substitution of judge and dismissed her complaint for an accounting, removal of her mother as successor trustee of the relevant trust, and imposition of equitable liens against defendants, on the grounds of *res judicata* because of a prior lawsuit that Susan had filed against her mother and brother in Pennsylvania, which had been dismissed in 2015 on the basis of statute of limitations, and *laches*. The defendants on appeal have withdrawn their *res judicata* argument but ask us to affirm the decision on the basis that Susan's claims are barred by *laches* and the statute of limitations. For the reasons that follow, we affirm the denial of substitution of judge as of right, reverse the dismissal of Susan's claims for an accounting and removal of her mother as successor trustee, and remand for further proceedings with instructions to allow Susan leave to amend her complaint.

¶ 3 I. BACKGROUND

¶ 4 A. Factual Background

¶ 5 Susan filed suit against her mother, her brother, and the Sara Jean Stann Trust (Sara Trust), alleging a series of "wrongs that ha[d] been committed by her [mother and brother] since December 16[,] 1986, the day on which her Father, Leonard Stann[,] died." The following draws from Susan's *pro se* complaint, which is voluminous and at times difficult to follow.

¶ 6 Leonard incorporated his business in Illinois as Leonard Stann Enterprises, Inc., and created the Leonard August Stann Family Trust (Family Trust) for the benefit of his wife and two children. Leonard served as trustee of the Family Trust during his lifetime. After his passing, Leonard Stann Enterprises merged with Lander, Inc. (Lander).

¶ 7 The Family Trust document is not part of the record and it is unclear whether Susan ever received a copy. However, portions of the document are quoted in Sara's September 27, 1988, petition that she filed as the executor of Leonard's estate in which she asked to be named as

successor trustee of the Family Trust. That petition is included in the record. According to the quoted portions in that filing, the Family Trust provided that, upon Leonard's death, Harris Bank would be named successor trustee. But Harris Bank refused the role and the trust provided that the three adult income beneficiaries must replace Harris with "any bank or trust company qualified to accept trusts," by majority vote. Rather than naming a bank as successor trustee, Sara petitioned to fill the role, claiming "[a]ll the adult beneficiaries have been served a copy of this Petition, waived notice of hearing and have consented to the appointment of Sara Jean Stann as Successor Trustee of the Family Trust." Sara became successor trustee, and Susan maintains that her signature on that petition was forged.

¶ 8 Some of the allegations in Susan's complaint are that the Lander properties have been or are being sold to satisfy tax irregularities that developed from mismanagement of the company's assets. Among Lander's real estate holdings, there are three properties particularly relevant to this appeal: (1) 855 Lake Street in Oak Park (Lake Property), (2) 1920 N. Sedgwick Street in Chicago (Sedgwick Property), and (3) 1647 N. North Park Avenue in Chicago (North Park Property). When he first incorporated the business, Leonard transferred these three properties into the corporation in exchange for preferred corporate shares. After his passing and the merger with Lander, the Family Trust received Leonard's 1,257 preferred shares, Sara held 1,257 shares, and siblings Susan and Christopher each held 1 share of common stock in Lander. Neither the Family Trust nor Lander is a party in this case.

¶ 9 Susan filed a lawsuit in Pennsylvania state court on December 5, 2011 (Pennsylvania suit), naming as defendants Sara, Christopher, Lander, and Olander Property Management Co., Inc. (the property management company for Lander) (collectively, Pennsylvania defendants). In that lawsuit she alleged those defendants committed fraud, conspiracy to commit fraud, and

breach of fiduciary duties by insisting for thirty years that Susan never held an ownership interest in the family business. According to that complaint, the Pennsylvania defendants ultimately conceded Susan's ownership interest and attempted to buy her out before she filed suit. The Pennsylvania defendants removed the case to the United States District Court for the Eastern District of Pennsylvania.

¶ 10 On July 24, 2015, the district court in Pennsylvania granted summary judgment to the defendants on Susan's claims, finding that Pennsylvania's two-year statute of limitations barred Susan's 2011 suit because by "no later than 2008—and perhaps as early as 2004—Susan Stann actually knew that she owned a share of the Stann Family Business." Based on the record in that suit, there was "no evidence from which a reasonable jury could find that any of Susan Stann's claims were timely filed or otherwise subject to equitable tolling under the discovery rule or the doctrine of fraudulent concealment." Several of the claims in the Pennsylvania suit were repeated in Susan's complaint here.

¶ 11 B. Illinois Procedural History

¶ 12 Susan filed her three-count complaint in the circuit court of Cook County on April 26, 2018, against defendants Sara and Christopher—in their individual capacities—and against the Sara Trust. In this case she sought (1) an accounting from the Family Trust (count I), (2) removal of Sara as successor trustee of the Family Trust (count II), and (3) imposition of equitable liens against all three defendants regarding their interests in the Family Trust and Lander (count III).

¶ 13 Susan alleged a variety of injuries in her complaint, many of which relate to conduct stretching back to the 1980s. As mentioned above, she detailed Sara's alleged efforts to fraudulently gain control of the Family Trust. Susan likewise complained she was not consulted on the decision in 1987 to merge Stann Enterprises, Inc., into Lander, and that she has yet to

receive an accounting in any of the 30 or more years her mother has served as successor trustee, notwithstanding her repeated requests to see tax filings and the company's books. Susan also alleged Christopher "has received millions of dollars in benefits originating with Lander and the Family trust" over the years, whereas she "has received nothing from her stock in Lander or her status as a beneficiary of the Family Trust." She further alleged that "on information and belief, Sara Stann has never filed a state or federal tax return for the [Family Trust] for any year" since Leonard's death.

¶ 14 Among the more recent misdeeds, Susan alleged her mother has had "significant problems with federal, state and local taxing authorities, including litigation in the United States Tax Court" as recently as 2018, and that the tax issues extended to Sara's management of the family business. Specifically, she referenced a case in the circuit court of Cook County, docket number 2017 COTD 004219, brought "by Equity One Investment Fund LLC on November 16, 2017 for 2013 property tax arrears owing" on Lander's North Park Property. She also alleged various Lander properties in Illinois have been allowed to "languish" as a result of "a lack of skill and effort" by Sara and Christopher in managing the business. In particular, she claimed the Lake Property's rental units "are seventy percent (70%) vacant," even as Sara and Christopher recently attempted to sell that property without "notice or an opportunity [for Susan] to provide input." Other alleged injuries are discussed below, where relevant.

¶ 15 On the same day she filed her complaint, Susan filed a notice of *lis pendens* and recorded it on the Lake Property while it was in the process of being sold. On May 18, 2018, defendants filed an emergency motion to cancel the *lis pendens*. The trial court heard and granted the emergency motion on May 22, 2018. Although no court reporter was present for the hearing in which the *lis pendens* was cancelled, the trial court stated its reasoning at a later hearing, in

which it explained that "since the property *** at 855 Lake was owned by Lander, Inc., and Lander, Inc., was not a defendant in the named complaint that was filed ***, the *lis pendens* statute did not apply, and therefore, I lifted the *lis pendens*."

¶ 16 On July 13, 2018, defendants filed a motion to dismiss the complaint pursuant to section 2-619.1 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619.1 (West 2016)). They argued that under section 2-619 of the Code (735 ILCS 5/2-619 (West 2016)), Susan's claims were barred by *res judicata* and the doctrine of *laches*, and that the complaint was insufficiently pled under section 2-615 of the Code (735 ILCS 5/2-615 (West 2016)). On July 27, 2018, Susan responded to both the *res judicata* and *laches* arguments, and asked in her response brief for a chance to amend her complaint to satisfy section 2-615. She argued "[t]he need for an accounting and the replacement of the Successor Trustee rest upon facts which were disclosed to the U.S. Tax Court late in 2017 or in 2018," rather than 30-year old injuries. She stated that her proposed amendments would "include additional parties such as Lander, Inc., the Leonard August Stann Trust and the Family Trust," as well as a "cause of action such as rescission" of the recent Lake Property sale, the prospect of which prompted her to file this suit.

¶ 17 Susan filed a motion on September 6, 2018, seeking a substitution of judge as of right pursuant to section 2-1001(a)(2) of the Code (735 ILCS 5/2-1001(a)(2) (West 2016)). The trial court ruled on both the motion for substitution and the motion to dismiss on September 14, 2018. First, the court denied substitution by finding that its earlier ruling cancelling the *lis pendens* for the Lake Property was a "substantive ruling, and, therefore, a substitution of judge as a matter of right is not available."

¶ 18 Turning to the motion to dismiss, the trial court found that *res judicata* applied because the claims at issue here were substantially similar to those in the Pennsylvania suit and were

leveled against many of the same parties. The court discounted Susan's argument that there was a distinction among the parties from the Pennsylvania suit to this one, and found that "[s]he has not named the Leonard Family Trust in this litigation," but only "a separate trust *** of which I have no idea if she's a beneficiary or not because she has not attached any of those documents to the complaint."

¶ 19 As an additional affirmative matter warranting section 2-619 dismissal, the trial court ruled that the doctrine of *laches* barred Susan's claims. The trial court reasoned that "any allegations that [Susan] may have against the conduct of her mother and/or her brother at the time that her mother became the successor trustee has long gone," and *laches* applied to those older claims. As for the more recent injuries, the trial court ruled that "[a]lthough *** [Susan] is now making allegations concerning some individual tax concerns that Miss Sara Stann may have overcome, those are completely irrelevant to her allegations here," and that "any tax issues that she may have had in 2013 are completely irrelevant."

¶ 20 Susan filed her *pro se* notice of appeal on September 27, 2018, seeking to reinstate counts I and II of her complaint. Susan filed an emergency motion for this court to take judicial notice of the recent judicial sale of the Sedgwick Property for tax arrears. After we denied that motion, Susan sought reconsideration, and we denied that motion, ruling that, even if the sale was relevant to the case, we could not take judicial notice because it was not presented to or contemplated by the trial court. See *People v. Boykin*, 2013 IL App (1st) 112696, ¶ 9 ("We will not *** take judicial notice of critical evidentiary material that was not presented to and not considered by the fact finder during its deliberations.").

¶ 21 II. JURISDICTION

¶ 22 Susan timely filed her notice of appeal on September 27, 2018, challenging the trial

court's dismissal order of September 14, 2015. We have jurisdiction under Illinois Supreme Court Rules 301 and 303, governing appeals from final judgments entered by the circuit court in civil cases. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); R. 303 (eff. July 1, 2017).

¶ 23 III. ANALYSIS

¶ 24 On appeal, Susan seeks reversal of both the denial of substitution of judge and the dismissal of the first two counts of her complaint. We take each argument in turn.

¶ 25 A. Substitution of Judge

¶ 26 Defendants argue Susan forfeited this issue by failing to properly raise it in her opening brief under Illinois Supreme Court Rule 341(h)(7) (Ill. S. Ct. R. 341(h)(7) (eff. Nov. 1, 2017)). Defendants argue in the alternative that the trial court correctly denied substitution as of right because it had already made a substantial ruling when it lifted the *lis pendens*. Our supreme court has held that "an appellant's failure to argue a point in the opening brief results in forfeiture under Supreme Court Rule 341(h)(7)." *BAC Home Loans Servicing, LP v. Mitchell*, 2014 IL 116311, ¶ 23. However, forfeiture is an admonition on the parties and not a limitation on this court (*In re Amanda H.*, 2017 IL App (3d) 150164, ¶ 33), and we will address the substitution ruling on the merits. We review this issue first because if it were a proper basis for reversal, it would moot all other issues. See *In re Marriage of Crecos*, 2015 IL App (1st) 132756, ¶¶ 28-29 (declining to reach any other issues after finding a substitution of judge as of right motion should have been granted, because all subsequent orders entered by that judge were void).

¶ 27 Section 2-1001 of the Code provides that, "[e]ach party shall be entitled to one substitution of judge without cause as a matter of right." 735 ILCS 5/2-1001(a)(2)(i) (West 2016). A motion for substitution of judge as of right must be filed before the trial judge considering the motion rules upon any "substantial issue." *Petalino v. Williams*, 2016 IL App

(1st) 151861, ¶ 18. We review the denial of such a motion *de novo*. *In re Estate of Gay*, 353 Ill. App. 3d 341, 343 (2004).

¶ 28 The trial court in this case denied substitution based on the ruling of May 22, 2018, lifting and cancelling Susan's notice of *lis pendens* on the Lake Property. A substantial ruling is one that directly relates to the merits of the case. *Id.* "Examples of 'rulings on substantial issues' include situations in which the trial court has ruled on a motion to dismiss, made pretrial rulings of law, or where the party moving for a substitution of judge has discussed issues with the trial judge, who then indicates a position on a particular point." *Colagrossi v. Royal Bank of Scotland*, 2016 IL App (1st) 142216, ¶ 30.

¶ 29 Lifting the *lis pendens* was a substantial ruling and the trial court properly denied Susan's motion for substitution as untimely. In its ruling, the trial court reasoned that "since the property *** at 855 Lake was owned by Lander, Inc., and Lander, Inc., was not a defendant in the named complaint that was filed ***, the *lis pendens* statute did not apply." This was a pretrial ruling of law that addressed the parties' ownership interest in the Lake Property, which was at the heart of several claimed injuries in Susan's complaint. We affirm the denial of substitution as of right.

¶ 30 B. Dismissal of the Complaint

¶ 31 Defendants filed a section 2-619.1 motion to dismiss (735 ILCS 5/2-619.1 (West 2016)), arguing that dismissal was proper under both sections 2-615 and 2-619(a)(9) of the Code (735 ILCS 5/2-615, 2-619(a)(9) (West 2016)). A section 2-615 motion to dismiss "challenges the legal sufficiency of a complaint based on defects apparent on its face" (*Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006)), whereas a section 2-619 motion to dismiss "admits the legal sufficiency of the plaintiff['s] complaint, but asserts an affirmative defense or other matter that avoids or defeats the plaintiff['s] claim" (*DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2006)). "An

'[a]ffirmative matter' is something in the nature of a defense that completely negates the cause of action or refutes crucial conclusions of law or conclusions of material fact contained in or inferred from the complaint." *Doe ex rel. Doe v. Lawrence Hall Youth Services*, 2012 IL App (1st) 103758, ¶ 16 (quoting *Golden v. Mullen*, 295 Ill. App. 3d 865, 869 (1997)). "We review dismissals under either statute *de novo*, drawing all reasonable inferences in favor of the nonmovant." *Slay v. Allstate Corp.*, 2018 IL App (1st) 180133, ¶ 28.

¶ 32 The trial court's ruling in this case relied primarily on the "affirmative matter," that this claim was barred by Susan's previous claim in Pennsylvania. However, as noted above, in their response brief on appeal, defendants withdraw this argument because subsequent research revealed to them that it was not a proper basis for dismissal of Susan's complaint. They rely instead on the trial court's secondary *laches* ruling.

¶ 33 Our supreme court has defined *laches* as "an equitable doctrine which precludes the assertion of a claim by a litigant whose unreasonable delay in raising that claim has prejudiced the opposing party." *Tully v. State*, 143 Ill. 2d 425, 432 (1991). "The doctrine is grounded in the equitable notion that courts are reluctant to come to the aid of a party who has knowingly slept on [her] rights to the detriment of the opposing party." *Id.*

¶ 34 On appeal, defendants argue the trial court "correctly determined that all of Plaintiff's claims are barred" by the doctrine of *laches*, whether guided by a statute of limitations approach or by the traditional application of the doctrine. Although statutes of limitations "are not directly controlling" of the *laches* issue, "[o]rdinarily, courts will follow statutes of limitations as convenient measures for determining the length of time that ought to operate as a bar to an equitable cause of action." *Meyers v. Kissner*, 149 Ill. 2d 1, 12 (1992).

¶ 35 Defendants argue that the five-year statute of limitations found in section 13-205 of the

Code (735 ILCS 5/13-205 (West 2016)) applies to each claim in Susan's complaint, whether framed as a suit for fraud (*Travelers Casualty & Surety Co. v. Bowman*, 229 Ill. 2d 461, 467 (2008)), a breach of fiduciary duties (*CitiMortgage, Inc. v. Parille*, 2016 IL App (2d) 150286, ¶ 43), or an accounting (*Matter of Estate of Krevchena*, 244 Ill. App. 3d 160, 164 (1993)). See *Rakstiene v. Kroulaidis*, 33 Ill. App. 3d 1067, 1072 (1975) ("[W]here the period of delay exceeds that limitation period, equity follows the law by adopting that limitation period as the period constituting *laches* as well."). Defendants also argue that the entirety of Susan's complaint is untimely under a traditional *laches* analysis, citing *Tully*, 143 Ill. 2d at 432 (finding *laches* bars a claim if there has been: (1) delay on the plaintiff's part, causing (2) prejudice to defendants).

¶ 36 We agree with defendants that under both the traditional and limitations-based approach of the *laches* doctrine, the trial court correctly ruled that many of the claimed injuries in Susan's complaint are untimely. The allegations of wrongdoing against defendants around the 1987 merger with Lander, Sara's actions in 1988 to acquire the role of successor trustee of the Family Trust, and all of the alleged injuries up to five years before she filed this suit on April 26, 2018, are properly barred by *laches*. See *Osler Institute, Inc. v. Miller*, 2015 IL App (1st) 133899, ¶ 25 (affirming trial court's *laches* dismissal of a medical education company's suit alleging a competitor violated a since-expired consent decree when the company waited two years to file suit and first sued in Indiana, rather than Illinois). It is difficult to parse the often meandering and repetitive assertions in Susan's complaint, but to the extent she is seeking some remedy for these belated claims, *laches* forecloses any relief.

¶ 37 Susan argues on appeal, however, that "the allegations supporting [her] Count I and II pertain to 2017 and 2018 events, not those which transpired at the time [Sara] became Successor Trustee" in 1988. Before the trial court, she argued that even if the "conduct which began in

1986, over thirty years ago" was untimely, "that should not prevent the Court from proceeding with[] an accounting; replacement of an evidently incompetent Successor Trustee," and the opportunity for Susan to amend her pleadings with "the addition of parties as well as cause of action such as rescission" of the Lake Property sale.

¶ 38 Defendants' response, that Susan "raise[s] this argument for the first time on appeal where the Complaint is completely devoid of any allegations of improper conduct by Defendants during this timeframe," is not accurate. The complaint references a 2017 suit over tax arrears against Lander regarding the North Park Property and alleges that Lander properties with rental units have been left vacant and were otherwise mismanaged, negligently diminishing the Family Trust corpus as a result.

¶ 39 Defendants do not dispute Susan's claim that she remains a beneficiary of the Family Trust. If true, those operating the trust for her benefit owe her fiduciary duties, including the duty of care to manage trust investments. See *Herget National Bank of Pekin v. Lampitt*, 133 Ill. App. 3d 418, 420 (1985) (finding trustee's "failure to attend [shareholder] meetings, the carelessness in following the market in [the company's] stock *** establishe[d] a breach of the duty of care required of a fiduciary"). Furthermore, if Susan is an income beneficiary, as the Family Trust seemed to contemplate for the three family members who survived Leonard, Susan would be entitled to some type of regular reporting on the status of the Family Trust assets. See *Sanders v. Stasi*, 2011 IL App (4th) 100750, ¶ 19 ("A trustee must report to all beneficiaries who are entitled to receive or are receiving income."). Defendants do not explain why these issues were properly disposed of through the trial court's ruling.

¶ 40 The cases cited by defendants, *Tarin v. Pellonari*, 253 Ill. App. 3d 542 (1993), and *Mo v. Hergan*, 2012 IL App (1st) 113179, are distinguishable. In *Tarin*, 253 Ill. App. 3d at 550-51, this

court affirmed the dismissal based on *laches* of a suit for constructive trust brought by one shareholder and director of a radiator business against other shareholders and directors who created a competing business. *Id.* After presiding over a bench trial in which it heard evidence supporting the defendants' *laches* defense, the trial court granted judgment for the defendants. *Id.* at 545. The appellate court affirmed, finding that the plaintiff displayed a lack of diligence in bringing suit two years after the alleged injury, in part based on the trial court's finding of the "strong inference that [the plaintiff] did not intend to file suit immediately because he wanted to see how successful" the competing business would be. *Id.* at 550. Susan's complaint was dismissed in its original form by way of a motion to dismiss, without any sort of evidentiary hearing. And in contrast to the plaintiff in *Tarin*, Susan filed suit within months of learning that the Lake Property was put up for sale, alleging tax irregularities relating to Lander dated to less than one year before filing suit.

¶ 41 *Hergan*, 2012 IL App (1st) 113179, was disposed of on a motion to dismiss, but is nonetheless distinguishable. *Id.* ¶ 33. In *Hergan*, we affirmed the dismissal based on *laches* of the plaintiff shareholder's claims against the administering shareholders for common law fraud, conversion, and conspiracy. *Id.* ¶¶ 39-40. The plaintiff claimed those shareholders conveyed an insufficient interest in their shared venture, but the plaintiff waited 10 years to file suit. *Id.* ¶ 37. Susan, by contrast, raised claims less than one year old at the time of her lawsuit.

¶ 42 We find that the trial court erred in dismissing the entirety of Susan's complaint, and did not construe the complaint broadly in favor of the nonmovant, as required when ruling on a motion to dismiss. *Slay*, 2018 IL App (1st) 180133, ¶ 28. The trial court's sole finding at the end of the dismissal hearing discounting her "allegations concerning some individual tax concerns that Miss Sara Stan may have overcome" did not address Susan's alleged injuries dated to 2017

and 2018, which are timely and ought to be heard.

¶ 43 Furthermore, as an alternative basis for reversal, we find that the trial court abused its discretion in denying Susan an opportunity to amend her complaint to name proper parties and more particularly allege those injuries pertaining to 2017 and 2018 events. Section 2-616(a) of the Code (735 ILCS 5/2-616(a) (West 2016)) provides :

> "At any time before final judgment amendments may be allowed on just and reasonable terms, introducing any party who ought to have been joined as plaintiff or defendant, *** changing the cause of action or defense or adding new causes of action or defenses, and in any matter, either of form or substance, in any process, pleading, bill of particulars or proceedings, which may enable the plaintiff to sustain the claim for which it was intended to be brought ***." *Id.*

¶ 44 "Amendments to pleadings should be liberally allowed to permit parties to fully present their causes of action." *Simon v. Wilson*, 291 Ill. App. 3d 495, 508 (1997). We consider four factors to determine whether the trial court refusing an amendment was an abuse of discretion: "(1) whether the proposed amendment would cure the defective pleading; (2) whether other parties would sustain prejudice or surprise by virtue of the proposed amendment; (3) whether the proposed amendment is timely; and (4) whether previous opportunities to amend the pleading could be identified." *Id.* "A proposed written amendment clearly is desirable, but it is not crucial," provided the plaintiff has "articulated the substance of the amendment and the reasons therefore to the court in such a manner that the materiality of the proposed alteration is made plain to the court or in the proceedings." *Baker v. Walker*, 173 Ill. App. 3d 836, 842 (1988).

¶ 45 All four factors run in Susan's favor. Her brief in opposition to the section 2-619.1 motion listed several of her proposed amendments to cure defects: for example, adding Lander

and the Family Trust as parties, and providing detailed allegations regarding the facts of the Lake Property sale. Defendants cannot claim prejudice or surprise at these allegations considering Susan filed suit to stop the Lake Property sale, naming both the successor trustee and remaining beneficiary of the Family Trust. On appeal, she repeatedly asked this court to take notice of the recent property tax sale. As for timeliness, Susan asked to amend her complaint barely four months after she filed it on April 26, 2018. Finally, this was her first request to amend. The trial court abused its discretion in denying her a chance to amend her complaint.

¶ 46 IV. CONCLUSION

¶ 47 For these reasons, we affirm the trial court's denial of substitution of judge as of right and reverse its dismissal of Susan's complaint. The trial court correctly ruled that Susan's older claims were barred by *laches*, but erred in dismissing the entire complaint with prejudice and abused its discretion by denying Susan a chance to amend her complaint to state her recent claims in counts I and II. We remand to give Susan a chance to amend her complaint.

¶ 48 Affirmed in part, reversed in part, remanded with instructions.