

**NOTICE**

Decision filed 09/09/15. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2015 IL App (5th) 150044-U

NO. 5-15-0044

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

**NOTICE**

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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PARKER CONIGLIO, Individually, and	)	Appeal from the
PARKER CONIGLIO as Administrator	)	Circuit Court of
of the Estate of Sharon Coniglio,	)	Jackson County.
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	No. 14-CH-25
	)	
TIMOTHY M. HALL,	)	Honorable
	)	W. Charles Grace,
Defendant-Appellee.	)	Judge, presiding.

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JUSTICE SCHWARM delivered the judgment of the court.  
Presiding Justice Cates and Justice Moore concurred in the judgment.

**ORDER**

¶ 1 *Held:* The circuit court's ruling that the plaintiff lacked standing in his individual capacity is affirmed because the plaintiff had no vested interest in the trust at its conclusion, and the circuit court's dismissal of the plaintiff's case is affirmed because the plaintiff filed after the statute of limitations had expired.

¶ 2 Parker Coniglio, the plaintiff, appeals from the circuit court's January 5, 2015, ruling determining that he lacked standing in his individual capacity and dismissing his claims for failing to file within the statute of limitations. The plaintiff had brought suit against Timothy M. Hall, the defendant, alleging that the defendant had improperly

managed the estate of Thomas Hall while acting as its trustee and demanding an accounting. The plaintiff argues that he has a vested interest in the trust, thus granting him standing, and that the defendant's alleged fraudulent acts permit the statute of limitations to be extended. For the reasons that follow, we affirm the decision of the circuit court.

¶ 3

### BACKGROUND

¶ 4 On December 11, 1997, Thomas Hall executed the Thomas Hall Trust (the Trust), acting as both grantor and trustee. The trust provided that Thomas Hall would "have the power to withdraw any part or all of the income and principal of the Trust" while acting as its trustee. The Trust provided that if Thomas Hall was no longer trustee, the successor trustee "shall distribute for [Thomas Hall's] benefit so much of the income and principal of the Trust as the Trustee believes to be desirable." The Trust stated that "[u]pon [Thomas Hall's] death, this Trust shall become irrevocable," and the successor trustee would be required to pay Thomas Hall's final expenses and dispose of the remaining Trust assets as directed by the Trust. The Trust directed that these assets would be distributed "to [Thomas Hall's] surviving children in equal shares, as soon after [his] death as is practical." The Trust further provided that "the Trustee shall distribute all of the rest, residue and remainder of the Trust Estate to my descendants, *per stirpes*." Both the defendant and Sharon Coniglio, the mother of the plaintiff, were children of Thomas Hall. The defendant was named to act as the successor trustee. On or about January 1, 2000, the defendant began acting as the trustee of the Trust.

¶ 5 On May 10, 2009, Thomas Hall died. On January 16, 2010, the defendant met with most of the beneficiaries of Thomas Hall and provided to them a "Trust Accounting for Partial Distribution." Sharon Coniglio was among the beneficiaries present. At this meeting, the defendant claims he discussed the accountings of the trust, answered any questions, and asked the beneficiaries to sign a release. The release states that "[t]he undersigned has examined the above Trust Accounting and schedules \*\*\* from January 1, 2000, through December 31, 2009, and finds all of them to be true and correct and in accordance with the proper administration of the trust," thereby "releas[ing] and waiv[ing] any rights against [the defendant] as trustee from any claim or cause of action" for any trustee actions during this period. All but Sharon signed this release. Sharon asked that she be allowed to consider the release for a few days before signing. The defendant did not object to this request. On January 17, 2010, Sharon met with Ken Hughes, the attorney assisting the defendant with the trust. At that meeting, Sharon signed the release.

¶ 6 On December 1, 2012, Sharon died intestate. The plaintiff was and is the administrator of her estate. On May 8, 2014, the plaintiff filed a complaint against the defendant. The plaintiff claimed standing "by virtue of the Residuary Distribution clause of the Trust." The plaintiff claimed he had standing as "a beneficiary of the Trust and [as someone having] a vested interest in the trust." The complaint contained two counts: a demand for final accounting and a breach of fiduciary duty. The plaintiff claimed that the defendant had commingled Trust funds with personal funds. The plaintiff also claimed that the sale of several real estate assets of the trust had garnered \$1,297,000, but the

January 16, 2010, accounting only listed proceeds of \$819,237.90 from these sales. The plaintiff also claimed that the January 17, 2010, release was signed by Sharon "under duress," though the plaintiff did not explain the source of this duress. The plaintiff thus claimed the defendant "breached his fiduciary duty to the beneficiaries by not making a final distribution of assets, commingling Trust funds, and wasting Trust assets." On June 23, 2014, the defendant filed a motion attacking the complaint. In this motion, the defendant alleged that the plaintiff lacked individual standing because Sharon, not the plaintiff, had a vested interest in the Trust. The defendant also argued that the complaint was barred under the three-year statute of limitations for challenges to trust accountings. On August 5, 2014, the circuit court heard arguments on the motion attacking the complaint. The court dismissed the demand for accounting with prejudice. The court also struck the count for breach of fiduciary duty but granted leave to refile. However, the court struck the word "duress" as conclusory.

¶ 7 On September 8, 2014, the plaintiff filed an amended complaint against the defendant. He alleged standing both as administrator of Sharon's estate and individually, as an heir of Sharon having a successor interest in the Trust. The complaint had three counts: a demand for an independent accounting, fraud in the inducement, and breach of fiduciary duty of loyalty. The plaintiff alleged that the accounting provided at the January 16, 2010, meeting was incomplete and contained errors, omissions, and misrepresentations. He claimed that, "at a meeting in a public place with the [defendant] and all the beneficiaries, [the defendant] yelled and argued with Sharon Coniglio and told her, in front of her siblings, that none of her siblings would receive their rightful

distributions unless she signed the release." The plaintiff claimed that Sharon signed the release due to this alleged statement. The plaintiff alleged that numerous items in the January 16, 2010, partial trust accounting showed that the defendant had breached his fiduciary duty of loyalty as trustee of the Trust. On October 6, 2014, the defendant filed a motion attacking the amended complaint. The defendant argued in part that any challenge to the January 16, 2010, accounting is untimely due to the running of the statute of limitations and that the plaintiff failed to plead fraud in the inducement with the specificity required. On October 20, 2014, the plaintiff responded to the motion attacking the complaint. On October 30, 2014, the defendant replied to the plaintiff's response. On January 5, 2015, the circuit court granted the defendant's motion attacking the amended complaint without a hearing. The circuit court held that the plaintiff did not have standing as an individual and that the amended complaint lacked the specificity needed to sustain fraud allegations. The circuit court also held that the plaintiff failed to prove that the release was invalid. Therefore, the circuit court dismissed the plaintiff's amended complaint with prejudice. On January 27, 2015, the plaintiff filed notice of appeal.

¶ 8

#### ANALYSIS

¶ 9 The plaintiff argues two issues on appeal. First, the plaintiff argues that he did have personal standing to file his amended complaint because he had vested rights in the Trust. Second, the plaintiff argues that the release signed by Sharon was induced by fraud and therefore ineffective. We consider each in turn.

¶ 10 "The doctrine of standing is designed to preclude persons who have no interest in a controversy from bringing a lawsuit" by "ensur[ing] that issues are raised by those with

a real interest in the outcome of the controversy." *Fitch v. McDermott, Will & Emery, LLP*, 401 Ill. App. 3d 1006, 1028 (2010). Standing requires an actual or threatened injury in fact to a legally cognizable interest. *Id.* Such an injury "must be: (1) distinct and palpable; (2) fairly traceable to the defendant's actions; and (3) substantially likely to be prevented or redressed by the grant of the requested relief." *Id.* "The doctrine of standing requires that a party, either in an individual or representative capacity, have a real interest in the action brought and in its outcomes." *O'Halloran v. Luce*, 2013 IL App (1st) 113735, ¶ 22 (quoting *In re Estate of Wellman*, 174 Ill. 2d 335, 344 (1996)). Issues regarding standing are given *de novo* review on appeal. *Glisson v. City of Marion*, 188 Ill. 2d 211, 220-21 (1999).

¶ 11 The goal in trust construction "is to determine the settlor's intent, which the court will effectuate unless contrary to law or public policy." *Spencer v. Di Cola*, 2014 IL App (1st) 121585, ¶ 20 (citing *Fifth Third Bank, N.A. v. Rosen*, 2011 IL App (1st) 093533, ¶ 23). "Utilizing the same rules of construction as apply to wills and other contracts, [courts] should attempt to determine the settlor's intent solely by reference to the plain language of the trust agreement." *In re Estate of Mendelson*, 298 Ill. App. 3d 1, 3 (1998). "Where the sole purpose of a trust is to provide an income for a beneficiary during his lifetime, the trust terminates at his (the income beneficiary's) death, in the absence of provisions to the contrary." *Trackman v. Ringer*, 174 Ill. App. 3d 1093, 1099 (1988) (quoting *Wiener v. Severson*, 11 Ill. 2d 347, 350 (1957)). "[T]he law favors the earliest possible vesting of an estate." *Eiche v. Illinois National Bank & Trust Co.*, 84 Ill. App. 3d 535, 539 (1980).

¶ 12 The Trust directed the defendant to "distribute \*\*\* so much of the income and principal of the Trust as the Trustee believes to be desirable" to Thomas Hall while Thomas Hall was alive. Upon Thomas Hall's death, the Trust became irrevocable, and the defendant was required to pay all of Thomas Hall's final expenses. The trust directed the defendant to then divide the remaining assets among "[Thomas Hall's] surviving children in equal shares, as soon after [his] death as is practical." The trust lastly directed that any remaining assets be distributed to "[Thomas Hall's] descendants, *per stirpes*." Taken as a whole, the Trust acted to provide Thomas Hall with income during his life. Therefore, under *Trackman*, upon Thomas Hall's death, the Trust must terminate because it contains no provisions with contrary directions. At that time, Thomas Hall's expenses were to be paid, and the defendant as trustee was to distribute the remaining assets evenly among Thomas Hall's surviving children. Any residuary would then be distributed among all of Thomas Hall's surviving children *per stirpes*. Because Sharon Coniglio was a child of Thomas Hall who survived Thomas Hall, she was entitled to a share in the estate. Even though she passed away before the final distribution of the Trust, her rights had fully vested in her share. The plaintiff, as a grandchild of Thomas Hall, only had an interest in any residuary assets. Because there were no residuary assets, the plaintiff had no personal interest in the estate. Therefore, the plaintiff lacks personal standing to challenge the accounting of the estate.

¶ 13 The plaintiff argues the case law upon which *Trackman* is decided concerned a testamentary trust, whereas this case concerns an *inter vivos* trust. The plaintiff argues that the two are treated differently with regards to when the trust should terminate and

interests should become vested. However, the case law relied upon by the plaintiff for this point either concerns contingent beneficiaries, not those with indefeasibly vested remainders, or fails to address the issue at all. See *Chicago Teachers Union, Local 1 v. Board of Education of the City of Chicago*, 189 Ill. 2d 200 (2000); *Farkas v. Williams*, 5 Ill. 2d 417 (1955); *Hawkins v. Voss*, 2015 IL App (5th) 140001. The plaintiff also alleges that the "Trust \*\*\* specifies that the [T]rust should terminate when the res is distributed." The plaintiff does not reference any section of the Trust that so specifies, and this court could not find such a section. Thus, we must affirm the circuit court's decision holding that the plaintiff does not have individual standing to bring his amended complaint. We do note, however, that Sharon's vested interest in the trust passed to her estate upon her death. See *Eiche*, 84 Ill. App. 3d at 539. Thus, the plaintiff does have standing to bring his amended complaint as the administrator of Sharon's estate.

¶ 14 The plaintiff also challenges the court's granting of the motion attacking the amended complaint. The court offered two reasons for this granting: because the plaintiff's complaint was filed after the statute of limitations had run, and because the release signed by Sharon was binding upon the plaintiff. We consider these reasons below.

¶ 15 "[A d]efendant may, within the time for pleading, file a motion for dismissal of the action or for other appropriate relief upon any of" numerous grounds, including because "the action was not commenced within the time limited by law." 735 ILCS 5/2-619(a)(5) (West 2014). "A current account [of a trust] shall be binding on the beneficiaries receiving the account and on such beneficiaries' heirs and assigns unless an action against

the trustee is instituted by the beneficiary or such beneficiary's heirs and assigns within 3 years from the date the current account is furnished." 760 ILCS 5/11(a) (West 2014). However, "[i]f the trustee is guilty of fraudulent concealment," the beneficiary or heir may bring an action "at any time within 5 years after the person entitled to bring the same discovers that he or she has such cause of action, and not afterwards." 760 ILCS 5/11(f) (West 2014); 735 ILCS 5/13-215 (West 2014). " 'Under the fraudulent concealment doctrine, the statute of limitations will be tolled if the plaintiff pleads and proves that fraud prevented discovery of a cause of action.' " *Lamet v. Levin*, 2015 IL App (1st) 143105, ¶ 31 (quoting *Carlson v. Fish*, 2015 IL App (1st) 140526, ¶ 44). For an action to be considered fraudulent concealment, it must consist of " 'affirmative acts or representations [by a defendant] that are calculated to lull or induce a claimant into delaying filing [his] claim or to prevent a claimant from discovering [his] claim.' " *Bloom v. Braun*, 317 Ill. App. 3d 720, 726-27 (2000) (quoting *Barratt v. Goldberg*, 296 Ill. App. 3d 252, 257 (1998)). "In addition, fraudulent misrepresentations which form the basis of the cause of action do not constitute fraudulent concealment under section 13-215 in the absence of a showing that the misrepresentations tended to conceal the cause of action." *Foster v. Plaut*, 252 Ill. App. 3d 692, 699 (1993).

¶ 16 The plaintiff alleges that the defendant commingled Trust funds with personal funds and that there is a large discrepancy in the sale proceeds from several real estate assets. However, the plaintiff bases these allegations on the January 16, 2010, accounting. Under the statute of limitations, the plaintiff had until January 16, 2013, to file a complaint regarding the accounting. He failed to do so. The plaintiff instead

argues that the five-year statute of limitations for claims hidden by fraudulent concealment should be applied instead of the standard three-year statute of limitations. The plaintiff claims that the "numerous allegations of omissions and errors within the [January 16, 2010, accounting]" constitute fraudulent concealment. The plaintiff states that the accounting was "intentionally a false and misleading document," but the plaintiff does not explain how this falsehood prevented him from discovering his cause of action. The plaintiff also argues the circumstances of the release's signing show fraudulent concealment. According to the plaintiff, the defendant told Sharon that none of the beneficiaries could collect their distributions until she signed the release. The plaintiff alleges that this claim forced Sharon to sign the release.

¶ 17 However, the plaintiff does not explain how the defendant used these alleged omissions to induce the plaintiff into delaying his claim or failing to discover his claim. The plaintiff's alleged omissions are extrapolated from clear numerical entries in the January 16, 2010, accounting. It is unclear why the plaintiff believes that the existence of alleged errors is in and of itself concealment. Further, these alleged omissions and errors are the basis of the plaintiff's fraud claims and thus cannot also be the basis for showing fraudulent concealment in the absence of a showing that the omissions and errors concealed the plaintiff's cause of action. The plaintiff also does not dispute that Sharon was allowed to leave the January 16, 2010, meeting without signing the release. Nor does the plaintiff dispute that Sharon met with attorney Ken Hughes the following day before signing the release. Hughes, as the plaintiff notes, was the attorney assisting the defendant with the Trust. However, the facts as stated by the plaintiff make it clear that

Sharon had an opportunity to seek independent legal counsel regarding the accounting and the release. The plaintiff has thus failed to allege any affirmative acts or representations by the defendant that prevented the plaintiff from discovering his claim. Therefore, the three-year statute of limitations applies, and the plaintiff's complaint is untimely. Because the complaint is untimely, we need not consider whether or not the release itself was valid.

¶ 18

#### CONCLUSION

¶ 19 For the reasons stated, we affirm the judgment of the circuit court of Jackson County.

¶ 20 Affirmed.