

Summary of SC93760, *Mary Ellison, Arthur Fry, David Fry and Susan Sleeper v. J.D. Fry, Deceased, by Linda Fry, Trustee of the John Delbert Fry Revocable Intervivos Trust, et al.*

Appeal from the Camden County circuit court, Judge Ralph Jaynes
Argued and submitted May 6, 2014; opinion issued August 19, 2014

Attorneys: Mary Ellison, Arthur Fry, David Fry and Susan Sleeper were represented by Beverly J. Figg and Joshua K. Friel of Andereck, Evans, Widger, Johnson & Lewis LLC in Jefferson City, (573) 634-3422. Linda Fry (in her personal capacity), Delbert Fry and Fry Grain were represented by Daniel S. Simon of the Simon Law Offices in Columbia, (573) 256-8989. Linda Fry (in her capacity as trustee of the John Delbert Fry Revocable Intervivos Trust) was represented by Thomas M. Harrison of VanMatre, Harrison, Hollis, Taylor & Bacon PC in Columbia, (573) 874-7777.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: In a case in which some family members sued other family members for frauds and other wrongs related to the disposition of their deceased mother's property, a jury awarded damages to the plaintiffs and against the widow of the primary defendant, who was substituted as defendant in her capacity as trustee of her husband's trust. The trial court entered judgment on the jury's verdict and dismissed the plaintiffs' other claims. The plaintiffs appeal the dismissal of those claims, and the defendants cross-appeal the verdicts for plaintiffs. In a 6-0 decision written by Judge Laura Denvir Stith, the Supreme Court of Missouri affirms in part and reverses in part the trial court's judgment. The plaintiffs' fraud claims were barred by the statute of limitations, which requires all fraud claims, regardless of circumstances, to be brought within 15 years of when the fraud occurs and which is not tolled (stopped from running) beyond this maximum time period. Further, the trial court erred in substituting the trustee when the primary defendant died. The only person who may be substituted for a deceased defendant on a claim for property interests is the personal representative of the deceased defendant's estate. Neither the widow nor anyone else opened an estate for the deceased man and no personal representative was appointed, and there is no authority for the wife to be substituted as a defendant in her capacity as trustee.

Facts: In 1981, Vincil and Willa Fry executed a joint will that distributed their assets and three tracts of land among their children, Mary Ellison, Arthur Fry and J.D. Fry, and two grandchildren, David Fry and Susan Sleeper. In 1990, after they became concerned they might lose their property in a lawsuit, they changed the will and gave much of their property to their son J.D., his son Delbert, and their daughter Mary. Vincil later granted J.D. power of attorney, and J.D. allegedly used this authority to purchase certificates of deposit in his name with his parents' funds and to cash other certificates of deposit that his parents owned that had listed his siblings Mary and Arthur as payable-on-death beneficiaries. Vincil died in 2000, and Willa died in 2005. Mary sued J.D. in 2008, alleging he fraudulently had concealed the fact he gave no consideration for the 1990 deeds and will changes and that his actions regarding the certificates of deposit also were fraudulent. J.D. died before trial, and the court on its own motion substituted

J.D.'s wife Linda, in her capacity as trustee of J.D.'s trust, despite defendants' objection that only the personal representative of J.D.'s estate could be substituted and that no one had opened an estate or had a personal representative appointed. Arthur, Susan and David later joined the suit. The trial court dismissed half the plaintiffs' claims on the defendants' motions for directed verdict, and the plaintiffs abandoned another claim. The jury awarded damages against Linda, as trustee, on three claims: Susan and David's claims for unjust enrichment related to J.D.'s alleged fraud in causing Willa and Vincil to sign the 1990 deeds and wills; and Mary's claim for J.D.'s alleged unjust enrichment, breach of fiduciary duty, fraudulent concealment and conversion. The trial court entered judgment and later overruled the defendants' motion for judgment notwithstanding the verdict. The plaintiffs appeal the dismissal of their claims on the defendants' motions for directed verdict, as well as the trial court's refusal to submit punitive damages and refusal to enter an order on an equitable motion to return personal property to Mary. The defendants cross-appeal the plaintiffs' verdicts.

AFFIRMED IN PART AND REVERSED IN PART.

Court en banc holds: (1) The trial court erred in overruling the defendants' motion for judgment notwithstanding the verdict. Susan and David's unjust enrichment claims were time-barred by the statute of limitations for fraud claims, section 516.120(5), RSMo. That statute requires a plaintiff to file a claim for fraud within five years of when the cause of action accrues, which is either the plaintiff's discovery of the fraud or at the end of 10 years after the fraud occurred, whichever occurs first. As a result, the latest a fraud claim may be brought is 15 years after the fraud occurred. Neither the common law nor the general tolling statute, section 516.280, RSMo, toll the maximum 15-year statute of limitations. Because Susan and David's claims allege fraud that occurred in 1990, the statute of limitations on their claims ran, at the latest, by 2005, which is before any plaintiff filed suit. Their judgment against Linda is reversed.

(2) Mary's claims against Linda, as trustee, are barred because they were brought against an improperly substituted defendant. That Linda was the trustee of J.D.'s trust did not make her a proper substitute when her husband died. If a defendant dies, sections 537.010 and 537.021.1(2), RSMo, require that a personal representative be appointed to continue to represent the property interests of the deceased defendant. Neither the plaintiffs nor defendants opened an estate for J.D. and had a personal representative appointed. Mary's judgment against Linda, as trustee, therefore, is reversed.

(3) The plaintiffs' other claims were barred either by the statute of limitations or by the failure to substitute the personal representative, or because they failed to present evidence or law to support them. The trial court's dismissals of those claims by directed verdict, refusal to submit punitive damages and refusal to enter an order on Mary's equitable claim, therefore, are affirmed.