Missouri Court of Appeals
Southern District

In Division

CAROL DEVOY, Co-Trustee of the Barnett Family Trust dated June 3, 1993, as amended, and STEPHANIE DEVOY and MEGAN DEVOY, Co-Trustees of the Barnett Family Trust dated June 3, 1993, as amended, and Co-Attorneys-In-Fact for Sara Jo Barnett under durable Power of Attorney dated May 2, 2017,

Respondents,

v.

CARMEN LISEK, RICHARD LISEK, and REBECCA CODY,

Appellants.

Case Number SD39171

Filed: July 29, 2026

APPEAL FROM THE CIRCUIT COURT OF CHRISTIAN COUNTY

Honorable Laura J. Johnson, Judge

DISMISSED

This appeal arises from a judgment finding that Carmen and Richard Lisek exerted undue influence to misappropriate Sara Jo Barnett's trust assets, and ordering return of property and repayment of appropriated funds plus interest and attorney fees. We

must dismiss the appeal because Appellants voluntarily acquiesced in the judgment, thus, they are estopped from challenging the validity of the judgment. Therefore, this appeal is moot.

Factual Background

More than 30 years ago, Sara Jo Barnett ("Barnett") established and began funding a living trust entitled the Barnett Family Trust (the "Trust"). The Trust originally named Barnett as sole trustee and sole beneficiary during her lifetime. Her three daughters, Janet Davies, Carmen Lisek ("Lisek"), and Carol DeVoy, were named beneficiaries who would receive all Trust assets after Barnett's death.

Barnett's memory and cognition began to deteriorate noticeably in 2016. She was diagnosed with Alzheimer's Disease and mild cognitive impairment in the fall of 2016. Her condition continued to decline to the extent that, in January 2017, a neurologist opined that Barnett did not have the mental capacity and competency to safely make sound medical or financial decisions in her best interest.

Barnett's family gathered, held an intervention with her, and planned for Barnett's future care and asset management. Appellants Carmen and Richard Lisek (the "Liseks") were present during this family meeting. The plan was for Barnett to cease driving her vehicle and continue living in her California home, as she desired, with supervision and assistance from family, church friends, and caregivers. The Trust was

amended to add Barnett's granddaughter, Megan DeVoy, and Lisek as co-trustees in addition to Barnett.

Three months after Lisek became a co-trustee, a new credit card was opened in Barnett's name with Lisek's Missouri address, the address for Barnett's existing credit card was changed to Lisek's Missouri address, and Lisek withdrew nearly all the funds from the Trust bank account. Barnett's attorney demanded return of the funds and instructed Lisek to cease and desist using Barnett's credit cards, taking or moving funds, or interfering with Barnett's caregivers. The Trust was amended once more to remove Lisek as a co-trustee and replace her with another of Barnett's granddaughters, Stephanie DeVoy. Lisek returned the funds, which were redeposited into the Trust bank account.

About two-and-a-half months later, the locks on the doors of Barnett's house were suddenly and unexpectedly changed, and, also unexpectedly, Barnett was absent from her California home. Her family in California filed a missing person report. Eventually, Barnett's family in California learned that somehow Barnett had traveled to Missouri and was living with the Liseks.

During the two months Barnett was under the Liseks' control and influence in Missouri, all the funds, some $251,000, were transferred out of the Trust bank account and were placed in a Missouri bank account for which Barnett and Lisek were owners and signatories. Likewise, $16,000 in the bank account Barnett used for her rental

property and for maintaining her tenants' security deposits was transferred to an account belonging to Lisek. Out of these funds, Lisek came into ownership of a sewing machine, purchased for $11,834, and a house in Republic, Missouri (the "Republic House"), purchased for $160,000. Barnett did not attend the real estate closing for the Republic House and never lived in it.[1] Barnett's family and friends from California called her cell phone during this time period, but Lisek restricted contact and monitored what conversations did occur.

When Barnett had no more liquid assets for the Liseks to misappropriate, Barnett was kicked out of the Liseks' house and sent back to California. After her return, a neuropsychologist confirmed the prior dementia diagnosis, found Barnett did not have the capacity to make health care decisions due to her significant cognitive impairment but could manage her finances with some assistance, and noted Barnett was at some risk of being subject to undue influence due to significant memory difficulty. A California court declared Barnett incompetent and appointed her daughter Carol DeVoy to make medical decisions for her. The co-trustees of the Trust now completely manage

[1] The Liseks' daughter, Appellant Rebecca Cody, has lived in the Republic House without providing any rent or remuneration to Barnett or to the Trust. Cody was evasive during her deposition and, although able to give detailed answers to several questions from the Liseks' attorney without difficulty on direct examination, she became unable to recall basic information or answer even a few simple questions on cross-examination.

Barnett's financial affairs for her. Barnett's California home and rental property had to be sold because she had no liquid assets to pay her bills and living expenses.

Missouri Adult Protective Services investigated what occurred while Barnett was in Missouri. The investigator noted that Barnett had obvious and significant cognitive impairment and memory issues and she was susceptible to coaching and manipulation. The investigator concluded that the Liseks had financially exploited Barnett.

Respondents filed suit against Appellants in Missouri to recover Trust assets appropriated by the Liseks. At trial, the Liseks' defense was that they had no idea Barnett had dementia, that all financial transactions occurred at Barnett's insistence, and that it was Barnett's California relatives who were stealing or trying to steal the Trust's assets.

The trial court found "by clear, cogent, and convincing evidence that excludes every reasonable doubt" that the Liseks had a confidential and fiduciary relationship with Barnett while she resided with them and that they abused that relationship to exert undue influence over Barnett, which resulted in misappropriation of Trust assets and unjust enrichment to the Liseks' personal benefit. The trial court imposed a constructive trust in favor of the Trust, ordered conveyance of the Republic House and sewing machine back to the Trust, and entered judgment against the Liseks in the amount of $252,616.59, which included the balance of the misappropriated funds,

prejudgment interest on those funds, and attorney fees and expenses incurred by the Trust.

Appellants filed a notice of appeal but did not seek a supersedeas bond to stay enforcement of the judgment pending appeal. When the Republic House and sewing machine were not turned over to the Trust as directed in the judgment, Respondents filed a motion for contempt and the trial court entered show cause orders. Appellants sought a stay of execution and entry of a supersedeas bond, which the trial court denied because it lacked authority to grant either request *after* Appellants had filed their notice of appeal. *See* Supreme Court Rule 81.09(a) (2025), § 512.080 RSMo. (2016), and ***State ex rel. Brickner v. Saitz***, 664 S.W.2d 209, 212 (Mo. banc 1984) ("Perhaps careful lawyers, on studying the rules, will now conclude that it is prudent to wind up all proceedings with respect to the … supersedeas bond before the Notice of Appeal is filed."). Before the trial court entered its contempt judgment, the Liseks surrendered the sewing machine and executed and delivered a quit claim deed affecting the Republic House. The money judgment remains unsatisfied.

Mootness

As a preliminary matter, Respondents claim this appeal is moot because Appellants have recognized the validity of the judgment and voluntarily acquiesced to it by electing not to seek a supersedeas bond to stay execution of the judgment during

appeal and instead surrendering the Republic House and sewing machine. In support, Respondents primarily rely on ***S. Mo. Dist. Council of the Assemblies of God, Inc. v. Kirk***, 334 S.W.3d 599 (Mo.App. S.D. 2011).

"A threshold question in the appellate review of a controversy is whether the matter has become moot due to subsequent events." ***Id.*** at 601. An appellant cannot simultaneously acknowledge and deny the validity of the judgment. ***Id.*** at 602. "It is well-settled that a party may be estopped from taking an appeal by performing acts after rendition of the judgment which are clearly inconsistent with the right of appeal. Any voluntary act by a party which expressly or impliedly recognizes the validity of the judgment may create such an estoppel." ***Id.*** (internal citation omitted).

Appellants argue ***Kirk*** should not apply here because the appellant in that case voluntarily chose to surrender the property prior to the initiation of the process to execute on the judgment, whereas in this case, Appellants' surrender of the property was not voluntary because civil contempt proceedings had been instituted against them. The appellant in ***Kirk*** argued that the property was only surrendered to avoid contempt proceedings. ***Id.*** at 603. We were not persuaded then, and we are not persuaded now. A desire to avoid the possibility of contempt of court does not render acquiescence with the judgment involuntary. ***Id.*** *See also* ***Braveheart Real Estate Co. v. Peters***, 157 S.W.3d 231 (Mo.App. E.D. 2004). Furthermore, the trial court would have had no basis

to hold Appellants in contempt had they sought and secured a supersedeas bond *prior to* filing their notice of appeal.

Appellants also argue that this appeal is not mooted by the surrender of the sewing machine and Republic House because the money judgment remains unsatisfied. ***Kirk*** also answers this argument, providing that mootness compels dismissal even though return of the property was not the only remedy granted in the judgment. ***Id.*** at 602 n.5.

An underlying question in ***Kirk***, and cases cited therein, was whether the appellants' post-judgment acts satisfied the objective of the lawsuit. As observed by the trial court at the beginning of trial, "The petition [is] primarily requesting a constructive trust be granted to seize certain assets and then damages be awarded for any other sums of money that can't be specifically accounted for." The same facts and law justified imposition of a constructive trust over <u>all</u> assets, whether they be misappropriated funds or property purchased with misappropriated funds. The only difference is that the Republic House and the sewing machine are unique, tangible assets that were acknowledged to still be in Appellants' possession, while the money judgment concerns a fungible asset.

The relief Appellants seek in this appeal, reversal of the trial court's judgment, concerns the imposition of the constructive trust and the recovery of <u>all</u> assets.

Appellants' argument would be more persuasive had the appeal only challenged a characteristic unique to the money judgment, *e.g.*, a miscalculation of the total amount owed or the propriety of the inclusion of certain fees in the amount owed. As it stands, we simply cannot grant the relief Appellants request without reversing the very findings and conclusions supporting relief to which they already have acquiesced.[2]

Conclusion

Appellants acquiesced in the validity of the judgment by declining to seek a supersedeas bond and instead voluntarily surrendering the Republic House and sewing machine. Their acquiescence is inconsistent with the challenges to the validity of the

[2] Mootness is the foremost impediment, but not the sole impediment, preventing Appellants from succeeding in this appeal. Our review of Appellants' three points relied on would be substantially hindered by Appellants' deficiencies in complying with Supreme Court Rule 84.04 (2025), which include but are not limited to deficient points relied on and a failure to provide record references for numerous factual assertions. Even if we ignored these deficiencies, the points would not succeed on the merits. Appellants make some effort to complete the necessary ***Houston v. Crider,*** 317 S.W.3d 178, 187 (Mo.App. S.D. 2010), analytical steps in their point challenging the judgment as against the weight of the evidence, yet they fail to resolve all conflicts in testimony in accordance with the trial court's credibility determinations, whether explicit or implicit, instead relying on contrary evidence and inferences. Their other two points, which purport to be challenges to the trial court's declaration or application of the law, are not supported by arguments showing how or why the trial court erroneously declared or applied the law. The burden of proof and legal standards cited by Appellants are the same as those expressly cited by the trial court in its judgment. Appellants' argument appears to be that the evidence did not satisfy these standards, which would be a sufficiency of the evidence challenge, not a challenge to the declaration or application of the law.

judgment and requested relief sought in this appeal. Appellants are estopped from denying the validity of the judgment. Accordingly, this appeal is dismissed as moot.

JACK A. L. GOODMAN, J. – OPINION AUTHOR

BECKY J. WEST, C.J. – CONCURS

MATTHEW P. HAMNER, J. – CONCURS