COURT OF APPEALS
DECISION
DATED AND FILED

April 28, 2005

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2003AP3535 **Cir. Ct. No. 2002CV58**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

NORA DE SALVO AND CARRIE WALLS,

PLAINTIFFS-APPELLANTS,

V.

STEVEN J. ELEGREET,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Dodge County: DANIEL W. KLOSSNER, Judge. *Affirmed in part; reversed in part and cause remanded with directions.*

Before Vergeront, Lundsten and Higginbotham, JJ.

¶1 LUNDSTEN, J. This case involves an action by Nora De Salvo and Carrie Walls (the sisters) against their brother, Steven Elegreet. The sisters allege that Steven mishandled the financial affairs of Margaret, the mother of all three

siblings, to the detriment of the sisters. Steven allegedly mishandled Margaret's financial affairs in the course of his duties as Margaret's agent under a durable power of attorney.

¶2 The sisters appeal the circuit court's order dismissing an amended complaint they filed after Margaret died. That complaint contains a request for an accounting under WIS. STAT. § 243.07(6r) (2003-04),[1] and it alleges two tort claims: breach of fiduciary duty and conversion. We conclude that the circuit court properly dismissed that part of the complaint requesting an accounting under § 243.07(6r)(a) and therefore affirm that part of the circuit court's order. However, we reverse the part of the circuit court's order dismissing the tort claims and remand for further proceedings consistent with this opinion.

Background

¶3 This appeal involves review of the circuit court's order granting Steven's motion to dismiss for failure to state a claim. Thus, for purposes of this review, we accept as true the following facts from the sisters' amended complaint and the documents attached to that complaint.

¶4 Margaret established a living trust. The terms of the trust directed that upon Margaret's death, after certain distributions, the balance of the assets in the trust would be held for her three children, with each receiving an equal one-third share.[2] After establishing the trust, Margaret executed a durable power of

[1] All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

[2] The trust named Margaret's husband as the primary beneficiary, but he predeceased Margaret. For the sake of simplicity, we omit further mention of the husband.

attorney, naming Steven as her agent. The power of attorney authorized Steven to "make investment decisions" and to "convey, sell, gift, or otherwise transfer assets into [Margaret's] Living Trust." It also authorized Steven to make gifts of cash or property, in amounts not to exceed $10,000 per year, to each of Margaret's children, her children's spouses, and Margaret's grandchildren.

¶5 Margaret was declared incompetent in July 2000 and died on December 2, 2002. About one month later, the sisters filed their amended complaint.[3] The amended complaint requested that Steven provide, pursuant to WIS. STAT. § 243.07(6r)(a), "an accounting of all transactions [Steven] has undertaken with assets of the Living Trust and assets otherwise owned by Margaret." The amended complaint also contained tort claims against Steven for breach of fiduciary duty and conversion.[4] The amended complaint alleged that Steven took unauthorized actions, as power of attorney, including:

- giving a portion of the proceeds from the sale of property of the Living Trust to himself, his wife, or his children;
- transferring title to a Cadillac automobile from the Living Trust to himself and his wife;

[3] The first complaint was filed prior to Margaret's death by Nora only, alleging that Steven had misused his durable power of attorney. The complaint requested an accounting under WIS. STAT. § 243.07(6r) and contained no tort claims. Steven moved to dismiss this complaint, arguing that Nora was not entitled to have a court review Steven's performance under § 243.07(6r) or any other Wisconsin law. The circuit court denied that motion and denied a separate motion to dismiss in which Steven framed the question as one of jurisdiction and asserted that Nora had to proceed with her claim in an open guardianship proceeding. Here, we address only the amended complaint because that is the only complaint that is the subject of this appeal.

[4] The conversion claim was brought solely by Carrie. Nonetheless, for ease of discussion, we refer to both tort claims as having been brought by the sisters.

- changing the beneficiary designation on certain annuities owned by Margaret, naming himself, his wife, and his children as beneficiaries; and

- purchasing mutual funds for his children with Margaret's money.

The amended complaint also alleged that Steven failed to comply with state and federal tax laws governing payments to one of Margaret's caregivers. In addition to the request for an accounting, the amended complaint sought relief in the form of a money judgment against Steven and any other relief the court deemed "just and necessary."

¶6 Steven moved to dismiss the amended complaint for failure to state a claim. The circuit court granted his motion in a written decision. The court reasoned that the three remedies authorized by WIS. STAT. § 243.07(6r)(a) have only prospective application and, therefore, the statute is not applicable after an agent's powers have been extinguished by the death of a principal. In particular, the court concluded that § 243.07(6r)(a)1. gives no indication that it can be applied to correct past misconduct. The circuit court did not explain its reasons for dismissing the sisters' tort claims.[5]

[5] In a footnote to its decision, the circuit court stated that its ruling did not affect the right of Margaret's estate to "*bring an action* or seek an accounting" (emphasis added). Thus, the circuit court may have implicitly determined that the sisters could not maintain their breach of fiduciary duty and conversion claims against Steven. However, as discussed below, the estate has no apparent interest in either the living trust assets or the annuities. In any event, we are unable to determine the circuit court's rationale for its decision to dismiss the tort claims. After the court issued its written decision, the sisters moved for reconsideration, pointing out that the court had not explained why it had dismissed the tort claims. The court denied the sisters' motions in another written order, after a hearing, but we are unable to discern the court's reasoning, either in comments made at the hearing or in the court's written decision denying the reconsideration motions.

Discussion

WIS. STAT. § 243.07(6r)(a)

¶7 For several years leading up to Margaret's death, Steven was her agent, acting under her durable power of attorney. The sisters' amended complaint contains a request for an order, pursuant to WIS. STAT. § 243.07(6r)(a), directing Steven to provide the sisters with an accounting of "all transactions [Steven] has undertaken with assets of the Living Trust and assets otherwise owned by Margaret."

¶8 As noted above, the circuit court dismissed the complaint, reasoning that WIS. STAT. § 243.07(6r)(a) is prospective in nature and has no application after Steven's durable power of attorney terminated due to Margaret's death. Although our reasoning is different, we agree with the circuit court that § 243.07(6r)(a) does not apply after a durable power of attorney has terminated due to the death of the principal.[6]

¶9 Wisconsin's version of the Uniform Durable Power of Attorney Act includes a provision permitting an interested party to petition for a review of the agent's performance. WISCONSIN STAT. § 243.07(6r)(a) provides:

> **(6r)** PETITION TO REVIEW AGENT'S PERFORMANCE. (a) An interested party may petition the court assigned to exercise probate jurisdiction for the county where a principal is present or the county of the principal's legal

[6] Steven separately argues that the circuit court properly dismissed the complaint because a request under WIS. STAT. § 243.07(6r)(a) must be in the form of a petition. The statute specifies that an "interested party may petition the court." Steven asserts that the sisters' complaint is not a petition. Because we resolve this dispute on other grounds, we need not address whether it matters that the sisters included their § 243.07(6r)(a) request for an accounting in a complaint along with their tort claims.

> residence to review whether the agent is performing his or her duties in accordance with the terms of the durable power of attorney executed by the principal. If the court finds after a hearing that the agent has not been performing in accordance with the terms of the durable power of attorney, the court may do any of the following:
>
> 1. Direct the agent to act in accordance with the terms of the principal's durable power of attorney.
>
> 2. Require the agent to report to the court concerning performance of the agent's duties at periods of time established by the court.
>
> 3. Rescind all powers of the agent to act under the durable power of attorney.

We interpret § 243.07(6r)(a) without deference to the circuit court's decision. The interpretation of a statute is a question of law for our *de novo* review. ***Three & One Co. v. Geilfuss***, 178 Wis. 2d 400, 413, 504 N.W.2d 393 (Ct. App. 1993).[7]

¶10 The sisters argue that, regardless whether an agency has ended, WIS. STAT. § 243.07(6r)(a) authorizes a court to order a present or former agent to account for past performance as an agent. More specifically, the sisters argue that subds. (a)1. and 2. of § 243.07(6r) have both retroactive and prospective application. For example, the sisters argue that § 243.07(6r)(a)1. permitted the circuit court to impose a constructive trust on any improperly transferred property and to order Steven to turn over the property or its equivalent value to the living

[7] The parties correctly note the dearth of case law interpreting WIS. STAT. § 243.07(6r)(a). When interpreting § 243.07, we normally would look to jurisdictions that have adopted the Uniform Act. *See* ***Knight v. Milwaukee County***, 2002 WI 27, ¶28, 251 Wis. 2d 10, 640 N.W.2d 773. However, it appears that the legislature added the provisions in § 243.07(6r) after adopting Wisconsin's version of the Uniform Act and that these provisions are not based on provisions in the Uniform Act. *See* 1997 Wis. Act 233, *and compare with* Uniform Durable Power of Attorney Act, 8A U.L.A. 244, 246-59 (master ed. 2003) (cataloguing states that have adopted the Uniform Act, along with each state's variation from the Act, if any).

trust. The sisters also argue that § 243.07(6r)(a)2. permits a court to order a retroactive accounting.

¶11 Steven argues that the circuit court correctly ruled that the sisters cannot obtain relief under WIS. STAT. § 243.07(6r)(a) because his agency terminated upon his mother's death and the relief authorized by statute is prospective only. Steven asserts that nothing in § 243.07(6r)(a) suggests that it authorizes a court to issue an order directing an agent to cure a past wrong, much less authorize a court to establish a constructive trust. Steven agrees that § 243.07(6r)(a) authorizes a court to examine the past performance of an agent, but not because of the remedy provision in § 243.07(6r)(a)2. That remedy provision, according to Steven, only authorizes a court to require an accounting for future time periods. Steven reasons that it makes no sense to permit a retroactive review of his performance when he is no longer an agent if the statute does not authorize any court action that would apply to him. He asserts that the court was in no position to grant the remedies enumerated in § 243.07(6r)(a) because he no longer had a durable power of attorney after his mother died.[8]

¶12 We agree that WIS. STAT. § 243.07(6r)(a) does not apply after Margaret's death—and consequent termination of Steven's durable power of attorney—but not because all three remedies under § 243.07(6r)(a) are prospective only. Rather, we focus on the agency itself. We conclude that the statute plainly

[8] One author has suggested that, apart from WIS. STAT. § 243.07(6r)(a), there is a common law action for an accounting. She writes: "In Wisconsin, an action for an accounting is a separate and distinct cause of action." Michele M. Hughes, *Remedying Abuse by Finance Agents*, 73 WIS. LAW. 20, 69 (Sept. 2000). She cites to ***Michels v. Michels***, 240 Wis. 539, 546, 3 N.W.2d 359 (1942), and contrasts this "cause of action" with "statutory actions," including § 243.07(6r)(a). The parties have not briefed this topic, and we express no opinion on the matter.

contemplates application to an ongoing agency and, when an agency terminates by reason of the death of a principal, there is no ongoing agency to which the statute can be applied.

¶13 WISCONSIN STAT. § 243.07(6r)(a) authorizes the court to enter three distinct types of orders if the court first finds "that the agent has not been performing in accordance with the terms of the durable power of attorney." All three types of orders contemplate an ongoing agency.

¶14 WISCONSIN STAT. § 243.07(6r)(a)1. authorizes the court to "[d]irect the agent to act in accordance with the terms of the principal's durable power of attorney." We disagree with the sisters that this subdivision authorized the circuit court to impose a constructive trust or to order Steven to turn over property to the living trust. At least as it applies after the death of a principal, para. (a) and subd. (a)1. plainly contemplate an ongoing agency. Simply put, nothing in the language of these subsections suggests that a court may do anything other than order an existing agent to act. Thus, we need not address the sisters' argument that subd. (a)1. authorizes a court to direct an existing agent to remedy a past misuse of a durable power of attorney. More specifically, we need not address whether subd. (a)1. authorizes a court to direct an agent to "act in accordance with" his or her durable power of attorney by restoring property misappropriated by the agent.[9]

[9] On a closely related point, in paragraph 18 below, we emphasize that we do not address whether WIS. STAT. § 243.07(6r)(a) may be applied before the death of a principal to a *former* agent. Read in combination, paragraphs 14 and 18 mean that we do not address whether subd. (a)1. may be applied prior to the death of a principal to require a former agent to remedy past abuse by that former agent.

¶15 WISCONSIN STAT. § 243.07(6r)(a)2. authorizes the court to "[r]equire the agent to report to the court concerning performance of the agent's duties at periods of time established by the court." We agree with Steven that the only reasonable construction of this subdivision is that it refers to future time periods. As Steven points out, subd. (a)2. is one of the three remedies available only after the court has held a hearing and determined that "the agent has not been performing in accordance with the terms of the durable power of attorney." WIS. STAT. § 243.07(6r)(a). Ordering an agent to provide an accounting of past performance under subd. (a)2. makes no sense because this remedy is only available after the court has reviewed past performance. We agree with the sisters that § 243.07(6r)(a) permits a court to require an accounting of past performance. But this authority stems from para. (a), not subd. (a)2. Paragraph (a) provides that, upon petition of an interested party, a court is authorized to "review whether the agent is performing his or her duties in accordance with the terms of the durable power of attorney executed by the principal." At a minimum, this language means that a court may require an agent to bring to court all relevant records and may require the agent to testify about his or her activities. Once the court's review under para. (6r)(a) is complete, it makes no sense to order the agent to provide an accounting of past performance. Such an accounting would, in effect, be a repeat of the court's review process.

¶16 Finally, WIS. STAT. § 243.07(6r)(a)3. authorizes the court to "[r]escind all powers of the agent to act under the durable power of attorney." The parties agree that this subdivision contemplates an ongoing agency.

¶17 Accordingly, all three remedies available under WIS. STAT. § 243.07(6r)(a) contemplate an ongoing agency. When, as here, the agency has terminated by reason of the death of the principal, none of these remedies are

available. It follows that the process described in the statute for obtaining the remedies does not apply.

¶18 We add one more qualification. The sisters' arguments lead us to wonder whether the legislature's intent in requiring an agent to provide an accounting to facilitate review under WIS. STAT. § 243.07(6r)(a) would be thwarted if an existing agent could avoid the requirement by simply resigning his or her agency. Could the legislature have intended that a self-dealing agent be able to escape the reach of the statute by resigning? We need not decide that question. We do not address the application of § 243.07(6r)(a) prior to the death of a principal.

¶19 The sisters argue that their suggested interpretation of WIS. STAT. § 243.07(6r)(a) is the most reasonable because that statute "provides the only way for persons to get an accounting, where there is virtually no probate estate, and where the institutional trustee of the living trust does not wish to become involved in litigation with the agent." Moreover, according to the sisters, if we interpret § 243.07(6r)(a) as not authorizing a court to act once a principal is deceased, our decision would place a "severe limitation on the practical application of the statute" because "powers of attorney are often activated when persons are in their declining years, and principals would often die during the court review under [§ 243.07(6r)(a)]." These arguments are undeveloped. The sisters simply assert the existence of these alleged practical problems with no explanation as to why some other remedy is not available to them. They provide no discussion of other statutory provisions or common law remedies that might or might not provide potential relief to persons in their situation after the death of a principal if a personal representative or a trustee fails to take action. This area of law is complicated. If the sisters mean to suggest that the plain meaning of

§ 243.07(6r)(a) leads to an absurd result under the situation before us, they needed to present a much more developed argument.

Breach of Fiduciary Duty and Conversion

¶20 The sisters separately challenge dismissal of their breach of fiduciary duty and conversion claims. When the court rejected the sisters' request for an accounting under WIS. STAT. § 243.07(6r)(a), the court dismissed the entire amended complaint, including these claims. However, we are unable to discern from the record the circuit court's rationale for dismissing these claims. Thus, we cannot affirm dismissal of the claims based on any reasoning supplied by the circuit court. Still, whether a claim should be dismissed for failure to state a claim is a purely legal issue, and our review is *de novo*. ***Bammert v. Don's SuperValu, Inc.***, 2002 WI 85, ¶8, 254 Wis. 2d 347, 646 N.W.2d 365. Also, we may affirm a circuit court's decision using reasoning that the circuit court did not employ. *See* ***State v. Baudhuin***, 141 Wis. 2d 642, 648, 416 N.W.2d 60 (1987) ("If the holding is correct, it should be sustained, and this court may do so on a theory or on reasoning not presented to the trial court."). Accordingly, in addressing the circuit court's dismissal of these tort claims, we will consider the reasons for dismissal that Steven provides on appeal.

¶21 Steven concedes that the amended complaint alleges breach of fiduciary duty and conversion and that the complaint supplies facts supporting these tort claims. But, according to Steven, these claims belong solely to Margaret's estate. This is true, Steven asserts, because "the fiduciary relationship exists between the agent *and his principal*. Not between the agent and the rest of the world." Steven maintains that the sisters' reliance on ***Alexopoulos v. Dakouras***, 48 Wis. 2d 32, 179 N.W.2d 836 (1970), is misplaced. According to

Steven, ***Alexopoulos*** supports his argument that any claims belong to the estate, not to the sisters. In Steven's view, the sisters lack standing.[10]

¶22 The sisters argue that they do have standing and that they have stated valid claims. The sisters primarily rely on ***Praefke v. American Enterprise Life Insurance Co.***, 2002 WI App 235, 257 Wis. 2d 637, 655 N.W.2d 456. They claim ***Praefke*** stands for the proposition that a judgment is permitted against an agent, even when a third party brings a claim for breach of fiduciary duty. The sisters' analysis of ***Praefke*** is not well developed, but we nonetheless agree that ***Praefke*** rejects the arguments Steven makes here.

¶23 The facts in ***Praefke*** track those here in several respects. The agent in ***Praefke*** was acting under a durable power of attorney and, about one year after the power of attorney was executed, the principal was diagnosed with an Alzheimer's-type of dementia. ***Id.***, ¶2. After this diagnosis, the agent changed the payable-on-death beneficiary designations on annuity contracts, designating herself as beneficiary. ***Id.***, ¶3. In addition, the agent established an investment account with herself as the sole beneficiary, using funds from a bank account owned by the principal. ***Id.*** Finally, the agent made unauthorized gifts. ***Id.*** Before the change of beneficiary, the principal's former neighbor had been a co-

[10] Steven also asserts that dismissal was proper because the circuit court correctly viewed the entire amended complaint as having been filed under WIS. STAT. § 243.07(6r)(a). But Steven provides no analysis to support this assertion, and we think it is patently without merit. Nothing in the amended complaint suggests that the tort claims were somehow filed under or tied to § 243.07(6r)(a). To the contrary, the sisters' claims of breach of fiduciary duty and conversion are set forth separately from the request for an accounting under § 243.07(6r)(a).

beneficiary on at least two annuity contracts. ***Id.*** This neighbor was also a beneficiary, in some manner, of the principal's estate.[11]

¶24 When the principal died, litigation ensued.[12] Pertinent here, the neighbor claimed the agent had violated her fiduciary duty to the principal by engaging in self-dealing. ***Id.***, ¶5. We rejected the agent's argument that the neighbor could not maintain her claim because the agent owed no fiduciary duty to the third-party neighbor and any claim belonged solely to the estate of the principal. ***Id.***, ¶¶11-12. In particular, we rejected the agent's argument that ***Alexopoulos*** is inapplicable to a third-party beneficiary claim because the claim in ***Alexopoulos*** was brought by the estate of the deceased principal. We explained:

> [The agent] misses the basic policy concern underlying ***Alexopoulos*** and related law that forbids self-dealing. That concern is not linked to any duty an agent may have to third parties, but is primarily addressed to the potential for fraud that exists when an agent acting pursuant to a durable power of attorney has the power to make gifts, especially after the principal becomes incapacitated. A fiduciary will not be allowed to feather his or her own nest unless the power of attorney specifically allows such conduct. In short, where the fiduciary argues that the power of attorney allowed for self-dealing, that power must be specifically authorized in the instrument.

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[11] We infer that the neighbor was a beneficiary of the estate because the ***Praefke*** decision affirms the circuit court's decision awarding the neighbor a fractional interest in the annuities, the investment fund, and the property constituting the unauthorized gifts. ***Praefke v. American Enter. Life Ins. Co.***, 2002 WI App 235, ¶20, 257 Wis. 2d 637, 655 N.W.2d 456.

[12] We acknowledge that the procedural setting of ***Praefke*** is different, but the difference does not matter for purposes of our analysis. In ***Praefke***, the agent commenced the litigation by suing a life insurance company for the proceeds of an annuity account that the company had refused to release without a waiver from the neighbor. ***Id.***, ¶¶1, 4-5. The agent also named the neighbor. ***Id.***, ¶5. The neighbor counterclaimed, alleging that the agent violated her fiduciary duty to the principal by engaging in self-dealing. ***Id.*** In our decision in the current case, we focus on that part of the ***Praefke*** lawsuit involving the neighbor's claim to her fractional interest in the annuities, the investment fund, and the property constituting unauthorized gifts.

Praefke, 257 Wis. 2d 637, ¶12. We affirmed summary judgment in favor of the neighbor, concluding that the neighbor was entitled to her fractional interest in the annuities, the investment fund, and the property constituting the unauthorized gifts. ***Id.***, ¶20.

¶25 Thus, we addressed and rejected in ***Praefke*** the very arguments that Steven makes here: (1) that ***Alexopoulos*** is distinguishable because it involved a claim brought by an estate, and (2) that a third party's claim against an agent arising from that agent's self-dealing is barred because an agent's fiduciary duty is owed to the principal rather than to third parties. *See* ***Praefke***, 257 Wis. 2d 637, ¶¶11-12. Steven's discussion of ***Praefke*** is limited to a brief summary of the facts in that case and his request that this court review ***Praefke*** "in detail and in its entirety." According to Steven, our unassisted review of ***Praefke*** will lead us to conclude that it "provides no authority whatsoever for [the sisters]." Obviously, we disagree. Steven has made two narrow arguments, and our review of ***Praefke*** reveals that both of those arguments were rejected in that decision. It might be that Steven believes ***Praefke*** was wrongly decided, but he does not say so and, in any event, ***Praefke*** is binding on this court. ***Cook v. Cook***, 208 Wis. 2d 166, 189-90, 560 N.W.2d 246 (1997).

¶26 We have closely scrutinized Steven's brief. Apart from the arguments we address above, Steven makes only unsupported assertions that Margaret's estate is the only entity that may sue him based on any alleged abuse of the durable power of attorney. Thus, we need go no further because we are presented with no useful argument that supports dismissal of the tort claims for failure to state a claim. Still, we stress what we do not hold. For the reasons that follow, we do not hold that the sisters' tort claims are without problems.

¶27 First, we acknowledge that there are arguable deficiencies and ambiguities in the factual background and analysis in ***Praefke*** that might make that case distinguishable from the case before us. But Steven does not develop any arguments along this line, and the resolution of such arguments is not readily apparent. We decline to go down that path without adversarial briefing.

¶28 Also, so far as we can tell from the complaint, some of the alleged abuse occurred with respect to living trust assets, some with respect to annuities, and some with respect to assets held in a non-living trust bank account. The status of each of these assets may matter for purposes of determining whether the sisters have either a cause of action or standing. For example, after Margaret's death, a trustee controls the trust and a personal representative acts on behalf of the estate, and there may be no comparable fiduciary with respect to the annuities. For that matter, the law regarding the powers of trustees and the law regarding the powers of personal representatives might vary in some pertinent respect. The parties do not address the law in any detail with respect to the interplay of the various types of assets and fiduciary powers.[13]

¶29 Finally, Steven makes no argument regarding the relief sought by the sisters. For example, the sisters seek a money judgment against Steven for alleged self-dealing in trust assets but, at the same time, the complaint tells us the trust assets have not been distributed. The available relief with respect to each alleged

[13] We observe that Steven's the-claim-belongs-to-the-estate argument ignores the fact that much of what is at stake here relates to the trust. Because trust assets do not necessarily pass through an estate, it is not immediately apparent why the estate has an interest in Steven's handling of the living trust assets.

act of tortious conduct may affect the viability of corresponding claims in the complaint.

¶30 Trust, annuity, and estate matters, and their relationship to the enforcement of fiduciary duties, may, as in this case, raise complicated issues. In this decision, we have chosen to limit our analysis, for the most part, to arguments actually made by the parties. Regarding the tort claims, we reverse the circuit court's decision because Steven presents us with no viable argument that the sisters' complaint fails to state a claim.

Frivolousness

¶31 Steven asks this court to declare the sisters' appeal frivolous. But, as should now be apparent, the appeal is not frivolous. Indeed, we reverse the part of the circuit court's order dismissing their amended complaint.

Conclusion

¶32 We affirm the part of the circuit court's order dismissing the sisters' request for an accounting and other relief under WIS. STAT. § 243.07(6r)(a). We reverse the part of the order dismissing the breach of fiduciary duty and conversion claims. We remand for further proceedings consistent with this opinion.

¶33 No costs to any party.

By the Court.—Order affirmed in part; reversed in part and cause remanded with directions.

Not recommended for publication in the official reports.