COURT OF APPEALS DECISION DATED AND FILED

September 22, 2026

Samuel A. Christensen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2024AP1913

Cir. Ct. No. 2023PR15

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT III

IN RE THE ESTATE OF FREDERICK E. DIETRICH:

THE BROTHERS DIETRICH, LLC,

APPELLANT,

V.

FREDERICK E. DIETRICH, II AS PERSONAL REPRESENTATIVE OF THE ESTATE OF FREDERICK DIETRICH,

RESPONDENT.

APPEAL from an order of the circuit court for Chippewa County: JAMES M. ISAACSON, Judge. *Affirmed*.

Before Stark, P.J., Hruz, and Gill, JJ.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. The Brothers Dietrich, LLC (TBD[1]) appeals from a probate order that denied its creditor's claim against the Estate of Frederick E. Dietrich. We affirm on the basis that the claim was barred by laches.

BACKGROUND

¶2 Frederick E. Dietrich ("Fritz") died on January 19, 2023. TBD filed a notice of claim against the Estate related to 107 shares of stock in Citizens State Bank of Cadott, which were titled in Fritz's name at the time of his death, but which TBD asserted had been sold to it in 2008 to help pay down Fritz's medical bills and credit card debt. In support of its claim, TBD provided a copy of a 2008 tax return, showing that Fritz had reported capital gains on the sale of the stock for $32,207; copies of checks from TBD to Fritz in December 2008, totaling $37,000; and QuickBooks account ledgers, showing $58,000 in payments from TBD to Fritz in 2008, as well as testimony from Fritz's nephew.

¶3 Following an evidentiary hearing, the circuit court found that the tax return had been filed on Fritz's behalf by his brother and business partner, John Dietrich, acting under a power of attorney during a period of time when Fritz was suffering some significant health issues. Although TBD took physical possession of the stock certificate and used it as collateral for a loan at some point, the stock remained titled in Fritz's name, and the bank continued to pay dividends to Fritz for 16 years following the purported sale. Additionally, Fritz was allowed to continue serving on the bank's board of directors based upon his registered ownership of the shares.

[1] We will collectively refer to both the LLC and a predecessor general partnership also called The Brothers Dietrich (from which the LLC was transformed in 2014) as TBD.

¶4 The circuit court found that laches barred TBD from asserting a claim to title of the stock shares because TBD had allowed Fritz to enjoy the benefits of ownership of the stock for 16 years, without asking the bank to change the name on the stock certificate, and until after both Fritz and John were dead. Without testimony from either brother or any independent appraisal, the court deemed the evidence insufficient to determine what the fair market value of the shares had been at the time of the alleged sale, or whether John had acted in good faith.

DISCUSSION

¶5 Laches is an equitable defense based upon a party's unreasonable and prejudicial delay in bringing a claim. ***State ex rel. Lopez-Quintero v. Dittmann***, 2019 WI 58, ¶16, 387 Wis. 2d 50, 928 N.W.2d 480. Whether the elements of laches have been established presents a question of law subject to de novo review. ***State ex rel. Wren v. Richardson***, 2019 WI 110, ¶16, 389 Wis. 2d 516, 936 N.W.2d 587. However, even if the elements are established, a court has discretion whether to apply the doctrine. ***Id.***, ¶15.

¶6 The elements of laches are as follows: "(1) a party unreasonably delays in bringing a claim; (2) a second party lacks knowledge that the first party would raise that claim; and (3) the second party is prejudiced by the delay." ***Clarke v. WEC***, 2023 WI 79, ¶41, 410 Wis. 2d 1, 998 N.W.2d 370 (citation omitted). The reasonableness of the delay is based upon the totality of the circumstances, taking into account what a party might have known having exercised due diligence, so ignorance of one's legal rights is not a reasonable excuse. ***Wren***, 389 Wis. 2d 516, ¶¶18, 20. Prejudice may include anything that places the party asserting laches in a less favorable position, including the loss of evidence or the unreliability of witnesses' memories over time. ***Id.***, ¶¶32-33.

¶7 Here, the circuit court correctly determined that the elements of laches had been satisfied. It was patently unreasonable for TBD to wait 16 years after allegedly paying for the bank stock to seek to have the stock retitled in its name. TBD knew, or certainly would have known with the reasonable exercise of diligence, that steps required to transfer the stock had not been taken and that Fritz continued to exercise the rights of ownership of the stock for 16 years. Conversely, TBD's failure to act reasonably would have led Fritz to believe that TBD would not assert a claim. Finally, the Estate was prejudiced by the fact that neither Fritz nor John was alive to provide testimony about the alleged sale.

¶8 Having determined that the elements of laches had been established, the circuit court then reasonably exercised its discretion by deciding to apply that doctrine here. As the court noted, this was a "textbook" situation in which a party slept on its rights to the detriment of another party's ability to defend against a claim. Even if TBD could establish that it had paid some amount for the stock, the Estate's ability to advance a defense of inadequate consideration or bad faith was severely compromised.

¶9 In light of our decision that TBD's claim was barred by laches, we need not address TBD's additional arguments regarding the adequacy of any consideration given for the stock; whether the requirements of WIS. STAT. § 408.301 (2023-24) for delivery of a certified security were satisfied; or whether the statute of limitations would bar any claims of undue influence, breach of fiduciary duty, or self-dealing on the part of John.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2023-24).