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DISTRICT II

October 14, 2026

To:

Hon. Michael P. Maxwell
Circuit Court Judge
Electronic Notice

Christa D. Wittenberg
Electronic Notice

Monica Paz
Clerk of Circuit Court
Waukesha County Courthouse
Electronic Notice

Eleanor S. Tikalsky
Electronic Notice

J. Steven Tikalsky
Electronic Notice

Dean P. Laing
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

2025AP1240

J. Steven Tikalsky v. Dean P. Laing (L.C. #2025CV67)

2025AP1669

J. Steven Tikalsky v. Dean P. Laing (L.C. #2025CV67)

Before Gundrum, LoCoco, and Gill, JJ.

Summary disposition orders 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).

In these consolidated appeals, J. Steven Tikalsky (“Steven”) and his wife, Eleanor S. Tikalsky (“Eleanor”), appeal a circuit court order dismissing their complaint against Steven’s siblings (Susan M. Tikalsky, James Allen Tikalsky, and Terry Ann Stevens), a trust created by Steven’s late parents, the Amended and Restated Donald J. and Betty Lou Tikalsky Trust, and the siblings’ and trust’s attorney, Dean P. Laing. Steven and Eleanor also appeal an order concluding that their complaint was frivolous and awarding attorney fees as a sanction.

Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. See WIS. STAT. RULE 809.21 (2023-24).¹ We affirm the circuit court order dismissing Steven and Eleanor’s complaint but reverse the order concluding the complaint was frivolous and awarding attorney fees as a sanction. We remand the matter for further proceedings consistent with this opinion.

We begin by putting the present dispute into context. Steven’s parents explicitly disinherited him from their estate plans. In 2015, after his parents’ deaths, Steven brought a nine-count complaint against his three siblings and his late-parents’ trust (collectively, the Trust). In 2016, when the Trust moved for summary judgment, Steven voluntarily dismissed six causes of action. The circuit court then granted the Trust’s motion for summary judgment on Steven’s claims for undue influence and constructive trust. It denied the Trust’s summary judgment motion on Steven’s claim for intentional interference with expected inheritance, leaving it as the sole remaining cause of action.

The circuit court’s order had the effect of creating a final order as to one sibling, Terry, and Steven appealed the court’s grant of summary judgment on Steven’s claim for a constructive trust as to Terry. While Steven’s appeal was pending, the parties and Steven engaged in extensive discovery and motion practice on Steven’s intentional interference claim and a trial was scheduled for August 2018. When the supreme court accepted review of Steven’s constructive trust appeal, it stayed the trial. In *Tikalsky v. Friedman*, 2019 WI 56, 386 Wis. 2d 757, 928 N.W.2d 502, the court held “a constructive trust is not a cause of action and ... Steven’s

¹ All references to the Wisconsin Statutes are to the 2023-24 version.

Complaint does not state a claim for relief against Terry. Therefore, the circuit court did not err when it dismissed her from the case with prejudice.” See *id.*, ¶44.

Upon remittitur, the circuit court scheduled a three-week trial for February 2020 on the intentional interference claim. In December 2019, Steven voluntarily moved to dismiss his intentional interference claim. The Trust did not contest the voluntary dismissal, but it moved for attorney fees incurred in defending Steven’s action.

As relevant, Steven opposed the Trust’s request for attorney fees on the basis of unclean hands. Generally, Steven advised the circuit court that, in 2017, after the court granted summary judgment in favor of the Trust, it learned that there were material misrepresentations in the Trust’s summary judgment filings. The Trust contested Steven’s allegations. Ultimately, the court granted the voluntary dismissal and awarded the Trust attorney fees incurred in connection with various motions during litigation. It rejected Steven’s unclean hands defense on the basis that Steven had forfeited that argument by bringing the allegedly false statements to the court’s attention in such a tardy fashion. Steven appealed.

In *Tikalsky v. Tikalsky*, No. 2020AP1345, unpublished slip. op., ¶¶2-3 (WI App Dec. 6, 2023), we affirmed both the circuit court’s grant of summary judgment on the undue influence claim and the court’s award of attorney fees. Regarding the undue influence claim, we concluded:

the evidence Steven submitted in response to the Trust’s summary judgment motion does not come close to creating a genuine issue of material fact regarding undue influence. Steven has failed to adequately substantiate his undue influence claims under either the four-element or two-element test. On these facts, no reasonable fact finder could conclude that the wills and trust documents were procured by undue influence.

Id., ¶40. We also affirmed the circuit court’s determination that six of Steven’s original causes of action were frivolous, which he dismissed when the Trust moved for summary judgment, that two motions were brought for purposes of delay, and that Steven had forfeited any unclean hands defense. *Id.*, ¶3.

As to Steven’s unclean hands defense, we agreed with the circuit court that Steven had forfeited any unclean hands argument by failing to raise the issue in a timely matter. *Id.*, ¶62. We explicitly rejected Steven’s argument that his earliest opportunity to raise his defense was at the conclusion of the lawsuit. *Id.* We stated, “To the contrary, Steven had ample opportunity to raise the issue of the alleged false testimony during the multi-year pendency of the litigation, including by bringing a WIS. STAT. § 806.07(1)(c) motion alleging fraud.” *Tikalsky*, No. 2020AP1345, ¶62. We also observed that the one-year time limitation in § 806.07(2) had not run at the time Steven discovered the purported misrepresentations. *Tikalsky*, No. 2020AP1345, ¶62 n.24. We explained that, “in any event, the time limitation set forth in WIS. STAT. § 806.07(2) would not have precluded Steven from filing an independent action challenging the [summary judgment] order on equitable grounds. *See generally Walker v. Tobin*, 209 Wis. 2d 72, 568 N.W.2d 303 (Ct. App. 1997).” *Tikalsky*, No. 2020AP1345, ¶62 n.24.

Finally, because we affirmed the circuit court’s determination of frivolousness, we remanded the case to the circuit court to award the Trust attorney fees in connection with defending the frivolousness determination on appeal. *Id.*, ¶¶66-67. Steven did not petition the supreme court to review our decision.

Instead, in January 2025, Steven and his wife, Eleanor, filed the underlying action—a 232-page complaint against the Trust and the Trust’s attorney (now, collectively the Trust). They alleged that, based on our footnote in *Tikalsky*, No. 2020AP1345, ¶62 n.24 (where we advised Steven that he had had ample opportunities to raise the issue of the alleged false testimony during the multi-year pendency of the litigation, including by bringing an independent action on equitable grounds), they were now bringing an independent action to challenge the summary judgment order on equitable grounds.

Broadly, Steven and Eleanor’s new complaint refuted arguments and affidavits that were filed by the Trust in support of its summary judgment motion from the previous lawsuit. Steven and Eleanor alleged that because of the Trust’s filings in the previous case, they were entitled to equitable relief from the circuit court’s grant of summary judgment on Steven’s undue influence claim, and equitable restitution from Steven’s siblings based on their wrongful conduct in the form of Steven’s expected one-quarter share of inheritance. Steven and Eleanor also argued the Trust abused the process by making various statements during the course of the prior litigation in relation to the Trust’s summary judgment motion.

In lieu of an answer, the Trust moved to dismiss Steven and Eleanor’s complaint for a variety of independent reasons. The Trust also moved for a determination that the complaint was frivolous and sought attorney fees as a sanction. Following briefing and argument, the circuit court dismissed the complaint for some of the reasons offered by the Trust, including application of the litigation privilege, claim preclusion, laches, and statute of limitations.

The circuit court also expressed concern that Steven and Eleanor’s complaint was frivolous. It advised the parties that it would require briefing as to whether the complaint was

frivolous and whether it should grant sanctions against Steven and Eleanor in the form of attorney fees. Following briefing and argument, the court concluded Steven and Eleanor's complaint was entirely frivolous, and it awarded attorney fees as a sanction for the frivolous filing. Steven and Eleanor appeal.

We first consider Steven and Eleanor's equitable claims for restitution and for relief from the circuit court's summary judgment order from the previous litigation. Broadly, these claims are based on Steven and Eleanor's assertion that the Trust's summary judgment materials from the previous lawsuit contained misrepresentations and Steven and Eleanor did not learn of these misrepresentations until 2017, after the court had granted summary judgment. The court dismissed Steven and Eleanor's equitable claims based, in part, on the doctrine of laches.

"Laches considers whether a party has brought an equitable claim within a reasonable time." *Kaiser v. Townline CTH-N LLC*, 2024 WI App 59, ¶49, 414 Wis. 2d 50, 13 N.W.3d 251. "It is based on the 'notion that equity aids the vigilant, and not those who sleep on their rights to the detriment of the opposing party.'" *Id.*, ¶50 (citation omitted). "The party raising laches must prove three elements: '(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.'" *Id.* (citation omitted). If all the elements are proven, application of laches is left to the discretion of the circuit court. *Id.*

Here, we agree with the circuit court that laches bars Steven and Eleanor's equitable claims against the Trust. Steven and Eleanor could have sought equitable relief years ago, and instead waited until the appeal rights from the previous case had been exhausted before bringing

more claims against the Trust. There is also no indication that the Trust knew Steven and Eleanor would file a second lawsuit against them alleging additional claims.

As for the third element, prejudice “may be economic or evidentiary” and “it is ‘generally held to be anything that places the party in a less favorable position.’” *Id.* (citation omitted). “[E]videntiary prejudice arises when the plaintiff’s ‘delay in bringing an action has curtailed the defendant’s ability to present a full and fair defense on the merits due to the loss of evidence, the death of a witness, or the unreliability of memories.’” *Id.* (citation omitted). “Economic prejudice arises when the ‘costs to the defendant have significantly increased due to the delay.’” *Id.* (citation omitted).

In this case, the Trust alleged both evidentiary prejudice (“a number of witnesses are now dead”) and economic prejudice (the Trust “will need to spend time and attorneys’ fees to relitigate the same issues previously litigated over eight years ... in the prior lawsuit”) in its dismissal motion. In Steven and Eleanor’s opposition brief, they responded to the Trust’s prejudice argument by stating that the Trust has access to the record and evidence from the prior case. Given the circumstances of this case, we conclude that at a minimum, it is economically prejudicial to require the Trust to now litigate equitable causes-of-action that could have been brought before the close of the prior case.

The circuit court applied the doctrine of laches, reasoning:

it’s not equitable for this Court to allow claims to proceed today that could have been and ought to have been and would have been and in some cases [were] litigated in the prior action. Under the doctrine of laches, ... these claims have now been brought many times, but it is not equitable for the Court to determine that these types of cases or claims can be brought today, when they were brought previously, could have been brought previously and in

some cases were litigated previously to adverse decisions that [Steven and Eleanor] don't or won't accept.

We conclude the court properly dismissed the equitable claims based on laches. *See id.* Because we affirm the court's dismissal of the equitable claims on the basis of laches, we do not discuss whether the court appropriately dismissed these claims based on other doctrines and defenses. *See State v. Blalock*, 150 Wis. 2d 688, 703, 442 N.W.2d 514 (Ct. App. 1989) (cases should be decided on the "narrowest possible ground").

We next turn to Steven and Eleanor's various claims for abuse of process. "An abuse of process occurs when a person uses a legal process against another primarily to accomplish a purpose for which it is not designed." WIS JI—CIVIL 2620. Steven and Eleanor's abuse-of-process claims are generally based on statements the Trust made during the course of the prior litigation in relation to the Trust's summary judgment motion. The complaint generally alleges that the Trust abused the process by making statements that attempted to induce Steven to dismiss his original complaint before the Trust moved for summary judgment, by using summary judgment to make statements that were not based on personal knowledge and/or were false, and by using summary judgment to make statements that caused emotional distress to Steven and Eleanor.

The applicable statute of limitations, which the parties stipulate is three years, *see* WIS. STAT. § 893.57, forecloses claims based on much of the conduct alleged in the complaint. To the extent anything survives the statute of limitations, Steven and Eleanor fail to account for the rule that "[s]tatements 'pertinent or relevant to the case' that are made in the process of judicial proceedings are absolutely privileged and insulate the speaker from liability." *Ladd v. Uecker*, 2010 WI App 28, ¶¶13, 15, 323 Wis. 2d 798, 780 N.W.2d 216 (citation omitted). As such, we

agree with the Trust that these statements cannot form a basis for Steven and Eleanor’s abuse-of-process claims. Steven and Eleanor do not adequately develop other bases for these claims. We therefore affirm the circuit court’s dismissal of Steven and Eleanor’s abuse-of-process claims based on the statute of limitations and the litigation privilege. Because we affirm the court’s dismissal of the abuse-of-process claims on these bases, we do not discuss whether the court appropriately dismissed these claims based on other doctrines and defenses. *See Blalock*, 150 Wis. 2d at 703.

Finally, we turn to the circuit court’s determination that Steven and Eleanor’s complaint was frivolous and its award of attorney fees as a sanction. Steven and Eleanor do not challenge the amount of the attorney fees awarded on appeal. Instead, they only challenge the court’s determination that their complaint was frivolous.

At the order to show cause hearing, the circuit court observed that to defeat a frivolous determination, Steven and Eleanor needed to show that they “had a good faith basis for the application of either existing law or a nonfrivolous argument for the extension, modification, or

reversal of existing law, or establishment of new law under [WIS. STAT. §] 802.05.”² However, the court determined that, based on the briefs and argument, Steven and Eleanor failed to establish they had a good faith basis for the application of either existing law or a nonfrivolous argument for the extension, modification, or reversal of existing law, or establishment of new law.

We disagree. As explained above, the circuit court’s application of laches was discretionary, and as for the other defenses raised and applied, Steven and Eleanor presented sufficiently reasonable arguments why they might not apply to the specific claims they asserted. Accepting the factual allegations in Steven and Eleanor’s complaint as true, as we are required to do at this stage, *Data Key Partners v. Permira Advisers LLC*, 2014 WI 86, ¶18, 356 Wis. 2d 665, 849 N.W.2d 693, we are unable to conclude that Steven and Eleanor lacked a good faith basis in the law for this action.

Because we reverse the circuit court’s ruling that the complaint is frivolous, we deny the Trust’s request for attorney fees in connection with its defense of the circuit court’s frivolousness

² WISCONSIN STAT. § 802.05(2) provides, in relevant part:

By presenting to the court, ... a pleading, written motion, or other paper, an attorney ... is certifying that to the best of the person’s knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, all of the following:

....

(b) The claims, defenses, and other legal contentions stated in the paper are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.

Id.

finding on appeal. See ***Riley v. Isaacson***, 156 Wis. 2d 249, 262, 456 N.W.2d 619 (Ct. App. 1990) (if a complaint is correctly adjudged to be frivolous in the circuit court, it is frivolous per se on appeal).

Therefore,

IT IS ORDERED that the dismissal order is summarily affirmed, the frivolousness and sanctions order is summarily reversed, and the cause is remanded for further proceedings consistent with this opinion. See WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that the Trust's request for attorney fees on appeal is denied.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals