

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 8, 2000

Cornelia G. Clark
Acting Clerk, Court of Appeals
of Wisconsin

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.

No. 99-0720

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**URSULA SKARVAN BOCHER, INDIVIDUALLY AND AS THE
SURVIVING SPOUSE OF ANTHONY SKARVAN, SR., URSULA
SKARVAN (BERTRAND) HINZ, AND SHERRIE SKARVAN
JAGOZINSKI,**

PLAINTIFFS-APPELLANTS,

V.

**ANTHONY SKARVAN, JR., INDIVIDUALLY AND AS
TRUSTEE, RAYMOND M. CLARK, ATTORNEY,
INDIVIDUALLY AND IN A FIDUCIARY CAPACITY, AND
GARY AND MARIANNE KAZMIER,**

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Shawano County:
EARL W. SCHMIDT, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Ursula Skarvan Bocher and her daughters, Ursula Skarvan Hinz and Sherrie Skarvan Jagozinski, (collectively referred to as Bocher), appeal a judgment dismissing their complaint against Gary and Marianne Kazmier. Their complaint sought to invalidate a trust on the grounds of mental incapacity and undue influence and to void the trustee's sale of trust property to the Kazmiers. Bocher argues that the trial court erroneously granted the Kazmiers' motion for judgment on the pleadings, holding that as bona fide purchasers for value, they are insulated from liability. We reject Bocher's argument and affirm the judgment of dismissal.

¶2 Bocher argues that the complaint alleges facts from which to find that no valid trust was ever formed and, therefore, the court erred when it ruled that she had no claim to the property conveyed to the Kazmiers. We are unpersuaded. We start with the premise that when reviewing the legal sufficiency of a complaint, the court must accept as true the facts pleaded and all reasonable inferences to be drawn from those facts. *See Hillcrest Golf & Country Club v. City of Altoona*, 135 Wis. 2d 431, 434, 400 N.W.2d 493 (Ct. App. 1986). We will affirm the judgment of dismissal only if it is clear that under no conditions could the plaintiff recover. The complaint must be given a liberal construction in favor of stating a claim. *See id.* If the facts as pleaded reveal an apparent right to recover under any legal theory, they are sufficient. *See id.* at 434-35.

¶3 Giving the complaint liberal interpretation, we glean the following essential allegations. Ursula and her late husband, Anthony Skarvan, Sr., owned more than 120 acres of land. In 1984, the family learned that Anthony, Sr., suffered from Alzheimer's disease and was incompetent to manage his affairs. Nonetheless, on April 10, 1985, Ursula and Anthony, Sr., entered into an irrevocable trust agreement drafted by attorney Raymond Clark which named their

son, Anthony, Jr., as trustee. The agreement conveyed to the Skarvan Beneficiary Trust all their real and personal property. Ursula and her daughters are trust beneficiaries.

¶4 Bocher claims that she was induced to enter into the trust agreement because of undue influence. There is no dispute that the trust agreement authorized Anthony, Jr., to market the real estate. Bocher claims, however, that Anthony, Jr., with the assistance of Clark, subsequently entered into a series of transactions designed to “denude the properties of their value, to encumber them substantially, to deprive the beneficiaries of the trust property and to unjustly enrich himself” and a business he owned.

¶5 In February 1998, Anthony, Jr., sold three parcels of real estate to the Kazmiers for \$81,000. Anthony, Jr., kept the proceeds of the sale and refused to account for them. The complaint asserts claims against Clark and Anthony, Jr., based on fraud, breach of fiduciary duty, misrepresentation, and conversion of trust assets. Bocher seeks damages from Anthony, Jr., and Clark. She also seeks to set aside the trust and the conveyances of real estate to the Kazmiers.

¶6 The Kazmiers answered and alleged that they purchased the real estate for a fair market price as bona fide purchasers in an arm’s length transaction. Bocher does not dispute this allegation. Relying on WIS. STAT. § 112.01 (3)¹ of the Uniform Fiduciaries Act, the Kazmiers moved for judgment on the pleadings, asserting that the complaint admits the Kazmiers purchased the property from a trustee authorized to sell, but fails to allege that the Kazmiers did

¹ All statutory references are to the 1997-98 edition.

not purchase the property in good faith. The trial court dismissed the claims against the Kazmiers.

¶7 We conclude that the trial court properly dismissed Bocher's claim against the Kazmiers. First, we acknowledge Bocher's premise that "a valid trust can be created only where the trustor or settlor has the legal competence to make a contract and to make a disposition of the legal title to his property." 76 AM. JUR. 2D *Trusts* § 55, at 84 (1992). Also, "[t]he general rules regarding the effect of invalidating causes apply to conveyances and contracts connected with the creation of a trust." GEORGE GLEASON BOGERT, TRUSTS AND TRUSTEES 2D § 44, at 452 (1984). One example would be undue influence. *See id.* Consequently, Bocher has alleged facts that would invalidate the trust agreement.

¶8 Bocher's premise, however, does not necessarily lead to her conclusion. Trust beneficiaries may follow and recover trust property that has been wrongfully diverted when the rights of innocent third parties have not intervened. *See Hocking v. Hocking*, 484 N.E.2d 406, 410 (Ill. App. 1985). However, an "important rule which limits the power of a beneficiary or other holder of an equitable interest to pursue and claim property is the doctrine to the effect that the transfer of the legal estate in property to a bona fide purchaser for value cuts off all equities in the same property." BOGERT, *supra* § 881, at 204.

This principle of equity is so well-established that it is often found in statutes which attempt to restate a large part of the judge-made law. Sometimes statutes protect bona fide purchasers dealing with trustees whose acts are later found to have been null and void because of the invalidity of the will or other instrument under which they have acted.

Id. at 205.

¶9 It does not matter what the positions of the predecessors in the chain of title have been as long as the ultimate purchaser is an innocent receiver of the legal title. *See id.* at 206. Several reasons have been cited for the rule, including commercial expediency. *See* BOGERT, *supra* § 882, at 217. Early cases held that “[i]n order to move the [court of chancery] to deprive the defendant of his legal title and possession, the complainant must show that the defendant holds these rights unfairly or dishonestly, but this cannot be done where the defendant is a bona fide purchaser.” *Id.*

¶10 Here, the Kazmiers raised as a defense to the complaint that they were bona fide purchasers for value. Bocher did not amend her complaint to allege otherwise and does not now contend that the Kazmiers were not bona fide purchasers for value. Therefore, Bocher has not joined issue whether the Kazmiers are bona fide purchasers for value. Also, Bocher cites no legal authority for her assertion that mental incapacity or undue influence on the part of the settlor invalidates the trustee’s conveyance of trust property to a bona fide purchaser for value. Because there is no dispute that the Kazmiers are bona fide purchasers for value, we conclude that Bocher’s right to recover her property is limited by the rule that “the transfer of the legal estate in property to a bona fide purchaser for value cuts off all equities in the same property.” BOGERT, *supra*, § 881, at 204. Consequently, the trial court correctly entered judgment on the pleadings.

¶11 Bocher further contends that the trial court misapplied WIS. STAT. § 112.01(3).² We agree that this section does not expressly address the

² WISCONSIN STAT. § 112.01(3), of the Uniform Fiduciaries Act, provides:

APPLICATION OF PAYMENTS MADE TO FIDUCIARIES. A person who in good faith pays or transfers to a fiduciary any money or other property which the fiduciary as such is authorized to

(continued)

circumstances alleged in the complaint that because the trust itself is invalid, the trustee's conveyance to a third party is null and void. Nonetheless, we conclude that even if § 112.01(3) would not apply, Bocher has not alleged any right to relief because she fails to claim that the Kazmiers were not bona fide purchasers for value. *See* BOGERT, *supra* § 882, at 217. Therefore, the trial court properly entered judgment of dismissal. *See Negus v. Madison Gas & Elec.*, 112 Wis. 2d 52, 61 n.3, 331 N.W.2d 658 (Ct. App. 1983) (We will affirm the trial court if the court reached the correct result, even if we employ different reasoning.).

¶12 Even if WIS. STAT. § 112.01(3) may not control the precise circumstances presented, we are persuaded that our result is consistent with the legislative policy evinced by this section. “The various subparts of sec. 112.01, Stats., generally preclude liability by a third party dealing with a fiduciary if the third party acts in good faith and without actual knowledge that the fiduciary is committing a breach of his obligation.” *Bolger v. Merrill Lynch Ready Assets Trust*, 143 Wis. 2d 766, 775, 423 N.W.2d 173 (Ct. App. 1988). Moreover, the third party is not bound to inquire and is not chargeable with notice unless the third party enters into the transaction knowing that the fiduciary is committing the breach of his obligation. *See id.*

¶13 Here, the trust instrument, attached and made part of the complaint, appoints Anthony, Jr., its trustee and authorizes him, among other things, to transfer real estate. It would be inconsistent with the legislature's intent, as expressed in WIS. STAT. § 112.01, to hold that the burden is on the bona fide

receive, is not responsible for the proper application thereof by the fiduciary; and any right or title acquired from the fiduciary in consideration of such payment or transfer is not invalid in consequence of a misapplication by the fiduciary.

purchaser to inquire into the competency or capacity of the settlor when purchasing property from a trustee acting within the scope of the trust instrument. Because Bocher has asserted no legal authority to the contrary, we conclude that the trial court correctly determined that the Kazmiers' status as bona fide purchasers for value insulates them from liability under the circumstances alleged in the complaint. Accordingly, the trial court properly dismissed the complaint against them.³

By the Court.—Judgment affirmed.

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

³ The record indicates that Bocher is not left without any remedy; the action apparently will proceed against Anthony, Jr., and Clark. Because our holding is dispositive, we do not address alternative arguments advanced by Bocher. See *Norwest Bank Wisconsin Eau Claire, N.A. v. Plourde*, 185 Wis. 2d 377, 383 n.1, 518 N.W.2d 265 (Ct. App. 1994).

