COURT OF APPEALS
DECISION
DATED AND FILED

May 12, 2016

Diane M. Fremgen
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. 2015AP758 **Cir. Ct. No. 2014CV5831**

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

JEANNA FRENCH AND PAULA VAN AKKEREN,

PLAINTIFFS-APPELLANTS,

V.

ATTORNEY'S LIABILITY ASSURANCE SOCIETY AND QUARLES & BRADY, LLP,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Milwaukee County: CHRISTOPHER R. FOLEY, Judge. *Affirmed*.

Before Kloppenburg, P.J., Lundsten and Higginbotham, JJ.

¶1 PER CURIAM. Jeanna French and Paula Van Akkeren filed this legal malpractice action against Quarles & Brady, LLP and its malpractice insurance carrier, alleging that the law firm and its attorney were negligent and breached their fiduciary duties in drafting certain trust documents that established

an irrevocable trust in which Jeanna French and Paula Van Akkeren were the beneficiaries.[1] The circuit court dismissed the beneficiaries' claims on three grounds: (1) the claims are barred by the six-year statute of limitations; (2) the claims are barred by the doctrine of issue preclusion; and (3) the beneficiaries lack standing. The beneficiaries appeal.

¶2 The dispositive issue on appeal is whether the beneficiaries' claims are barred by the statute of limitations. *See* WIS. STAT. § 893.53 (2013-14).[2] More specifically, the dispositive issue is when the beneficiaries had information that would give a reasonable person notice of injury and its cause, such that their legal malpractice claims accrued and the limitations period began to run. As we explain below, we conclude that the legal malpractice claims are time barred, because the beneficiaries had sufficient information by November 2005 and the beneficiaries did not file this action until more than eight years later.[3] Therefore, we affirm.

[1] The trust was executed by James French to benefit his four children, including Jeanna French and Paula Van Akkeren. Although Jeanna French and Paula Van Akkeren are not the sole beneficiaries, for ease of writing in this opinion we refer to them as if they were and, therefore, refer to them collectively as the beneficiaries. Also, we refer to James French as James.

[2] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

[3] Because our decision as to the statute of limitations disposes of this appeal, we do not address the law firm's other arguments that: the beneficiaries lack standing; issue preclusion prevents relitigation of decisions rendered in a separate federal court decision in which the beneficiaries sued the trustee Wachovia Bank; and the beneficiaries fail to state a claim for which relief can be granted. *See* ***Maryland Arms Ltd. P'ship v. Connell***, 2010 WI 64 ¶48, 326 Wis. 2d 300, 786 N.W.2d 15 ("Issues that are not dispositive need not be addressed.").

BACKGROUND[4]

¶3 We summarize the facts as alleged by the beneficiaries in their amended complaint.[5]

¶4 In 1991, Quarles & Brady and its attorney Kathleen Gray prepared trust documents for James French, the beneficiaries' father, to establish two irrevocable trusts for the benefit of his children upon his death. The trust documents contain a clause under the heading of Trustee "Powers and Duties" that states that the trustee shall have the power "to deal with any trust hereunder without regard to conflicts of interest."

¶5 In December 2004, Wachovia became the trustee for the trust pertinent to this appeal. In March 2005, Wachovia presented James with a proposal for a "1035 Exchange," whereby two life insurance policies in the trust would be exchanged for two "no-lapse life-insurance policies."

¶6 On April 7, 2005, Wachovia asked James and his children to sign a waiver of conflict of interest, because the broker for the proposed 1035 Exchange was an affiliate of Wachovia and would earn a commission on the transaction. James refused to sign the waiver and instructed his children to do the same.

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[4] The beneficiaries' principal brief on appeal contains almost no citation to the record. We admonish the beneficiaries that WIS. STAT. RULE § 809.19(1)(d) and (e) requires appropriate citations to the record on appeal and that a general footnote reference to the amended complaint is not in conformity with the rules. *See* ***Casey v. Smith***, 2013 WI App 24, 346 Wis. 2d 111, 115 n.1, 827 N.W.2d 917.

[5] As we note below, a motion to dismiss based on the statute of limitations is treated as a motion for summary judgment. Here, however, neither party presented in the circuit court evidentiary material beyond the allegations in the beneficiaries' amended complaint. Accordingly, we, like the circuit court, base our decision taking those allegations as true. We note that the law firm does not dispute the allegations on which we rely in this opinion.

¶7 On May 18, 2005, Wachovia withdrew its request for a signed waiver of conflict of interest, and informed attorney Gray: "[O]ur legal counsel has determined that after reviewing the facts and circumstances in this case, [Wachovia] will not require the signing of any waivers by the beneficiaries of the French Trust."

¶8 By May 20, 2005, the exchange was completed and an initial commission of $512,000 was paid to Wachovia's affiliate. Wachovia's affiliate continued to receive two percent of the annual insurance premiums every year until 2014, bringing the total commission amount to $548,000.

¶9 On May 27, 2005, James demanded from Wachovia and its affiliate "copies of all paperwork related to the exchange as well as a copy of the waiver request and … the amount of the commission." Wachovia and its affiliate provided that information on June 13, 2005.

¶10 In November 2005, James and his children retained new counsel and demanded that Wachovia reverse the transaction. Wachovia refused.

¶11 In July 2006, the children filed an action against Wachovia for breach of fiduciary duty, alleging that the trust documents prohibit self-dealing and conflicts of interest absent express written waiver, and that Wachovia completed the exchange without obtaining such a waiver. In July 2011, the federal district court in that action granted summary judgment in favor of Wachovia, held that the trust documents unambiguously authorized Wachovia to engage in self-dealing, and awarded Wachovia attorney's fees and costs. *See generally* ***French v. Wachovia Bank, Nat. Ass'n***, 800 F. Supp. 2d 975 (E.D. Wis. 2011). The Seventh Circuit affirmed that decision in July 2013. *See generally* ***French v. Wachovia Bank, N.A.***, 722 F.3d 1079 (7th Cir. 2013).

¶12 In July 2014, the beneficiaries filed this legal malpractice action against the law firm's insurance carrier. The beneficiaries amended the complaint in August 2014 and added the law firm as a defendant. The amended complaint alleges that the law firm and attorney Gray "were negligent, and breached the fiduciary duties they ow[ed] James French and the beneficiaries of the Trust, in drafting the trust instruments to permit the trustee … to effectuate transfers in trust assets despite having conflicts of interest, and despite self-dealing, without first informing James French and/or the beneficiaries that such conduct was permitted under the Trust documents in securing their consent to such terms." The beneficiaries seek as damages the attorney's fees they paid their own counsel in the federal litigation, the attorney's fees the federal court in that litigation ordered them to pay to reimburse Wachovia, and the alleged lost value of the trust.[6]

¶13 In October 2014, the law firm filed a motion to dismiss asserting among other defenses that the claims are barred by the statute of limitations. The circuit court granted the motion to dismiss, and the beneficiaries now appeal.

DISCUSSION

¶14 As we stated above, the dispositive issue on appeal is whether the beneficiaries' legal malpractice claims are barred by the statute of limitations. "A threshold question when reviewing a complaint is whether the complaint has been timely filed, because an otherwise sufficient claim will be dismissed if that claim is time barred." ***Pritzlaff v. Archdiocese of Milwaukee***, 194 Wis. 2d 302, 312, 533 N.W.2d 780 (1995). Generally, "[a] motion to dismiss based on the statute of

[6] In their briefing on appeal, the beneficiaries indicate that they also seek as damages the $548,000 commission paid to the Wachovia affiliate for the 1035 Exchange.

limitations is treated as a motion for summary judgment." ***Dakin v. Marciniak***, 2005 WI App 67, ¶4, 280 Wis. 2d 491, 695 N.W.2d 867; *see also* WIS. STAT. § 802.06(2)(b). "Accordingly, the statute of limitations issue is subject to our independent review." ***Willowglen Academy-Wisconsin, Inc. v. Connelly Interiors, Inc.***, 2008 WI App 35, ¶9, 307 Wis. 2d 776, 746 N.W.2d 570. As we proceed to explain, we conclude that, based on the allegations in the amended complaint, the beneficiaries' legal malpractice claims are barred by the statute of limitations.

¶15 The parties appear to agree that the malpractice claims in this case are governed by the six-year statute of limitations under WIS. STAT. § 893.53.[7] *See generally* ***Hicks v. Nunnery***, 2002 WI App 87, ¶17, 253 Wis. 2d 721, 643 N.W.2d 809 ("The applicability of the six-year statute of limitations under WIS. STAT. § 893.53 to legal malpractice actions is well established.").

¶16 "To prevail in an action for legal malpractice, a plaintiff must prove four elements: (1) a lawyer-client relationship existed; (2) the defendant committed acts or omissions constituting negligence; (3) the attorney's negligence caused the plaintiff injury; and (4) the nature and extent of injury." ***Id.***, ¶33.

¶17 The parties' dispute concerns the latter two elements, specifically when the beneficiaries had information that would give a reasonable person notice of their injury and its cause. *See* ***Claypool v. Levin***, 209 Wis. 2d 284, 300-301,

[7] The law firm suggests that the breach of fiduciary duty claim is subject to a shorter statute of limitation. Both the negligent drafting and the breach of fiduciary duty claims arose from the same facts and accrued on the same day. Because we conclude that the negligent drafting claim is barred by the longer six-year statute of limitations, it follows that the breach of fiduciary duty claim, subject to the same or a shorter statute of limitation, is also time barred.

562 N.W.2d 584 (1997). The law firm argues, as it did in its motion to dismiss, that the beneficiaries' malpractice claims accrued no later than November 2005, after: (1) the 1035 Exchange had occurred without James' and the children's waiver of conflict of interest; (2) the commission had been paid to Wachovia's affiliate; (3) the children had discharged the law firm as their attorneys; (4) the children had retained replacement counsel who demanded that Wachovia reverse the exchange; and (5) Wachovia had refused to do so. Because the claim accrued no later than November 2005, so the argument goes, and the beneficiaries did not file this malpractice action until more than eight years later in July 2014, the claims are time barred.

¶18 The beneficiaries concede that the law firm's alleged negligent drafting authorizing self-dealing took place in 1991, and that the law firm's alleged failure to so inform the beneficiaries took place before the beneficiaries replaced the law firm with new counsel in November 2005. However, the beneficiaries argue that their claims are not time barred because the claims did not accrue until July 6, 2011, when the federal district court issued its decision in their action against Wachovia and the beneficiaries "learned that the trust documents permitted the insurance exchange despite Wachovia's self-dealing and conflict of interest." The beneficiaries appear to argue that they relied on replacement counsel's and attorney Gray's advice or statements and that the advice or statements suggested to the beneficiaries that Wachovia, not the law firm, was the cause of their injury. The beneficiaries contend that, by relying on the advice or statements, they exercised "reasonable diligence" to discover the cause of their injury and failed to do so. This reasonable reliance, the beneficiaries argue, prevented them from discovering the cause of their injury until after the federal court's decision was rendered.

¶19 In the sections that follow, we begin with general legal principles on claim accrual and the discovery rule and a discussion of our supreme court's decision in ***Hennekens v. Hoerl***, 160 Wis. 2d 144, 465 N.W.2d 812 (1991), on which the beneficiaries rely. Next, we apply those legal principles to this case and conclude that the beneficiaries had information that would give a reasonable person notice of their injury and its probable cause by November 2005, so that their legal malpractice claims accrued in November 2005 and are therefore time barred. We then examine and reject the beneficiaries' argument that their attorney's legal advice excused them from discovering their injury and its probable cause until the federal court decision was rendered. Finally, we reject the beneficiaries' other arguments to the contrary as misplaced or not preserved in the circuit court.

A. Legal Principles: When Claims Accrue and the Discovery Rule

¶20 "It is well settled that a cause of action accrues when there exists a claim capable of enforcement, a suitable party against whom it may be enforced, and a party with a present right to enforce it." ***Pritzlaff***, 194 Wis. 2d at 315. "A party has a present right to enforce a claim when the plaintiff has suffered actual damage, defined as harm that has already occurred or is reasonably certain to occur in the future." ***Id.***

¶21 "The discovery rule does not change these basic propositions, it simply defines some of the elements." ***Id.*** "That is, the discovery rule is so named because it tolls the statute of limitations until the plaintiff discovers or with reasonable diligence should have discovered that he or she has suffered actual damage due to wrongs committed by a particular, identified person." ***Id.*** "Until that time, plaintiffs are not capable of enforcing their claims either because they do

not know that they have been wronged, or because they do not know the identity of the person who has wronged them." ***Id.*** at 315-16 (citation omitted).

¶22 "The cause of an injury is 'discovered' when a potential plaintiff has information that would give a reasonable person notice of the cause of injury." ***Jacobs v. Nor-Lake, Inc.***, 217 Wis. 2d 625, 636, 579 N.W.2d 254 (Ct. App. 1998). "This does not mean that if there is more than one reasonable cause of the injury that discovery cannot occur." ***Claypool***, 209 Wis. 2d at 300-01. A plaintiff "cannot wait until he or she is certain about the cause, or wait for expert verification of known information." ***Jacobs***, 217 Wis. 2d at 636. "[A] valid legal opinion is *not* necessary for discovery to occur." ***Claypool***, 209 Wis. 2d at 300-01 (emphasis added). "[D]iscovery occurs when the potential plaintiff has information that would give a reasonable person notice of her injury and its cause *regardless* of whether she has been given a misleading legal opinion." ***Id.*** (emphasis added).

¶23 Additionally, a plaintiff "can rely on the discovery rule only if he or she has exercised reasonable diligence." ***Allen v. Wisconsin Public Service Corp.***, 2005 WI App 40, ¶8, 279 Wis. 2d 488, 694 N.W.2d 420 (quoted source omitted). "Reasonable diligence means 'such diligence as the great majority of persons would use in the same or similar circumstances' to discover the cause of the injury." ***Id.*** (quoted source omitted). "[O]nce a person either discovers the injury or in the exercise of reasonable diligence should have discovered the injury, nothing, including a misleading legal opinion, can cause the injury to become 'undiscovered.'" ***Claypool***, 209 Wis. 2d at 301.

B. Hennekens v. Hoerl

¶24 A close look at the pertinent facts and analysis in ***Hennekens***, 160 Wis. 2d 144, in this section will help inform our answer to the ultimate question in the next section: When did the beneficiaries have information that would give a reasonable person notice of injury and its cause?

¶25 In July 1981, Hennekens entered into a land purchase agreement, in which attorney Hoerl represented Hennekens. Under that agreement, Hennekens agreed to purchase land from Gene Crotteau for $225,000. Hennekens signed a promissory note for the amount, due August 16, 1981. ***Id.*** at 149, 157. In October 1981, Hennekens received a letter from Crotteau's attorney stating that Hennekens had not satisfied the note and that Crotteau would commence a foreclosure action against Hennekens on the note if payment was not received by October 27. ***Id.*** at 150. Hennekens did not satisfy the promissory note and did not receive the land from Crotteau. ***Id.***

¶26 After a third party foreclosed on Crotteau's interest in the land, Hennekens purchased the land for $68,700. ***Id.*** In August 1985, Crotteau filed an action against Hennekens on the promissory note. In December 1987, Crotteau obtained a judgment against Hennekens for $210,481.98, the amount still owed on the note plus interest and less a credit for what Hennekens paid for the land. ***Id.*** at 150-51.

¶27 Hennekens incurred substantial attorney's fees in defending the action Crotteau brought against him on the promissory note. In August 1988, Hennekens commenced a legal malpractice action against Hoerl for negligently failing to insert a financing contingency clause in the land purchase agreement.

Id. at 147-48, 151. Hoerl argued on summary judgment that Hennekens' claims were barred by the six-year statute of limitations. ***Id.*** at 151.

¶28 Our supreme court was faced with two issues: (1) when Hennekens suffered actual damage and (2) whether Hennekens knew or, in the exercise of reasonable diligence, should have known of his actual damage more than six years prior to the time he commenced his action. ***Id.*** at 148.

¶29 As to the first issue, the supreme court held that Hennekens suffered actual damage on August 16, 1981, when the promissory note was due. The court reasoned that Hennekens "followed poor legal advice and, as a result, lost a legal right … to rescind the transaction and avoid liability on the promissory note." ***Id.*** at 156-57. The court held that Hennekens "suffered actual damage to [his] legal rights and interests when [he] received negligently drafted legal documents." ***Id.*** at 157. In so holding, the court concluded that the fact that Hennekens did not incur attorney's fees until 1985 did not affect when Hennekens suffered actual damage. *See* ***id.*** at 158. The court refused to adopt "the rule that a legal malpractice plaintiff's claim does not accrue until the plaintiff/client incurs legal fees defending a suit caused by the malpractice." ***Id.*** at 159.

¶30 As to the second issue, whether Hennekens knew or, in the exercise of reasonable diligence, should have known of his actual damage more than six years prior to the time he commenced his legal malpractice action, the supreme court held that, "as a matter of law, [Crotteau's attorney's] October 13, 1981, letter constituted *sufficient notice* to Hennekens of his injury so that his claim for relief accrued as of that date." ***Id.*** at 167-68 (emphasis added). Addressing Henneken's contention that he reasonably inferred "that the transaction was null and void when the seller was threatening foreclosure of both the mortgage and the promissory

note despite the fact that Hennekens had not received clear title to the land," the court held that "it was unreasonable for Hennekens to infer that the transaction was void after he received [the October 13, 1981 letter]" and that Hennekens "should have contacted an attorney in response to [the October 13, 1981] letter." ***Id.*** at 165, 168. Important here, the ***Hennekens*** court did not state that the statute of limitations period would have tolled if, hypothetically, an attorney had then given Hennekens bad legal advice. Rather, as the supreme court stated in ***Claypool***, once a plaintiff discovers his injury, nothing can make that injury "undiscovered," not even misleading legal advice. *See* ***Claypool***, 209 Wis. 2d at 301.

¶31 Finally, the supreme court in ***Hennekens*** stated that Hennekens could have filed an action for declaratory judgment to determine Henneken's rights and obligations under the promissory note and "could have made [Hoerl and his insurer] parties to the declaratory judgment action … by alleging in the alternative that either [Hennekens] is not liable on the promissory note or that, if he is liable on the note, [Hoerl and his insurer] are liable to him for the amount of his liability on the note." ***Hennekens***, 160 Wis. 2d at 166-67. The court reasoned: "In this manner, Hennekens could have determined his liability on the note *while not sleeping on his right to bring a malpractice action* against [Hoerl and his insurer]." ***Id.*** at 167 (emphasis added).

C. Application of Legal Principles Here

¶32 Similar to the supreme court in ***Hennekens***, we are faced with two issues: (1) when the beneficiaries suffered actual damage and (2) whether the beneficiaries knew or, in the exercise of reasonable diligence, should have known

of their actual damage more than six years prior to the time they commenced this action. *See* ***id.*** at 148.

¶33 The relevant sequence of events in this case is as follows:

- 1991 – Attorney Gray and the law firm draft and prepare trust documents for James French.
- December 2004 – Wachovia becomes trustee.
- March 2005 – Wachovia proposes the 1035 Exchange.
- April 2005 – Wachovia requests conflicts waiver.
- May 2005 – Wachovia rescinds request for conflicts waiver by letter; 1035 Exchange is executed; commission is paid to Wachovia's affiliate.
- November 2005 – James and the beneficiaries discharge the law firm and retain new counsel; new counsel requests that Wachovia reverse the transaction; Wachovia refuses.
- July 2006 – James and the beneficiaries sue Wachovia.
- July 2011 – federal district court grants summary judgment in favor of Wachovia.
- November 2011 – Deadline for commencing action if period of limitations is computed from date the law firm was discharged.
- July 2013 – federal court of appeals affirms judgment in Wachovia case.
- July 2014 – beneficiaries commence this legal malpractice action against the law firm's insurer.
- July 2017 – Deadline for commencing action if period of limitations is computed from date the federal district court rendered decision in Wachovia case.

¶34 From this sequence, it is apparent that, just as Hennekens "suffered actual damage to [his] legal rights and interests when [he] received negligently drafted legal documents," the beneficiaries here suffered actual damage to their legal rights and interest when they received allegedly negligently drafted trust

documents in 1991 that gave the trustee power to "deal with any trust hereunder without regard to conflicts of interest." *See* ***Hennekens***, 160 Wis. 2d at 157. Also like Hennekens, the beneficiaries' claims did not necessarily accrue in 1991, but rather when the beneficiaries knew of or, in the exercise of reasonable diligence, should have discovered the injury, namely the actual damage to their legal rights and interest, and its cause. *See* ***id.*** at 160.

¶35 As we now explain, we conclude that at least by November 2005, the beneficiaries had sufficient information that would give a reasonable person notice of their injury and notice that a probable cause was negligent drafting by the law firm and, therefore, their legal malpractice claims accrued as of then.

¶36 By November 2005, the information available to the beneficiaries would have triggered a reasonable person to look at the trust documents. As noted from the above time sequence, by April 2005, the beneficiaries knew that there was potentially a conflict of interest issue if the 1035 Exchange went through because Wachovia specifically asked them to sign a conflicts waiver. On May 18, 2005, Wachovia withdrew its request and gave the reason that upon review by its "legal counsel" of the facts and circumstances, it would "not require the signing of any waivers by the beneficiaries of the French Trust." By May 20, 2005, the 1035 Exchange went through, and the commission was paid to Wachovia's affiliate. If the information up until this point was not enough to signal to the beneficiaries to look at the trust documents and see whether this transaction involving conflicts of interest was authorized, then the beneficiaries certainly would have had sufficient information by November 2005, when the beneficiaries hired new counsel and demanded that Wachovia reverse the transaction, and Wachovia refused. At that point, a reasonable person would have wondered whether the reason for

Wachovia's refusal was because the trust could reasonably be read as authorizing Wachovia to refuse.

¶37 Notably, and key to the resolution of this case, a reasonable person looking at the trust documents would see that it plainly gives the trustee the power "to deal with any trust hereunder *without regard to conflicts of interest*." In other words, the plain language of the trust documents provided the beneficiaries with notice of their injury, namely receiving trust documents that authorize self-dealing, and a probable cause to their injury, namely the law firm's allegedly negligent drafting of the trust documents.

¶38 The beneficiaries argue that the allegedly bad or misleading legal advice or statements from attorney Gray and the replacement counsel prevented them from discovering the law firm's allegedly negligent drafting of the trust documents as a probable cause of their injury. Case law, however, precludes this argument. As our supreme court held in ***Claypool***, "[O]nce a person either discovers the injury *or in the exercise of reasonable diligence should have discovered the injury*, nothing, including a misleading legal opinion, can cause the injury to become 'undiscovered.'" ***Claypool***, 209 Wis. 2d at 301. Moreover, if the beneficiaries had any doubt as to their rights under the trust documents, the beneficiaries could have, as our supreme court similarly suggested in ***Hennekens***, made the law firm a party in its action against Wachovia, and in this manner, could have determined the meaning of the trust documents while not sleeping on their right to bring a malpractice action against the law firm. *See* ***Hennekens***, 160 Wis. 2d at 166-67.

D. Beneficiaries' Counter Arguments

¶39 We discern several overlapping counter arguments by the beneficiaries to the conclusion that their legal malpractice claims accrued no later than November 2005. First, the beneficiaries argue that a distinct legal malpractice claim did not accrue until one part of their damages arose. That is, when a federal court ordered the beneficiaries to pay Wachovia's attorney's fees incurred in the federal litigation. They argue that this claim for attorney's fees accrued separately from their claim for loss in value of the trust assets and the commission. The beneficiaries present no legal authority supporting their argument that a separate harm gives rise to a separate claim. As reviewed above, the legal authority is to the contrary. As our supreme court stated in ***Hennekens***, in response to the argument that Hennekens did not suffer actual damage until he was sued on the promissory note and incurred attorney's fees in defending against the suit:

> We disagree. Monetary loss is not the only form of actual damage. One form of actual damage is injury to a legal interest or loss of a legal right. Injury to a legal interest or loss of a legal right often occurs without a contemporaneous monetary loss. However we have held that injury to a legal interest or loss of a legal right constitutes actual damage before such an injury or loss produces monetary loss.

Hennekens, 160 Wis. 2d at 153-54.

¶40 Here, an "actual" damage was the loss of the beneficiaries' rights and legal interest when the trust documents were drafted to authorize self-dealing, and the beneficiaries had sufficient information as to that actual damage and its cause in November 2005, for all the reasons stated above. We reject their argument that their suffering additional monetary loss, allegedly as a result of the

law firm's malpractice, starts a new limitations period because their argument is unsupported.

¶41 It appears that the beneficiaries' argument tied to attorney's fees and the federal court's decision in July 2011 was also not raised in the circuit court. "Arguments raised for the first time on appeal are generally deemed forfeited ...." ***State Farm Mut. Auto. Ins. Co. v. Hunt***, 2014 WI App 115, ¶32, 358 Wis. 2d 379, 856 N.W.2d 633 (quoted source omitted). For this reason, too, we decline to address this argument further.

¶42 Similarly, the beneficiaries make an alternative argument on appeal that their claims accrued in May 2011 based on "the continuing negligence doctrine," but that argument was also not raised in the circuit court. Therefore, we decline to consider this alternative argument further.

¶43 Finally, the beneficiaries argue that they are entitled to discovery to establish that the law firm "is equitably estopped from asserting its statute of limitations defense." They base this argument on attorney Gray's submission in May 2011 of an affidavit in the federal action averring that the trust document she drafted in 1991 did not authorize self-dealing, and the law firm's acknowledgement in its 2014 circuit court brief that the trust document attorney Gray drafted "unequivocally" permitted trustee self-dealing. The beneficiaries contend that such conduct is "unconscientious or inequitable," and that, if they "can demonstrate that they would have filed suit against [the law firm] before the expiration of the statute of limitations had [the law firm] admitted earlier what it admits now, [the law firm] is equitably estopped from asserting its statute of limitations defense." This argument, too, is raised for the first time on appeal. While the beneficiaries made a one-sentence assertion that the law firm is

equitably estopped from asserting a statute of limitations defense in the beneficiaries' sur-reply brief in the circuit court, the beneficiaries made no argument supporting that assertion. Therefore, we decline to consider the argument they now make for the first time on appeal.

CONCLUSION

¶44 In sum, the beneficiaries' legal malpractice claims against the law firm are barred by the six-year statute of limitations, because the claims accrued by November 2005 and the beneficiaries did not initiate this action until more than eight years later in July 2014.

By the Court.—Judgment affirmed.

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