

VIRGINIA:

*In the Supreme Court of Virginia held at the Supreme Court Building in the
City of Richmond on* Friday *the* 7th *day of* March, 2014.

Donna D. Pettit, et al., Appellants,
against Record No. 130508
Circuit Court No. CL12-1125
Ronald A. Pettit, Sr., Appellee.

Upon an appeal from a
judgment rendered by the Circuit
Court of Stafford County.

Upon consideration of the record, briefs, and argument of
counsel, the Court is of opinion that there is no reversible error
in the judgment of the circuit court.

On September 11, 2012, Donna D. Pettit and Christopher M.
Pettit ("Plaintiffs") filed a "Complaint to Remove Executor"
("Complaint") against their brother, Ronald A. Pettit, Sr.
("Defendant"), seeking to remove him as executor of the estate of
their father, Harvey L. Pettit ("Harvey"). Plaintiffs alleged
that, while serving as Harvey's agent and attorney-in-fact during
Harvey's lifetime, Defendant breached fiduciary duties owed to
Harvey by making substantial unauthorized gifts and engaging in
self-dealing. They alleged that there were several questionable
transactions appearing in Harvey's bank records that needed to be
investigated. Because the executor has the duty to investigate all
possible claims of the estate, Plaintiffs alleged that Defendant
was inherently conflicted in his duties as executor of Harvey's
estate. Thus, Plaintiffs sought removal of Defendant and
appointment of an independent fiduciary as administrator, c.t.a.

Defendant filed a special plea in bar asserting that the Complaint was time barred. Defendant argued that the two-year "catch-all" limitations period in Code § 8.01-248 applied to the underlying claims for breach of fiduciary duty, and that the acts complained of by Plaintiffs occurred at least two years prior to the filing of the instant Complaint. Defendant also argued that Plaintiffs did not receive the benefit of the tolling provisions in Code § 8.01-229. He argued that, because all of Plaintiffs' claims are time barred, the Complaint should be dismissed with prejudice.

Plaintiffs responded by arguing that, if Defendant were removed as executor, the successor personal representative would not be time barred from bringing claims against Defendant for breach of fiduciary duty. Plaintiffs stated that "[t]he applicable statute of limitations for breach of fiduciary duty, in accordance with Section 8.01-248 . . . is two years. The focus of our inquiry, however, is whether and/or for how long the application of the statute has been tolled." Plaintiffs argued that, because Defendant had refused to resign or bring a claim against himself on behalf of the estate, the limitations period was tolled pursuant to Code § 8.01-229(D).

The circuit court sustained the special plea in bar. The court held that Plaintiffs' claims were barred by the two-year limitations period set forth in Code § 8.01-248, and that Plaintiffs did not receive the benefit of the tolling provisions in Code § 8.01-229.

Plaintiffs filed a motion to reconsider, arguing that the circuit court erroneously held that the Complaint, as opposed to the underlying breach of fiduciary duty claims asserted therein, is

governed by the two-year statute of limitations in Code § 8.01-248. Plaintiffs argued that there is no governing statute of limitations for the Complaint because an action to remove an executor is purely equitable. They argued that the doctrine of laches generally applies to purely equitable claims. Plaintiffs simultaneously filed an endorsed order memorializing the court's ruling and noting their objection "for the reasons stated in the [m]otion to [r]econsider." By cover letter, Plaintiffs requested a fifteen-minute hearing on the motion prior to entry of the order. They also sent a copy of the letter and motion to the chambers of the judge assigned to the case.

On January 2, 2013, without hearing argument on the motion to reconsider, the court entered the order dismissing the Complaint with prejudice.

On appeal, Plaintiffs' sole assignment of error is that the circuit court incorrectly determined that the Complaint is governed by the two-year limitations period set forth in Code § 8.01-248, rather than the equitable doctrine of laches. Defendant responds that Plaintiffs' assignment of error was not properly preserved pursuant to Rule 5:25 and that, in any event, it is without merit.

Assuming without deciding that Plaintiffs' assignment of error was properly preserved, and that the doctrine of laches applies to the Complaint, the Court is of opinion that the circuit court's judgment must be affirmed.

While an action to remove a fiduciary may be governed by laches, the underlying issue in the Complaint relates to a failure to pursue specific actions that are now time barred by the statute of limitations governing those actions. Despite language in the

special plea asserting that "the Complaint is barred by the applicable statute of limitations," a review of the pleadings and transcript reveals that the circuit court also was asked to determine whether the underlying claims for breach of fiduciary duty asserted in the Complaint are barred by the applicable statute of limitations. For instance, in the memorandum in support of his special plea, Defendant stated: "because all of Plaintiffs' claims are time barred, the Complaint should be dismissed in its entirety with prejudice." Likewise, Plaintiffs' arguments in response to the special plea focused on whether Code § 8.01-248 would bar a successor personal representative from bringing claims for breach of fiduciary duty against Defendant.

The circuit court ultimately held that the breach of fiduciary duty claims asserted in the Complaint are time barred pursuant to Code § 8.01-248. No party has assigned error to this ruling; thus, it has become the law of the case and we may not consider the issue on appeal. See Commonwealth v. Luzik, 259 Va. 198, 206, 524 S.E.2d 871, 876 (2000).

Plaintiffs' "Complaint to Remove Executor" is premised entirely on Defendant's failure to investigate certain claims on behalf of the estate based upon Defendant's alleged breach of fiduciary duties while serving as Harvey's agent and attorney-in-fact. Because the circuit court determined that the estate's claims for breach of fiduciary duty are time barred, there are no viable claims remaining that could be brought by a successor personal representative. Consequently, no reason has been alleged to remove Defendant as executor of Harvey's estate. Accordingly,

the circuit court's judgment is affirmed. The appellants shall pay to the appellee two hundred and fifty dollars damages.

This order shall be certified to the said circuit court.

A Copy,

Teste:

Pat L Hamilton

Clerk