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STATE OF MICHIGAN

IN THE SUPREME COURT
(On Appeal from the Michigan Court of Appeals)

In re ESTATE OF JENNIFER L. FOWLER.

SHELLIE SPACIL, Personal Representative
Of The ESTATE OF JENNIFER L. FOWLER,
Appellant,

v.

SC: 167501
COA: 365600
St. Clair PC: 19-000085-DE

JULIE BROOKS, Personal Representative
Of The Estate of Helen Fowler,
Appellee.
_____/

In re ESTATE OF JENNIFER L. FOWLER.

SHELLIE SPACIL, Trustee for the JENNIFER
L. FOWLER TRUST,
Appellant,

v.

SC: 167502
COA: 365603
St. Clair PC: 22-000259-CZ

JULIE BROOKS, Personal Representative of
The Estate of Helen Fowler,
Appellee.
_____/

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In re ESTATE OF JENNIFER L. FOWLER.

SHELLIE SPACIL, Trustee for the JENNIFER L. FOWLER TRUST,
Appellant,

v.

SC: 167503
COA: 365610
St. Clair PC: 2022-000259-CZ

JULIE BROOKS, Personal Representative of The ESTATE OF HELEN FOWLER,
Appellee.
_____/

APPELLANT JENNIFER FOWLER TRUST'S SUPPLEMENTAL REPLY BRIEF IN SUPPORT OF APPLICATION FOR LEAVE TO APPEAL

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STATEMENT OF FACTS IN SUPPORT OF SUPPLEMENTAL REPLY BRIEF

The underlying facts of the case were set forth in the Briefs and Appendices already filed with the Court and will not be repeated.

Unfortunately, Appellee continues its efforts to malign Shellie Spacil, the Personal Representative of the Estate of Jennifer Fowler, and the Trustee of the Jennifer Fowler Trust, with his assertion that Ms. Spacil had testified that the Helen Fowler Estate was not to receive "one dime" and that she would continue to spend whatever attorney fees and costs were necessary until a court ordered her otherwise. Appellee Supplemental Brief, page 1, Introduction.

As the facts relevant to the issue before the Court are not in dispute and the issues are matters of law regarding the interpretation of MCL 700.7605; MCL 700.7605 and MCL 500.2207, the actions of Shellie Spacil are irrelevant to the issues before the Court. More importantly, despite the opportunity to appeal from the trial court's decision denying Appellee's Petition to Remove Ms. Special as Personal Representative, [Appellant's Appendix pp 486-488.], Appellee's did not but continue to muddy the waters and attack Ms. Spacil to somehow gain a perceived advantage.See Appellant's Appendix 11, pp. 479-488. In fact, the trial court specifically found:

> "Because the court finds that Special had the authority to seek a resolution of the questions which were presented in her petition, it does not find that Spacil has failed to perform a duty of her office. Similarly, the court cannot

> find that Spacil is incapable of discharging her duties as personal representative or that her removal is in the best interest of Jennifer's Estate, as she has acted within the permissible bounds of her position. Accordingly, the request for her removal as personal representative of Jennifer's Estate is denied."

The claimed issues regarding Ms. Spacil and her defense of the Estate of Jennifer Fowler are irrelevant to this Applicant for Leave to Appeal and the outcome of this case.

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ARGUMENT

WHETHER THE 401(k) ACCOUNT AND LIFE INSURANCE PROCEEDS ARE SUBJECT TO THE CLAIMS OF CREDITOR'S OF THE ESTATE OF JENNIFER FOWLER

Whether a trust was revocable or irrevocable is a question of the intention of the settlor. Fornell v Fornell Equipment, Inc, 390 Mich 540, 551 (1973). Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. MCL 700.7602(1). Unfortunately, in addressing the issues presented in the action, Appellee seeks to turn trust law on its head.

Revocable vs Irrevocable:

The Jennifer Fowler Trust is a Revocable Trust. The Trust provides in relevant part:

> "Article One
>
> Creation of My Trust
>
> Section 1. My Tru1st
>
> ***
>
> My trust is a revocable living trust that contains my instructions for my own well-being and that of my loved ones." Appellants Appendix, p. 11.
>
> ***
>
> Article Four
>
> "Administration of My Trust
> During My Lifetime
>
> Section 1. My Lifetime Powers

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> During my life, I shall have the express and total power to control and direct payments, make investment decisions, add or remove trust property, and amend or revoke this trust." Appellants Appendix, p. 16.
>
> ***
>
> "Article Six
>
> Administration of My Trust upon My Death
>
> Section 1. My Administrative Trust
>
> Upon my death, my trust shall become irrevocable and my Trustee shall administer all trust property under the terms of this Article…[.]." Appellants Appendix, p. 32.

MCL 700.7103(h) provides:

> "(h) '"Revocable"', as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest. A trust's characterization as revocable is not affected by the settlor's lack of capacity to exercise the power of revocation, regardless of whether an agent of the settlor under a durable power of attorney, a conservator of the settlor, or a plenary guardian of the settlor is serving."

Pursuant to its expressed terms, the Jennifer Fowler Trust is and was a revocable trust, which Ms. Fowler could amend and/or revoke at any time during her life, and the Trust then became irrevocable upon her death. Upon the death of Jennifer Fowler, the revocable trust became irrevocable and the rights of beneficiaries of a revocable trust became a vested. In re Childress Trust, 194 Mich App 319 (1992). Contrary to the claim of Appellee, the Jennifer Fowler Trust did not become an irrevocable trust, rather, the power to amend/revoke the trust ceased, and the revocable trust became irrevocable and the rights of beneficiaries were fixed.

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Likewise, Appellee's citation of Sparling v Sparling, unpublished Michigan Court of Appeals decision, docket no: 355843, decided June 16, 2022, attached as **Exhibit A**, has no application to this case. In Sparling, the issue concerned the statute of limitations to challenge an Irrevocable Trust.

In the case at bar, the Jennifer Fowler Trust is a revocable trust, which became irrevocable upon the death of Jennifer Fowler, pursuant to the terms of the Trust.

Chicorel:[1]

To add further confusion to its argument, Appellee erroneously claims that the United State District Judge in United States v Estate of Chicorel, "transformed" the revocable trust into "a fictitious "irrevocable trust"'. [2] Nothing could be further from the truth.

In fact, the Court correctly noted that the issue before the Court was whether Michigan law authorizes creditors to collect from a revocable trust made irrevocable by the death of the settlor. In addressing whether all assets of a revocable trust, which became irrevocable as a result of the death of the settlor, versus only those assets which existed in the trust prior to or at the time of the death of the settlor, are subject to the claims of creditor's of the Estate of the deceased,[3] the Judge Cleland correctly noted and found:

> "Defendant argues that MCL 700.7506(1) and 7605(1) 'plainly make the assets of a *revocable* trust subject to the claims of creditors under certain circumstances.

---

[1] United States v Estate of Chicorel, United States District Court for the Eastern District of Michigan January 17, 2017, Decided; January 17, 2017, Case No. 16-10894, 2017 U.S. Dist. LEXIS 229139,

[2] Page 3 of Appellee's Supplemental Brief.

[3] Appellant acknowledges that the assets of the Estate of Jennifer Fowler are insufficient to satisfy claims of creditor's and that the provisions of MCL 700.7605 apply.

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> However, trust funds are only subject to claims of a decedent's creditors to the extent that these funds existed in a *revocable* trust at the date of decedent's death.' (Dkt. # 14, Pg. ID 102 (double emphasis in original). *Because the trust received the death benefit proceeds only after the trust became irrevocable and not otherwise part of the estate, Defendant argues those proceeds are unreachable by Decedent's creditors.* (*Id.*) [Emphasis added]
>
> ***
>
> The government's construction[4] ignores the most salient statutory provision, which provides:
>
> > "For purposes of this section, property held or received by a trust to the extent that the property would not have been subject to a claim against the settlor's estate if it had been paid directly to a trust created under the settlor's will or other than to the settlor's estate, or property received from a trust other than a trust described in this section, shall not be considered trust property available for the payment of the administration expenses, a claim against the settlor's estate, or an allowance described in subsection (1). MCL 700.7605(4)."
>
> Had Decedent used a testamentary trust instead of a revocable living trust, sections 7605(1) and 7506(1) unambiguously would not apply and the death benefit proceeds would not be subject to claims of the estate's creditors. In effect, Defendant's assertion that the statute does not apply to property held outside of a revocable trust at the time of Decedent's death is correct." Appellant's Supplemental Appendix, pp 16-17.

The district judge did not create a "fictitious irrevocable trust"; rather, the district judge correctly interpreted MCL 700.7506; MCL 700.7605 and MCL

[4] The IRS claimed that all property held by a trust made irrevocable by the death of the settlor is always reachable by creditors under Michigan law. This argument was rejected by the district judge.

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700.7605(4) and found that the revocable trust became irrevocable upon the death of the settlor..

MCL 700.7506(1)(b) provides:

> "After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that at the settlor's death was revocable by the settlor, either alone or in conjunction with another person, is subject to expenses, claims, and allowances as provided in section 7605.

MCL 700.7506(1)(b) clearly only applies to property which was in a revocable trust at the time of the death of the settlor.

MCL 700.7605(1) provides in part:

> "The property of a trust over which the settlor has the right . . . at his or her death, either alone or in conjunction with another person, to revoke the trust and revest principal in himself or herself is subject to . . . . (b) An enforceable and timely presented claim of a creditor of the settlor[.]

MCL 700.7605(1) likewise only applies to property which was in a revocable trust at the time of the death of the settlor.

At the time of her death, Jennifer had a vested interest in the DTE Electric Company Savings & Stock Ownership Plan ("the 401(K) Plan"). [Appellant's Appendix 5]. The beneficiary of the Plan was the Jennifer L. Fowler Trust. [Appellant's Appendix 5]. Jennifer also had an interest in an employee group whole life insurance policy, which was a benefit of Jennifer Fowler's employment. [Appellant's Appendix 3-4]. The life insurance had no cash value. [Appellant's

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Appendix 3-4]. The beneficiary of the life insurance policy was the Jennifer Fowler Trust. [Appellant's Appendix 3, pp 115, 142]. These employment benefits were not assets of the Trust at the time of Jennifer's death and only became assets as a result of the Trust being the beneficiary of both the 401(k) and the life insurance policy.

In fact, as correctly noted in Chicorel, and supported by MCL 700.7605(4), the assets must be in the revocable trust at the time of the death of the settlor before MCL 700.7605(1) applies. MCL 700.7605(4) specifically exempts both the 401(k) and life insurance proceeds as they were not assets of the revocable trust at the time of Jennifer Fowler's death, and they were paid to the named beneficiary, which was "other than to the settlor's Estate".

History of Revocable Trusts and Settlor's Creditors

Whether rooted under a fraudulent conveyance theory or otherwise, MCL 700.7506(1)(a) merely codified Michigan common law where a creditor can of a settlor can satisfy claims against the settlor's revocable trust. In Re Johannes, 191 Mich App 514 (1991); Colman v Department of Mental Health, (In Re Hertzberg Inter Vivos Trust), 457 Mich 430 (1998). The Court's uniformly find that public policy prohibits one from establishing a revocable trust over which they hold the power to amend and/or revoke and to protect those assets from creditors, and creditors can reach the assets of the trust. In fact, this Court in Colman held:

> "[w]e find persuasive and adopt Restatement Trusts, 2d, § 156. Section 156 states:

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> (1) Where a person creates for his own benefit a trust with a provision restraining the voluntary or involuntary transfer of his interest, his transferee or creditors can reach his interest.
>
> (2) Where a person creates for his own benefit a trust for support or a discretionary trust, his transferee or creditors can reach the maximum amount which the trustee under the terms of the trust could pay to him or apply for his benefit. [Id., p 326.]
>
> As recognized by the Court of Appeals in *In re Johannes Trust, supra*, it would be contrary to public policy to allow a person to shelter assets from creditors in a trust of which he is the beneficiary." Colman, 457 Mich at 434.

In the instant case, during the lifetime of Jennifer Fowler neither asset was an asset of the Trust. Furthermore, during her lifetime, creditors of Jennifer Fowler could not seize the 401(k) or the life insurance as: a.) The 401(k) was exempt from claims of creditors under ERISA, 29 USC 1056(d); and b.) the life insurance policy had no cash value, and the benefits are not payable until death. The Trust was the named beneficiary of the death benefit of each of these assets, and thus they were not assets of the Jennifer Trust at the time of Ms. Fowler's death. Thus, MCL 700.7506 and the holding in Colman have no application and exemption these assets does not run afoul of either the history or public policy regarding pursuing revocable trusts to enforce claims against an Estate.

In addressing Appellee's historic argument, of importance is the timing of when the 401(k) and the life insurance proceeds became assets of the Jennifer Fowler Trust. The 401(k) is payable to the named beneficiary upon the death of the owner, Jennifer. The rights of a beneficiary of a life insurance policy become absolute

upon the death of the insured. Aetna Life Ins Co v Owens, 318 Mich 129, 138-139 (1947); Dogariu v Dogariu, 306 Mich 392, 406 (1943). Thus, it is clear that the life insurance proceeds were never assets of the Jennifer Fowler Trust prior to her death.

EPIC Framework

It is undisputed that the assets of the Estate of Jennifer Fowler are insufficient to satisfy its claims. While MCL 700.3805(3) directs a personal representative to seek payment from a trust, MCL 700.7605(1), the payment is only allowed if the assets are available or not otherwise exempt pursuant to MCL 700.7506 and MCL 700.7605. No matter what argument Appellee seeks to assert, MCL 700.7506 and MCL 700.7605, required that the assets being pursued were assets in the trust at the time of the death of settlor.

As correctly noted by district judge Cleland in Chicorel:

> "Had Decedent used a testamentary trust instead of a revocable living trust, sections 7605(1) and 7506(1) unambiguously would not apply and the death benefit proceeds would not be subject to claims of the estate's creditors. In effect, Defendant's assertion that the statute does not apply to property held outside of a revocable trust at the time of Decedent's death is correct." Appellant's Supplemental Appendix, pp 16-17.

While EPIC has a procedure to seek trust assets to satisfy claims of an Estate's creditors, in the instant case, as the 401(k) and life insurance benefits were not assets of the revocable trust at the time of Jennifer Fowler's death, they cannot be attached to satisfy the claims of the Estate, MCL 7605(1) and MCL

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7506(1) and are further specifically exempt pursuant to MLC 7506(4), they are beyond the reach of the creditors of the Estate of Jennifer Fowler.

Terms of the Trust

Oddly enough, Appellee claims that both the 401(k) retirement proceeds and the life insurance proceeds are payable to creditors of Jennifer Fowler's Estate under the terms of the Trust. Appellee's argument is misplaced.

The Trust provides:

> Article Six
>
> "Administration of My Trust upon My Death
>
> Section 2. Payment of Expenses, Claims, and Taxes
>
> My Trustee is authorized, but not directed, to pay the following:
>
> Expenses of my last illness and my final arrangements, including, without limitation, burial or cremation, memorials, and funeral or memorial services of such kind as my trustee, in its sole discretion, shall approve. In exercising this discretion, my Trustee shall be guided, but not controlled, by the Memorial Instructions, if any, that I have provided in my Estate Planning Portfolio.
>
> Legally enforceable claims against me or my estate.
>
> Expenses with regard to the administration of my estate.
>
> ***
>
> The payments authorized under this Section are discretionary, and no claims or right to payment by third parties may be enforced against my trust by virtue of such discretionary authority.
>
> ***

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> My trustee is prohibited from using proceeds from life insurance, endowment policies, or annuity contracts to satisfy any legally enforceable claims against me or my estate that arose prior to my death" Appellants Appendix, p. 32-33.

As clearly set forth in the Trust, the authority which Appellee now appears to invoke is solely within discretion of the Trustee, is not mandatory, and with all due respect, is not an issue before this Court for decision.

RELIEF REQUESTED

WHEREFORE, Appellant requests this Court reverse the decision of the Michigan Court of Appeal and hold that both the 401(k) and life insurance benefits are exempt and not subject to the claim of the creditors of the Estate of Jennifer Fowler.

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CERTIFICATE OF COMPLIANCE WITH MCR 7.305(A)(1)

In compliance with MCR 7.305(A)(1), I hereby certify that Appellant's Supplemental Reply Brief in Support of Application for Leave to Appeal contains 2,765 countable words as determined by Microsoft Word "Wordcount"; the typeface used is Century Schoolbook set at a 12 point font except for footnotes.

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June 11, 2025

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EXHIBIT A

If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

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STATE OF MICHIGAN

COURT OF APPEALS

MARY SPARLING,

Plaintiff-Appellee,

v

JOHN R. SPARLING, as Co-Trustee of the WALTER SPARLING IRREVOCABLE GRANTOR TRUST,

Defendant-Appellant,

and

GREGORY L. SPARLING, as Co-Trustee of the WALTER SPARLING IRREVOCABLE GRANTOR TRUST,

Defendant,

v

JEFFERY S. SPARLING, WILLIAM SPARLING, VICKI TURNBULL, DELORES GAUVEY, and JUDITH MILLER,

Interested Parties.

UNPUBLISHED
June 16, 2022

No. 355843
St. Clair Probate Court
LC No. 17-000427-CZ

Before: LETICA, P.J., and K. F. KELLY and RIORDAN, JJ.

PER CURIAM.

Defendant John R. Sparling appeals by right the trial court's opinion and order invalidating the Walter Sparling Irrevocable Trust. Finding no errors warranting reversal, we affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

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Walter Sparling and Mary Sparling were husband and wife, and married for 66 years before Walter's death in 2013. Walter and Mary had eight children: defendants John Sparling and Greg Sparling, interested parties Vicki Turnbull, Judith Miller, Delores Gauvey, Jeffrey Sparling, and William "Chuck" Sparling, and nonparty Wayne Sparling.[1]

Sometime in late November or early December 2012, Greg contacted Gary Fletcher, an attorney who had represented Walter and his businesses in the past. Fletcher arranged to meet with Greg, Walter, Mary, John, and Vicki at the Sparlings' business office to discuss upcoming tax changes that could have an impact on Walter and Mary's estates. Specifically, there was a concern that at the end of 2012, the estate tax exemption would decrease from $5 million to $1 million, which would have a significant impact on their wealth.

At the meeting, Fletcher explained the tax situation to Walter and his family. Fletcher told the family that if the tax cuts were not extended beyond 2012, the Walter's revocable trust could pay higher taxes for all amounts above $1 million. According to Fletcher, Walter appeared to understand the implications of the potential change in tax treatment, and told Fletcher that he did not want to pay any more in taxes than he needed to.

After the meeting, Greg contacted Fletcher's office and instructed the firm to prepare the Irrevocable Trust. Walter did not have any input as to what assets would be used to fund the trust; that decision was made by John. John also signed a W-9 form as trustee of the Irrevocable Trust on December 13, 2012, even though no trust had been formed yet. Greg also contacted Tom Coleman, a family friend and notary public, to meet Walter at his house on December 14, 2012, to execute the trust documents. Walter, who was very sick that day, did not read the Irrevocable Trust before signing it. Although there were two signature blocks for witnesses as well, no witnesses observed Walter sign nor did any witnesses sign the Irrevocable Trust while Coleman was present. After Coleman notarized the Irrevocable Trust, John had two witnesses sign the already-notarized document.

Under the Irrevocable Trust, Walter acknowledged that the trust was "irrevocable" and that he "stands without power at any time to revoke, change, alter, amend or annul any of the provisions" of the Irrevocable Trust. John and Greg, as co-trustees of the Irrevocable Trust, were given the power to "pay over and distribute any portion or all of the remaining net income and principal" to the beneficiaries. John and Greg were also required to "distribute, pay over, and transfer to each beneficiary in equal shares, all of the property remaining in the trust ten years from the date of the Trust."

Two days later, on December 16, 2012, Walter began experiencing health problems and was admitted to the hospital for pneumonia. At the time, Walter was also experiencing chronic health issues related to his heart, kidney, and cognitive functions. Although eventually discharged, hospital staff had Mary sign Walter's discharge papers because he did not appear capable of understanding the after-care instructions. Walter died in November 2013.

[1] For ease of reading and to diminish confusion, we will refer to the parties by their first names.

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On August 17, 2017, Mary filed a complaint with the trial court seeking to invalidate the Irrevocable Trust. Mary alleged that copies of the Irrevocable Trust were not provided to her or Walter before signing them. Mary also alleged that on the day Walter signed the Irrevocable Trust, his health was in such poor condition that he did not understand what he was signing. On September 12, 2017, John answered the complaint and asserted various affirmative defenses.[2]

On October 25, 2017, John filed a motion for summary disposition under MCR 2.116(C)(7), asserting that the complaint was barred under the statute of limitations. In his motion, John argued that under MCL 700.7604, Mary's complaint was subject to a two-year statute of limitations. John also argued that even if the two-year limitations period did not apply, the three-year limitations for recovery of lost or stolen property, *i.e.*, conversion, under MCL 600.5805(10) applied to bar Mary's claims. The trial court rejected these arguments, concluding neither limitations period applied to Mary's complaint.

A jury trial commenced on February 12, 2019, to determine whether Walter had the requisite mental capacity to form the Irrevocable Trust. Ultimately, the jury returned a verdict that Walter did not have the requisite mental capacity on December 14, 2012, to form the Irrevocable Trust.

On February 3, 2020, the trial court began a bench trial to determine whether any of John's affirmative defenses applied, notwithstanding the jury's verdict. On December 7, 2020, the trial court entered a written opinion and order rejecting each of John's affirmative defenses. The trial court's order dissolved the Irrevocable Trust and returned all of its assets to Walter's revocable trust. This appeal followed.

II. STANDARDS OF REVIEW

"This Court . . . reviews de novo a trial court's decision on a motion for summary disposition." *Dell v Citizens Ins Co of America*, 312 Mich App 734, 739; 880 NW2d 280 (2015). In a motion under MCR 2.116(C)(7):

> [T]his Court must accept all well-pleaded factual allegations as true and construe them in favor of the plaintiff, unless other evidence contradicts them. If any affidavits, depositions, admissions, or other documentary evidence are submitted, the court must consider them to determine whether there is a genuine issue of material fact. If no facts are in dispute, and if reasonable minds could not differ regarding the legal effect of those facts, the question whether the claim is barred is an issue of law for the court. However, if a question of fact exists to the extent that factual development could provide a basis for recovery, dismissal is inappropriate. [*Hutchinson v Ingham Co Health Dep't*, 328 Mich App 108, 123; 935 NW2d 612 (2019) (quotation marks and citation omitted) (alteration in original).]

[2] Greg, a named defendant, did not defend the lawsuit because he believed the allegations in the complaint to be true.

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In addition, "[t]his Court reviews questions of statutory interpretation de novo." *Herald Co, Inc v Eastern Mich Univ Bd of Regents*, 475 Mich 463, 470; 719 NW2d 19 (2006). "The role of this Court in interpreting statutory language is to ascertain the legislative intent that may reasonably be inferred from the words in a statute." *Mich Ass'n of Home Builders v Troy*, 504 Mich 204, 212; 934 NW2d 713 (2019) (quotation marks and citations omitted). "[W]here the statutory language is clear and unambiguous, the statute must be applied as written." *Id.* (quotation marks and citations omitted) (alteration in original).

We "review[] a trial court's findings of fact in a bench trial for clear error and its conclusions of law de novo." *Alan Custom Homes, Inc v Krol*, 256 Mich App 505, 512; 667 NW2d 379 (2003). "A finding is clearly erroneous where, after reviewing the entire record, this Court is left with a definite and firm conviction that a mistake has been made." *Id.*

III. ANALYSIS

John first claims that the trial court erred when it denied his motion for summary disposition on the issue of whether Mary's claims are barred by the statute of limitations. Specifically, John claims the trial court erred when it concluded that Mary's claims were not subject to the two-year limitations period in MCL 700.7604 or the three-year limitations period in MCL 600.5805. With respect to the limitations period under MCL 700.7604, the trial court rejected the idea that the statute would apply because, by its terms, the limitations period only applies to revocable trusts. And with respect to the limitations period under MCL 600.5805, the trial court also concluded that section did not apply because Mary's complaint was not for the return of ill-gotten property. In neither case did the trial court err.

Under MCL 700.7604, a two-year limitations period applies to actions contesting the validity of revocable trusts. Specifically, that statute states, in relevant part:

> (1) A person may commence a judicial proceeding to contest the validity of *a trust that was revocable at the settlor's death* within the earlier of the following:
>
> (a) Two years after the settlor's death.
>
> (b) Six months after the trustee sent the person a notice informing the person of all of the following:
>
> (*i*) The trust's existence.
>
> (*ii*) The date of the trust instrument.
>
> (*iii*) The date of any amendments known to the trustee.
>
> (*iv*) A copy of relevant portions of the terms of the trust that describe or affect the person's interest in the trust, if any.
>
> (*v*) The settlor's name.
>
> (*vi*) The trustee's name and address.

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(*vii*) The time allowed for commencing a proceeding. [MCL 700.7604(1) (emphasis added).]

It is clear by the terms of the statute that the limitations periods in MCL 700.7604 apply only to "a trust that was revocable at the settlor's death . . . ." A revocable trust is defined as a trust "revocable by the settlor without the consent of the trustee or a person holding an adverse interest." MCL 700.7103(h).

There is no dispute that the Irrevocable Trust was not revocable at Walter's death. Moreover, John has offered this Court no authority that this Court should ignore the plain words of the statute when deciding this issue. The Irrevocable Trust simply does not fall within the ambit of MCL 700.7604, and we emphatically reject John's suggestion that we ignore the words in the statute. See *Mich Ass'n of Home Builders*, 504 Mich at 212 ("[W]here the statutory language is clear and unambiguous, the statute must be applied as written.") (quotation marks and citations omitted) (alteration in original).

Perhaps in anticipation of the issues with the preceding argument, John claims that the reference to revocable trusts applies equally to irrevocable trusts because once a settlor is deceased, all of the settlor's trusts become irrevocable. This argument, however, again ignores the plain words of the statute, which clearly focuses on the time period immediately preceding the settlor's death, not after. To read the statute otherwise would render the term "revocable" surplusage, as the qualifier would be unnecessary under John's interpretation. See *Ayotte v Dep't of Health and Human Servs*, 337 Mich App 29, 39; 972 NW2d 282 (2021) (stating this Court will "avoid a construction that would render any part of the statute surplusage or nugatory") (quotation marks and citations omitted). In other words, if the Legislature intended that all trusts—revocable or irrevocable—were subject to MCL 700.7604, it would not have needed to add the phrase "revocable at the settlor's death." Accordingly, the trial court did not err when it denied John's motion for summary disposition on the basis that MCL 700.7604 barred Mary's claims.

Similarly, we find unpersuasive John's contention that Mary's claims are barred under MCL 600.5805. While John's argument does not suffer from the same infirmities as the preceding argument, it is based on a mischaracterization of the complaint.

John claims that the complaint is not to determine Walter's mental capacity, but rather one for conversion. Conversion is defined as "any distinct act of domain wrongfully exerted over another's personal property in denial of or inconsistent with the rights therein." *Lawsuit Financial, LLC v Curry*, 261 Mich App 579, 591; 683 NW2d 233 (2004) (quotation marks and citation omitted). To establish conversion, a plaintiff must show: (1) a distinct act of dominion; (2) wrongfully exerted; and (3) over another's personal property. *Check Reporting Servs, Inc v Mich Nat'l Bank-Lansing*, 191 Mich App 614, 626; 478 NW2d 893 (1991). The limitations period for a conversion claim is three years. MCL 600.5805.

The plain language of Mary's complaint defeats this argument. In her complaint, Mary alleged she and Walter signed their respective irrevocable trusts after meeting with Fletcher, but that the actual documents were never read to or reviewed by them. Mary further alleged that as a result of Walter's failing health, he did not have the requisite mental capacity to form the intent to

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create the Irrevocable Trust. Thus, Mary sought an order deeming the Irrevocable Trust invalid and transferring all assets to Walter's Revocable Trust.

John is correct that this Court must read the complaint as a whole and should "look beyond the mere procedural labels used in the pleadings." See *Wiggins v Burton*, 291 Mich App 532, 561; 805 NW2d 517 (2011). But an analysis of the complaint, omitting procedural labels, does not lead us to the conclusion that Mary filed a claim for conversion. In many ways, this argument suffers from the same problems as the preceding one, in that it asks this Court to ignore the plain words on the page in favor of a misguided interpretation. If John's argument were correct, most, if not all claims to invalidate a trust would be a claim for conversion, rendering MCL 700.7604 nugatory, because all claims would be properly addressed under MCL 600.5805. We reject such an interpretation of the complaint. See *Ayotte*, 337 Mich App at 39.

In sum, the trial court did not err in its conclusion that neither MCL 700.7604 nor MCL 600.5805 time-barred Mary's complaint. Accordingly, we affirm the order of the trial court denying John's motion for summary disposition under MCR 2.116(C)(7).

Turning next to the trial court's decision to invalidate the Irrevocable Trust, John first argues that notwithstanding the jury's verdict regarding that Trust, a separate oral trust was formed during the meeting with Fletcher in the preceding days. We disagree.

Under MCL 700.7407, "a trust need not be evidenced by a trust instrument, but the creation of an oral trust and its terms may be established only by clear and convincing evidence." In *Kefgen v Davidson*, 241 Mich App 611, 625; 617 NW2d 351 (2000) (quotation marks and citations omitted) (alterations in original), we explained that clear and convincing evidence is evidence that

> "produce[s] in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable [the factfinder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue."

In addition, to create a trust, oral or written, all of the following factors must be met:

> (a) The settlor has capacity to create a trust.
>
> (b) The settlor indicates an intention to create the trust.
>
> (c) The trust has a definite beneficiary or is either of the following:
>
> (*i*) A charitable trust.
>
> (*ii*) A trust for a noncharitable purpose or for the care of an animal, as provided in section 2722.
>
> (d) The trustee has duties to perform.
>
> (e) The same person is not the sole trustee and sole beneficiary. [MCL 700.7402(1).]

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In this case, the jury returned a verdict that Walter did not have the requisite mental capacity to create the Irrevocable Trust, a finding that John does not challenge on appeal. Accordingly, if this Court were to focus only on the written Irrevocable Trust (the subject of the jury's verdict), the Irrevocable Trust fails at step one. See MCL 700.7402(1)(a). Yet John contends that the jury's verdict does not apply because the jury only focused on the written instrument, and did not decide whether Walter had the capacity to form an oral trust when he met with Fletcher and his family to discuss the upcoming potential tax changes. When viewed through those facts, John contends that an oral trust was created. We disagree.

There is no evidence to support the creation of an oral trust. During the meeting with Fletcher, John and Greg both testified that Fletcher did most of the talking when he explained the potential tax changes and the possible options available to Walter and Mary. The only statement anyone present remembered Walter saying was that he did not want the government to get more of his money than it was entitled to. This may be evidence that Walter wanted *something* done to counter the potential tax increases at the end of 2012, but it is not clear and convincing evidence that Walter created an oral trust. Moreover, it is evident that, to the extent Walter wanted anything done, he wanted a written trust prepared, evidenced by the fact that one was, in fact, prepared.

Moreover, once the meeting concluded, all parties agree that Walter did not have any further involvement with his financial affairs. Allen Francis, an attorney who worked with Fletcher, testified that he prepared the trust documents at Greg's request, and did not speak with Walter regarding the Irrevocable Trust. Likewise, Walter was never asked and did not have any input as to what assets would be placed into the trust (irrevocable or otherwise), and Greg and John changed the terms of the Irrevocable Trust without Walter's knowledge. In short, there was no evidence presented at either trial, let alone clear and convincing evidence, demonstrating Walter intended to or did in fact create an oral trust.[3]

Next, John argues the trial court erred when it concluded that the doctrine of election did not act to bar Mary's claims. John's assertions that Mary's complaint is barred by the doctrine of election is predicated on the idea that Mary received two benefits through execution of the Irrevocable Trust: (1) avoidance of *potential* tax increases; and (2) peace of mind knowing her children would be taken care of. Neither of these assertions are persuasive.

The doctrine of election is an extension of the law of equitable estoppel. *Holzbaugh v Detroit Bank & Trust Co*, 371 Mich 432, 435-437; 124 NW2d 267 (1963). In *Holzbaugh*, the Michigan Supreme Court explained the doctrine as follows: "If one accepts benefits because she was then satisfied with the will or because she has made up her mind to accept its provisions, then she is estopped from contesting the will." *Holzbaugh*, 371 Mich at 435. Similarly, in *Aiken v*

[3] As a companion to this argument, John contends that the trial court erred when it invalidated the Irrevocable Trust because Walter, Mary, and all of the beneficiaries ratified the oral trust. However, because we conclude that the trial court did not err when it determined there was no evidence of an oral trust, John's argument on this point must fail as well. Even if the nonexistence of the oral trust were not an issue for John, we are unconvinced that any party, and especially Mary, ratified the trust.

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Gonser, 342 Mich 29, 35; 69 NW2d 180 (1955) (quotation marks and citation omitted), the Michigan Supreme Court explained:

> A person cannot accept and reject the same instrument, or, having availed himself of it as to part, defeat its provisions in any other part; and this applies to deeds, wills, and all other instruments whatever . . . . This doctrine of election which prevents the assertion of repugnant rights, is but an extension of the law of equitable estoppel.

We reject the notion that the purported benefits Mary received through the creation of the Irrevocable Trust acted to estop her from invalidating it. In the first instance, Mary never actually received a benefit from the impending tax consequences because the tax increase never occurred. But even if the tax increase had occurred, it was *Walter's* estate, not *Mary's* estate, that stood to benefit from the creation of the Irrevocable Trust. And even if we were to agree that the intangible benefit of peace of mind is sufficient to invoke the doctrine of election, there is no actual evidence that John can point to in the record that demonstrates Mary received such peace of mind. In fact, if there is evidence that points in any direction, it would be that the Irrevocable Trust created anxiety and a great rift within the family. Accordingly, the trial court did not err when it concluded the doctrine of election did not bar Mary's claims.

Lastly, John contends that the trial court erred when it rejected his claim that the doctrine of laches barred Mary's claims. According to John, Mary waited almost five years to bring her claim, despite receiving benefits from it. We disagree.

Under the doctrine of laches, "[i]f a plaintiff has not exercised reasonable diligence in vindicating his or her rights, a court sitting in equity may withhold relief . . . ." *Knight v Northpointe Bank*, 300 Mich App 109, 114; 832 NW2d 439 (2013). "This is so because equity will not lend aid to those who are not diligent in protecting their own rights." *Id.* In other words, "[t]he doctrine of laches is concerned with unreasonable delay, and it generally acts to bar a claim entirely . . . ." *Mich Educ Employees Mut Ins Co v Morris*, 460 Mich 180, 200; 596 NW2d 142 (1999). Where, however, a claim is made within the prescribed statute of limitations, such a claim is "presumptively reasonable, and the doctrine of laches is simply inapplicable." *Id.*

Here, Mary brought her claim within the six-year limitations period in MCL 600.5813. Absent facts to overcome the presumption that the purported delay in bringing the claim was reasonable, we must reject John's argument that laches bars Mary's claims. See *Morris*, 460 Mich at 200. To that end, John advances no persuasive argument that Mary's delay was so unreasonable as to overcome the presumption she filed her complaint within a reasonable time. Similar to his doctrine of election argument, John focuses his analysis on the fact that Mary received certain benefits, such as tax avoidance and peace of mind, through the creation of the Irrevocable Trust. As explained above, these purported benefits are insufficient to overcome the presumption that Mary's delay was reasonable. In addition, John cannot show that whatever the delay, he or other beneficiaries suffered prejudice as a result.

Mary filed her claim within the limitations period, and there is no evidence that her delay in filing the claim was so unreasonable as to invoke the doctrine of laches. The trial court, therefore, did not err when it concluded the doctrine did not apply.

Affirmed. Mary, as the prevailing party, may tax costs. MCR 7.219(A).

/s/ Anica Letica
/s/ Kirsten Frank Kelly
/s/ Michael J. Riordan

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