

GRANDI V. GRANDI

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**WILLIAM H. GRANDI a/k/a BILLY GRANDI,
Trustee of Trust "B" and Sole Beneficiary
of Trust "B" of the Henry H. Grandi and
Kathryn M. Grandi Revocable Trust,
Plaintiff-Appellant,
v.
FABIOLA GRANDI, Individually and as
Personal Representative of the Estate
of Henry Howard Grandi, Deceased, and
THE ESTATE OF HENRY HOWARD
GRANDI, Deceased,
Defendants-Appellees,
IN THE MATTER OF THE ESTATE OF HENRY
HOWARD GRANDI, Deceased.**

No. A-1-CA-36271

COURT OF APPEALS OF NEW MEXICO

December 3, 2018

APPEAL FROM THE DISTRICT COURT OF EDDY COUNTY, Raymond L. Romero,
District Judge

COUNSEL

Martin, Dugan & Martin, W.T. Martin Jr., Carlsbad, NM, for Appellant

Newell Law Firm, Michael Newell, Lovington, NM, Jeff Diamond Law Firm, Jeffrey B. Diamond, Carlsbad, NM, for Appellees

JUDGES

LINDA M. VANZI, Chief Judge. WE CONCUR: J. MILES HANISEE, Judge, STEPHEN G. FRENCH, Judge

AUTHOR: LINDA M. VANZI

MEMORANDUM OPINION

VANZI, Chief Judge.

{1} Before this Court is the limited question of whether the district court correctly applied the equitable defense of laches to bar a claim by Plaintiff William H. Grandi (Billy¹) against his father's estate. Finding no abuse of discretion, we affirm.

I. BACKGROUND

{2} The following facts are not disputed. Henry Howard Grandi (Henry) and Kathryn M. Grandi (Kathryn), a married couple, created a trust in 1990 that included deeds to real property, along with water rights and mineral rights. There was also personal property assigned to the trust, namely farm equipment and vehicles. In 1999 Kathryn died. Upon her death, the trust provided that it would be split into Trust A and Trust B. Henry's half of the estate would go into Trust A, and Kathryn's half of the estate would go into Trust B. Trust A was amendable and revocable and Trust B was irrevocable. Upon Kathryn's death, Henry and Billy, Kathryn and Henry's son, became co-trustees of Trust B. Billy was also the sole beneficiary of Trust B, but the trust terms did not permit him or Henry to receive any benefit from Trust B during Henry's lifetime. Instead, Billy was entitled to benefit from Trust B only after Henry died. Until that time, income earned by Trust A was to be paid to Henry, and income earned by Trust B was to remain in Trust B. Under the Trust B terms, Henry had no right to access Trust B's income. In addition, Henry had "no power or right to direct the beneficial enjoyment of any disclaimed property in Trust B." Only if Henry were to become the sole trustee (in other words, if Billy died) did the terms of the trust allow him to receive income from the assets in Trust B. Henry was also not entitled to any payment of principal from Trust B unless Henry had substantially exhausted Trust A's assets, which never occurred.

{3} Although the terms of the original trust created Trust A and Trust B and provided for the transfer of assets following Kathryn's death, no books of account were created or conveyance documents executed transferring assets into either Trust A or Trust B. Instead, the farm and other assets continued to be operated as an undivided unit.

{4} In November 2006 Henry revoked Trust A and conveyed to himself a one-half interest in the real property, mineral and water rights, and personal property contained in Trust A. Trust B, being irrevocable, continued to hold "an undivided one-half interest in the real property, including appurtenant water rights, as well as minerals, together with an undivided one-half interest in the personal property that was in the [original trust]."

{5} Approximately seven years later, Henry died. Fabiola Grandi, whom Henry married after Kathryn's death, was Henry's sole heir according to his will. It was undisputed, and the district court found, that, contrary to the terms of the trust, "[f]rom

Kathryn's death until Henry's death, all income generated by all assets in Trust B did not go into Trust B."

{6} During probate of Henry's will, Billy filed a complaint, arguing that he "is . . . entitled to payment for all income that should have been placed in Trust B from the date of Kathryn's death" and requesting "judgment against the Estate . . . for all property, real or personal, that should be in Trust B and is not, as well as the income from the assets to which Trust B and Billy as beneficiary of Trust B was entitled." After a bench trial, the district court found that "Billy is entitled to distribution of one half of all the real property, appurtenant water rights, mineral rights, personal property, one half of which was to remain in [t]rust under the [t]rust agreement, and of the income generated by any of the above *since Henry's death*." (Emphasis added.) However, the district court denied Billy's claim "to one half of the income earned from oil and gas royalties from Kathryn's death forward" because this claim was barred by laches. The district court therefore dismissed Billy's claim with prejudice. Billy appealed. Additional findings by the district court are included in our discussion of Billy's arguments only as relevant to the issue this appeal presents.

II. DISCUSSION

{7} "Laches will lie when, in addition to other factors, there has been an unexplainable delay of such duration in asserting a claim as to render enforcement of such claim inequitable." *Skaggs v. Conoco, Inc.*, 1998-NMCA-061, ¶ 14, 125 N.M. 97, 957 P.2d 526. The analysis of laches is case-specific. "The length of time during which the party neglects the assertion of his rights which must pass in order to show laches varies with the peculiar circumstances of each case, and is not, like the matter of limitations, subject to an arbitrary rule." *Halstead v. Grinnan*, 152 U.S. 412, 416-17 (1894). To prevail on the defense of laches, the defendant must show:

- (1) Conduct on the part of the defendant, giving rise to the situation of which complaint is made and for which the complainant seeks a remedy;
- (2) delay in asserting the complainant's rights, the complainant having had knowledge or notice of the defendant's conduct and having been afforded an opportunity to institute a suit;
- (3) lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which she bases her suit; and
- (4) injury or prejudice to the defendant in the event relief is accorded to the complainant or the suit is not held to be barred.

Garcia v. Garcia, 1991-NMSC-023, ¶ 31, 111 N.M. 581, 808 P.2d 31 (alterations, internal quotation marks, and citation omitted). "The decision to apply laches is left to the sound discretion of the [district] court which we review only for an abuse of discretion." *Skaggs*, 1998-NMCA-061, ¶ 13.

{8} Except as noted below, Billy does not challenge the district court's findings of fact. "An unchallenged finding of the [district] court is binding on appeal." *Seipert v. Johnson*, 2003-NMCA-119, ¶ 26, 134 N.M. 394, 77 P.3d 298.

A. Henry's Conduct Gave Rise to the Situation of Which Billy Complains and for Which Billy Seeks a Remedy

{9} In his complaint, Billy contends that Henry breached his duties as trustee of Trust B and thereby deprived him of assets and income to which he was entitled as beneficiary of Trust B. Billy contends that he is entitled to restitution for Henry's failure to manage Trust B's assets and income in compliance with the terms of the trust. The district court found that, despite Trust B's requirements that "the income earned by Trust B's assets have to remain in Trust B and the surviving Grantor [Henry] has no right to access the income," "[a]ll the income generated by Trust A (later Henry, individually) and Trust B was left in a common fund and used to operate the undivided assets equally owned by Trust A (later Henry, individually) and Trust B." It further found that "Henry [commingled] Trust B's share of the income generated from oil and gas royalties, with his own funds and utilized . . . them to operate Grandi Farm." Thus, Henry's conduct gave rise to Billy's claim.

B. Billy Delayed in Asserting His Rights Despite Having Had Knowledge or Notice of Henry's Conduct and an Opportunity to Institute a Suit

{10} The second requirement is that "having had knowledge or notice of the defendant's conduct and having been afforded an opportunity to institute a suit[.]" the complainant nevertheless delayed in asserting his or her rights. *Garcia*, 1991-NMSC-023, ¶ 31. As to this element, the district court found that Billy, as co-trustee of Trust B, either knew or should have known about Henry's management of Grandi Farm and Trust B. Specifically, it found that

36. Billy knew that Henry ran the farm the same way as it had been prior to [Kathryn]'s death.

.....

44. Billy knew the [t]rust [a]greement made him a [s]uccessor [c]o-[t]rustee on August 24, 1990 when he signed it as such.

45. At the time Billy signed the [t]rust [a]greement[,], he was 36 years old.

46. Billy was at all times competent, was represented by independent counsel, and had access to trust documents.

47. Billy's signing of the [t]rust [a]greement as [s]uccessor [c]o-[t]rustee unequivocally represented his acceptance of the trusteeship.

48. Billy further accepted the trusteeship by exercising his powers as [s]uccessor [c]o-[t]rustee to sign documents conveying Henry's share of [t]rust property out of trust and back to Henry.
49. Billy's acceptance of the trusteeship imposed upon him several duties.
50. Billy was required to participate in the performance of a trustee's function, to administer the [t]rust in good faith, with prudence, and with loyalty and impartiality to himself, to control and protect trust property, keep records of the [t]rust's administration, and reasonably inform himself about the [t]rust's administration.

In addition, it found that, as co-trustee, Billy was obligated to address any breaches of Trust B's terms as they arose and that the trust terms provided a mechanism for doing so. Specifically, it found that

51. Billy, as [c]o-[t]rustee, was obligated to prevent Henry from committing a serious breach of trust and to require Henry to provide redress if he did.
.....
54. If Billy had truly objected to Henry's use of income generated by Trust B assets to partially fund Grandi Farm, he was obligated to prevent him from further doing so, and to redress his past actions.
55. If Billy truly objected to Henry's use of Trust B's income to partially fund Grandi Farm, the [t]rust agreement afforded him a method of resolving the dispute.

Finally, it found that, "[a]t no time during the thirteen-plus (13+) years from Kathryn's death to Henry's death, while Billy was a [c]o-[t]rustee, did he ever tell Henry that he objected to Henry's use of income generated by Trust B assets to partially fund Grandi Farm." See *Cave v. Cave*, 1970-NMSC-113, ¶ 20, 81 N.M. 797, 474 P.2d 480 (holding that laches applied where the plaintiff's decedent "had every opportunity for a period of eighteen years to complain, ask, search or sue on the distribution [of assets after dissolution of a partnership], or any other facet of the dissolution with which he was dissatisfied[, and stating that t]he avenues of inquiry and knowledge were open [yet h]e did nothing"). Based on these findings, the district court did not err in concluding that Billy: (1) knew or should have known how Trust B's assets and income were being managed; (2) had an opportunity to assert his rights; and (3) nevertheless, delayed asserting his rights. Hence, it did not err in further concluding that this factor was satisfied.

{11} Billy relies on NMSA 1978, Section 46A-10-1005(A), (B) (2007), to argue that his delay was not unreasonable because "the time period for determining an unreasonable delay in bringing a claim never began to run." Section 46A-10-1005 is a statute of limitation, which provides that

A. A beneficiary shall not commence a proceeding against a trustee for breach of trust more than one year after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust and informed the beneficiary of the time allowed for commencing a proceeding.

B. A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or representative knows of the potential claim or should have inquired into its existence.

C. If Subsection A of this section does not apply, a judicial proceeding by a beneficiary against a trustee for breach of trust must be commenced within five years after the first to occur of:

- (1) the removal, resignation or death of the trustee;
- (2) the termination of the beneficiary's interest in the trust; or
- (3) the termination of the trust.

Billy argues that this statute “has effectively modified and limited, if not eliminated, the ability of a trial court to impose lac[h]es on a claim against a trustee.” He then argues that under this statute, an “effective repudiation” consists of “a report that adequately disclosed the existence of a potential claim for breach of trust and informed the beneficiary of the time allowed for commencing a proceeding.” See § 46A-10-1005(B). Here, he argues, there was no repudiation from which to start measuring the delay because Henry never submitted a report to Billy.

{12} We disagree that this statute applies here. The New Mexico Uniform Trust Code, of which Section 46A-10-1005 is part, states that “[t]he common law of trusts and principles of equity supplement the Uniform Trust Code . . . , except to the extent modified by that code or another statute of this state.” NMSA 1978, § 46A-1-106 (2003). We do not interpret Section 46A-10-1005 as modifying the doctrine of laches for three reasons. First, “[a] statute will be interpreted as supplanting the common law only if there is an explicit indication that the [L]egislature so intended.” *Sims v. Sims*, 1996-NMSC-078, ¶ 22, 122 N.M. 618, 930 P.2d 153. Nothing in Section 46A-10-1005 expressly supplants the doctrine of laches. Hence, “the common law [as it existed when the statute was enacted] remains in place to fill gaps not addressed expressly by [the] statute.” *Estate of Brice v. Toyota Motor Corp.*, 2016-NMSC-018, ¶ 25, 373 P.3d 977; see *id.* ¶¶ 20, 25 (holding that the common law doctrine of fraudulent concealment was not supplanted by a statute where the Legislature “did not expressly address the applicability of the doctrine” even though other aspects of the statute replaced the common law). Second, Section 46A-10-1005 mirrors Section 1005 of the Uniform Trust Code promulgated by the Uniform Law Commission. *Compare* Unif. Trust Code § 1005 (2010), *with* § 46A-10-1005. In the comment to that section, the Commission noted that

the statute does not negate laches: “The . . . limitations periods under this section are not the only means for barring an action by a beneficiary. . . . Claims may also be barred by principles such as estoppel and laches arising in equity under the common law of trusts.” Unif. Trust Code § 1005 cmt. Third, laches is an equitable doctrine distinct from a statute of limitation. “While both defenses, limitations and laches, share a common underpinning in their policy to prevent litigation of stale claims, laches is the more flexible defense, allowing the particular facts of a dispute to be considered in determining whether a party should be foreclosed from bringing a claim because of a delay in asserting his or her rights.” *Garcia*, 1991-NMSC-023, ¶ 30; see *Trujillo v. Padilla*, 1968-NMSC-090, ¶ 12, 79 N.M. 245, 442 P.2d 203 (discussing whether the statute of limitation or laches applied and distinguishing the two, stating that “[l]aches is an equitable defense and, unlike limitations, is not necessarily a matter of time, but is a question of the inequity of permitting the claim to be enforced”). Given that the two defenses are separate, the lack of any reference to laches in the statute further indicates that the Legislature did not intend to modify the doctrine of laches.

{13} Since Section 46A-10-1005 does not govern the analysis of laches, Billy’s arguments as to the conduct constituting repudiation under the statute are unavailing. The district court did not err in assessing the length of delay based on when Billy, as co-trustee of Trust B, knew or should have known that Henry was not complying with the terms of Trust B.

C. Henry Lacked Knowledge or Notice That Billy Would Assert a Claim

{14} The district court found that this element was satisfied: “Henry was without knowledge that Billy would assert his right to have income generated by Trust B assets segregated and held for his future benefit.” Billy argues on appeal that “[t]he [district c]ourt charged Billy with the responsibility of learning and knowing Trust B’s provisions[, y]et the [district c]ourt did not hold Henry to the same standard.” Billy appears to interpret this finding to mean that Henry did not know that he should segregate Trust B income. This argument misses the point of the finding. For laches to apply, the defendant must demonstrate that the defendant did not have notice that the plaintiff believed that the defendant was acting improperly or that the plaintiff would bring a claim based on that conduct. *Cf. Garcia*, 1991-NMSC-023, ¶ 34 (holding that this factor was satisfied where the defendant “had no indication that [the plaintiff] would claim ownership of the property until one and a half years after [the defendant’s decedent’s] death, about one year before the . . . suit was filed”). Contrary to Billy’s interpretation and consistent with *Garcia*, the district court here found, as required for laches, that Henry did not know that *Billy* would challenge Henry’s failure to segregate Trust B’s income.

D. Henry’s Absence Is Prejudicial to the Estate

{15} The fourth element is “injury or prejudice to the defendant in the event relief is accorded to the complainant or the suit is not held to be barred.” *Id.* ¶ 31. The unavailability of a witness key to the defendant’s defense is a form of prejudice. See

Skaggs, 1998-NMCA-061, ¶ 15 (stating that “common forms of prejudice to defendant are loss of evidence to meet the claim of plaintiff” (alteration, internal quotation marks, and citation omitted)). In *Garcia*, for example, our Supreme Court affirmed the district court’s finding of prejudice where the “main actor in the scenario” had died before the plaintiff initiated her claim. 1991-NMSC-023, ¶ 35. In that case, the missing witness had conceived of the idea for the initial sale of property between the parties, arranged for subsequent lease of the property, and then told the plaintiff that no more payments were necessary even though she had not paid the contracted amount. *Id.* Thus, “it was he who could have enlightened the court and the jury on the parties’ understanding and intentions at the time of these transactions years before.” *Id.*

Here, the district court found that

60. Billy’s thirteen-plus (13+) year delay in bringing his claims has deprived Henry’s estate of a witness essential to its defense.
61. Billy’s delay has left Henry’s estate without any means of contradicting Billy’s assertions.
62. To allow Billy, having realized such substantial benefits over a thirteen-plus (13+) year period as a result of the way Henry funded Grandi Farm, to now assert these claims, especially since the only person who could possibly refute them is deceased, would be to work a severe, and patently unfair prejudice to Henry’s estate.

{16} Billy challenges the district court’s conclusion, arguing that Henry’s testimony is not necessary because the tax returns admitted at trial reflected all of the relevant income and expenses and, together with testimony by the accountant who prepared the returns, were “adequate evidence to determine what cash, if any, should go into Trust B for distribution to” Billy. He points out that the district court also admitted the terms of Trust B, which controlled treatment of Trust B’s assets, into evidence.

{17} We do not agree that admission of this evidence negates any prejudice to the Estate by Henry’s absence. Billy’s position is that he is entitled to restitution from the Estate for Henry’s breach of his duties as trustee of Trust B. Henry’s testimony as to whether he in fact breached those duties is, therefore, central to Billy’s claim. Moreover, like in *Garcia*, Henry was a “main actor in the scenario”; together with Kathryn, he was the architect of Trust B and, after her death, the manager of Grandi Farm and its finances, as well as co-trustee of Trust B. Billy’s claim directly implicates Henry’s conduct and intentions in all of these areas. The district court did not abuse its discretion in concluding that the Estate is prejudiced by Henry’s unavailability.

{18} In sum, based on the undisputed findings of fact, we discern no abuse of discretion in the district court’s conclusion that laches applies here.

{19} Billy makes two additional general arguments. Billy first argues that the district court erred in finding that “[Billy’s] failure to, with the help of his attorney, educate himself sufficiently to know of, and to assert [his] claims during Henry’s lifetime is the result of inexcusable neglect.” See *Cave*, 1970-NMSC-113, ¶ 23 (“It is true that laches is not favored absent inexcusable neglect.”). Billy maintains that there was “an ongoing business arrangement between Trust A (later Henry) and Trust B that allowed for use of the jointly owned assets in one farming operation” and that the arrangement was similar to a partnership, and, upon Henry’s death, any income remaining from the farming operation should have been divided between the partners, i.e., Billy and Henry. Billy argues that, because he was in partnership with Henry, there was “no need to make a claim,” and “[o]nly when Henry died and the joint venture terminated did Billy have an accrued right to claim the excess earnings that belonged to Trust B.” He concludes that there was no inexcusable neglect in asserting his rights because he timely filed his complaint after Henry’s death.

{20} This argument strengthens the district court’s conclusion that Billy rested on his rights. If, as Billy argues, Trust B’s assets and income were commingled with the Grandi Farm finances because of a partnership between Billy and Henry, then Billy acquiesced in such commingling. Acquiescence does not negate Billy’s obligation to assert his rights as a beneficiary of Trust B. Moreover, Billy’s assertion of the partnership argument after Henry’s death poses the same prejudice to the Estate discussed above. Hence, the district court’s conclusions vis á vis laches apply to this argument as well.

{21} Finally, Billy briefly argues that the district court’s judgment as to the distribution of “one half of all the real property, appurtenant water rights, mineral rights, personal property, one half of which was to remain in [t]rust under the [t]rust agreement, and of the income generated by any of the above since Henry’s death” is inconsistent with its finding that laches bars distribution of cash that should have been in Trust B. However, the Estate states that “[t]he parties have stipulated the assets and property at issue in this matter are owned equally in undivided interests by [Trust B] and the Estate of Henry Grandi.” This assertion is supported by a pretrial statement of stipulated facts filed by Billy in the district court, which states that, after Henry revoked the trust, Trust B held “an undivided one-half interest in the real property, including appurtenant water rights, as well as minerals, together with an undivided one-half interest in the personal property that was in the [original t]rust.” Thus, it appears that Trust B’s ownership of the property and other assets was never contested. There was therefore no reason for the district court to consider whether laches applied to bar Billy’s claim to those assets.

II. CONCLUSION

{22} For the foregoing reasons, we affirm the district court’s dismissal of Billy’s claim with prejudice.

{23} IT IS SO ORDERED.

LINDA M. VANZI, Chief Judge

WE CONCUR:

J. MILES HANISEE, Judge

STEPHEN G. FRENCH, Judge

[1](#) Like the parties and the district court, we will use first names for the sake of clarity in discussing members of the Grandi family.