IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARILYN BURKHART,
Appellant,
vs.
JASON BURKHART; AND TREVOR BURKHART,
Respondents.

No. 87173-COA

ORDER OF REVERSAL AND REMAND

Marilyn Burkhart appeals from a district court order granting a motion to dismiss in a quiet title action. Second Judicial District Court, Washoe County; Barry L. Breslow, Judge.

Marilyn filed a complaint in October 2022 against her two sons, respondents Trevor and Jason Burkhart, concerning a condominium in Reno, Nevada (Reno property). She sought equitable reformation of the deed to reflect her as the owner of the property, to quiet title in her name, or for the imposition of a constructive or resulting trust benefiting her over the property.

In her complaint,[1] Marilyn alleged that, in April 2014, at Trevor's request, she gave him $95,000 from a retirement account to invest for her. Rather than investing the money, Trevor and Jason used the money to purchase the Reno property and listed themselves on the deed, which was recorded in May 2014. Marilyn was not consulted about the purchase and

[1]Because this matter was resolved at the motion to dismiss stage, the information regarding the events underpinning Marilyn's case is taken from the allegations set forth in her complaint.

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was not informed that her name was not on the title. Trevor and Jason contributed their own funds, totaling approximately $51,000, toward the purchase of the Reno property, but shortly thereafter requested that Marilyn reimburse them, which she did. At respondents' urging, Marilyn moved into the Reno property in August 2014. Although Trevor initially paid the homeowners' association (HOA) fees, Marilyn paid other expenses for the Reno property, including the property taxes. In May 2018, Trevor stopped paying the HOA fees and Marilyn began paying them. In 2020, respondents convinced Marilyn to move out of the Reno property and into Trevor's house and, in May 2020, Trevor rented the Reno property to tenants, who moved out in March 2021. Marilyn then moved back into the Reno property and was told that Jason would pay the HOA fees. In March 2022, Trevor texted Marilyn, demanding that she deposit $1,000 into Jason's bank account, ostensibly to cover the HOA fees. Respondents subsequently served Marilyn with a 30-day termination notice to vacate the property and then a seven-day notice to pay rent or quit.

Respondents filed a motion to dismiss the complaint pursuant to NRCP 12(b)(5). In their motion, respondents argued that Marilyn's claims were barred by various statutes of limitations, which they claimed ran in 2018, four years after she was aware or should have known of the basis for her claims. According to respondents, Marilyn's claims began to accrue after they purchased the property, and she reimbursed them for the funds they contributed toward the purchase. Respondents also contended that Marilyn's claims for quiet title were improper because she failed to allege facts that supported that she had an ownership interest in the property or that established that she adversely possessed it. Finally,

respondents argued that Marilyn failed to plead facts to support claims for a constructive trust.

Marilyn opposed the motion, asserting that the statute of limitations period began to run when she was served with eviction papers in March 2022, the date that she was deprived of ownership or possession of the property. In response to respondents' assertion that her quiet title claim began to run in 2014 when Marilyn reimbursed them for their contributions to the property purchase, she argued that those payments supported her belief that she owned the property, as did her payment of the property taxes. Moreover, she argued that she sufficiently pled her constructive trust claims in accordance with NRCP 8 and that she did not assert a claim for adverse possession, and instead brought her action pursuant to NRS 40.010.[2]

In reply, respondents argued that Marilyn failed to overcome their statute of limitations arguments because she had constructive notice in 2014 that the Reno property was not titled in her name when the property was purchased or at the time the deed was recorded. Further, respondents disputed Marilyn's argument that the limitations period did not begin to run until March 2022 because she never had any ownership interest in the property to begin with. Rather, in her complaint she merely alleged that she provided money to respondents to "vaguely 'invest,'" and "Marilyn's eviction from the Property as a tenant does not constitute proper tolling in this action."

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[2]NRS 40.010 provides that, "[a]n action may be brought by any person against another who claims an estate or interest in real property, adverse to the person bringing the action, for the purpose of determining such adverse claim."

The district court heard oral arguments on the motion to dismiss and subsequently entered a written order granting the motion and dismissing the case with prejudice. The court determined that the statute of limitations on Marilyn's claims ran in 2018. It found that Marilyn had knowledge of her claims when she allegedly reimbursed respondents for the funds that they contributed to the purchase of the Reno property in August 2014. At that point, the court found, Marilyn knew or had reason to know her name was not on the title to the property. As a result, the court concluded that the limitations period began to run from that time because Marilyn, as the allegedly wronged party, knew or should have known of respondents' alleged inequitable conduct. Additionally, the court concluded that Marilyn's request to quiet title in her favor was improper because she failed to plead any facts that entitled her to quiet title in or adversely possess the property. Finally, the district court determined that Marilyn failed to sufficiently plead facts to establish a constructive trust. This appeal followed, in which Marilyn challenges the district court's order dismissing her complaint for quiet title and other related claims.

An order granting an NRCP 12(b)(5) motion to dismiss is reviewed de novo. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). A decision to dismiss a complaint under NRCP 12(b)(5) is rigorously reviewed on appeal, with all alleged facts in the complaint and the attached documents presumed true and all inferences drawn in favor of the plaintiff. *Id.* Dismissing a complaint is appropriate "only if it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would entitle [the plaintiff] to relief." *Id.* at 228, 181 P.3d at 672.

A court can dismiss a complaint for failure to state a claim upon which relief can be granted if the action is barred by the statute of limitations. NRCP 12(b)(5); *Shupe & Yost, Inc. v. Fallon Nat'l Bank*, 109 Nev. 99, 100, 847 P.2d 720, 720 (1993). "In determining whether a statute of limitations has run against an action, the time must be computed from the day the cause of action accrued. A cause of action 'accrues' when a suit may be maintained thereon." *Clark v. Robison*, 113 Nev. 949, 951, 944 P.2d 788, 789 (1997) (internal citation omitted). In *Berberich v. Bank of America, N.A.*, 136 Nev. 93, 96, 460 P.3d 440, 442 (2020), our supreme court explained that the limitations period for quiet title actions "only starts to run when the plaintiff has been deprived of ownership or possession of the property."

Considering the district court's dismissal in light of the rule set forth in *Berberich*, we conclude the court erred by dismissing Marilyn's complaint. Taking the allegations set forth in Marilyn's complaint as true, as we must, *see Buzz Stew, LLC*, 124 Nev. at 227-28, 181 P.3d at 672, Marilyn gave respondents money to invest on her behalf and, without consulting with her, they used her money to purchase the Reno property, but did not tell her that her name was not on the title. She then reimbursed them for their own contributions toward the purchase, lived in the property for years at their insistence, paid the property taxes and, during certain periods, paid the HOA fees. Marilyn's possession of the property was largely undisturbed for years, except for a brief period when she moved out of the house and moved in with Trevor, at respondents' urging, so the property could be rented. Notably, there is nothing in Marilyn's complaint to suggest that she was forced to move out at that time as opposed to making the decision to do so of her own volition, and when the tenants moved out of the property, the complaint indicates that Marilyn moved back in.

Indeed, Marilyn's allegations indicate that she was not purposefully deprived of possession of the property by respondents until they attempted to evict her in March 2022. Assuming the truth of these allegations and drawing all reasonable inferences in her favor, Marilyn had no reason to question the validity or legality of her alleged ownership or possession of the property until the eviction attempt which, under *Berberich*, was the triggering event that commenced the running of the limitations period.[3] *See Berberich*, 136 Nev. at 97, 460 P.3d at 443 (stating the quiet title limitations period is "triggered when the plaintiff is ejected from the property or has had the validity or legality of . . . her ownership or possession of the property called into question"). As a result, we conclude that the district court erred by dismissing Marilyn's claims on statute of limitations grounds at this stage in the proceedings.

In reaching this conclusion, we reject respondents' contention that the 2014 recording of the deed necessarily gave Marilyn constructive notice that she had no ownership interest in the property. Generally, "a cause of action accrues when the wrong occurs and a party sustains injuries for which relief can be sought," but an exception to this is the discovery rule, which tolls the statute of limitations "until the injured party discovers or reasonably should have discovered facts supporting a cause of action." *Bemis v. Estate of Bemis*, 114 Nev. 1021, 1024, 967 P.2d 437, 440 (1998). "Ordinarily the constructive knowledge of recording statutes is held to prospective purchasers of realty" but "[i]t does not necessarily follow" that

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[3]While the district court concluded that *Berberich* did not apply because Marilyn was never a titled owner of the property and therefore could not be dispossessed of it, we reject that determination given the reasoning set forth above.

persons who are not prospective purchasers, such as persons that already have an ownership interest in a property, are covered by such statutes. *Allen v. Webb*, 87 Nev. 261, 270, 485 P.2d 677, 682 (1971). Here, Marilyn's allegations reflect that she was not a prospective purchaser who would be deemed to have constructive knowledge of previously recorded deeds under the recording statutes. Instead, her complaint alleges that she gave funds to respondents—her own children—to invest for her, which they used to purchase the property. Given her relationship with respondents, we cannot say as a matter of law that the mere recording of the deed of a property they purchased—with funds she allegedly gave them to invest on her behalf—operated to give Marilyn constructive notice that she had no ownership interest in the property.

"In the event the party relied upon in a fiduciary situation fails to fulfill his obligations, and if [that party] also fails to tell the other party of this failure, there is said to be fraudulent concealment and constructive fraud, so the statute of limitations may be tolled." *Id.* at 269, 485 P.2d at 681. In such a situation, "the mere fact of the record notice does not provide sufficient basis for holding [a party] to have had notice unless they had reason to check the real estate records." *Id.* at 270, 485 P.2d at 682.

As detailed in her complaint, Marilyn and respondents had a familial relationship, such that a fiduciary or confidential relationship may have existed. *See Perry v. Jordan*, 111 Nev. 943, 947, 900 P.2d 335, 338 (1995) (noting a confidential relationship is "particularly likely to exist when there is a family relationship or one of friendship" and when such a relationship exists "the person in whom the special trust is placed owes a duty to the other party similar to the duty of a fiduciary, requiring the person to act in good faith and with due regard to the interests of the other

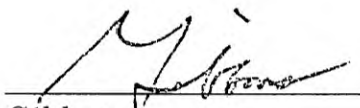
party" (internal citation and quotation marks omitted)). Drawing all reasonable inferences in favor of Marilyn, her familial relationship with respondents and the allegations set forth in her complaint demonstrate that she had no reason to question the validity of her claimed ownership or to check the real estate records prior to receiving the eviction notice. This is particularly true where the thrust of Marilyn's complaint was that she should be the titled owner of the property, that respondents wrongfully took title to the property in their names, and that her funds were used to purchase the property. Based on our review of Marilyn's complaint, and given the reasoning set forth above, we cannot conclude at this stage that the mere recordation of the deed for the property gave Marilyn constructive notice that she did not have an ownership interest in the property. Thus, under the circumstances presented here, we conclude Marilyn's allegations were sufficient to overcome respondents' motion to dismiss.

Additionally, in dismissing the complaint, we conclude that the district court erroneously found that Marilyn was not entitled to quiet title in the property because she failed to demonstrate that she adversely possessed it. Below, Marilyn affirmatively stated that she was not claiming that she adversely possessed the property and was instead bringing her suit under NRS 40.010 ("An action may be brought by any person against another who claims an estate or interest in real property, adverse to the person bringing the action, for the purpose of determining such adverse claim."). The court's conclusion that she failed to plead any facts that entitled her to adversely possess the property was therefore erroneous, as there was no need to plead such facts or make such allegations to assert a quiet title claim under NRS 40.010. The court also ruled, as a matter of law, that she failed to establish the elements of a constructive trust. We

disagree, however, as a review of her complaint demonstrates that Marilyn raised sufficient allegations to support a possible constructive trust. *See Buzz Stew, LLC*, 124 Nev. at 228, 181 P.3d at 672; *Cf.* NRCP 8 (requiring, in relevant part, that a pleading contain a short, plain statement of the claim showing the pleader is entitled to relief and a demand for the relief sought).

In sum, we cannot conclude beyond a doubt that Marilyn could prove no set of facts which would entitle her to relief, *see Buzz Stew, LLC*, 124 Nev. at 228, 181 P.3d at 672; thus, we conclude the district court erred by granting respondents' motion to dismiss her complaint.[4] We, therefore,

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.



_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

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[4]We note that the parties did not raise any arguments concerning Marilyn's claim for a resulting trust, so we do not independently address that claim. *See Sec'y of State v. Wendland*, 140 Nev., Adv. Op. 64 ___ at *10 n.5, ___ P.3d ___, ___ n.5 (Ct. App. 2024) (noting that courts follow the "principle of party presentation" on appeal, which requires litigants to frame the issues); *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that arguments not raised on appeal are deemed waived).

cc: Hon. Barry L. Breslow, District Judge
Debbie Leonard, Settlement Judge
Jack I. McAuliffe, Chtd.
McMenomy Law
Washoe District Court Clerk