

Circuit Court for Prince George's County
Case No. CAL18-46978

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1828

September Term, 2021

ASHLEE CARTER

v.

SABRINA SENN, ET AL.

Berger,
Friedman,
Albright,

JJ.

Opinion by Friedman, J.

Filed: November 17, 2022

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. MD. R. 1-104.

We are asked to determine whether the Circuit Court for Prince George’s County erred in denying Appellant Ashlee Carter’s demand for a jury trial. For the reasons that follow, we reverse the ruling of the trial court and remand the case for further proceedings.

FACTUAL BACKGROUND

Thorlough Edward Carter, Jr. is a 60-year-old alleged disabled person suffering from cognitive decline and dementia. This case stems from an intra-family dispute regarding competing powers of attorney and control over Mr. Carter’s assets.

In April 2017, Mr. Carter executed a Durable Power of Attorney appointing his daughter, Ashlee, as the agent of his estate and her brothers, Anthony Lamar Carter and Thorlough Edward Carter, III, as successor agents.¹ In the spring of 2018, allegedly as the result of discovering that Ashlee had been stealing from him, Mr. Carter executed a second power of attorney appointing his sisters—appellees Sabrina Senn and Dorlisa Carter—to act on his behalf. In December 2018, Ashlee and her brothers sued Mr. Carter’s sisters, seeking to invalidate the power of attorney that Mr. Carter had granted to them and to enjoin the sisters from interfering with the power of attorney that Mr. Carter had previously granted to Ashlee and her brothers.

¹ Because many of the parties share the same surname, for the purpose of clarity, we will refer to everyone except Mr. Thorlough Edward Carter, Jr., by their first names. We intend no disrespect to any of the parties, and we hope that none of the language used in this opinion overshadows our sympathy for Mr. Carter and his entire family.

In response, the sisters filed a counterclaim² alleging that while Ashlee exercised Mr. Carter’s power of attorney in 2017, she “stole and misappropriated over \$100,000.00 of [Mr. Carter’s] money maintained in financial institutions.” The sisters’ counterclaim included equitable claims for declaratory judgment, injunctive relief, and to establish a constructive trust; and legal claims seeking monetary damages sounding in unjust enrichment, negligence, and intentional misrepresentation. Ashlee’s answer stated a general denial and did not include a jury trial demand. Later, the sisters sought leave to amend their counterclaim, which the trial court granted. The sisters then filed an amended counterclaim on January 26, 2021, adding a new count for conversion.³ Ashlee filed a motion to dismiss the amended counterclaim on March 23, 2021. On July 12, 2021, before the court had ruled on her motion to dismiss, Ashlee filed an answer to the amended counterclaim and with it, for the first time, a jury trial demand.

The trial court granted Ashlee’s motion to dismiss only with respect to the count for constructive trust and denied it with respect to all other counts. The trial court also denied

² There is some confusion among the parties about whether the sisters’ claims against Ashlee are counterclaims or cross-claims. A counterclaim is a claim filed against an opposing party. MD. R. 2-331(a). A cross-claim, on the other hand, is a claim against a *co-party* arising out of the same transaction or occurrence that caused the original claim or the counterclaim. MD. R. 2-331(b). At the time of the sisters’ filing, Thorlough Carter, III’s status as a co-guardian for his father aligned his party status with that of his aunts. As a result, the sisters’ claim, at least as vis-à-vis Thorlough, might have been a cross-claim. Now, however, because the remaining counts are only against Ashlee, the pleading is in the nature of a counterclaim and that is how we shall refer to it.

³ Conversion is the civil law counterpart of criminal theft. *Darcars Motors of Silver Spring, Inc. v. Borzym*, 150 Md. App. 18, 36-39 (2003).

Ashlee’s demand for a jury trial, finding that it was untimely and therefore waived. After a bench trial, the court found Ashlee liable for negligence and ordered judgment against her in the amount of \$86,550.00. Ashlee noted her appeal.

DISCUSSION

Ashlee raises two questions on appeal: whether the trial court erred in denying her a jury trial and whether the trial court erred in finding her liable for negligence. We do not reach the issue of negligence, however, because we conclude that the trial court erred in denying Ashlee a jury trial.

The right to a civil jury trial is a constitutional right recognized by Article 5 and Article 23 of the Maryland Declaration of Rights and effectuated by Maryland Rule 2-511, which provides that the “right of trial by jury as guaranteed by the Maryland Constitution and the Maryland Declaration of Rights or as provided by law shall be preserved to the parties inviolate.” MD. R. 2-511(a). Despite these guarantees, reasonable limitations may be placed on the right to a jury trial in a civil matter, including the limitation found in Maryland Rule 2-325, “which provides that a party’s failure to demand a jury trial within 15 days after service of the last pleading directed to the issue constitutes a waiver by that party of a jury trial.” *Scarfield v. Muntjan*, 444 Md. 264, 266 (2015). This waiver is not absolute. A previously waived right to a jury trial may be revived if “a party files an amended complaint, asserting a new substantive issue and demanding a jury trial.” *Id.*

As a preliminary matter, we note that because Ashlee did not include a demand for a jury trial in any of her pleadings until her response to the sisters’ amended counterclaim,

she has waived her right to a jury trial *unless* that right was revived by the amended counterclaim. Thus, to determine whether the trial court erred in denying Ashlee a jury trial, we must first determine whether the amended counterclaim asserted a new substantive issue, and then determine whether Ashlee’s demand for a jury trial was filed within 15 days after service of the last pleading directed to that issue.

We conclude that the new claim of conversion introduced in the amended counterclaim was sufficient to revive Ashlee’s right to a jury trial based on three factors. *First*, it is a *legal* (as distinguished from equitable) claim seeking money damages and, thus, it is the type of claim to which the jury trial right attaches. *See Scarfield*, 444 Md. at 274-75; *Md. Dep’t of Env’t v. Underwood*, 368 Md. 160, 183 (2002); JOHN A. LYNCH, JR. & RICHARD W. BOURNE, *MODERN MARYLAND CIVIL PROCEDURE* 5-13 (3d ed. 2016). *Second*, the new conversion count is *nonduplicative* of claims previously asserted. *Scarfield*, 444 Md. at 275 (holding that to revive a jury trial right, a newly introduced claim must not simply repeat an earlier claim).⁴ And *third*, the count for conversion is sufficient to survive a motion to dismiss for failure to state a claim. *Id.* at 275-76. As a result, the

⁴ In connection with our finding that the conversion count was nonduplicative, we note that the original counterclaim had, among its general allegations that Ashlee had “stole[n] and misappropriated over \$100,000.00 of [Mr. Carter’s] money maintained in financial institutions [Theft].” As noted above, n.3, theft is the criminal law counterpart of the tort of conversion. Despite this, however, as the prior complaint did not contain a count directly seeking recovery for this allegedly stolen property, we hold that the amended counterclaim was nonduplicative.

addition of conversion in the amended counterclaim effectively revived Ashlee’s previously waived right to a jury trial.

Next, we must determine the identity of the “last pleading filed by any party” that was directed to the issue of conversion and whether Ashlee’s demand for a jury trial was filed within 15 days after service of that last pleading. MD. R. 2-325(b); *see also* MD. R. 1-202(v) (defining “pleading” to include complaints, counterclaims, cross-claims, third-party complaints, and any answers thereto). Here, the sisters filed their amended counterclaim on January 26, 2021. As a resident of Washington, D.C., Ashlee would have had 60 days to file her answer. MD. R. 2-321(b)(1). Instead of filing an answer, however, Ashlee filed a motion to dismiss, which automatically extended the time for filing her answer until 15 days after the court entered an order ruling on that motion. MD. R. 2-321(c). The court’s order ruling on the motion to dismiss was not entered on the record until September 7, 2021, making Ashlee’s deadline for filing an answer September 22, 2021. Ashlee filed her answer much earlier, however, on July 12, 2021, more than two months before the trial court ruled on the motion to dismiss. Thus, Ashlee’s July answer to the amended counterclaim was the “last pleading filed by any party” directed to the count of conversion and establishes the date from which the timeliness of her demand for a jury trial must be measured. Based on the date the answer was filed, Ashlee had until July 27 to demand a jury trial. Because she filed her demand for a jury trial at the same time as her answer, on July 12th, we conclude that Ashlee’s demand for a jury trial was timely and the trial court erred, as a matter of law, in finding it untimely.

Finally, we note that where a newly introduced claim revives the right to a jury trial, that right applies to all issues in the action that would have been subject to trial by jury. *Goldstein & Baron Chtd. v. Chesley*, 375 Md. 244, 255-56 (2003); MD. R. 2-325(e). Where a party is denied their right to a jury trial, that right “can be enforced only by a remand of the entire case.” *Goldstein*, 375 Md. at 254. Because Ashlee was entitled to a jury trial on all issues triable to a jury, including conversion, unjust enrichment, negligence,⁵ and intentional misrepresentation, we remand the case to the trial court for further proceedings consistent with this opinion.

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE’S COUNTY IS
REVERSED. CASE REMANDED FOR
FURTHER PROCEEDINGS CONSISTENT
WITH THIS OPINION. COSTS TO BE
PAID BY APPELLEES.**

⁵ As noted above, Ashlee has also appealed the trial court’s determination that the sisters’ negligence claim was legally sufficient. Although we do not reach this question, we note that investing in cryptocurrency or gambling away her father’s savings at a casino, if either is proven, is an unusual application of the tort of negligence. On remand, careful consideration should be given to what specific duty or duties Ashlee is alleged to have breached and whether that duty was an ordinary tort duty or a fiduciary duty (based, perhaps on the power of attorney); how specifically that duty was breached; and what damages were caused by that breach. See *Perry v. Asphalt & Concrete Servs., Inc.*, 447 Md. 31, 51-52 (2016) (discussing elements of negligence); *Plank v. Cherneski*, 469 Md. 548, 598-600, 625 (2020) (discussing breach of fiduciary duty).