2026 IL App (1st) 241634-U

No. 1-24-1634

First Division
September 8, 2026

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

ESTATE OF JUDY C. AGNO, Deceased,	)	Appeal from the
	)	Circuit Court of
(Maria Cristina Agno-Chambers, not individually but as the Trustee of the Judy C. Agno Living Trust Dated June 24, 2011 and as the Trustee of the Maria Cristina Agno-Chambers Living Trust Dated September 14, 2010,	)	Cook County.
	)	No. 21 P 000513
Plaintiff-Appellant	)	
v.	)	
Naomi Laboy and Advanced Healthcare Services, LLC, an Illinois limited liability company,	)	Honorable Daniel O. Tiernan, Judge, Presiding.
Defendants-Appellees).	)	

JUSTICE COBBS delivered the judgment of the court.
Justices Smith and Howse concurred in the judgment.

ORDER

¶ 1 *Held*: The probate court's judgment is affirmed in part and reversed in part. We affirm the probate court's dismissal of plaintiff's request for a declaration that Paul

Franciszkowicz's designation of Laboy as AHS's manager is null and void, and we reverse the probate court's dismissal of plaintiff's request for a declaration that Joseph Pieper's designation of Laboy as AHS's manager is null and void.

¶ 2 This actions stems from an amended complaint for declaratory relief filed by plaintiff-appellant Maria Cristina Agno-Chambers, as trustee of the Judy C. Agno Living Trust Dated June 24, 2011 (Judy C. Agno Trust) and of the Maria Cristina Agno-Chambers Living Trust Dated September 14, 2010 (Maria-Cristina Agno-Chambers Trust)[1], against defendants-appellees Naomi Laboy and Advanced Healthcare Services, LLC (AHS). Plaintiff sought declarations that the designations of Laboy as manager of AHS are null and void and that no membership interests in AHS are property of decedent Judy C. Agno's estate or, alternatively, that only a 33.33 percent membership interest in AHS is part of the estate. Defendants filed an amended motion to dismiss plaintiff's complaint pursuant to section 2-619 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619 (West 2022)). On July 16, 2024, the probate court entered an order, denying in part and granting in part defendants' motion to dismiss. Plaintiff appeals, arguing that the probate court erred in granting defendants' motion to dismiss as to her request for judgment declaring null and void the designations of Laboy as the manager of AHS. For the reasons that follow, we affirm in part and reverse in part.

¶ 3 I. BACKGROUND

¶ 4 The following background is gleaned from the pleadings, exhibits, and orders included in the record on appeal.

[1]When addressing Maria Cristina Agno-Chambers as trustee of the Judy C. Agno Trust and the Maria Cristina Agno-Chambers Trust, we will refer to her as plaintiff. Otherwise, when acting as heir or an individual, she shall be referred to as Cristina, in accordance with plaintiff's filings in the court below.

¶ 5 AHS has been providing home health services in the Springfield, Illinois area since 2006. It has offices in both Springfield and Chicago. Judy C. Agno, plaintiff's mother, had been involved in AHS from its inception, serving as an administrator, manager, and nurse at various points in time. On January 14, 2021, Judy died. At the time of her death, she had been serving as the manager of AHS. Defendant Laboy has been employed by AHS since 2010, performing various administrative functions.

¶ 6 Included in the record as an exhibit is AHS's Restated Operating Agreement, dated January 1, 2011, which sets forth that the membership interests of AHS as follows: the Maria Cristina Agno-Chambers Trust: 33.33 percent, Carmencita Agno: 33.33 percent, and the Peter C. Agno Declaration of Trust (Peter C. Agno trust): 33.33 percent. The signatories of the agreement are Cristina as trustee of the Maria Cristina Agno-Chambers Trust, Carmencita Agno , and Judy as trustee of the Peter C. Agno Trust.

¶ 7 In 2019, Judy's son, Emmanuel Agno, and his wife, Carmencita, plead guilty to one count of conspiracy to defraud Medicare and received 3-month and 15-month prison sentences, respectively. As part of their conditions for release, they were prohibited from engaging in any home healthcare business or profession that would require submission of Medicare claims.

¶ 8 The record shows that, in 2019, "Judy Agno, who holds 66.66% Membership interest" called a special meeting to remove Cristina as manager of AHS and to appoint Judy as the manager instead. Subsequently, Judy, then manager of the company, also suspended Cristina from her role as administrator and appointed herself as the acting administrator.

¶ 9 Following Judy's death, on January 25, 2021, AHS filed a petition for letters of administration to collect in the probate division of the circuit court of Cook County.

¶ 10 The record includes an e-mail from Charles Chejfec, counsel for AHS, to Cristina and Carmencita, dated January 26, 2021, advising them that, on behalf of AHS, he had filed a petition for letters of administration in the probate court, and a hearing was set for the following day before Judge Joel Buikema. According to Paul Franciszkowicz's declaration (filed later in this action), on the day of the hearing, he sent Chejfec, Cristina, and Emmanuel the Zoom hearing information, but only Franciszkowicz and Chejfec participated in the hearing.

¶ 11 On January 28, 2021, the court granted AHS's petition and entered an order appointing Franciszkowicz as the independent administrator to collect, and letters of office were issued to Franciszkowicz that day. The following day, Franciszkowicz, as the court-appointed independent administrator to collect for Judy's estate, designated Laboy as the manager of AHS "for the limited purpose of continuing to manage the day-to-day operations" of AHS.

¶ 12 On February 18, 2021, Judy's will was filed with the clerk of the circuit court. The will provided that all of her probate estate, after payment of expenses and taxes, be given to the Judy C. Agno Trust.

¶ 13 On March 18, 2021, the parties appeared before the probate court for a status hearing. Present that day was Cristina's counsel, Matthew McQuiston. At the conclusion of the hearing, the court extended Franciszkowicz's appointment to April 21, 2021.

¶ 14 On March 25, 2021, Cristina, as executor of Judy's will, filed a petition for probate of will and letters testamentary. On April 19, 2021, AHS filed objections to the petition.

¶ 15 On April 20, 2021, Nathan Agno, Emmanuel's son and Judy's grandson, filed in the probate court a "Petition for Probate of Will and For Letters of Administration with Will Annexed." The petition indicated that Judy had nominated as executor, Cristina, who, "by

agreement with the other named heirs and legatees, agree[d] not to act." Instead, Nathan sought to nominate Joseph Pieper as the independent administrator.

¶ 16 On April 21, 2021, the court set the petition for status on May 6, 2021, and extended Franciszkowicz's appointment to the same date.

¶ 17 On May 6, 2021, the court entered an order admitting Judy's will into probate. That order indicated that "[l]etters of office shall issue to Joseph Pieper as Supervised administrator with the Will annexed[.]" The court also entered an order that day discharging Franciszkowicz as independent administrator to collect and waiving Franciszkowicz's duty to account.

¶ 18 Also on May 6, 2021, a document titled "Waiver and Consent" was filed with the court. The document, dated May 4, 2021, stated: "I, Maria Cristina J. Agno a/k/a Maria Cristina Agno-Chambers, as an heir and legatee to the Estate of Judy C. Agno, hereby waives notice and consent to the appointment of Joseph Pieper as Independent Administrator with the Will Annexed." The document was signed by Cristina. Also filed that day was an identical "Waiver and Consent" signed by Emmanuel.

¶ 19 On May 10, 2021, Pieper independently designated Laboy as AHS's manager. It is not clear from the record whether this document was filed with the probate court or served on any of the parties, and if so, what date that was done. It first appears in the record as an exhibit to defendants' October 31, 2022, motion to dismiss.

¶ 20 On August 31, 2021, Cristina and Emmanuel, as heirs of the decedent, filed a petition for citation to discover assets. Attached to the petition, *inter alia*, were: Franciszkowicz's designation of Laboy as manager; AHS's January 1, 2011 Restated Operating Agreement; the Judy C. Agno Living Trust Agreement, dated June 24, 2011; an Irrevocable Assignment of Limited Liability Company Interests, dated September 30, 2011, which transferred Judy's membership interest in

AHS to the Judy C. Agno Trust; an Irrevocable Assignment of Limited Liability Company Interests, dated October 15, 2011, which transferred Carmencita's membership interest in AHS to the Judy C. Agno Trust; and an Irrevocable Assignment of Limited Liability Company Interests, dated October 15, 2011, which transferred the membership interest in AHS owned by the Maria Cristina Agno-Chambers Trust to the Judy C. Agno Trust.

¶ 21 On October 1, 2021, the court entered an order awarding administrator fees to Franciszkowicz. The order also stated that Cristina and Emmanuel agreed that AHS was authorized to pay the fees.

¶ 22 From October 2021 to July 2022, various matters regarding Judy's estate were litigated in the probate court, including the sale of real property and discovery of assets. Additionally, Judge Daniel O. Tiernan replaced Judge Buikema as the judge assigned to this action.

¶ 23 On July 26, 2022, plaintiff ("Maria Cristina Agno-Chambers[,] not individually but as the Trustee of the Judy C. Agno Living Trust Dated June 24, 2011 and as Trustee of the Maria Cristina Agno Living Trust Dated September 14, 2010") filed her initial complaint for declaratory judgment and other relief in the probate court. Plaintiff was represented by Samuel Neschis at this point.

¶ 24 On October 31, 2022, defendants filed a motion to dismiss the complaint. In response to defendants' motion to dismiss, plaintiff sought to amend her complaint, and on November 15, 2022, plaintiff was granted leave to file the operative amended complaint.

¶ 25 On November 22, 2022, the amended complaint was filed. Count I requested that the court enter a judgment: "[d]eclaring that no membership interests in [AHS] are property of [Judy's] Estate or, alternatively, declaring that the maximum membership interest in AHS that became property of this estate was [a] 33.33 percent membership interest" and declaring null and void the

designations of Laboy as AHS's manager by Franciszkowicz and Pieper. Count II requested that the court enter a judgment "[d]irecting AHS and Laboy to submit an accounting of AHS's business from January 29, 2021 to present[.]" Plaintiff later filed a motion to voluntarily dismiss count II of her amended complaint, which the court granted.

¶ 26 On December 6, 2022, defendants filed a motion to dismiss plaintiff's amended complaint pursuant to section 2-619 of the Code (735 ILCS 5/2-619 (West 2022)). Therein, defendants asserted that count I of plaintiff's complaint should be dismissed pursuant to Illinois Supreme Court Rule 304(b)(1) (eff. Mar. 8, 2016), the law of the case doctrine, *res judicata*, and section 23-8 of the Illinois Probate Act (Probate Act) (755 ILCS 5/23-8 (West 2022)).

¶ 27 Attached to defendants' motion was Laboy's declaration, in which she stated that, during Cristina's tenure as manager from 2011 to 2019, "she misappropriated more than $500,000 of AHS's funds for her personal use" and "AHS did not have sufficient funds to pay its taxes from 2013-2016." According to Laboy, due to this theft, AHS had been on repayment plans with the Internal Revenue Service (IRS) and currently owed the IRS $868,993. In 2019, Judy, "as the controlling interest holder in AHS, terminated [Cristina] as Manager and Administrator and installed herself in both positions." Since being designated by Franciszkowicz as AHS's manager, she has "certified AHS's compliance with various regulatory matters, including CMS quarterly balance and annual cost reports, Illinois Department of Health annual renewal, and state and federal unemployment and tax filings." Laboy further stated that, since Judy's death, Cristina "has attempted to regain her position as Manager of AHS as well as access its bank accounts" by filing "false documents with the Illinois Secretary of State designating herself and 21-year-old nephew, Nathan Agno, as Managers of AHS" and presenting "fraudulent documents at various Chase Bank branches in the Chicago area[.]" According to Laboy, Cristina was not successful because they

had placed an alert on the accounts requiring Chase to notify AHS if she attempted to access the accounts.

¶ 28 On January 10, 2023, plaintiff filed a response to the motion to dismiss. Subsequently, the court entered several orders setting dates for defendants to disclose witnesses and provide affidavits to plaintiff.

¶ 29 On June 20, 2023, plaintiff filed a motion to bar Pieter and Franciszkowicz as witnesses and strike Pieter and Franciszkowicz's declarations.

¶ 30 Franciszkowicz stated the following in his declaration. Chejfec contacted him to request that he serve as administrator for AHS. Chejfec informed him that: he was not aware of and was not in possession of Judy's will; AHS was a creditor of Judy's estate because "she had personally guaranteed a portion of AHS's million dollar IRS debt" as a result of Cristina's theft from the AHS bank account; and if Cristina sought appointment of herself as representative of the estate, AHS would object based on her past conduct. Franciszkowicz agreed to serve as administrator. After the court appointed him as administrator and he designated Laboy as the manager, Chejfec advised him in April 2021 that McQuiston, counsel for Cristina and Emmanuel, had proposed that Pieper serve as administrator instead because the heirs wished to have someone "who they believed would be independent in selecting a Manager for AHS." Franciszkowicz indicated that he believed Pieper would act independently. "[T]he parties reached an agreement" where Nathan would nominate Pieper as the new administrator and Pieper would then designate AHS's manager. Under this agreement, the heirs "agreed that Mr. Pieper would independently decide who to designate as the Manager of AHS" and "would agree to accept whoever Mr. Pieper designated as the AHS Manager." They also agreed to payment of Franciszkowicz's fees and to waive accounting of his service as administrator.

¶ 31 Pieper stated the following in his declaration. In April 2021, McQuiston contacted him and explained that he was representing the heirs in this case, and a dispute had arisen between his clients and the manager of AHS over ownership and control of the company. He further explained that his clients wanted to replace Franciszkowicz with someone independent, and he was working on an agreement whereby Nathan would nominate a new administrator who would, in turn, independently designate a manager of AHS. According to Pieper, "McQuiston said that his clients would also agree to accept whoever the new Administrator designated as the AHS manager." Pieper advised McQuiston that he was willing to serve as administrator. Pieper then met with Chejfec and Laboy, and Chejfec also sent via e-mail to Pieper a copy of his objection to Cristina serving as the administrator. Pieper believed that prior to the May 5, 2021, hearing, the parties had agreed to McQuiston's proposal, and at the hearing, the parties advised the court as to the agreement. The court was also informed that an accounting by Franciszkowicz was waived, and the heirs would execute waivers of notice and consent to Pieper's appointment. On May 10, 2021, Pieper decided to designate Laboy as the manager of AHS, as she was the most qualified person.

¶ 32 On July 19, 2023, defendants filed a response to plaintiff's motion to bar witnesses and strike declarations, and on July 27, 2023, plaintiff filed a reply. On October 19, 2023, the court entered an order barring witness testimony but declining to strike the witnesses' declarations. In that order, defendants were also granted leave to file an amended 2-619 motion to dismiss.

¶ 33 On November 13, 2023, AHS filed a counterclaim against Cristina, alleging that she breached AHS's operating agreement and requested a monetary judgment against her in the amount of $1,083,864.24. On January 12, 2024, Cristina filed a motion to dismiss the counterclaim pursuant to section 2-615 of the Code.

¶ 34 On November 30, 2023, defendants filed an amended motion to dismiss plaintiff's amended complaint. In addition to the arguments made in the original motion to dismiss, defendants argued that count I of plaintiff's amended complaint should be dismissed on the grounds of waiver, equitable estoppel, and *laches*.

¶ 35 On April 23, 2024, plaintiff filed a response to the amended motion to dismiss. As an exhibit, plaintiff attached portions of Franciszkowicz's deposition. Therein, Franciszkowicz testified that he did not believe that Judge Buikema had been informed of the existence of Judy's trust, and Franciszkowicz was unaware of the alleged assignments of her membership interest in AHS to her trust. He further affirmed that it was his belief that Judy personally owned a 62 percent membership interest in AHS at the time that she died, but, "based on other documents that have been discovered a year after I've been discharged, that position could be different."

¶ 36 McQuiston's affidavit was also attached to plaintiff's response. McQuiston averred that he only represented Cristina and Emmanuel, individually, as heirs to Judy's estate in this action and had not represented either of the trusts. McQuiston agreed that his clients "consented to the appointment of Mr. Pieper as administrator of this Estate[,]" but they did not consent to the appointment of Laboy as manager of AHS and he did not inform Pieper, Chejfec, or Franciszkowicz that his clients would agree to Laboy's appointment. He further did not agree that his clients would accept whoever Pieper selected as AHS's manager. McQuiston averred that an accounting by Franciszkowicz was waived as to "any assets that he collected and any disbursements that he made while serving as the independent administrator to collect" and his clients "never waived their right to challenge Mr. Franciszkowicz's acts as administrator[.]" Finally, he averred that there has never been a concession that AHS is an asset of Judy's estate and

he has "not found any record that [he] received notice when Mr. Pieper designated Naomi Laboy as manager of AHS."

¶ 37 On July 16, 2024, a hearing was held on the pending motions. We note the following exchanges that occurred between the court and defendants' counsel:

"The Court: Well, you're here for your hearing now, Mr. Chefjec. What do you have for me today that indicates that Judy individually owned a majority stake in this company? Because otherwise this whole thing is not an asset of the estate.

Mr. Chefjec: I understand that.

The Court: Okay. So what do you have to show me?

Mr. Chefjec: Well, candidly, Judge, right now I wasn't expecting this, but I can go back and look. There's a very complicated trail of ownership to this company. Very complicated.

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The Court: Mr. Chefjec, this has been – I mean, I don't know what to tell you. This has been pending for over a year, and the restatement of this company in 2011 indicates that Judy Agno as trustee of the Peter Agno Declaration of Trust is the third owner, not Judy. There's no mention of Judy being individually a member or an owner of this company.

Mr. Chefjec: Your Honor, I'm not sure that Peter Agno [ever] became, his trust ever became an owner either. It's complicated. For purposes of this motion, your Honor, we've stated that she is the owner.

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Mr. Chefjec: Because this issue they're asking you to decide, should have been decided back in 2021, not now. They let all this time pass without taking any action with respect to six orders where actions were being taken based on Judy Agno personally owning these shares.

The Court: Based on you and Mr. [Franciszkowicz] telling Judge [Buikema] that she was, in fact, the majority shareholder, right?

Mr. Chefjec: Absolutely.

The Court: Right. Okay. So where is the evidence of that?

Mr. Chefjec: Well, I'm happy to provide it, Judge, but this isn't the forum for that. It's not my burden to show that she is the owner at this point. I'll do it and I've said that in my motion, we'll do it, but this isn't [the] forum for it, Judge."

¶ 38 That day, the court entered an order granting in part and denying in part defendants' amended motion to dismiss plaintiff's amended complaint. The court declined to dismiss plaintiff's request for a declaratory judgment as to the membership interest of AHS. The court granted the motion as to plaintiff's request for a declaratory judgment that the designations by Franciszkowicz and Pieper of Laboy as AHS's manager are null and void.

¶ 39 In particular, in its oral ruling during the hearing, the court stated the following:

"The Motion to Dismiss lists mostly equitable defenses to the declaratory relief[:] waiver, equitable estoppel, [l]aches, and 5/23-8 of the [P]robate [C]ode.

In terms of the declaration that Judy did or did not own personally at stake in this company and, therefore, it is part of her estate, the Motion to Dismiss is denied.

> I don't think any of these defenses put forth in the Motion to Dismiss really addressed that issue. I think that still has to be proven up one way or the other. Certainly there's nothing in these pleadings that can lead me to the conclusion that she did, but there's not enough conclusive proof to say that she didn't either.
>
> So in terms of whether or not Judy Agno personally owned a stake in this company at the time of her death, the Motion to Dismiss the Declaratory Judgment, it doesn't really address that. So the Motion to Dismiss as to that request is denied.
>
> As to the remaining points, declaring null and void actions by [Laboy], her appointment by Mr. [Franciszkowicz] and then by Joseph Pieper, the Motion to Dismiss is granted. I think at this point a year-and-a-half, several years later, the appointment of Ms. Laboy as the manager, assuming that this company is, in fact, part of the estate, has been firmly rooted. They should have appealed it sooner, and so I think the Motion to Dismiss as to the appointment of Ms. Laboy and the actions taken by Mr. [Franciszkowicz] and Mr. Pieper were proper for the last several years. So the Motion to Dismiss that portion of the Petition for Declaratory Judgment is granted."

The court also dismissed AHS's counterclaim against Cristina and denied plaintiff's citation to discover assets.

¶ 40 This appeal followed.

¶ 41 II. ANALYSIS

¶ 42 On appeal, plaintiff argues that the probate court erred in granting defendants' section 2-619 motion to dismiss as to her request for declaratory relief, which sought to nullify and void Franciszkowicz's and Pieper's designations of Laboy as AHS's manager. She specifically sets

forth arguments, in her opening and reply briefs, addressing section 23-8 of the Probate Act, waiver, equitable estoppel, *laches*, and Illinois Supreme Court Rule 304(b)(1).

¶ 43 A. Motion to Dismiss

¶ 44 Section 2-619 of the Code permits dismissal of a complaint based upon certain defects or defenses. 735 ILCS 5/2-619 (West 2020). Its purpose is to "dispose of issues of law and easily proved issues of fact at the outset of litigation." *Pruitt v. Pruitt*, 2013 IL App (1st) 130032, ¶ 13. In reviewing a motion to dismiss pursuant to section 2-619, all well-pleaded facts in the complaint must be accepted as true and all reasonable inferences that arise from those facts must be drawn in favor of the nonmoving party. *Leetaru v. Board of Trustees of University of Illinois*, 2015 IL 117485, ¶ 4.

¶ 45 A section 2-619 motion to dismiss admits the complaint's legal sufficiency but asserts an affirmative matter that otherwise defeats the claim. *Pruitt*, 2013 IL App (1st) 130032, ¶ 13; *Leetaru*, 2015 IL 117485, ¶ 40. "The phrase 'affirmative matter' encompasses any defense other than a negation of the essential allegations of the plaintiff's cause of action." *Kedzie and 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill. 2d 112, 115 (1993) (citing 4 R. Michael, Illinois Practice § 41.7 (1989)). The asserted "affirmative matter" must be apparent on the face of the complaint or supported by affidavits or other evidentiary material. *Pruitt*, 2013 IL App (1st) 130032, ¶ 14. Once the defendant satisfies the initial burden of proving an affirmative matter, it becomes the plaintiff's burden to "establish that the defense is unfounded or requires the resolution of an essential element of material fact before it is proven." *Kedzie*, 156 Ill. 2d at 116.

¶ 46 Upon review, this court must determine "whether a genuine issue of material fact exists which should have precluded dismissal and, if no such issue exists, whether dismissal was proper as a matter of law." *Janowiak v. Tiesi*, 402 Ill. App. 3d 997, 1001-02 (2010). We review a section

2-619 dismissal *de novo. Patrick Engineering, Inc. v. City of Naperville*, 2012 IL 113148, ¶ 31. Accordingly, we may affirm dismissal on any basis appearing in the record, regardless of whether the circuit court relied on that same basis or if its reasoning was correct. *Malinksi v. Grayslake Community High School Dist. 127*, 2014 IL App (2d) 130685, ¶ 6.

¶ 47 Preliminarily, we address the issue of ownership of AHS. In its July 16, 2024, order, the probate court denied defendants' amended motion to dismiss as to plaintiff's request for a declaration as to the membership interests in AHS. This is because, as is clear from the hearing transcript, ownership of AHS is strongly contested, and the parties have yet to prove whether Judy owned her membership interest in AHS personally at the time of her death or whether ownership rested in Judy's trust. In particular, the 2011 Restated Operating Agreement does not show that Judy, individually, or through her trust, owned any membership interest in AHS, and yet, the 2011 assignment documents to the Judy C. Agno trust indicate that Judy personally owned membership interests in AHS such that they could be transferred to the trust. No other documents have been submitted showing the assignment of any membership interests to Judy personally. Additionally, defendants argue that the 2011 assignments were ineffectual because they did not comply with the assignment provisions in AHS's operating agreement. Whether the business was an asset of Judy's estate or the Judy C. Agno trust at the time of her death is a central issue in this action. Therefore, any arguments by the parties that rely on the factual ownership of AHS will not be considered by this court.

¶ 48 B. Section 23-8 of the Probate Act

¶ 49 Although the probate court appeared to base its decision to dismiss in part on plaintiff's lack of timeliness in challenging the designations of Laboy as manager, our review is *de novo,* and we may affirm on any basis supported by the record. As such, we first find that section 23-8 of the

Probate Act is applicable, and thus, we begin our analysis there. Notably, defendants made no argument as to the applicability of this section to Pieper's actions as administrator in the court below or in their response brief on appeal. See *Lemke v. Kenilworth Ins. Co.*, 109 Ill. 2d 350, 355 (1985) (issues not raised in the trial court are considered waived on appeal).

¶ 50 Plaintiff argues that section 23-8 does not apply to Franciszkowicz's designation because that action was not done "according to law" and he did not have the authority to effectuate such designation. In response, defendants assert that this section of the Probate Act renders all of Franciszkowicz's actions, including his designation of Laboy as AHS's manager, valid.

¶ 51 In statutory interpretation, we must ascertain and give effect to legislative intent. *Blum v. Koster*, 235 Ill. 2d 21, 29 (2009). "The best evidence of legislative intent is the language used in the statute itself, which must be given its plain and ordinary meaning. The statute should be evaluated as a whole, with each provision construed in connection with every other section." *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 216-17 (2008). When the statute's language is clear, we need not resort to other tools of construction. *Id.* at 217.

¶ 52 Section 23-8 provides: "Acts done before revocation of letters are valid. If the letters of a representative are revoked, all acts done by him according to law before the revocation of his letters are valid." 755 ILCS 5/23-8 (West 2024). The Probate Act defines "representative" as "executor, administrator, administrator to collect, standby guardian, guardian and temporary guardian." 755 ILCS 5/1-2.15 (West 2024).

¶ 53 The plain language clearly indicates that, where there has been a revocation of the letters to administer, any acts done by an administrator to collect are considered valid. Here, the probate court issued letters to administer to Franciszkowicz, and he was appointed the administrator to collect for the estate. Subsequently, Franciszkowicz's letters were revoked, and Pieper was

appointed in his stead. Pursuant to section 23-8, any of Franciszkowicz's acts done according to law are therefore valid.

¶ 54 There is little case law construing this provision of the Probate Act; however, the case law that does exist sufficiently supports our conclusion that Franciszkowicz's designation of Laboy—effectuated before his letters to administer were revoked—was valid, regardless of the correctness of Franciszkowicz's appointment.

¶ 55 In 1864, our supreme court reviewed the statutory scheme for probate in this state and determined that it was *not* the legislature's intent to render void the acts of an executor or administrator whose letters had been later revoked, regardless of whether there was any mistake as to the grant of the letters. *Wight v. Wallbaum*, 39 Ill. 554, 565 (1864). Similarly, in 1873, the supreme court held that, where a proper petition was presented to the probate court with all the requisite statutory facts recited therein, the court had authority to issue letters of administration, which "must, under such circumstances, be regarded as a protection to the administrator." *Meek v. Allison*, 67 Ill. 46, 49 (1873). The court continued, stating that the administrator was required to perform certain duties, including paying debts and distributing assets, and it would be "unreasonable and in violation of every principle of right and justice to hold him liable for acts which were in compliance with the law." *Id.*; see *Rebhan v. Mueller*, 114 Ill. 343, 347 (1885) (where "letters of administration issue, acts done and rights accrued under such administration will be entitled to protection, so that no serious consequences can follow from the delay in probating a will"); *Smith v. Smith*, 168 Ill. 488, 497 (1897) (where letters of administration are revoked and then granted to another person, "the acts performed by the first administrator are binding in a collateral proceeding").

¶ 56 Finally, in *In re Estate of Yoon*, 20 Ill. App. 2d 343, 345-46 (1959), it was determined that the administrator had procured letters from the probate court by false pretenses and fraud, and the probate court nonetheless approved fees for the attorneys who had represented the administrator. On appeal, this court affirmed, finding that there was nothing in the record to show that the attorneys' services were not rendered for the benefit of the estate, rather than the administrator personally, or that there was any improper conduct on the part of said attorneys. *Id.* at 352-53. In coming to this conclusion, the court relied on the same statutory language as section 23-8 and concluded that, even where an appointment is vitiated by fraud, "[t]he acts of an administrator performed prior to the revocation of his letters are by statute made valid" and the grant of the letters of administration would not be "void but voidable" under this statute. *Id.* at 350-51.

¶ 57 In accordance with this precedent, we find that Franciszkowicz's designation of Laboy as the manager of AHS constituted an act rendered to the benefit of the estate, was not contrary to law, and is therefore valid. Thus, we conclude that the probate court's dismissal of plaintiff's request for a declaration that Franciszkowicz's designation of Laboy is null and void was proper. We also observe that McQuiston's own statements at the July 16, 2024, hearing support our conclusion as well. In discussing the effect of nullifying the designations of Laboy, McQuiston stated that her acts would only be voidable, not void and thus finding in favor of plaintiff "wouldn't automatically undue all the actions that occurred in the last couple of years." He further stated, "You can't unring the bell of actions that have occurred over the last two years." As to Franciszkowicz's appointment and all of his actions as administrator, we certainly agree.

¶ 58 Plaintiff argues that Franciszkowicz's designation was "not done according to law" because he did not have the authority to vote AHS's membership interest. However, this argument

assumes that Judy did not own a controlling membership interest in AHS at the time of her death, which has not been determined. Thus, we reject this argument.

¶ 59 Because Pieper's letters of administration have not been revoked and defendants do not argue applicability of section 23-8 to his actions, we decline to draw any conclusions regarding the validity of any of his actions, particularly his designation of Laboy as AHS's manager. As such, we must address the other affirmative defenses raised by defendants in determining whether the probate court properly dismissed that request in plaintiff's amended complaint.

¶ 60 C. Waiver

¶ 61 Defendants' argument as to waiver is based on an alleged agreement between McQuiston, on behalf of the heirs, and Chejfec, on behalf of defendants, in which plaintiff waived and consented to Pieper's appointment and his independent designation of AHS's manager without objection. Plaintiff contends that there is no reliable evidence of this agreement, and the declarations of Franciszkowicz and Pieper conflict with McQuiston's counter-affidavit and, thus, cannot support their argument as they contain controverted facts.

¶ 62 Generally, "waiver applies when a party intentionally relinquishes a known right or his consent warrants an inference of such relinquishment." *Northern Trust Co. v. Oxford Speaker Co.*, 109 Ill. App. 3d 433, 438 (1982). It is not necessary that the party asserting waiver show that they were misled to his or her detriment. *Vaughn v. Speaker*, 126 Ill. 2d 150, 161-62 (1988). The party claiming implied waiver must prove "a clear, unequivocal, and decisive act of its opponent manifesting an intention to waive its rights." *In re Nitz*, 317 Ill. App. 3d 119, 130 (2000). Before turning to our analysis, we emphasize that, in a section 2-619 motion to dismiss, all pleadings and supporting documents must be interpreted in the light most favorable to the nonmoving party, *i.e.* plaintiff. *Van Meter v. Darien Park District*, 207 Ill. 2d 359, 367-68 (2003).

¶ 63 Here, the record shows that, on May 6, 2021, there were documents filed in the probate court wherein the heirs, Cristina and Emmanuel, waived "notice and consent to the appointment of Joseph Pieper as Independent Administrator with the Will Annexed." These documents did not contain any express waiver or agreement as to Pieper's subsequent designation of AHS's manager.

¶ 64 The meaning of the waiver agreement is disputed by the parties. Although McQuiston admitted that the heirs did consent to Pieper's appointment as administrator, he asserted that there was no agreement as to Pieper's designation of the AHS manager and the heirs did not consent to accept whoever Pieper selected. However, Franciszkowicz, in his declaration, stated that the heirs "would agree to accept whoever Mr. Pieper designated as the AHS Manager[,]" and Pieper, in his declaration, stated that "McQuiston said that his clients would also agree to accept whoever the new Administrator designated as the AHS manager." The probate court declined to grant plaintiff's motion to strike these declarations, but at no point did the court resolve the factual dispute between McQuiston's affidavit and Franciszkowicz and Pieper's declarations either. Thus, we cannot say that defendants have proven that plaintiff made a clear, unequivocal, and decisive act manifesting her intention, as trustee, to waive her right to contest Pieper's designation of Laboy as the manager of AHS. Because a determination as to the applicability of waiver requires resolution of this factual dispute, this affirmative defense cannot support the probate court's dismissal of plaintiff's request for a declaratory relief as to Pieper's designation of Laboy as AHS's manager.

¶ 65 Additionally, we are reticent to conclude that Cristina's actions, whether as heir or trustee, constituted a "purposeful relinquishment of a known right," where there has yet to be any determination as to who, the estate or the trust, actually has rights to and membership interests in AHS as an asset. *Dever v. Simmons*, 292 Ill. App. 3d 70, 74 (1997). We further point out that AHS's 2011 operating agreement was not presented to the court until August 31, 2021, several

months after both designations, and Franciszkowicz stated in his deposition that he was unaware of the alleged assignments of Judy's membership interest in AHS to her trust, and his position that Judy personally owned a 62 percent membership interest in AHS at the time that she died "could be different" because of "other documents that have been discovered" a year after his discharge as administrator. Where none of the parties are clear as to the rights and interests in AHS and because these issues remain vehemently disputed between the parties, we believe it would be inequitable to enforce any waiver as procedural default against plaintiff.

¶ 66 Finally, we find that the waiver document and any oral agreement made between Chejfec and McQuiston as to Judy's heirs did not bind plaintiff, who is acting as trustee in this action. "A nonparty may be bound pursuant to privity if his interests are so closely aligned to those of a party that the party is the virtual representative of the nonparty." (Internal quotation marks omitted.) *Oshana v. FCL Builders, Inc.*, 2013 IL App (1st) 120851, ¶ 23. At first blush, it might seem as though Cristina, as heir, and Cristina, as trustee, would be in privity under these circumstances. However, depending upon where ownership of AHS lies (with Judy's trust or with the estate), a finding that privity exists under these particular circumstances would ignore that Cristina, in those different roles, may have competing, or at least differing, interests in the litigation. See *People ex rel. Burris v. Progressive Land Developers, Inc.*, 151 Ill. 2d 285, 296 (1992) (in determining whether privity exists, the identity of the interest controls, not the nominal identity of the parties). For that reason, we do not find that the heirs' waiver of Pieper's appointment necessarily bound plaintiff, as trustee, to accept Pieper as administrator and his designation of the AHS manager.

¶ 67 D. Equitable Estoppel

¶ 68 As to equitable estoppel, plaintiff argues that defendants did not establish the requisite elements for equitable estoppel, particularly "the key element of misrepresentation of a material

fact" where there is no "competent evidence of the alleged agreement" to accept whomever Pieper selected as AHS's manager. Defendants respond that plaintiff is estopped from seeking a declaration that nullifies Laboy's designation as AHS's manager because she failed to timely challenge the appointments of the administrators, she entered into the parties' agreement, and she waived her right to an accounting.

¶ 69 The purpose of equitable estoppel is to prevent fraud or injustice. Ordinarily, estoppel is a question of fact but can become a question of law "where there is no dispute as to the material facts and only one inference can be drawn from those facts." *Board of Library Trustees of Village of Midlothian v. Board of Library Trustees of Posen Public Library,* 2015 IL App (1st) 130672, ¶ 31.

> "A party claiming equitable estoppel must demonstrate that: (1) the other party misrepresented or concealed material facts; (2) the other party knew at the time the representations were made that the representations were untrue; (3) the party claiming estoppel did not know that the representations were untrue when they were made and when they were acted upon; (4) the other party intended or reasonably expected the representations to be acted upon by the party claiming estoppel; (5) the party claiming estoppel reasonably relied upon the representations in good faith to its detriment; and (6) the party claiming estoppel has been prejudiced by its reliance on the representations." *Id.* ¶ 35 (citing *Geddes v. Mill Creek Country Club, Inc.*, 196 Ill. 2d 302, 313 (2001)).

"Equitable estoppel is available if one party has relied upon another party's misrepresentation or concealment of a material fact." *McInerney v. Charter Golf, Inc.*, 176 Ill. 2d 482, 492 (1997). The defense is unavailable where there has been no fraud or misrepresentation. *Id.* However, the element of fraud need not be construed "in the strict legal sense[,]" but "it is sufficient that a

fraudulent or unjust effect results from allowing another person to raise a claim inconsistent with his or her former declarations." *Geddes*, 196 Ill. 2d at 314. Further, "to benefit from equitable estoppel, the party claiming it must have had no knowledge or means of knowing the true facts." *R and B Kapital Development, LLC v. North Shore Community Bank and Trust Co.*, 358 Ill. App. 3d 912, 922 (2005) (citation modified).

¶ 70 Defendants contend that the first element is satisfied because plaintiff misrepresented "at the time of the agreement that she would accept Mr. Pieper's choice of Manager." However, as with the defense of waiver, we find that the meaning of the heirs' agreement to accept Pieper as administrator is disputed. This court, and the court below, are faced with conflicting understandings of the agreement that have not been resolved, and a disputed fact cannot support this affirmative defense on a motion to dismiss. See *In re Estate of Zivin*, 2015 IL App (1st) 150606, ¶ 17 (plaintiff may use affidavits to show that a fact dispute precludes dismissal).

¶ 71 Moreover, defendants' assertion requires that we bind all of Cristina's actions, as an heir to the estate, to the actions of plaintiff, as trustee of two different trusts. Where it is unclear what authority and rights the heirs and the trustee in this action actually have in regards to AHS, it would be inequitable, at this juncture, for plaintiff to be bound by her actions as an heir.

¶ 72 Even had defendants submitted competent evidence of plaintiff's agreement to accept Pieper's designation, "mere oral promises concerning future performances" are not regarded as legally binding and cannot support a claim of equitable estoppel. *Sinclair v. Sullivan Chevrolet Co.*, 31 Ill. 2d 507, 510-11 (1964) ("a false representation must generally relate to an existing or past event, not to a promise or prognostication concerning a future happening"); see *In re Scarlett Z.-D.*, 2015 IL 117904, ¶¶ 27-31 (finding that the mother was not equitably estopped from challenging her former boyfriend's custody, visitation, and child support action where the former

boyfriend's allegation that she promised to pursue his adoption of the child in the future was not a factual misrepresentation).

¶ 73 We also reject defendants' argument as to the prejudice element, *i.e.*, that the party claiming estoppel has been prejudiced by his reliance on the representations. Specifically, defendants contend that plaintiff's "misrepresentations have created uncertainty whether AHS's numerous regulatory and government filings are valid because they may not have been properly certified by a qualified corporate officer." However, there would be no uncertainty had defendants ensured proper ownership of AHS at the outset. Defendants further contend that plaintiff's efforts to nullify Laboy's designation has "strained AHS's limited resources." It appears to this court that the alleged prejudice defendants have suffered resulted from their own failure to provide competent proof to the court of Judy's personal ownership and interest in AHS earlier in this action.

¶ 74 To this point, our supreme court has stated that "[a] party claiming the benefit of an estoppel cannot shut his eyes to obvious facts, or neglect to seek information that is easily accessible, and then charge his ignorance to others." *Vail v. Northwestern Mutual Life Ins. Co.*, 192 Ill. 567, 570 (1901). There is certainly an argument to be made that enforcing estoppel against plaintiff would not be equitable here, where Chejfec openly admitted to the probate court that the trail of ownership for AHS is confusing, and he had not yet gathered proof of where the membership interests actually resided upon Judy's death. Thus, we would also find that it was not reasonable for Chejfec, and therefore, defendants, to rely on the heirs' actions in foreclosing any challenges to Pieper's designation of Laboy as AHS's manager where it was unclear if the heirs of Judy's estate even had any membership interest in AHS or authority over that asset through the estate.

¶ 75 Therefore, we conclude that defendants failed to prove equitable estoppel as an affirmative defense to plaintiff's request that Pieper's designation of Laboy be declared null and void.

¶ 76 E. *Laches*

¶ 77 Next, we address the applicability of *laches*. Defendants' basis for this defense is that plaintiff had all of the necessary facts and information necessary to file her complaint for declaratory judgment and nonetheless waited 18 months to do so, resulting in prejudice to defendants. Plaintiff asserts that she did not learn that Pieper had redesignated Laboy as the manager until after she filed her initial complaint; thus, she subsequently filed her amended complaint, which included her request as to Pieper only one month after having all the information necessary to do so.

¶ 78 *Laches* is an affirmative matter that may be asserted in a section 6-219 motion to dismiss. *Richter v. Prairie Farms Dairy, Inc.*, 2016 IL 119518, ¶ 50. It "is an equitable doctrine that precludes the assertion of a claim by a litigant whose unreasonable delay in raising that claim has prejudiced the opposing party." *Noland v. Mendoza*, 2022 IL 127239, ¶ 32. " 'The doctrine is grounded in the equitable notion that courts are reluctant to come to the aid of a party who has knowingly slept on his rights to the detriment of the opposing party.' " *PNC Bank, National Association v. Kusmierz*, 2022 IL 126606, ¶ 25 (quoting *Tully v. State*, 143 Ill. 2d 425, 432 (1991)). To establish *laches*, a party must show "(1) lack of diligence by the party asserting the claim and (2) prejudice to the opposing party resulting from the delay." *Id.* ¶ 26. "[A] *laches* inquiry is highly fact-intensive and dependent on the unique circumstances of each case." *Schittino v. Village of Niles*, 2024 IL App (1st) 230926, ¶ 31 (citing *Kusmierz*, 2022 IL 126606, ¶ 26).

¶ 79 In the case before us, Pieper was appointed as independent administrator with the will annexed on May 6, 2021. The record demonstrates that plaintiff had personal knowledge of this

appointment by virtue of the waiver signed by her as heir, which was filed with the court the same day. On May 10, 2021, Pieper independently designated Laboy as AHS's manager. However, the document accomplishing such is first found in the record as an exhibit to defendants' initial motion to dismiss filed on October 31, 2022. Nothing on the document's face suggests that it was filed with the court earlier in the action or served upon anyone, other than presumably the signatories, Pieper and Laboy. Additionally, McQuiston stated in his affidavit that he never received notice of Pieper's redesignation of Laboy. Less than a month after defendants' filed their motion to dismiss, plaintiff requested leave to amend her complaint to add a claim regarding Pieper's designation of Laboy as the manager of AHS.

¶ 80 There is nothing in the record to suggest that plaintiff had personal knowledge of Pieper's redesignation prior to October 2022. Certainly, defendants have asserted that plaintiff has continued to object to Laboy's position as manager, even going so far as to file a citation to discover assets against Laboy after her redesignation. However, that filing does not clearly demonstrate any knowledge on plaintiff's part that Pieper had redesignated Laboy as manager, only that Laboy had been serving as manager since January 2021.

¶ 81 Accordingly, we agree with plaintiff that there was no undue delay in asserting her claim against Pieper. We note that defendants only respond that plaintiff "had all the facts necessary to challenge Mr. Pieper's designation of Ms. Laboy in May of 2021[,]" but they point to nothing in the record to show plaintiff's personal knowledge of that designation. See *Kampmann v. Hillsboro Community School District No. 3 Board of Education*, 2019 IL App (5th) 180043, ¶ 15 (the defendant must plead and prove "that the plaintiff had knowledge or notice of the facts giving rise to the claim"). If anything, this is yet another disputed fact that prevents dismissal.

¶ 82 Nonetheless, even if plaintiff did have knowledge of the redesignation earlier, we cannot agree that plaintiff slept on her rights as trustee because, once again, it remains unclear where the rights to AHS lie. If defendants did not know in 2021 and still do not know now who owns AHS, why should plaintiff be barred from asserting her undetermined rights? See *In re Estate of Schafroth*, 233 Ill. App. 3d 185, 187 (1992) ("the imposition of *laches* requires an unreasonably delayed assertion of a *known* right" (emphasis original)).

¶ 83 Thus, we conclude that *laches* is not applicable under these specific circumstances.

¶ 84 F. Illinois Supreme Court Rule 304(b)(1)

¶ 85 Finally, we acknowledge that, in their response brief, defendants contend that Illinois Supreme Court Rule 304(b)(1) (eff. Mar. 8, 2016), regarding the finality of orders, bars plaintiff from seeking a judgment declaring the designation of Laboy null and void. This argument was included in the amended motion to dismiss in the probate court, and plaintiff addressed it in her reply brief; therefore, we briefly address it here.

¶ 86 According to defendants, plaintiff cannot contest Pieper's designation of Laboy as AHS's manager because she failed to appeal, within 30 days, the May 6, 2021, order issuing letters of office to Pieper as the supervised administrator with will annexed. Plaintiff argues that Rule 304(b)(1) is not applicable here because her complaint for declaratory judgment was not directed at the May 6, 2021, order, but, rather, Pieper's subsequent actions following the court's appointment order. We agree with plaintiff.

¶ 87 Rule 304(b)(1) permits appeals, without a special Rule 304(a) finding, of "[a] judgment or order entered in the administration of an estate, guardianship, or similar proceeding which finally determines a right or status of a party." Ill. S. Ct. R. 304(b)(1). The purpose of this rule, in the estate context, is to avoid a party whose rights have been determined having to wait years before

securing an appeal and "because a reversal at that late date could require the unwinding of other judgments and force a complicated and messy redistribution of assets." *In re R.J.*, 2022 IL App (1st) 211542, ¶ 41 (citing *Cushing v. Greyhound Lines, Inc.*, 2012 IL App (1st) 100768, ¶ 84). "Orders within the scope of Rule 304(b)(1), even though entered before the final settlement of estate proceedings, must be appealed within 30 days of entry or be barred." *Stephen v. Huckaba*, 361 Ill. App. 3d 1047, 1051 (2005).

¶ 88 Rule 304(b)(1) does not deprive this court of jurisdiction or bar plaintiff's appeal or complaint below where the current appeal is not from that order, and her amended complaint does not contest that order. Additionally, plaintiff, as trustee, was also not a party to the probate action at the time the May 6, 2021, order was entered, and Cristina, as an heir, is not a party to this appeal or to the declaratory judgment action. Finally, we are unaware of any cases, and defendants point us to none, where Rule 304(b)(1) has been successfully used as an affirmative matter to dismiss a complaint.

¶ 89 We also find *In re Estate of Pawlinski*, 407 Ill. App. 3d 957 (2011), upon which defendants rely, inapposite. There, heirs of the decedent challenged the omission of certain bank certificates of deposit in the accounting and distribution of the estate's assets, and the probate court held an evidentiary hearing on the issue. *Id.* at 957-58. The executor appealed from the court's order finding the certificates to be assets of the estate, and the heirs argued on appeal that this court lacked jurisdiction because "the estate remains open in probate court." *Id.* at 962. This court in that case effectively held that, even while an estate remains open in probate court, final appealable orders may be entered in the case. *Id.* at 963. Our conclusion that plaintiff's appeal and complaint below are not direct challenges to the May 16, 2021, order is not implicated by the court's holding in *Pawlinski*.

¶ 90 III. CONCLUSION

¶ 91 In sum, we find that the probate court properly dismissed plaintiff's request that Franciszkowicz's designation of Laboy as the manager be declared null and void, and therefore affirm. However, we find that the probate court's dismissal of her same request as to Pieper's designation was erroneous where none of defendant's affirmative defenses were applicable, and therefore reverse. Thus, we remand this matter to the circuit court for further proceedings on plaintiff's request for declaratory relief as to Pieper's designation of Laboy as AHS's manager, which will necessarily require a determination of ownership of AHS.

¶ 92 For the reasons stated, we affirm in part and reverse in part the judgment of the circuit court and remand for further proceedings.

¶ 93 Affirmed in part, reversed in part, and remanded with directions.