UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0254

September Term, 2015

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LAURA W. POWER

v.

SOLARIS POWER, PERSONAL REPRESENTATIVE OF THE ESTATE OF RICHARD TYNE POWER

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Krauser, C.J.,
Berger,
Reed,

JJ.

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Opinion by Berger, J.

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Filed: March 2, 2016

This case arises out of a 2014 motion to modify a 1999 judgment of absolute divorce, based upon the terms of a 1999 marital settlement agreement. Laura W. Power ("Laura") filed the motion giving rise to the present appeal after the death of her ex-husband, Richard Tyne Power ("Richard").[1] Following a hearing, the circuit court dismissed Laura's claim.

On appeal, Laura presents four issues[2] for our review, which we have consolidated and rephrased as a single issue:

> Whether the circuit court erred by dismissing Laura's motion to modify the judgment of divorce.

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[1] Because Laura and Richard share a surname, we shall refer to them by their first names for purposes of clarity and out of no disrespect.

[2] The issues, as presented by Laura, are:

> 1. Did the Trial Court err by ruling on the wrong motion by granting the Motion to Dismiss, based on denying the underlying Motion to Modify, and disregarding the evidence and case law filed in opposition to the Motion to Dismiss?
>
> 2. Did the Trial Court err in granting the Motion to Dismiss where it failed to consider or apply Appellant's evidence and authority concerning the application of: post-death litigation, collateral estoppel, *res judicata*, laches and prejudice, and statute of limitations?
>
> 3. Did the Trial Court err in denying Appellant's Motion to Alter or Amend the January 30, 2015 Order where the motion demonstrated that the trial court had erred in granting the Motion to Dismiss?
>
> 4. Did the Trial Court err in denying that the Motion to Modify, on its face, discloses a legally sufficient cause of action?

For the foregoing reasons, we shall affirm.

## FACTS AND PROCEEDINGS

Richard and Laura were married on November 8, 1974. Their daughter, Solaris Power ("Solaris"), was born on March 7, 1980. Richard and Laura separated in June 1995.

In 1998 and early 1999, Richard and Laura worked with a mediator to negotiate a settlement agreement. On February 4, 1999, Richard and Laura entered into a 28-page marital settlement agreement, which was initialed on each page and signed by both parties ("the 1999 Agreement"). The 1999 Agreement provided that it superseded all prior agreements. The 1999 Agreement also set forth division of the parties' assets and liabilities and provided for alimony.

On March 11, 1999, Richard filed a complaint for divorce. Laura filed her answer on April 27, 1999. On May 6, 1999, the parties filed a joint request for an uncontested divorce hearing, and on June 15, 1999, the uncontested divorce hearing occurred. Laura did not appear at the hearing. The reason for Laura's failure to appear is disputed by the parties. At the beginning of the hearing, Richard's attorney represented to the court that Laura was aware of the hearing but was not expected to attend. Laura maintains that she received no notice of the June 15, 1999 hearing. According to Laura, either the clerk failed to mail her a notice of the hearing or Richard interfered with the notice by removing it from her mailbox. A judgment of absolute divorce was entered on June 28, 1999. Copies of the divorce judgment were mailed to the parties.

Nearly ten years later, on January 29, 2009, Laura filed a motion to modify the judgment of divorce ("the 2009 Litigation"). Laura further moved for Richard to be held in contempt. Laura asserted that Richard had failed to make certain alimony payments that were due pursuant to the 1999 Agreement. Laura further sought to modify the judgment of absolute divorce based upon Richard's alleged concealment of assets during the negotiation of the 1999 Agreement. Laura argued that Richard had made fraudulent misrepresentations and had failed to disclose the existence of substantial assets. Laura asserted that Richard's misrepresentations caused her to be denied an equitable share of all marital asserts and that she had suffered significant financial injury.

Following a three-day trial, the circuit court found that Laura had been denied access to $28,000 in funds which she was entitled to under the terms of the 1999 Agreement. The court awarded Laura $28,000, plus $1,141 in interest and $5,000 in attorney's fees. The court denied all of Laura's other claims.

In 2011, Laura sued the law firm that had represented her in connection with the 2009 Litigation, alleging malpractice. Laura alleged that her prior attorney had failed to provide certain discovery documents to Laura or to Laura's accountant in sufficient time to allow the accountant to analyze the documents. Laura and the law firm ultimately settled the matter.

Richard died on January 1, 2014. Solaris was appointed administrator of Richard's estate ("the Estate"). On March 24, 2014 Laura presented four claims against the Estate, seeking certain alimony interest, recovery of Laura's 1988 inheritance from her parents, "lost

marital assets," and recovery of miscellaneous personal property. The Estate disallowed the claims. Thereafter, Laura petitioned the Orphans' Court for Montgomery County for "Alimony B" interest in the amount of $4,375 and recovery of miscellaneous personal property. Laura did not petition the orphans' court following the disallowance of the her claims for recovery of her 1988 inheritance from her parents and alimony interest. Following a November 7, 2014 hearing, the orphans' court denied Laura's claims.[3]

On August 22, 2014, Laura filed the motion to modify which gives rise to the current appeal. Laura sought recovery of the 1988 inheritance plus interest as well as recovery of marital assets which she alleged were inequitably divided between the parties. The Estate moved to dismiss on four alternate bases. The Estate argued that Laura's claim was barred by laches because the claim was made fifteen years after the 1999 Agreement and after Richard's death. The Estate further asserted that Laura's claims were barred under the doctrines of *res judicata* and collateral estoppel. Finally, the Estate asserted that the claims were untimely filed. Following a hearing on January 30, 2015, the circuit court dismissed Laura's motion to modify.[4] Laura filed a motion to alter or amend, which was denied. This appeal followed.

[3] Initially, Laura filed four claims. She later supplemented her demand with two additional claims. All six claims were either withdrawn or denied by the orphans' court.

[4] The circuit court did not expressly set forth the basis for its ruling.

## STANDARD OF REVIEW

Appellate courts apply a *de novo* standard when reviewing a trial court's granting of a motion to dismiss. *Monarc Const., Inc. v. Aris Corp.*, 188 Md. App. 377, 384 (2009) (citing *Gasper v. Ruffin Hotel Corp. of Md.*, 183 Md. App. 211, 226 (2008)). We consider whether the complaint, on its face, states a legally sufficient cause of action. *Pulliam v. Motor Vehicle Admin.*, 181 Md. App. 144, 153 (2008). Furthermore, "although an appellate court will not ordinarily consider an issue that was not previously raised in the trial court, an appellate court can affirm when 'the record in a case adequately demonstrates that the decision of the trial court was correct, although on a ground not relied upon by the trial court and perhaps not even raised by the parties.'" *Yaffe v. Scarlett Place Residential Condominium, Inc.*, 205 Md. App. 429, 440 (2012) (quoting *Robeson v. State*, 285 Md. 498, 502 (1979)). "'Considerations of judicial economy justify the policy of upholding a trial court decision which was correct although on a different ground than relied upon.'" *Id*. (quoting *Robeson*, *supra*, 285 Md. at 502).

## DISCUSSION

Laura maintains that the circuit court erred by granting the Estate's motion to dismiss her motion to modify the 1999 judgment of divorce. As we shall explain, dismissal was appropriate on multiple grounds: (1) because the motion was untimely filed pursuant to the relevant portion of the Estates and Trusts Article; (2) because consideration of the motion

was barred by the doctrine of laches; and (3) because consideration of the motion was barred by *res judicata*.

## I. Untimely Filing

Two separate statutory deadlines apply for bringing claims against an estate of a decedent. Pursuant to Md. Code (1974, 2011 Repl. Vol.), § 8-103(a) of the Estates and Trusts Article ("ET"), "except as otherwise expressly provided by statute . . . all claims against an estate of the decedent . . . are forever barred against the estate, the personal representatives, and the heirs and legatees, unless presented within . . . 6 months after the date of the decedent's death."[5]

Richard died on January 1, 2014. Pursuant to ET § 8-103, Laura was required to present her claim within six months of Richard's death -- by June 30, 2014. Laura actually presented her claims for lost inheritance and lost marital assets due to the allegedly unconscionable 1999 Agreement on August 22, 2014. Laura's claims were not presented to the Estate within the time frame set forth by ET § 8-103. Accordingly, Laura's claims were properly rejected.

[5] The statute provides an alternate deadline of within two months after the personal representative delivers notice to a creditor pursuant to ET § 7-103. This is inapplicable to the instant case. Furthermore, ET § 8-103 requires that all claims be presented by the earlier of the two alternate deadlines.

Furthermore, Laura did not challenge the disallowance of her claims within the requisite time frame. ET § 8-107(b) sets forth the deadline for a claimant to challenge an estate's disallowance of a claim:

> If the claim is disallowed in whole or in a stated amount, the claimant is forever barred to the extent of the disallowance unless he files a petition for allowance in the court or commences an action against the personal representative or against one or more of the persons to whom property has been distributed. The action shall be commenced within 60 days after the mailing of notice by the personal representative. The notice shall warn the claimant concerning the time limitation.

In the present case, the Estate disallowed Laura's claims on April 15, 2014. Pursuant to ET § 8-107(b), Laura was required to challenge the disallowance in court by Monday, June 16, 2014.[6] Laura did not filed her motion in the circuit court until August 22, 2014. Laura's motion to modify, therefore, was filed over two months too late. Accordingly, the motion to modify was properly dismissed.

## II. Laches

We have explained that "[t]he equitable doctrine of laches bars litigation of a claim when there is unreasonable delay in its assertion and the delay results in prejudice to the opposing party." *Lopez v. State*, 433 Md. 652, 653 (2013). "The defense of laches in civil actions generally can be asserted by a party or invoked by the court on its own initiative."

[6] The sixtieth day after the disallowance was June 15, 2014. This date, however, was a Sunday. Laura was, therefore, required to file her claim by the next business day, Monday, June 16, 2014. *See* Md. Rule 1-203(a).

*Moguel v. State*, 184 Md. App. 465, 473 (2009). In the present case, although the circuit court did not expressly explain the reason for its ruling on the motion to dismiss, the court indicated that it was persuaded by the Estate's laches argument, commenting:

> [U]nder the doctrine of laches, [Laura] had plenty of time to have brought this [motion to modify the 1999 judgment of divorce]. I see absolutely no merit, and I see that the motive there is nothing but greed.

"[T]here is no inflexible rule as to what constitutes, or what does not constitute, laches; hence its existence must be determined by the facts and circumstances of each case." *Liddy v. Lamone*, 398 Md. 233, 244 (2007) (quoting *Ross v. State Board of Elections*, 387 Md. 649, 669 (2005)). We recognize that the passage of time alone does not render an action barred by laches. *See Brashears v. Collison*, 207 Md. 339 (1955). Indeed, "[i]t is ... well settled that laches 'applies when there is an unreasonable delay in the assertion of one's rights and that delay results in prejudice to the opposing party.'" *Liddy*, *supra*, 398 Md. at 244 (quoting *Frederick Road Ltd. Partnership v. Brown & Sturm*, 360 Md. 76, 117 (2000)). "There must have been some lapse of time during which the plaintiff failed to assert his rights, and the lapse must have caused some prejudice to the defendant." *Hungerford v. Hungerford*, 223 Md. 316, 321 (1960).

Turning our attention to the facts of the present case, we note that the parties entered into their marital settlement agreement in 1999. Laura offers a variety of justifications for her delay in seeking modification of the 1999 divorce judgment. Laura asserts that she was unaware of the revisory powers of the court until May 30, 2014, when Steward Sutton,

Esquire explained the doctrine of unconscionability to her and provided her with a copy of a transcript of a ruling in an unrelated case in the Circuit Court for Montgomery County, in which a judge vacated a separation agreement on the grounds that the agreement was unconscionable and inequitable in the distribution of marital property. Laura asserts that she "did not fully comprehend her legal rights, know how to represent herself, or know that the [c]ourt could modify inequitable settlement agreements once granted until recently." Laura further asserts various other purported justifications for the delay, including that she failed to receive notice of the 1999 uncontested divorce hearing either due to a clerical error or because Richard may have stolen it from her mailbox, various problems relating to Laura's health and finances, as well as receiving poor lawyering related to the 2009 Litigation.

In our view, none of Laura's purported justifications for the fifteen-year delay are compelling. Even if we were to assume *arguendo* that Laura failed to receive notice of the 1999 uncontested divorce hearing, it is undisputed that Laura received a copy of the judgment of divorce, by mail, that incorporated the 1999 Agreement. Although we do not intend to dismiss the magnitude of Laura's health and financial struggles, we are unpersuaded that the various struggles render her fifteen year delay reasonable. Furthermore, Laura clearly knew that she could seek relief from the court, as reflected by Laura's filing of the motion giving rise to the 2009 Litigation.

Having determined that Laura's delay in filing the instant motion to modify was unreasonable, we turn our attention to the issue of whether the delay caused prejudice to the

defendant. In the context of latches, "prejudice is generally held to be anything that places the defendant in a less favorable position." *Liddy*, *supra*, 398 Md. at 244-45 (internal quotation omitted). The Estate was plainly prejudiced in its ability to defend against Laura's claims of unconscionability by Richard's death. After Richard's death, Richard's testimony was unavailable. Although various forms of documentary evidence remained available, this evidence is not a substitute for Richard's testimony. Accordingly, because Laura's delay in filing the motion to modify was unreasonable, and because the Estate was prejudiced by Richard's death, the doctrine of laches bars Laura's claim of unconscionability.

## III. *Res Judicata*

The Estate further asserts that Laura's claims are barred by the doctrine of *res judicata*.[7] "*Res judicata* and collateral estoppel are based upon the judicial policy that the losing litigant deserves no rematch after a defeat fairly suffered, in adversarial proceedings, on issues raised, or that should have been raised." *Grady Mgmt., Inc. v. Epps*, 218 Md. App. 712, 736 (2014) (citation omitted). We have explained:

> The doctrine of claim preclusion, or *res judicata*, "bars the relitigation of a claim if there is a final judgment in a previous litigation where the parties, the subject matter and causes of action are identical or substantially identical as to issues actually litigated and as to those which could have or should have been raised in the previous litigation." *Board of Ed. v. Norville*, 390 Md. 93, 106, 887 A.2d 1029, 1037 (2005). *See also Alvey v.*

[7] The Estate asserts that Laura's claims are barred by both *res judicata* and collateral estoppel. In our view, the doctrine of *res judicata* is more applicable than collateral estoppel to the present case. Accordingly, we shall not address the collateral estoppel argument.

> *Alvey*, 225 Md. 386, 390, 171 A.2d 92, 94 (1961) and *Lizzi v. WMATA*, 384 Md. 199, 206-07, 862 A.2d 1017, 1022 (2004). The doctrine embodies three elements: (1) the parties in the present litigation are the same or in privity with the parties to the earlier litigation; (2) the claim presented in the current action is identical to that determined or that which could have been raised and determined in the prior litigation; and (3) there was a final judgment on the merits in the prior litigation.

*R & D 2001, LLC v. Rice*, 402 Md. 648, 663, 938 A.2d 839, 848 (2008).[8]

All of these elements are satisfied in the present case. The parties in the present litigation are the same parties or in privity with the parties involved in the 2009 Litigation -- namely, Laura and Richard, or, in this case, Richard's estate. The claim presented in the current action is the alleged unconscionability of the 1999 Agreement. Laura attempts to distinguish between the claim of unfairness and inequity she sought to establish in 2009 and that claim of unconscionability in the instant case. Critically, even if we accept Laura's

[8] We explained further, differentiating *res judicata* from collateral estoppel:

> Issue preclusion, or collateral estoppel is a somewhat allied doctrine, but it looks to issues of fact or law that were actually decided in an earlier action, whether or not on the same claim. We have articulated the doctrine thusly: "When an issue of fact or law is actually litigated and determined by a valid and final judgment, . . . the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim." *Janes v. State*, 350 Md. 284, 295, 711 A.2d 1319, 1324 (1998); *Murray International v. Graham*, 315 Md. 543, 547, 555 A.2d 502, 504 (1989).

*R & D 2001*, *supra*, 402 Md. at 663. Although the issues of law raised in this case are quite similar to the issues raised in 2009 Litigation, we need not address this issue in light of our holdings on the issues of timeliness of filing, laches, and *res judicata*.

premise that the unconscionability claim differs from the claims raised in the 2009 Litigation, there is no reason why the unconscionability claim could not have been raised in the previous litigation. Finally, there was a judgment on the merits in the 2009 Litigation, when the trial court denied Laura's motion to vacate the 1999 divorce judgment. Because all three elements of the doctrine of *res judicata* are satisfied, consideration of Laura's motion to modify the 1999 judgment of divorce is barred.

## IV. Conclusion

Laura's motion to modify the 1999 divorce judgment was properly subject to dismissal for multiple reasons. The motion was untimely under the relevant statutory deadline. Furthermore, the doctrines of laches and *res judicata* preclude consideration of the merits of Laura's claim. Accordingly, we hold that the circuit court did not err by granting the Estate's motion to dismiss.

**JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.**