Workman, C.J., Concurring in part, Dissenting in part Opinion, Case No.23589 Jerry A. Vorholt v. One Valley Bank, et al.

No. 23589 - Jerry A. Vorholt v. One Valley Bank (Formerly The Kanawha Valley Bank, N.A.), One Valley Bank, A National Banking Association, (Formerly the Kanawha Bank), Trustee of the Ansel F. Vorholt Trust, Leo J. Vorholt, Jr., Edward Vorholt, Archie Vorholt, Ruth V. Childress, Catherine V. Melton, and the Most Reverend Bernard W. Schmitt, D.D., Bishop of the Roman Catholic Diocese of Wheeling-Charleston, and His Successor in Office, and All Other Known and Unknown Heirs at Law of Beneficiaries or Other Beneficiaries Known or the Ansel F. Vorholt Trust

Workman, Chief Justice, concurring, in part, dissenting in part:

Although I agree with the majority's conclusion that Appellant's action is barred by the statute of limitations contained within West Virginia Code 55-2-12 (1994), I disagree with the decision to the extent it concludes the statute of limitations began to run when the trust terminated in 1980. Instead, I believe the statute of limitations began to run in 1989, when Appellant first learned of the trust's existence. As to this point, it is beyond comprehension how, on one hand, the majority can state that Appellant "should have reasonably known of the existence of his claim long before May of 1989," while on the other hand, it places no significance to the fact that One Valley Bank failed to contact Appellant until 1989, despite the fact it had actual knowledge since 1970 that Appellant was the adopted son of Leo J. Vorholt.

Approximately three years prior to the expiration of the trust and twelve years before Appellant was contacted by One Valley Bank, this Court stated: "Any testamentary . . . trust governed by the laws of the State of West Virginia, regardless of the date of its execution . . . shall be construed under the provisions of W. Va. Code, 48-4-5 [1969] and adopted children shall take under any provisions which uses the word[] . . . 'children' . . . ."[(1)] Syl. pt. 2, in part, Wheeling Dollar Savings & Trust Co. v. Hanes, 160 W. Va. 711, 237

S.E.2d 499 (1977).[(2)] Certainly, as an institution which professionally manages trust accounts, One Valley Bank actually knew or reasonably should have known of this Court's decision in Hanes. As One Valley Bank also knew of Appellant's status as an adopted child, I believe One Valley Bank clearly had a fiduciary duty as the trustee to at least inform Appellant of the trust and his potential qualification as a beneficiary.

To the contrary, I do not find any evidence which suggests Appellant should have known or reasonably should have known about the trust. The majority suggests Appellant should have made an inquiry into his father's estate because he knew his father was dead. However, Appellant was seventeen years old when his father died and never had any reason to question his father's estate until One Valley Bank contacted him in 1989. It is far from a "reasonable" expectation to think ordinary people spend their time searching dusty circuit court record rooms to find trust agreements they do not know exist. Therefore, I conclude under the discovery rule the statute of limitations should have begun to run in 1989, not 1980.

Lastly, I believe although I concur with the result based on the statute of limitations, I conclude that, with regard to their obligations to be cognizant of the law, the majority opinion leaves the strong implication that major banking institutions will be held to a lower standard than average people

1. The relevant language in the will provides: "In the event that Leo Vorholt does not live until the termination of the Trust Estate, then his interest shall pass to his children and descendants, per stirpes, and not per capita."

2. In full, syllabus point two of Hanes states:

Any testamentary or inter vivos trust governed by the laws of the State of West Virginia, regardless of the date of its execution, including by way of example and not by way of limitation, all trusts executed before 1959, shall be construed under any provisions of W. Va. Code, 48-4-5 [1969] and adopted

children shall take under any provisions which uses the words "child" or "children," or any general words which are loosely, if not technically, synonymous with the words "child" or "children," including again by way of example and not by way of limitation, such words as "natural children," "descendants," "heirs," "issue," or any other similar language.