

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

IN RE: ESTATE OF: ÜLKÜ CAMLIBEL, : IN THE SUPERIOR COURT OF
DECEASED : PENNSYLVANIA

APPEAL OF: TURGUL TÜRKSAN,
TIBET TÜRKSAN AND ATLAS
TÜRKSAN

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No. 186 WDA 2025

Appeal from the Order Entered January 23, 2025
In the Court of Common Pleas of Allegheny County Orphans' Court at
No(s): No. 02-16-6730

IN RE: ESTATE OF ÜLKÜ CAMLIBEL, : IN THE SUPERIOR COURT OF
DECEASED : PENNSYLVANIA

APPEAL OF: ROBERT J. GRAY, YALE
H. GUTNICK AND JAY L. FINGERET

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No. 216 WDA 2025

Appeal from the Order Entered April 4, 2023
In the Court of Common Pleas of Allegheny County Orphans' Court at
No(s): No. 02-16-6730

IN RE: ESTATE OF ÜLKÜ CAMLIBEL : IN THE SUPERIOR COURT OF
: PENNSYLVANIA

APPEAL OF: GUNGOR ONAL

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No. 255 WDA 2025

Appeal from the Order Entered April 4, 2023
In the Court of Common Pleas of Allegheny County Orphans' Court at
No(s): No. 021606730

BEFORE: NICHOLS, J., McLAUGHLIN, J., and SULLIVAN, J.

MEMORANDUM BY McLAUGHLIN, J.:

FILED: August 25, 2026

These cross-appeals arise from a dispute over a decedent's estate. Appellants Atlas Türksan, Tibet Türksan, and Turgul Türksan appealed to Orphans' Court from the decree of the Register of Wills admitting to probate the will of decedent Ülkü Camlibel ("Decedent" or "Camlibel"). Appellees Jay Fingeret, Robert J. Gray, Yale H. Gutnick, and Gungor Onal responded with petitions for abatement and motions for summary judgment.¹ They contended Appellants' claims were time-barred. The Orphans' Court granted summary judgment to Appellees but denied Appellees' petition for abatement. We affirm the order granting summary judgment and dismiss the appeals of the denial of abatement as moot.

Decedent was born in Turkey in 1939 but lived in the United States for much of her adult life. In 1999, Camlibel made her final trip to Turkey to visit family, including her aunt Necla Türksan ("Necla") and Necla's son, Turgul.² During this visit, Camlibel provided to her family a photocopy of a Will, created in 1981 ("1981 Will"). The Will stated:

I give, devise, and bequeath, all my property, real and personal and wherever situate unto my beloved uncle, Mr. Celal Türksan . . . ; provided, however, should my beloved uncle, Mr. Celal Türksan, predecease me, I hereby give,

¹ Fingeret, Gray, and Gutnick filed a joint summary judgment motion, and Onal moved separately for summary judgment.

² Atlas was not yet born when Camlibel visited Turkey in 1999. Mot. for Summ. J., Ex. B at 37. Tibet was born in 1999, and was unsure whether he had been born at the time of Camlibel's visit. *Id.*, Ex. C at 23. Atlas and Tibet are Necla's grandsons.

devise, and bequeath, all my property, real and personal, and wherever situate unto my beloved aunt and wife of my beloved uncle, Mrs. Necla Türksan . . . ; provided, however, should my beloved aunt, Mrs. Necla Türksan, and my beloved uncle, Mr. Celal Türksan, both predecease me, I hereby give, devise, and bequeath, all my property, real and personal and wherever situate unto my beloved nephew, Turgut Türksan . . . ; provided, however, should all my beloved relatives, specifically Mrs. and Mrs. Celal Türksan and their son, Turgut Türksan,^[3] previously mentioned hereinabove, predecease me, I hereby give, devise, and bequeath, all my property, real and personal and wherever situate, unto my beloved nephew, Turgul Türksan

Resp. to Mot. for Summ. J., Ex. at 10.

Appellants did not stay in contact with Camlibel between the 1999 visit to Turkey and Camlibel's death in 2016. Atlas and Tibet testified that they had never met or spoken to Camlibel. Mot. for Summ. J., Ex. B at 13 (Atlas Türksan Dep.);⁴ **id.**, Ex. C at 11 (Tibet Türksan Dep.). Turgal had not seen or spoken to Camlibel since her 1999 visit to Turkey. **Id.**, Ex. D at 13 (Turgal Türksan Dep.). Turgal, who lived with Necla prior to Necla's death, thought he saw Necla on the phone with Camlibel "once or twice." **Id.** at 16.

By 2013, Camlibel had developed dementia and was hospitalized at UPMC Mercy. A guardianship petition was filed in the Allegheny County Court of Common Pleas and the Honorable Kathleen Durkin presided over a three-year guardianship proceeding. **See** Docket No. 02-13-6258. Judge Durkin

³ Turgut was Atlas and Tibet's father and died before Camlibel.

⁴ Citations to the motion for summary judgment are to the motion for summary judgment filed by Gray, Gutnick, and Fingeret.

appointed Attorney Gary Gushard as Camlibel's attorney.⁵ Gushard learned that Camlibel had a potential interest in property in Turkey ("Turkish Property") and recommended that, if Camlibel owned the property, it should be sold. Mot. for Summ. J., Ex. F at 37, 44-45, 51, 55 (Gushard Dep.). Gushard testified that he believed it would be in Camlibel's best interest to investigate the Turkish Property and "if potentially appropriate, to then proceed to try to monetize the real estate." **Id.** at 55. He testified that Camlibel was gaining no benefit from the property. **Id.** at 51. He stated that it was uncertain "how much cash she would actually need for the remainder of her life, but her expenses in living in a nursing home as a private pay resident were going to be very high." **Id.** at 64. He testified that Camlibel "appeared to be a relatively healthy woman," although elderly, and he could not predict her how long she would live. **Id.**

Gushard testified that his notes of his meeting with Camlibel stated that "Ülkü Camlibel presented as significantly confused and mentally impaired, but stated that she was a native of Turkey and that she had no close living relatives and no relatives who resided in the United States." **Id.** at 121-22. He stated that he believed "she thought she had some distant relatives in Turkey." **Id.** at 122. When asked if Gushard considered whether there would

⁵ In addition, the court appointed Gray as the plenary guardian of Camlibel's person and Aligned Partners Trust Company as the plenary guardian of her estate. Mot. for Summ. J., at Ex. F, at 33-34.

be a benefit to Camlibel from leaving the property to her heirs in Turkey, he testified that he did not think he considered that:

[P]articularly because both from her own discussions with me and then also from the information I received . . . , and the fact that she had been in this country for probably a minimum of 50 years, I had doubts as to whether she had any real relationship with anyone that remained in Turkey. That there may have been a blood tie, a cousin, you know, something like that, second cousin, but I didn't get the impression that there was anyone who was close to her on a personal level.

Id. at 129-30.

In March 2014, Judge Durkin authorized Gungor Onal to travel to Turkey and make decisions regarding the sale of the Turkish Property.⁶ Onal worked on a contingent fee basis and the order stated the estate would not advance costs associated with the proceedings in Turkey. Mot. for Summ. J. at Ex. F at 53-54; Mot. for Summ. J., Ex. J (Order, No. 6258 of 2013, dated Mar. 11, 2014). Onal went to Turkey, where he engaged local lawyers.

In his response to interrogatories and at his deposition, Onal stated that he had no knowledge of Camlibel's assets and liabilities. Pls.' Resp. to Mot. for Summ. J., Ex. 2 at 21-23; **Id.**, Ex. 9 at 101 (Onal's Dep.). He agreed that

⁶ Onal testified he learned of Camlibel through his legal contacts in Turkey. Pls.' Resp. to Mot. for Summ. J., at Ex. 9, at 12-13. He stated that the property had squatters on it, and in 2009 or 2010, individuals had tried to impersonate Camlibel to obtain possession of the property. **Id.** at 15. He stated that his "legal network" asked him to find Camlibel. **Id.** at 17.

during the proceedings in Turkey, the court was told Camlibel was in “harsh” conditions. ***Id.*** at 98.⁷

The Turkish court issued a decision finding that “[d]ue to the need of the incapacitated individual” a request was made to allow the sale of property. Pls.’ Resp. to Mot. for Summ. J., Ex. 1. The court found Camlibel was the sole heir of the property and concluded that it was in her best interest for the property to be sold. ***Id.*** After the Turkish court authorized the sale of the property, the property sold for \$1,680,346.43.

The money was transferred to Camlibel’s account. The court awarded Onal a fee of \$600,000. ***Id.***, Ex. 6 at Ex. G; Mot. for Summ. J., Ex. Q. It also reimbursed him \$188,777.33 in costs advanced, which included closing costs such as back taxes and title transfer fees, international airfare costs, and local costs, such as costs for the local Turkish representatives, translators, and

⁷ In their brief, Appellants list other alleged statements made to the Turkish Court. In support, the brief cites the second amended petition for citation to show cause why petitioner/appellants’ notice of appeal should not be sustained. Appellants’ Br. at 20-21. This filing contained the same allegations and attached as exhibits materials where they provide alleged translations for portions of documents that they claim represented to the court in Turkey that it was urgent that the property be sold because Camlibel was in need of money. Am. Pet. for Citation to Show Cause, at Ex. 5-8. These were not full or certified translations and it is not clear how the statements were conveyed to the court or who conveyed them.

At his deposition, Onal was asked about the documents, which he testified were court filings prepared by the attorney he hired to handle the court proceedings in Turkey. Onal provided summaries of the relevant passages. ***Id.*** at 98-115. The summaries did not include the language contained in the translations. ***Id.***

appraisals. Mot. for Summ. J., Ex. M, Ex. Q. The court allowed the payment of counsel fees to Fingeret, who was counsel for Camlibel's financial guardian, Aligned Partners Trust Company. Pls.' Resp. to Mot. for Summ. J., Ex. 7.⁸

In December 2016, Camlibel passed away. That same month, the Allegheny County Register of Wills admitted to probate a will dated 2008 (the "2008 Will"). The handwritten 2008 Will provided:

This is my wish & living will to leave all of my financial assets & property of 1000 Grandview Unit 602, Automobil[e] parked in spot 112 to Robert J. Gray all of the above.

Robert J. Gray has been the only person I have trusted. He has been very helpful and kind to me for over 13 years. That is why I wish to leave everthing [sic] to Robert.

Pet. for Grant of Letters, filed, Dec. 16, 2013.

Gray was the man in charge of maintenance at Camlibel's condominium building, whom she had befriended. The 2008 Will included Gray's date of birth and social security number. It was signed by Camlibel on June 20, 2008 and witnessed by Gray. Gray renounced his right to administer the estate and requested that Gutnick be issued the letters, which the court did. ***Id.***

Gutnick testified at his deposition that he resided in the same condominium building that Camlibel had resided in and that they knew each other. Pls.' Resp. to Mot. for Summ. J., Ex. 11 at 8-9. He stated that he did not take action to notify Camlibel's relatives in Turkey of the guardianship or

⁸ The fees were not solely related to the sale of the Turkish Property. Rather, they were for all representation in the guardianship case. Pls.' Resp. to Mot. for Summ. J., at Ex. 4.

estate proceedings and that he did not think such relatives needed to be notified because Camlibel had told him that “she had no relationship with them at all.” ***Id.*** at 33.

More than two years after the 2008 Will was admitted to probate, in March 2019, Necla filed an appeal of the Register’s decree. Pet. for Cit. to Show Cause, filed Mar. 19, 2019. Necla died in 2021. In March 2021, following Necla’s death, Appellants filed a voluntary substitution of Turgal, Tibet, and Atlas as petitioners. They attached to this filing a certificate of inheritance from the Republic of Turkey stating that Turgal received two hereditary shares of Necla’s estate and Atlas and Tibet each received one share. Voluntary Substitution, filed Mar. 22, 2021, Ex. 1.

Appellants subsequently amended their appeal petition. The second amended petition stated that it “concern[s] various actions and inactions detailed below – both before and after Ülkü Camlibel’s death – that defeated [Necla’s] interests under Ülkü Camlibel’s 1981 Will, including an interest in their childhood home and property in Istanbul, Republic of Turkey.” Second Am. Pet. for Citation to Show Cause, July 2, 2021, at 3. It further stated:

12. The handwritten document offered and accepted by the Register of Wills as the last will and testament of Ülkü Camlibel (the “2008 Living Will”) was not a last will and testament that disposed of the entirety of the Estate of Ülkü Camlibel.

13. The 2008 Living Will does not direct that Robert J. Gray receive the Turkish Property.

14. The 2008 Living Will did not revoke the 1981 Last Will and Testament of Ülkü Camlibel (the “1981 Will”), does not

contain a residuary clause, and does not dispose of Ülkü Camlibel's entire estate.

15. Ülkü Camlibel did not intend for Robert J. Gray or Gungor Onal to receive the Turkish Property or proceeds from its sale. To the contrary, she intended that the Turkish Property go to her family in Turkey as directed under the 1981 Will.

Id. at 3-4.

Appellants claimed the proceeds from the sale of the Turkish Property and any residuary estate should have been distributed to Appellants. ***Id.*** at 5. They further claimed they were not provided notice of the guardianship proceedings, the Turkish Court was given false information regarding Camlibel's financial state, and they were not provided notice of the estate proceedings. ***Id.*** at 14-21, 24-27. Appellants sought, among other things, an order declaring the 2008 Will did not revoke the 1981 Will, did not contain a residuary clause, and did not dispose of the Turkish Property; the imposition of a constructive trust on the funds Onal received; a constructive trust on the proceeds from the sale of the Turkish Property that Gray received from Camlibel's estate; an order sustaining the appeal from the register of Wills; and an order setting aside the December 2016 decree. ***Id.*** at 36-37.

In March 2023, Appellees filed a petition for abatement. They argued the case should be abated because more than two years had passed since the notice of Necla's death was filed and no personal representative had been appointed. The court denied the motion.

Appellees filed motions for summary judgment claiming, among other things, the claims were time-barred. Appellants argued that summary

judgment was inappropriate because—among other reasons—they were never given the required notice of the guardianship and estate proceedings and that there is no statute of limitations for a constructive trust. The trial court granted the summary judgment motion.

Appellants appealed from the order granting the summary judgment motion and Appellees appealed from the order denying their petition for abatement.

Appellants raises the following issues:

1. Whether the Lower Court erred in concluding that [Appellants'] July 2, 2021 Second Amended Petition failed to state a claim upon which relief could be granted seeking the imposition of a constructive trust.
2. Whether the Lower Court erred in concluding that [Appellants'] claims are time-barred under 42 Pa.C.S. § 5505 and 20 Pa.C.S. § 908.
3. Whether the Lower Court erred in concluding that "the plain language of the 2008 Will" barred [Appellants'] claims.
4. Whether the Lower Court erred in its "ancillary point" and conclusion that "it will not second-guess the findings and legal conclusions of a Turkish court."

Appellants' Br. at 4-5 (trial court answers omitted).

Appellees raise the following issues:

1. Did the trial court err in denying the Joint Petition [f]or Abatement?
2. Did the trial court err in denying the Joint Petition [f]or Abatement before the pleadings on that issue were closed and without conducting a hearing?

Appellees' Br. at 72 (trial court answers omitted).

Appeal of Grant of Summary Judgment

“[S]ummary judgment is only appropriate in cases where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.” **Nicolaou v. Martin**, 195 A.3d 880, 891 (Pa. 2018) (citing Pa.R.C.P. 1035.2(1)). “When considering a motion for summary judgment, the trial court must take all facts of record and reasonable inferences therefrom in a light most favorable to the non-moving party and must resolve all doubts as to the existence of a genuine issue of material fact against the moving party.” **Id.** We “reverse a grant of summary judgment if there has been an error of law or an abuse of discretion.” **Id.** at 892. Our standard of review is *de novo* and our scope of review is plenary. **Id.**

Because we find it dispositive, we will first address Appellants’ second claim—that the court erred in concluding their claims were time-barred. Appellants argue that Section 5505, which allows a court “upon notice to the parties” to modify an order within 30 days, does not apply because Appellants were not parties to the guardianship proceedings and did not have an opportunity to challenge the orders in that case. They also argue Section 5505 applies only to final orders, not interlocutory orders, and claim the guardianship orders were not final. Appellants further maintain that Section 5505 is not applicable to their claims because they do not seek to undo or modify the orders in the guardianship case. Rather, they state they want to impose a constructive trust over the proceeds inequitably acquired. They

argue a court can revisit prior orders when the manner in which they were obtained is called into question.

Appellants also maintain there is no statute of limitations for a claim for a constructive trust, as the timeliness of a claim in equity is based on laches. They argue that the Second Amended Petition does not affirmatively challenge the probate of the will and the “claim for a constructive trust does not rise or fall on the admission of the 2008 Will to probate.” Appellants’ Br. at 67. They argue that this case is not a will contest and therefore Section 908 does not apply. Finally, Appellants contend that under Section 3521 they had five years to challenge any confirmation of account, as they were parties in interest.⁹

Pennsylvania Rule of Appellate Procedure 342 governs the appealability of Orphans’ Court orders. It provides, in relevant part, that a party may appeal as of right from “[a]n order determining the status of fiduciaries, beneficiaries, or creditors in an estate, trust, or guardianship,” and from “[a]n order determining an interest in real or personal property.” Pa.R.A.P. 342(a)(5)-(a)(6). However, Rule 342 also provides that the failure to appeal from some types of orders it renders immediately appealable “shall constitute a waiver of

⁹ In their argument that the case is not barred by 42 Pa.C.S.A. § 5505 and 20 Pa.C.S.A. § 908, Appellants contend, in part, that the trial court erred because a prior judge had determined that the claim was not time-barred. Appellants’ Br. at 60-62. They cite no law to support the argument, and therefore have waived the claim. **See Kelly v. The Carman Corp.**, 229 A.3d 634, 656 (Pa. Super. 2020) (finding challenged waived on appeal where appellant “provided no citations to the Rules . . . , to case law, or to any other supporting authority for [an] issue”); **see also** Pa.R.A.P. 2119(a) (argument shall include citation of authorities).

all objections to such order and such objections may not be raised in any subsequent appeal.” **Id.** at (c). Two of the categories of such orders subject to the waiver rule include orders “determining the status of fiduciaries, beneficiaries,” etc., and orders “determining an interest in real or personal property.” For example, in ***In re Bush***, No. 2657 EDA 2022, 2023 WL 5526395, at *1 (Pa.Super. Nov. 7, 2023) (unpublished mem.), this Court concluded a trial court lacked jurisdiction to take action in the guardianship case where the guardianship termination order had been entered more than 30 days earlier.

Pursuant to Section 5505, a court can modify an order only within 30 days after its entry:

Except as otherwise provided or prescribed by law, a court upon notice to the parties may modify or rescind any order within 30 days after its entry, notwithstanding the prior termination of any term of court, if no appeal from such order has been taken or allowed.

42 Pa.C.S.A. § 5505. Further, decrees entered in the probate of a will or in guardianship cases cannot be collaterally attacked if the court had jurisdiction to enter it. **See** 20 Pa.C.S.A. § 3358 (providing “[n]o decree entered pursuant to this code shall be subject to collateral attack on account of any irregularity if the court which entered it had jurisdiction to do so”); 20 Pa.C.S.A. § 5523 (providing “[n]o decree entered pursuant to this chapter shall be subject to collateral attack on account of any irregularity if the court which entered it had jurisdiction to do so”).

In addition, Section 908 of the Probate, Estates and Fiduciaries Code governs appeals from the probate of a will and provides that an appeal must be filed within one year of a decree by the Register:

Any party in interest seeking to challenge the probate of a will or who is otherwise aggrieved by a decree of the register, or a fiduciary whose estate or trust is so aggrieved, may appeal therefrom to the court within one year of the decree: Provided, That the executor designated in an instrument shall not by virtue of such designation be deemed a party in interest who may appeal from a decree refusing probate of it. The court, upon petition of a party in interest, may limit the time for appeal to three months.

20 Pa.C.S.A. § 908(a). The only exception to Section 908 is if there “has been a fraud on the court or the Register of Wills.” ***Dempsey v. Figura***, 542 A.2d 1388, 1390-91 (Pa.Super. 1988) (concluding “the one year period in which an appeal from the probate of a will can be taken is mandatory and cannot be aside to entertain a claim of undue influence,” and noting the “only situation permitting us to set aside the statutory period for filing such an appeal occurs in cases where there has been a fraud on the court or the Register of Wills”).¹⁰

Here, the trial court found the claims time-barred. It rejected Appellants’ argument that they were denied notice of the guardianship proceedings, finding they pointed to no statute, rule, or case law that required that they be provided notice of the proceedings. It found the only possible applicable law required notice only to persons residing in Pennsylvania. **See** Trial Ct. Op.,

¹⁰ In ***Dempsey***, this Court held that the filing of an equity action within a year of the entry of the order did “not provide a basis for excusing the late filing of the appeal from probate action by joining the latter action to the former one.” 542 A.2d at 1391.

filed Jan. 23, 2025, at 11 (citing 20 Pa.C.S.A. § 5511). The court further pointed out that it lacked jurisdiction to grant relief more than 30 days after the entry of a final order and that a decree in a guardianship case cannot be collaterally attacked if the court had jurisdiction to enter it. ***Id.*** at 11-12 (citing 20 Pa.C.S.A. § 5523). The court also found the one-year period under Section 908 applied and barred the claims, as one year from the entry of the decree in the will case had passed. ***Id.*** at 12-13.

We conclude the court did not err in finding the claims time-barred. We first point out that Appellants did not file any document at the guardianship docket. Rather, they attempt to challenge the orders entered in the guardianship docket in a challenge to the probate of a will.

We agree with the trial court that the orders in the guardianship proceedings permitting the sale of the Turkish Property, distributing the money, and confirming the guardianship account were final orders. ***See In re Bush***, 2023 WL 5526395, at *1; Pa.R.A.P. 342(a)(5)-(a)(6). In addition, the guardianship statute did not require notice to Appellants, as it required notice to only individuals residing in Pennsylvania.¹¹ 20 Pa.C.S.A. § 5511 (providing “notice of the petition and hearing shall be given in such manner as the court shall direct to all persons residing within the Commonwealth who are sui juris

¹¹ We point out that 20 Pa.C.S.A. § 5512.2(a.1)(1) permits “any interested person” to “file a petition with the court to terminate or modify the guardship.” Had Appellants sought to terminate or modify Camlibel’s guardianship during the three-year guardianship proceeding, they could have filed a petition requesting to do so.

and would be entitled to share in the estate of the alleged incapacitated person if he died intestate at that time, to the person or institution providing residential services to the alleged incapacitated person and to such other parties as the court may direct, including other service providers”).

We also agree with the trial court that Section 908 bars Appellants’ claims. Appellants argue the Section does not apply because they allegedly did not “affirmatively” challenge the probate of the 2008 Will. Appellants’ Br. at 67. We disagree. Appellants appealed to the Orphans’ Court, seeking to challenge the probate of the will. Their second amended petition claimed that the 2008 Will did not dispose of all Camlibel’s property and that the Turkish Property and any other property in the residuary estate should have been distributed to them and sought relief that would result in the re-distribution of the property. Such a challenge must be filed within one year of the entry of the decree. 20 Pa.C.S.A. § 908. Here, the filing was made more than two years after entry of the decree. Although Appellants argue they should have been provided notice of the probate action, they provide no case law providing an exception to Section 908 based on the lack of notice.¹²

¹² Gutnick had a duty under Section 3503 to provide “written notice of the filing of his account and of its call for audit or confirmation to every person known to the personal representative to have or assert an interest in the estate as beneficiary, heir, next of kin or claimant, unless the interest of such person has been satisfied or unless such person fails to respond to a demand under Section 3532(b.1) (relating to at risk of personal representative).” 20 Pa.C.S.A. § 3503. We have held that the statute and related rules “contemplate that potential beneficiaries entitled to notice include those who
(Footnote Continued Next Page)

On appeal, Appellants contend that Section 3521 of the Probate, Estates and Fiduciaries Code applies. Section 3521 pertains to petitions for rehearing and provides that a party in interest may file a petition for review within five years of the final confirmation of an account:

If any party in interest shall, within five years after the final confirmation of any account of a personal representative, file a petition to review any part of the account or of an auditor's report, or of the adjudication, or of any decree of distribution, setting forth specifically alleged errors therein, the court shall give such relief as equity and justice shall require: Provided, That no such review shall impose liability on the personal representative as to any property which was distributed by him in accordance with a decree of court before the filing of the petition. The court or master considering the petition may include in his adjudication or report, findings of fact and of law as to the entire controversy, in pursuance of which a final order may be made.

20 Pa.C.S.A. § 3521.

Appellants cited Section 3521 in the second amended petition but did not argue in response to Appellees' motion for summary judgment that the claims were timely under Section 3521. They therefore waived the argument.

Devine v. Hutt, 863 A.2d 1160, 1169 (Pa.Super. 2004) (concluding "arguments not raised initially before the trial court in opposition to summary judgment cannot be raised for the first time on appeal"); **Harber Phila. Ctr.**

were ascertainable by the exercise of due diligence on the part of the executor or administrator." **In re Estate of Alexander**, 758 A.2d 182, 187 (Pa.Super. 2000). We reasoned that "[t]he statute and rule presuppose that a personal representative, as an officer of the court and a fiduciary for the heirs and distributees, would make an honest effort to determine those persons lawfully entitled to the estate." **Id.**

City Office Ltd. v. LPCI Ltd. P'ship, 764 A.2d 1100, 1105 (Pa.Super. 2000) (finding non-moving parties' failure to raise an issue in response to a motion for summary judgment waives that issue for appellate purposes).¹³

We further conclude that Appellants' laches argument fails. Once the statute of limitations has run, a constructive trust is not an available remedy. **See Rush v. Butler Fair & Agric. Ass'n**, 137 A.2d 245, 247 (Pa. 1958) (citation omitted). Although this principle does not apply in cases of fraudulent concealment, Appellants did not plead fraudulent concealment. Moreover, Appellants' request for a constructive trust is in effect a bid to collaterally attack the probate decree, which is impermissible. Section 3358 of the Probate, Estates and Fiduciaries Code prohibits collateral attacks on probate decrees:

No decree entered pursuant to this code shall be subject to collateral attack on account of any irregularity if the court which entered it had jurisdiction to do so.

20 Pa.C.S.A. § 3358.

In **Kern v. Kern**, 892 A.2d 1, 7 (Pa.Super. 2005), the plaintiff sought the imposition of a constructive trust upon heirs of an estate "because the heirs received property obtained by [the decedent] from [plaintiff's husband] through the exercise of undue influence." There, this Court noted that a "'constructive trust' is defined as 'a relationship with respect to property subjecting the person by whom the title to the property is held to an equitable

¹³ Further, they did not file a petition for rehearing in either the probate or guardianship proceedings.

duty to convey it to another on the ground that his acquisition or retention of the property is wrongful and that he would be unjustly enriched if he were permitted to retain the property[.]” ***Id.*** at 8 (citation omitted, alteration in ***Kern***). We pointed out that “the imposition of a constructive trust is appropriate only where the defendant has no right whatsoever to the property he holds in violation of the plaintiff’s rights.” ***Id.*** (emphasis omitted). We concluded that “the imposition of a constructive trust would require the property in question to be re-conveyed to Appellants in its entirety” and “the effect of the imposition of a constructive trust on the property in question would be to overrule the trial court’s previous distribution decree, which action is forbidden by 20 Pa.C.S.A. § 3358.” ***Id.*** at 9 (emphasis omitted). The Court pointed out that if the plaintiffs “had a legitimate challenge to the probate of [the] estate, they were obligated to follow the procedure set forth in 20 Pa.C.S.A. § 3521.” ***Id.*** at 9.¹⁴

Accordingly, we conclude the trial court did not err in granting summary judgment because the filing was not timely. Because we agree with the trial court that Appellants’ claims are untimely and there are no genuine issues of material fact on the timeliness issue, we need not address Appellants’ remaining claims in the summary judgment appeal.

¹⁴ Appellants also seek a constructive trust on the portion of the proceeds of the sale of the house that the guardianship court distributed to Onal. We point out that Section 5523 also provides that decrees in guardianship proceedings cannot be collaterally attacked: “No decree entered pursuant to this chapter shall be subject to collateral attack on account of any irregularity if the court which entered it had jurisdiction to do so.” 20 Pa.C.S.A. § 5523.

Appeal of Order Denying Petition for Abatement

In appeals docketed at 216 WDA 2025 and 255 WDA 2025, Appellees argue the trial court erred in denying their petition for abatement. They argue the case should have been abated because the original petitioner, Necla, died during the pendency of the proceedings and no estate was opened to carry her claims forward. They claim the survival act states a cause of action survives the death of a plaintiff and sets forth the procedural requirements for maintaining a survival action. They argue that where a petitioner, such as Necla, dies during the pendency of the lawsuit, a personal representative must be appointed within one year after the filing of the suggestion of death and that under Section 3375 of the Probate, Estates and Fiduciaries Code, the court must abate the action if the delay in taking out letters is not reasonably explained.

Here, because we affirm the grant of summary judgment in their favor, Appellees' cross appeals are moot. We therefore dismiss them.

Order granting summary judgment affirmed. Appeals of order denying petition for abatement dismissed.

Judge Nichols joins the memorandum.

Judge Sullivan concurs in the result.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

DATE: 08/25/2026