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Marietta Newman, Personal Representative of the Estate of Adolph J. Liebig, Jr.; Personal Representative of the Estate of Valeria K. Liebig; and in her own right, appellant, v. Paul D. Liebig and Shirley S. Liebig, husband and wife, et al., appellees.

810 N.W.2d 408

Filed October 21, 2011. No. S-10-946.

1. **Equity: Quiet Title.** A quiet title action sounds in equity.
2. **Equity: Appeal and Error.** On appeal from an equity action, an appellate court decides factual questions de novo on the record and, as to questions of both fact and law, is obligated to reach a conclusion independent of the trial court's determination.
3. **Decedents' Estates: Trusts: Property: Intent.** Where the owner of property gratuitously transfers it and properly maintains an intention that the transferee should hold the property in trust but the trust fails, the transferee holds the trust estate upon a resulting trust for the transferor or his or her estate.
4. **Decedents' Estates: Trusts: Time.** Upon the failure of an express trust, the trustee holds the trust estate upon a resulting trust for the heirs of the testator as of the date of the failure of the trust.
5. **Decedents' Estates: Trusts.** A resulting trust is a species of trust that attaches to a legal estate acquired by the consent of the parties, not in violation of any fiduciary duty or trust relation.
6. **Limitations of Actions: Trusts.** The statute of limitations does not begin to run in favor of the trustee of a resulting trust until some act by the trustee that is equivalent to a repudiation of the trust.
7. **Limitations of Actions.** The time when the statute of limitations commences to run must be determined on the facts in each case.
8. **Limitations of Actions: Trusts: Property.** The statute of limitations on a resulting trust will begin to run when the trustee repudiates the trust by the assertion of an adverse claim to or ownership of the trust property.
9. **Trusts: Proof: Notice.** Repudiation of a trust may be proved either by actual knowledge or notice thereof, or by open, notorious, and unequivocal facts and circumstances from which a beneficiary who is not under any recognized disability would be put on notice that the trust has been repudiated and require the beneficiary to timely assert his or her equitable rights.

Appeal from the District Court for Platte County: Alan G. Gless, Judge. Affirmed.

George H. Moyer, of Moyer & Moyer, for appellant.

Jeffery T. Peetz and Sara L. Gude, of Woods & Aitken, L.L.P., for appellees Paul D. Liebig and Shirley S. Liebig.

WRIGHT, CONNOLLY, GERRARD, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.

GERRARD, J.

This appeal involves an allegedly void trust that was executed and recorded in 1979 and to which several parcels of real property were purportedly deeded. The trust terms provided that it would terminate in 2004, and in 2008, the trustees of the questioned trust deeded the property to the trust's purported beneficiaries. One of the settlor's children sued to set aside the trust and both deeds, and to quiet title in the property to the settlor's heirs at law. But the district court determined that her claims were barred by the statute of limitations. The primary question presented in this appeal is when the applicable statute of limitations began to run. Although our reasoning differs somewhat from that of the district court, we find, on our de novo review, that the statute of limitations for these claims has expired. Therefore, we affirm the district court's judgment.

BACKGROUND

Adolph J. Liebig, Jr., and his wife, Valeria K. Liebig, owned several parcels of real property in Platte County, Nebraska, either individually or as joint tenants. In 1979, Valeria executed a bill of sale purporting to convey her interests in the property to Adolph, who in turn quitclaimed all of his interest in the real estate to the trustees of the Adolph J. Liebig Trust (the Liebig Trust). Adolph also recorded a "Declaration of Trust" in Platte County, containing the terms of the Liebig Trust. The Liebig Trust, generally described, purported to create 100 "Certificates of Beneficial Interest" "as a convenience, for distribution," and the Liebig Trust provided that 25 years from the date of its creation (which would be March 30, 2004), it would terminate and the proceeds would be distributed pro rata to the beneficiaries, i.e., the holders of the 100 certificates, or units.

Adolph and Valeria also had several children: three sons (Paul, Greg, and Robert Liebig), and three daughters (Madonna Mohnsen, Marietta Newman, and Marlene Rickert). When the

Liebig Trust was created in 1979, Valeria and Paul were the trustees to whom the property was originally deeded. One hundred "units of beneficial interest" were originally issued to Adolph, but were immediately canceled and reissued to Adolph and Valeria, 50 units each. Adolph then immediately canceled his 50 units and reissued them to Paul, Greg, Robert, and Valeria.

Adolph died in 1980. Marietta and at least one of her sisters each received $7,000 from Valeria that they were told was their inheritance. They received no real property and were told that the land would go to Paul, Greg, and Robert under the Liebig Trust. Over the years, Valeria canceled and reissued her units of beneficial interest to Paul, Greg, and Robert in equal amounts until, by 1985, Paul, Greg, and Robert each purported to hold one-third of the units. Valeria died in 2006. Paul and his wife, Shirley Liebig, became the trustees of the Liebig Trust.

In the meantime, Paul had been farming the property under a 50-50 crop share oral lease, at first leasing from Adolph, then from Valeria, then from the trust. Paul's son eventually moved into the residence on the property, paying $100 per month in rent in addition to making repairs and helping Paul. Although the farm records were not complete, tax records and Farm Service Agency records entered into evidence established that Valeria and Paul, acting as trustees of the Liebig Trust, were paying the taxes on the property and accepting government payments for farm activities. Paul described, in some detail, how he operated the property as cropland and pastureland: for instance, how he planted and rotated crops and grasses, how his son was repairing and planning to reshingle the house, and how he and his son maintained the fences and power company rights-of-way.

In February 2008, Paul and Shirley, purporting to act as the trustees of the Liebig Trust, deeded the real estate to Paul, Greg, and Robert as tenants in common. In June, Paul and Shirley filed for and later obtained an order from the county court approving their administration of the Liebig Trust and a final accounting, finding that the Liebig Trust had terminated

and been wound up, and terminating their administration of the Liebig Trust.

Marietta, in her individual capacity and as personal representative of Adolph's and Valeria's estates, sued all of her other siblings and their spouses in district court, seeking a decree that would, among other things, set aside Adolph's 1979 "Declaration of Trust" and quitclaim deed to the trustees and Paul and Shirley's 2008 trustees' deed to Paul, Greg, and Robert, and would quiet title in the property to all six of Adolph's children. Marietta alleged that the Liebig Trust was defective and void; so, because the Liebig Trust failed, the property purportedly deeded to the Liebig Trust actually remained Adolph's property and passed to his heirs at law when he died. Marietta also alleged that a particular parcel of the property had been Valeria's homestead and that her interest in that particular parcel had not been properly conveyed to the Liebig Trust.

Paul and Shirley answered Marietta's complaint, denying her claim that the Liebig Trust was void. As relevant, they also alleged as an affirmative defense that Marietta's complaint was barred by the applicable statutes of limitations. The matter proceeded to a bench trial, after which the district court determined that Marietta's complaint was barred by the statute of limitations. The court reasoned that the statute of limitations began to run on April 18, 1979, when Adolph's "Declaration of Trust" and quitclaim deed had been recorded in Platte County, or, at the latest, the date of Adolph's death in 1980. So, the court found, whether a 4-year or 10-year statute of limitations was applied, Marietta's complaint was untimely filed. The court dismissed the complaint, and Marietta appeals.

ASSIGNMENTS OF ERROR

Marietta assigns, as consolidated and restated, that the district court erred in (1) concluding that the statute of limitations had run on her claim for relief, (2) concluding that her suit was one to declare the Liebig Trust void, (3) failing to set aside the 2008 trustees' deed of distribution, and (4) failing to quiet title in the property.

STANDARD OF REVIEW

[1,2] A quiet title action sounds in equity.[1] On appeal from an equity action, an appellate court decides factual questions de novo on the record and, as to questions of both fact and law, is obligated to reach a conclusion independent of the trial court's determination.[2]

ANALYSIS

Validity of Trust

The basis of Marietta's argument on appeal is that the Liebig Trust was invalid. With that much, we agree. The Liebig Trust in this case is substantially indistinguishable from a "family trust" that we have declared, on several occasions, to be void because the trust instrument does not adequately identify the beneficiaries.[3] We are not persuaded by the appellees' argument that Nebraska's 2003 adoption of the Nebraska Uniform Trust Code[4] affects that conclusion. The appellees argue that under § 30-3828(a)(3), creation of a trust requires a "definite beneficiary," but that pursuant to § 30-3828(b), "[a] beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities." The appellees assert that the beneficiaries of the Liebig Trust are ascertainable by reference to the "Beneficial Interests" and trustees' records.

But § 30-3828(a)(3) did not change the law upon which our conclusions in *First Nat. Bank v. Schroeder*,[5] *First Nat. Bank v. Daggett*,[6] and *Schlatz v. Bahensky*[7] were based. In fact, *Schlatz* was decided several years after § 30-3828 was adopted. And

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[1] *Ottaco Acceptance, Inc. v. Larkin*, 273 Neb. 765, 733 N.W.2d 539 (2007).

[2] *County of Sarpy v. City of Papillion*, 277 Neb. 829, 765 N.W.2d 456 (2009).

[3] See, *Schlatz v. Bahensky*, 280 Neb. 180, 785 N.W.2d 825 (2010); *First Nat. Bank v. Daggett*, 242 Neb. 734, 497 N.W.2d 358 (1993); *First Nat. Bank v. Schroeder*, 222 Neb. 330, 383 N.W.2d 755 (1986).

[4] Neb. Rev. Stat. §§ 30-3801 to 30-38,110 (Reissue 2008).

[5] *Schroeder, supra* note 3.

[6] *Daggett, supra* note 3.

[7] *Schlatz, supra* note 3.

§ 30-3828(a)(3) is simply a codification of the common-law rule of the Restatement (Second) of Trusts § 112,[8] which states that a trust is not created unless there is a beneficiary "who is definitely ascertained at the time of the creation of the trust or definitely ascertainable within the period of the rule against perpetuities." In *Schroeder*, we relied upon § 112, and the comment to the relevant section of the Uniform Trust Code makes clear that the language of § 30-3828 was intended to adopt the Restatement's definite beneficiary requirement.[9]

And that requirement is not met here, because no beneficiary is designated *by the trust instrument*. The Restatement explains, for example, that a disposition fails if it identifies its beneficiaries as "the persons named in a memorandum to be found on his death in his safe-deposit box."[10] Similarly, in *Daggett*, we explained that a trust identical to the Liebig Trust failed because it

> fails, on its face, to adequately designate its beneficiaries. The trust, like the trust in *Schroeder,*[11] merely provides a method of ascertaining who owns the certificates of beneficial interest. However, nothing *in the trust instrument itself* indicates how possession and ownership shall occur. The trust provisions do not indicate who is to receive the certificates, nor do they give the trustees the power to make that determination. As was the case in *Schroeder*, the trust must fail.[12]

The same is true here, and § 30-3828(b)'s provision that a "beneficiary is definite if the beneficiary can be ascertained now or in the future" did not change the common-law rule that the beneficiary must be ascertainable *from the trust instrument*. Contrary to the appellees' suggestion, the trustees' records of who held "Certificates of Beneficial Interest" are not trust

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[8] Restatement (Second) of Trusts § 112 at 243 (1959).

[9] See Unif. Trust Code § 402, comment, 7C U.L.A. 481 (2006).

[10] Restatement, *supra* note 8, § 122, comment *e.* at 259.

[11] *Schroeder, supra* note 3.

[12] *Daggett, supra* note 3, 242 Neb. at 740, 497 N.W.2d at 363 (emphasis in original).

instruments.[13] In short, the law has not changed since our decisions in *Schroeder*, *Daggett*, and *Schlatz*.[14] So, our conclusion is also the same: the Liebig Trust is void.

Trigger for Statute of Limitations

Next, Marietta contends that the statute of limitations that applies here is the 10-year statute of limitations applicable to quiet title actions, Neb. Rev. Stat. § 25-202 (Reissue 2008).[15] With that much, we also agree: As will be explained below, although the validity of the Liebig Trust underlies Marietta's arguments, the present controversy concerns title to the property that Adolph failed to effectively transfer to the failed Liebig Trust.[16]

Marietta also argues that the district court erred in finding that the statute of limitations began to run in 1979 or 1980. She contends that the Liebig Trust's failure produced a resulting trust and that the statute of limitations did not begin to run against the trustees until they repudiated the resulting trust. And again, we agree, as will be explained in more detail below. But where we part ways with Marietta is when she concludes that the resulting trust was not repudiated until the 2008 trustees' deed to Paul, Greg, and Robert. We find, on our de novo review of the record, that the resulting trust was effectively repudiated well before then, by the actions of the trustees. But explaining that conclusion will require a more comprehensive examination of the underlying legal principles.

[3,4] To begin with, Marietta is correct in suggesting that the property at issue here was held by the trustees of the Liebig Trust—Paul and Valeria, and Shirley after Valeria's death—in a resulting trust for Adolph and, after his death, his heirs. We have explained that where the owner of property gratuitously transfers it and properly maintains an intention that

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[13] See cases cited *supra* note 3.

[14] See *id.*

[15] See, *Olsen v. Olsen*, 265 Neb. 299, 657 N.W.2d 1 (2003); *Wait v. Cornette*, 259 Neb. 850, 612 N.W.2d 905 (2000); *Nemaha Nat. Resources Dist. v. Neeman*, 210 Neb. 442, 315 N.W.2d 619 (1982).

[16] See, *Wait, supra* note 15; *Neeman, supra* note 15; *Fleury v. Chrisman*, 200 Neb. 584, 264 N.W.2d 839 (1978).

the transferee should hold the property in trust but the trust fails, the transferee holds the trust estate upon a resulting trust for the transferor or his or her estate.[17] "'The great weight of authority supports the view that upon the failure of an express trust as in this case, the trustee holds the trust estate upon a resulting trust for the heirs of the testator as of the date of the failure of the trust.'"[18]

This was why, in our recent decision in *Schlatz*, we explained that the failure of a trust effectively identical to the Liebig Trust produced a resulting trust in favor of the settlor.[19] In this case, the resulting trust arose in favor of Adolph, as the settlor, then his heirs at law after his death. (The record establishes some dispute over whether Adolph's estate would have passed by intestacy or a 1975 will, the validity of which is disputed in a separate proceeding. For purposes of this opinion, we assume that the estate would have passed to Marietta, at least in part, by the rules of intestacy, and we do not comment on the enforceability of the will.)

[5-7] A resulting trust is a species of trust that attaches to a legal estate acquired by the consent of the parties, not in violation of any fiduciary duty or trust relation.[20] And the statute of limitations does not begin to run in favor of the trustee of a resulting trust until some act by the trustee that is equivalent to a repudiation of the trust.[21] We have repeatedly held that "[t]he statute of limitations does not begin to run in the case of a resulting trust until the trustee clearly repudiates his trust"[22] and that the time when the statute of limitations commences to run must be determined on the facts in each case.[23]

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[17] *Applegate v. Brown*, 168 Neb. 190, 95 N.W.2d 341 (1959). See, also, *Schlatz, supra* note 3.

[18] *Applegate, supra* note 17, 168 Neb. at 203, 95 N.W.2d at 349.

[19] See *Schlatz, supra* note 3.

[20] *Hanson v. Hanson*, 78 Neb. 584, 111 N.W. 368 (1907).

[21] See *id.*

[22] *Jirka v. Prior*, 196 Neb. 416, 422, 243 N.W.2d 754, 759 (1976). Accord, *Wait, supra* note 15; *Fleury, supra* note 16.

[23] See, *Fleury, supra* note 16; *Jirka, supra* note 22.

So, for instance, the statute of limitations has been held not to run in cases where the resulting trustee did not expressly repudiate the resulting trust and the resulting trustee's use of the property was concurrent with that of the resulting trust beneficiaries.[24] For example, in *Hanson v. Hanson*,[25] we held that the trustee of a resulting trust had not repudiated the trust while his occupancy of the land was consistent with his obligation to the partnership for whom he held the land in trust. It was only when the trustee sued his partner in ejectment that his repudiation of the resulting trust was clear.[26] In *Jirka v. Prior*,[27] the trustees held and operated agricultural land in a resulting trust for a partnership, and their operation of the farming business was consistent with the resulting trust; the repudiation did not occur until the trustees sold the property without the consent of their partners. And, in *Wait v. Cornette*,[28] the holder of a life estate in a sum of trust money became the trustee of a resulting trust, in favor of the remainder beneficiaries, when she purchased real property with the money. But her possession of the land was consistent with her duties as resulting trustee until she repudiated the resulting trust by transferring the property, instead of holding it with the intention of transferring it to the beneficiaries upon her death.[29]

Facts Establishing Repudiation of Resulting Trust

It is upon authority such as *Jirka* and *Wait* that Marietta relies in contending that the resulting trust in this case was not repudiated until the 2008 trustees' deed to Paul, Greg, and Robert. But a transfer of property is not the only way in

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[24] See, *Wait, supra* note 15; *Jirka, supra* note 22; *Windle v. Kelly*, 135 Neb. 143, 280 N.W. 445 (1938); *Hanson, supra* note 20. See, also, *Wiseman v. Guernsey*, 107 Neb. 647, 187 N.W. 55 (1922).

[25] See *Hanson, supra* note 20.

[26] See *id.*

[27] See *Jirka, supra* note 22.

[28] *Wait, supra* note 15.

[29] See *id.*

which a trust can be repudiated. In *Dewey v. Dewey*,[30] a resulting trust was created when several owners of a parcel of real property agreed to convey their interests to one of the owners for the purpose of obtaining a loan to disencumber the property of mortgages and tax liens. After that, the property was to be returned back to the original owners. The person to whom the property was conveyed was then the trustee of a resulting trust in favor of the other owners.[31]

But the resulting trustee never returned the property. Instead, he and his wife began improving it. They spent money building a new home and installing farm equipment and fixtures. They farmed the land under the government soil conservation program in their own names and kept the proceeds. They contoured and improved the land for crops, paid the mortgage, and paid all the taxes. They leased the land for oil and gas, recorded the leases, and kept the rentals they received.[32]

[8,9] On appeal from a judgment quieting title in the trustee, we considered whether the trustee's actions operated to repudiate the resulting trust. We said:

> Concededly, defendants never did give the interested plaintiffs and codefendants actual formal notice that they claimed title to the land or had repudiated the trust, but defendants were not required to do so because, contrary to plaintiffs' and codefendants' contention, they and their predecessors at all times had notice and knowledge of defendant's repudiation from all the attending open, notorious, and unequivocal facts and circumstances heretofore recited. Concededly, they had severally visited defendants on the land upon numerous occasions . . . . They then and there saw the improvements and knew that defendants were paying no rentals and were taking the income and profits, but they made no demand for an accounting thereof. They knew that defendants were contracting with regard to the land as owners and were making the great expenditures for improvements and otherwise aforesaid

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[30] *Dewey v. Dewey*, 163 Neb. 296, 79 N.W.2d 578 (1956).

[31] See *id.*

[32] See *id.*

> . . . . However, they never reimbursed or offered to reimburse defendants for any of them, and none of plaintiffs or codefendants or their predecessors ever claimed any interest whatever in the land or made any demand whatever for any accounting or reconveyance until . . . some 19 years after [the transfer of the property].[33]

We noted the rule, explained above, that the statute of limitations on a resulting trust will begin to run when the trustee repudiates the trust by the assertion of an adverse claim to or ownership of the trust property. And, we explained, repudiation of a trust "may be proved either by actual knowledge or notice thereof, or by open, notorious, and unequivocal facts and circumstances from which a beneficiary who is not under any recognized disability would be put on notice that the trust has been repudiated and require him to timely assert his equitable rights."[34] Nor was it pertinent that the trustees were also entitled to a share of the property, because, we said:

> "Where one tenant in common enters upon the whole estate, substantially improves it beyond that ordinarily proper for the full enjoyment or use of the estate as a tenant in common, takes all the rents and profits, pays all the taxes, makes it his home and openly claims the whole for more than the period of the statute of limitations, an ouster of his cotenants will be presumed although not otherwise proved."[35]

In sum, based on those facts, we affirmed the trial court's conclusion that the quiet title action was time barred.[36]

Comparable facts are found in this case. The record establishes beyond dispute that Paul and Valeria, and later Paul and Shirley, had been using the property as cropland and pastureland for cattle, paying the expenses for the property, improving the property, accepting rent and other income for the property, and generally operating it in a manner that was irreconcilably

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[33] *Id.* at 303-04, 79 N.W.2d at 583.

[34] *Id.* at 305, 79 N.W.2d at 583.

[35] *Id.* at 307-08, 79 N.W.2d at 585. Cf. *Maxwell v. Hamel*, 138 Neb. 49, 292 N.W. 38 (1940).

[36] See *Dewey, supra* note 30.

inconsistent with a resulting trust in favor of Adolph's heirs. For nearly 30 years after Adolph's death, the resulting trustees made no attempt to convey the property to the beneficiaries of the resulting trust, pay them any of the property's income, or require them to share in the expenses. In short, their possession and operation of the property was openly, notoriously, and unequivocally hostile to the implicit terms of the resulting trust.

It is important to distinguish between the purported beneficiaries of the Liebig Trust and the alleged beneficiaries of the resulting trust. Marietta asserts (correctly) that the beneficiaries of the resulting trust are Adolph's heirs at law, whom she alleges are Adolph's intestate beneficiaries. But at that point, the express terms of the Liebig Trust and the implicit terms of the resulting trust were contradictory. And in managing the property according to what they believed to be the terms of the Liebig Trust, the trustees were clearly acting contrary to the resulting trust. No reasonable person aware of the manner in which the property was being managed would believe that it was being managed with the interests of all six of Adolph's children in mind, but that is precisely what the resulting trust alleged by Marietta would have required.

Marietta does not dispute these facts. In fact, she contends that Paul and Valeria did not administer the Liebig Trust property pursuant to its terms or "as true fiduciaries."[37] Marietta asserts, and the record supports, that cattle supposedly belonging to the Liebig Trust were sold to pay for Valeria's funeral, that supposed Liebig Trust assets were used to pay Valeria's personal expenses, and that Valeria was treated as the "real beneficiary" of the Liebig Trust.[38] Marietta's purpose in reciting these facts seems to be to impugn Paul and Valeria's administration of the Liebig Trust, but this evidence is not particularly helpful to her cause. Paul and Valeria's supposed mismanagement of the Liebig Trust assets is *also* inconsistent with the resulting trust created by the failure of the Liebig Trust, and helps establish that the resulting trust was repudiated

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[37] Brief for appellant at 12.

[38] *Id.* at 13.

by the conduct of its trustees no later than (and probably well before) 1997, making Marietta's 2008 complaint untimely pursuant to § 25-202.

Marietta suggested at oral argument that the trustees' management of the property was permissive—in essence, she contended that all of the siblings were comfortable with the property's being managed essentially for Valeria's benefit, so long as Valeria was alive. Marietta seems to be suggesting that her failure to assert any rights under the resulting trust was knowing and deliberate, because neither she nor her siblings wanted to interfere with Valeria's support. Of course, a knowing failure to assert a legal right does not toll a statute of limitations—to the contrary, it is exactly the circumstance against which a statute of limitations is intended to provide a defense. But more significantly, the record in this case affirmatively contradicts Marietta's argument.

While Marietta may have believed that the property was being managed consistent with the terms of the Liebig Trust, it was repudiation of the *resulting trust*, not the Liebig Trust, that started the statute of limitations running on her claims. And as noted above, the requirements of the Liebig Trust and the resulting trust were quite different. Whether or not Valeria was treated as the "real beneficiary" of the Liebig Trust,[39] it is apparent that Marietta was not treated as a beneficiary of *any* trust—either the Liebig Trust or, more importantly, a resulting trust. The record is clear that Marietta did not investigate the validity of the Liebig Trust or her right to any of the property under a resulting trust until the fall of 2007. The conduct of the trustees gave Marietta clear notice that the property was not being managed for her benefit pursuant to any resulting trust—but she did not pursue any claim based on the resulting trust until at least 10 years later. Therefore, her claims are time barred by the statute of limitations.

Marietta's Remaining Arguments

For that reason, we find Marietta's assignments of error to be either without merit or mooted by our conclusion with

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[39] *Id.*

respect to the statute of limitations. Marietta argues, in addition, that one particular deed to the Liebig Trust was defective, even if the Liebig Trust itself was effective, because it conveyed the homestead of a married person and was not properly signed by both Adolph and Valeria.[40] This fact does not change our conclusion; if true, it would simply be another reason that its conveyance to the Liebig Trust was void and does not affect our statute of limitations analysis.

And finally, Marietta argues that the trial court's judgment was "odd," because it did not quiet title in anyone, nor did it dispose of certain state and federal tax liens which were not discussed above because they were not pertinent to our analysis.[41] "An action to quiet title," she argues, "should end with a decree quieting title in somebody."[42] But Marietta filed a complaint seeking to quiet title, and her complaint was time barred. The defendants to her complaint did not expressly ask for title to be quieted in any of them, nor have they appealed from the court's failure to do so. Contrary to Marietta's suggestion, we do not find it odd that the trial court did not grant relief that was not requested, nor is there any basis to reverse a court's failure to grant particular relief when the only parties potentially aggrieved by it have asked that the judgment be affirmed. We find no merit to Marietta's final argument.

CONCLUSION

Our de novo review of the record establishes that the 10-year statute of limitations began to run on Marietta's claim no later than 1997, by which time the resulting trustees' repudiation of the resulting trust was clearly established. Marietta's 2008 complaint was time barred. We affirm the judgment of the district court.

AFFIRMED.

HEAVICAN, C.J., participating on briefs.

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[40] See *Christensen v. Arant*, 218 Neb. 625, 358 N.W.2d 200 (1984).

[41] Brief for appellant at 27.

[42] *Id.*