

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA26-60

Filed 21 October 2026

Gaston County, No. 23CVS003647-350

KRISTA DEDMON KUSTRA, individually and as Co-Trustee of the Betty S. Dedmon Living Trust FBO Daughters and beneficiary of the Betty S. Dedmon Revocable Trust Agreement executed February 23, 2006, as amended; and JANE DEDMON ELDER, individually and as Co-Trustee of the Betty S. Dedmon Living Trust FBO Daughters and beneficiary of the Betty S. Dedmon Revocable Trust Agreement executed February 23, 2006, as amended, Plaintiffs,

v.

JOHN GRIFFING, individually and in his representative capacities, and as Trustee of the Betty S. Dedmon Revocable Trust Agreement executed February 23, 2006, as Amended, Trustee of Don's Trust FBO Donald Gene Dedmon, Sr. and Donald Gene Dedmon, Jr; DONALD GENE DEDMON, SR.; and DONALD GENE DEDMON, JR., Defendants.

Appeal by plaintiffs from orders entered 21 March 2024 by Judge Sally Kirby-Turner in Gaston County Superior Court and 17 July 2025 by Judge Craig R. Collins in Gaston County Superior Court. Cross-appeal by defendants from order entered 21 March 2024 by Judge Sally Kirby-Turner in Gaston County Superior Court. Heard in the Court of Appeals 12 August 2026.

David C. Boggs and Maynard Nexsen PC, by Kevin Y. Zhao and James C. Smith, for plaintiffs-appellants/cross-appellees Krista Dedmon Kustra and Jane Dedmon Elder.

Johnston, Allison & Hord, P.A., by Kimberly J. Kirk and Arya V. Koneru, for defendants-appellees/cross-appellants Donald Gene Dedmon, Sr., and Donald Gene Dedmon, Jr.

Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P., by Shameka C. Rolla and J. Mitchell Armbruster, for defendant-appellee John Griffing.

FLOOD, Judge.

Plaintiffs Krista Dedmon Kustra and Jane Dedmon Elder appeal from two orders of the trial court: one order, entered 21 March 2024, dismissed their claim to set aside a deed, and the second order, entered 17 July 2025, granted summary judgment in favor of Defendant Donald Gene Dedmon, Sr. (“Don Sr.”), Defendant Donald Gene Dedmon, Jr. (“Don Jr.”), and Defendant John Griffing (collectively, “Defendants”). On appeal, Plaintiffs argue that the trial court erred in dismissing their claim to set aside a deed on the basis that an error on the face of the deed was more than a mere scrivener’s error. Plaintiffs also argue that the trial court erred by granting Defendants’ motions for summary judgment because N.C.G.S. § 36C-6-604 did not time-bar Plaintiffs’ undue influence claim and because Defendant Griffing did not provide any evidence to support summary judgment on the merits of Plaintiffs’ breach of fiduciary duty claim. Defendants Don Sr. and Don Jr. cross-appeal from the 21 March 2024 order, arguing that the trial court should have dismissed Plaintiffs’ undue influence claim for failure to state a claim. After careful review, we affirm the 21 March 2024 order setting aside the deed. We also affirm in part and reverse in part the order of the trial court granting summary judgment in favor of Defendants.

I. Factual and Procedural Background

Plaintiffs are the daughters of Betty S. Dedmon (“Ms. Dedmon”), who passed away on 22 July 2018. Defendant Don Sr. is Ms. Dedmon’s son, and Defendant Don

Jr. is Ms. Dedmon's grandson (collectively, the "Dedmon Defendants").

During her lifetime, Ms. Dedmon created three trusts. Sometime prior to 2003, Ms. Dedmon created the "Betty S. Dedmon Living Trust FBO Daughters" for the benefit of Plaintiffs (the "Daughters' Trust"). A condominium unit located in Cleveland County (the "Condominium") was subsequently conveyed to the Daughters' Trust in 2003. On 23 February 2006, Ms. Dedmon executed "the Betty S. Dedmon Revocable Trust Agreement" (as amended, the "Revocable Trust"). The third trust, entitled "Don's Trust[,] " was created under the Revocable Trust for the benefit of the Dedmon Defendants. Ms. Dedmon was the initial trustee for all three trusts. The Daughters' Trust did not identify a successor trustee; however, by unanimous consent of the qualified beneficiaries, Plaintiffs serve as co-trustees of the Daughters' Trust. Defendant Griffing, Ms. Dedmon's personal attorney, was appointed as successor trustee of the Revocable Trust and Don's Trust.

The Revocable Trust was amended on 19 December 2007 (the "First Amendment"), on 3 July 2014 (the "Second Amendment"), and, for a third and final time, on 18 July 2015 (the "Third Amendment"). The Second Amendment provided for a distribution of a one-third interest in a family farm (the "Farm")—which was previously allocated to Plaintiffs in equal shares—to the Dedmon Defendants. The Third Amendment provided for the Farm to be distributed outright to Defendant Don Jr. and provided for distribution of the Condominium to Don's Trust. On the same day the Third Amendment was executed, Ms. Dedmon executed a deed purportedly

transferring the Condominium from the Daughters' Trust to the Revocable Trust. All three amendments were prepared by Defendant Griffing.

After Ms. Dedmon passed away, Defendant Griffing served as the duly appointed executor of her Estate. The Estate administration concluded around October of 2020. Upon its conclusion, Defendant Griffing, in his capacity as executor, distributed Estate assets to the Trustee for the Revocable Trust.

On 29 June 2022, Plaintiffs filed a lawsuit seeking to challenge the validity of the Revocable Trust, but Plaintiffs voluntarily dismissed their lawsuit on 31 July 2023. On 25 October 2023, Plaintiffs filed a new complaint bringing three claims of relief—without specifically identifying or labeling any of the causes of actions—against the Dedmon Defendants and Defendant Griffing, individually and in his capacity as trustee of the Revocable Trust and Don's Trust.

The First Claim of Relief involved the validity of the deed conveying the Condominium from the Daughters' Trust to the Revocable Trust. Plaintiffs alleged the deed was invalid because, although the notary block certified that Ms. Dedmon was executing the deed as Trustee of the Daughters' Trust, Ms. Dedmon actually executed the deed in her capacity as Trustee of the Revocable Trust, the Grantee, not as Trustee of the Daughters' Trust, the Grantor.

The Second Claim of Relief concerned Defendant Griffing's changes and transactions regarding the Revocable Trust and Ms. Dedmon's property, and Plaintiffs' request for disclosure, accounting, and distribution.

The Third Claim of Relief concerns Ms. Dedmon’s progressive cognitive decline between 2010 and 2014. According to Plaintiffs, in 2013 and 2014, three physicians opined that Ms. Dedmon, who was living in an assisted care facility in South Carolina at the time, had “dementia (Alzheimer’s) and/or lacked sufficient cognitive ability to handle her affairs, specifically including financial affairs[.]” Plaintiffs and the Dedmon Defendants met at various times in 2013 and early 2014 with Defendant Griffing, who had been appointed as Ms. Dedmon’s General Power of Attorney in 2007, to discuss Ms. Dedmon’s medical reports. Ultimately, all parties agreed Ms. Dedmon “was incompetent or incapacitated to handle her personal, financial or business affairs.” Plaintiffs alleged that Defendant Don Sr. then took Ms. Dedmon out of her assisted care living facility in May 2014; moved her to Cleveland County, North Carolina, where she would be closer to him; and thereafter “unilaterally took over [Ms.] Dedmon’s medical and personal care” Plaintiffs further claimed that Defendants exerted undue influence and improper pressure on Ms. Dedmon to procure the Second Amendment and the Third Amendment.

In their prayer for relief, Plaintiffs requested the following:

(1) For a judgment and recovery from or as to [Defendant] Griffing, individually, and as Trustee or fiduciary in any capacity for (a) an accounting of the (i) assets of and disbursements from, for or to the [Revocable] Trust or any account held or controlled by him at any time and (ii) the investments of securities and monies in the cash and investment accounts (d) damages for such losses due to [Defendant Griffing]’s failure to (i) manage or distribute accounts, assets or property in timely fashion; (ii) recognize

Plaintiffs' rights in the Condominium; and (iii) collect assets due Plaintiffs or the [Revocable] Trust and rents and charges due; and (e) breach of fiduciary duty.

(2) For a judgment or Order of specific performance for conveyance or transfer of the Residuary estate interest to each Plaintiff.

(3) For a judgment against Defendants Dedmon Sr. and Jr., individually, jointly and severally, for (a) damages resulting from the undue influence of said Defendants; (b) immediate possession of the Condominium and collection of rents; and (c) damages to the Condominium.

(4) For a jury trial on all issues so triable.

(5) For costs and attorneys' fees as by law allowed.

(6) For such other and further relief as the Court may deem just and proper.

All Defendants moved to dismiss Plaintiffs' complaint. In their motions to dismiss, Defendants argued that Plaintiffs' complaint should be dismissed for failure to state a claim because "the alleged defect in the [Condominium deed] consists of a mere scrivener's error and does not materially change the rights of the parties to the [d]eed or the effect thereof" and because the Third Claim of Relief was time-barred pursuant to N.C.G.S. § 36C-6-604. On 21 March 2024, the trial court entered an order granting the Dedmon Defendants' motion to dismiss as to the First Claim of Relief, ruling the alleged defect was a mere "scrivener's error" that did not materially alter the rights of the parties. The trial court also dismissed all claims against Defendant Griffing in his individual capacity, but not in his capacity as trustee. Defendants' motions were denied in all other respects. Plaintiffs appealed the trial court's order;

however, on 16 April 2025, this Court dismissed Plaintiffs' appeal as interlocutory.

On 11 June 2025, the Dedmon Defendants filed a motion for summary judgment, arguing that the Third Claim of Relief was time-barred under N.C.G.S. § 36C-6-604. Defendant Griffing subsequently filed a motion for summary judgment, joining the Dedmon Defendants' motion for summary judgment and asserting that any remaining claims against the Trustee were barred, among other reasons, by N.C.G.S. § 36C-6-604.

This matter came on for hearing on 14 July 2025. At the outset of the hearing, the parties agreed that the only issue before the trial court was whether Plaintiffs' claims were time-barred by the three-year statute of limitations set forth in N.C.G.S. § 36C-6-604. Throughout the hearing, Plaintiffs repeatedly stated that the Third Claim of Relief was solely against the Dedmon Defendants and that they were not seeking to invalidate the Revocable Trust, but rather, they were only seeking damages against the Dedmon Defendants for undue influence. When asked by the trial court what the basis was for Defendant Griffing as Trustee still being a party to this action, Plaintiffs' counsel responded that Defendant Griffing owes an accounting but conceded that Defendant Griffing had provided an accounting several months prior, and Plaintiffs were in the midst of analyzing the accounting to determine whether Defendant Griffing provided complete and accurate accounting. After hearing the parties' arguments, the trial court stated:

It seems, having reviewed the file and hearing contentions

of the attorneys, every bit of this challenge is to say that this trust was not valid. Whether it was based off of competency, undue influence, any issue, it all comes back to, was this a valid trust. And the arguments of why it may have been an invalid trust was -- [are] the issues of undue influence, competency, et cetera.

But in the end, the only way the Plaintiffs receive the benefit from this case would be if that trust shouldn't have been entered. And if the claim—I understand the wording by counsel on the Complaint, which reminded [me] of the idea that if a—walks like a duck and talks like a duck, that's going to be a duck.

This seems to be a challenge on the trust. There [are] different avenues that the Plaintiff[s are] using to attack the trust, but at the end of the day, the relief sought requires the Court to find that the trust was not valid. 36C-6-604 does limit the timeline for challenging . . . that trust. Again, I think any claim by the Plaintiffs is attacking the validity of that trust, and there is no other claim.

Three days after the hearing, the trial court entered an order granting summary judgment in Defendants' favor. The trial concluded that, "[r]egardless of Plaintiffs' arguments to the contrary, Plaintiffs' Third Claim for Relief implicates the validity of the [Revocable] Trust, and in essence, challenges the validity of the [Revocable] Trust" and was therefore time-barred under N.C.G.S. § 36C-6-604. The trial court also concluded that "there are no substantive claims left in the action with the dismissal of Plaintiff[s'] Third Claim for Relief, and as all claims against Defendant Griffing in his individual capacity have already been dismissed, summary judgment should also be granted to Defendant Griffing as Trustee"

Less than a month later, on 11 August 2025, Plaintiffs filed their notice of

appeal from the 21 March 2024 order and the 17 July 2025 order. The Dedmon Defendants timely filed notice of cross-appeal, appealing the trial court’s 21 March 2024 order denying their motion to dismiss the Third Claim of Relief.

II. Jurisdiction

This Court has jurisdiction to hear Plaintiffs’ appeal of the 17 July 2025 order granting summary judgment for Defendants because it is a final judgment of a superior court. N.C.G.S. § 7A-27(b) (2025). This Court also has jurisdiction pursuant to N.C.G.S. § 1-278 (2025) to consider any intermediate orders, such as the 21 March 2024 order, necessarily affecting the final judgment. Moreover, because the Dedmon Defendants timely filed their cross-appeal from the 21 March 2024 order, we have jurisdiction to hear the Dedmon Defendants’ cross-appeal. *See Slaughter v. Slaughter*, 254 N.C. App. 430, 444 (2017) (“In a matter in which multiple, separate orders issue, and one party appeals from some, but not all, of those orders, a cross-appellant who files [his] cross-appeal outside of the 30-day window contemplated by Rule 3(c), but within the 10-day window for cross-appeals, shall be limited to appeal from only those orders challenged in the original appeal.”); *see also Miller v. Carolina Coast Emergency Physicians, LLC*, 277 N.C. App. 449, 461 (2021) (holding this Court had jurisdiction to review the defendants’ cross-appeals from interlocutory orders not appealed by the plaintiff “because the [interlocutory] orders did not dispose of the case and were not individually, immediately appealable”).

III. Analysis

A. Plaintiffs’ Appeal from Order Dismissing First Claim of Relief

Plaintiffs argue that the trial court erred in dismissing their First Claim of Relief and holding the error on the face of the Condominium deed was a mere scrivener’s error. We disagree.

“On appeal of a 12(b)(6) motion to dismiss, this Court conducts a *de novo* review of the pleadings to determine their legal sufficiency and to determine whether the trial court’s ruling on the motion to dismiss was correct.” *Burgin v. Owen*, 181 N.C. App. 511, 512 (2007) (citation and internal quotation marks omitted). When reviewing a 12(b)(6) motion to dismiss, a trial court must determine “whether, as a matter of law, the allegations of the complaint, treated as true, are sufficient to state a claim upon which relief may be granted under some legal theory, whether properly labeled or not.” *Gouch v. Rotunno*, 291 N.C. App. 7, 10 (2023) (citation omitted). Dismissal pursuant to Rule 12(b)(6) is proper in any of the following circumstances: “(1) the complaint on its face reveals that no law supports the plaintiff’s claim; (2) the complaint on its face reveals the absence of facts sufficient to make a good claim; or (3) the complaint discloses some fact that necessarily defeats the plaintiff’s claim.” *Wood v. Guilford Cty.*, 355 N.C. 161, 166 (2002) (citation omitted).

To be valid, a deed “must be signed by the grantor.” *Matter of Mills*, 68 N.C. App. 694, 695 (1984) (citing *New Home Building Supply Co. v. Nations*, 259 N.C. 681 (1963)). Under N.C.G.S. § 39-6.7, a deed “that purports to convey, devise, or otherwise transfer any ownership or security interest in real or personal property *to a trust* shall

be deemed to be a transfer *to the trustee* or trustees of that trust.” N.C.G.S. § 39-6.7(a) (2025) (emphasis added). Similarly, a deed transferring any ownership or security interest in real property *by a trust* is construed as being a transfer *by the trustee* of that trust even if the deed “is signed by the trustee or trustees as such, or by the trustee or trustees purportedly for or on behalf of the trust” or “the instrument by which the trustee or trustees acquired title transferred that title to the trustee or trustees as such, or purportedly to the trust.” N.C.G.S. § 39-6.7(b) (2025).

In the instant case, there is no dispute that Ms. Dedmon signed the Condominium deed in her capacity as a trustee. Plaintiffs, in their First Claim of Relief, sought to invalidate the deed because the signature block indicates that Ms. Dedmon was signing the deed in her capacity as the trustee for the Revocable Trust, the Grantee, not in her capacity as trustee of the Daughters’ Trust, the Grantor. The signature block, however, comes after the testimonium clause, where the “Grantor has hereunto set Grantor’s hand and seal . . . has caused this instrument to be signed” Moreover, the notary certified that Ms. Dedmon, as Trustee of the Daughters’ Trust, executed the deed on behalf of the Daughters’ Trust. Thus, it is clear to this Court that the signature block contains a misnomer. *See Pierce v. Johnson*, 154 N.C. App. 34, 39 (2002) (“A misnomer is a ‘mistake in name; giving an incorrect name to the person in accusation, indictment, pleading, deed, or other instrument.’” (quoting

Misnomer, BLACK'S LAW DICTIONARY (6th ed. 1990))).¹

North Carolina appellate courts have not yet addressed whether a misnomer in the grantor's signature block on a deed invalidates the deed, though North Carolina appellate courts have held that a misnomer of a grantee on a deed is ordinarily immaterial and does not vitiate the deed if the intended grantee's identity is apparent. *See Asheville Div. No. 15 v. Aston*, 92 N.C. 578, 583 (1885); *Troy & N.C. Gold Mining Co. v. Snow Lumber Co.*, 170 N.C. 273, 277 (1915); *Tomika Invs., Inc. v. Macedonia True Vine Pentecostal Holiness Church of God, Inc.*, 136 N.C. App. 493, 496 (2000). In each of these cases, our courts determined the intent of the parties based on the written language they used in the deed and construed the deed in a way to effectuate the parties' intent. *See Asheville Div. No. 15*, 92 N.C. at 583 ("A misnomer does not vitiate, provided the identity of the corporation with that *intended* by the parties is apparent." (emphasis added)); *N.C. Gold Mining Co.*, 170 N.C. at 277–78 ("A corporate name is essential, but the inadvertent or mistaken use of the name is ordinarily not material if the parties really *intended* the corporation by its proper name. If the name is expressed in the written instrument, so that the real name can be ascertained from it, this is sufficient; but, if necessary, other evidence

¹ We assume for the purposes of this appeal that a misnomer, such as the one in this case, could be categorized as a "scrivener's error" in the sense that the misnomer was an inadvertent typographical error. *See* Scrivener's Error, BLACK'S LAW DICTIONARY (10th ed. 2014) ("A clerical error, esp. in a legal document"); *see also* Clerical Error, BLACK'S LAW DICTIONARY (10th ed. 2014) ("An error resulting from a minor mistake or inadvertence and not from judicial reasoning or determination; esp., a drafter's or typist's technical error that can be rectified without serious doubt about the correct reading").

may be produced to establish what corporation was intended. . . . A misnomer of a corporation has the same legal effect as a misnomer of an individual.” (emphasis added) (citation omitted)); *Tomika Invs., Inc.*, 136 N.C. App. at 496 (relying on the reasoning in *N.C. Gold Mining Co.*). These cases are in accordance with this State’s jurisprudence that, when construing a deed, the court’s paramount goal should be effectuating the intent of the parties:

Whatever the technicalities of the law may formerly have required in the construction of deeds, the modern doctrine does not favor the application of such technical rules as will defeat the obvious intention of the grantor—not the unexpressed purpose which may have existed in his mind, of course, but his intention as expressed in the language he has employed; for it is an elementary rule of construction that the intention of the parties shall prevail unless it is in conflict with some unyielding canon of construction or settled rule of property or is repugnant to the terms of the grant. Such intention, as a general rule, must be sought in the terms of the instrument; but if the words used leave the intention in doubt, resort may be had to the circumstances attending the execution of the instrument and the situation of the parties at that time—the tendency of modern decisions being to treat all uncertainties in a conveyance as ambiguities to be explained by ascertaining in the manner indicated the intention of the parties.

Seawell v. Hall, 185 N.C. 80, 82 (1923). “We must, if possible[,] without resorting to parol evidence, determine the grantors’ intent based on the four corners of the deed.”

Rutledge v. Feher, 255 N.C. App. 356, 361 (2017) (citation omitted).

Utilizing the above cases as guidance, we conclude that the misnomer in the Condominium deed does not render the deed void because it appears Ms. Dedmon

intended to sign the deed in her capacity as the Trustee of the Daughters' Trust. Although the signature block states Ms. Dedmon was signing on behalf of the Revocable Trust, the deed correctly stated the Grantor, and the notary certified that Ms. Dedmon was signing in her capacity as Trustee of the Daughters' Trust. Thus, based on the four corners of the deed, Ms. Dedmon, as trustee, intended to convey the Condominium to the Revocable Trust. Plaintiffs failed to allege sufficient facts in their Complaint to support invalidating the deed based on said misnomer.² Accordingly, we conclude the trial court did not err by dismissing Plaintiffs' First Claim of Relief for failure to state a claim upon which relief may be granted under some legal theory. *See Wood*, 355 N.C. at 166.

B. Plaintiffs' Appeal from Summary Judgment

Plaintiffs also appeal from the trial court's order granting summary judgment

² Plaintiffs also argue that Defendants cannot seek reformation of the Condominium deed because Defendants "did not raise the scrivener's error issue" before the three-year statute of limitations under N.C.G.S. § 1-52(9) ran and the trial court erred by allowing reformation of the deed "well after the statute of limitations had run." "Reformation is a well-established equitable remedy used to reframe written instruments where, through mutual mistake or the unilateral mistake of one party induced by fraud of the other, the written instrument fails to embody the parties' actual, original agreement." *Wells Fargo Bank, N.A. v. Coleman*, 239 N.C. App. 239, 248 (2015). The trial court in the instant case did not order reformation of the deed, and in fact, none of Defendants instituted an action, or asserted a counterclaim, for reformation of the deed. The question before the trial court was whether Plaintiffs' First Claim of Relief stated a claim upon which relief may be granted under some legal theory, not whether the deed should be reformed. As such, our review is limited to whether the trial court's ruling on Defendants' motions to dismiss was correct. The Dedmon Defendants also argue that, even if the Condominium deed contained a material defect, it was cured as a matter of law under N.C.G.S. § 47-108.28. This statute, however, is inapplicable because the Condominium deed was executed in 2015, and N.C.G.S. § 47-108.28, according to the Editor's and Revisor's Notes, became "effective August 31, 2018, and applies to instruments filed on or after that date." N.C.G.S. § 47-108.28 (2025).

in Defendants' favor. Plaintiffs argue that the trial court erred by granting summary judgment on (1) the Third Claim of Relief in the Dedmon Defendants' favor, because N.C.G.S. § 36C-6-604 does not time-bar an undue influence claim that seeks monetary damages, and (2) the Second Claim of Relief in Defendant Griffing's favor, because a breach of fiduciary duty claim remained pending. In the instant case, the trial court addressed and ruled on the Third Claim of Relief before addressing the Second Claim of Relief. Since the trial court's ruling on the Second Claim of Relief is dependent on the outcome of the trial court's ruling on the Third Claim of Relief, we first address whether N.C.G.S. § 36C-6-604 time-bars Plaintiffs' Third Claim of Relief and then address whether a breach of fiduciary duty claim remained pending.

"On appeal from an order granting summary judgment, our standard of review is *de novo*, and we view the evidence in the light most favorable to the non-movant." *Baum v. John R. Poore Builder, Inc.*, 183 N.C. App. 75, 80 (2007) (citation omitted). In motions for summary judgment, "[t]he burden is on the moving party to show the absence of any genuine issue of fact and his entitlement to judgment as a matter of law." *In re Will of Smith*, 158 N.C. App. 722, 724 (2003) (citation omitted). "A defendant may satisfy [this] burden by showing that the party asserting the claim cannot overcome an affirmative defense which would bar the action." *Id.*

"When the affirmative defense of the statute of limitations has been pled, the burden is on the plaintiff to show that his cause of action accrued within the limitations period." *Lycaste, LLC v. Newsome*, 300 N.C. App. 507, 511 (2025) (citation

omitted). Summary judgment entered in favor of a defendant based on the statute of limitations “is proper when, and only when, all the facts necessary to establish the limitation are alleged or admitted, construing the non-movant’s pleadings liberally in his favor and giving him the benefit of all relevant inferences of fact to be drawn therefrom.” *Ward v. Fogel*, 237 N.C. App. 570, 578 (2014) (quoting *Huss v. Huss*, 31 N.C. App. 463, 468 (1976)); *Pembee Mfg. Corp. v. Cape Fear Const. Co.*, 313 N.C. 488, 491 (1985) (“[W]hen the bar [of an applicable statute of limitations] is properly pleaded and the facts are admitted or are not in conflict, the question of whether the action is barred becomes one of law and summary judgment is appropriate.” (citations omitted)).

1. Third Claim of Relief

Plaintiffs and Defendants disagree as to the nature of the Third Claim of Relief and whether N.C.G.S. § 36C-6-604 time-bars Plaintiffs’ Third Claim of Relief. Although not labeled as such in their complaint, Plaintiffs assert that the Third Claim of Relief is an “undue influence claim[,]” which seeks monetary damages “for interference with an inheritance or gift by way of undue influence.” Plaintiffs further assert that N.C.G.S. § 36C-6-604 does not time-bar an undue influence claim that seeks monetary damages. On the other hand, the Dedmon Defendants argue that Plaintiffs’ Third Claim of Relief is actually a claim seeking to invalidate the Revocable Trust and is time-barred pursuant to N.C.G.S. § 36C-6-604. We agree with the Dedmon Defendants.

Similar to a will, a trust can be contested on the grounds “that its creation was induced by fraud, duress, or undue influence[.]” *see* N.C.G.S. § 36C-4-406 (2025), or the settlor lacked the requisite mental capacity when creating the trust, *see* N.C.G.S. § 36C-4-402 (2025).³ Section 36C-6-604(a)(1) provides that a person seeking to challenge a revocable trust must bring a contest within three years after the settlor’s death. N.C.G.S. § 36C-6-604(a)(1) (2025). According to the official comment, the three-year statute of limitations set forth in N.C.G.S. § 36C-6-604(a) “is derived from Section 3-108 of the Uniform Probate Code[.]” which provides a three-year time limit for contesting a nonprobated will; was “designed to allow an adequate time in which to bring a contest while at the same time permitting the expeditious distribution of the trust property following the settlor’s death”; and “should provide potential contestants with ample time in which to determine whether they have an interest that will be affected by the trust, even if formal notice of the trust is lacking.” N.C.G.S. § 36C-6-604 off. cmt. The official comment also clearly states that the time limit set forth in N.C.G.S. § 36C-6-604(a) applies to a contest, which is “an action to invalidate all or part of the terms of the trust or of property transfers to the trustee”; it does not apply in “[a]n action against a beneficiary or other person for intentional interference

³ As the Official Commentary to N.C.G.S. § 36C-6-604 acknowledges, “only a small minority of trusts are actually contested[.]” N.C.G.S. § 36C-6-604 off. cmt. Wills, however, are often contested by filing a caveat to the probate of such will with the Clerk of Superior Court. N.C.G.S. § 31-32 (2025). Although trusts are not probated like wills, the grounds to contest a trust and a will are very similar. Since there is little caselaw discussing trust contests in this jurisdiction, but an abundance of caselaw discussing will contests, this opinion often relies on caselaw discussing the nature of a contest, not the procedures of probate.

with an inheritance or gift, not being a contest[.]” N.C.G.S. § 36C-6-604 off. cmt.

North Carolina recognizes “the tort of malicious and wrongful interference” with an expected inheritance. *Griffin v. Baucom*, 74 N.C. App. 282, 285 (1985) (citing *Bohannon v. Wachovia Bank & Tr. Co.*, 210 N.C. 679 (1936)); *Hauser v. Hauser*, 252 N.C. App. 10, 13 (2017). In North Carolina, therefore, “[i]f one maliciously interferes with the making of a will, or maliciously induces one by means of undue influence to revoke a will, to the injury of another, the party injured can maintain an action against the wrongdoer.” *Griffin*, 74 N.C. App. at 285–86. Undue influence, which “is frequently employed surreptitiously, and is chiefly shown by its results[.]” *In re Thompson’s Will*, 248 N.C. 588, 593 (1958), has been defined as “a fraudulent influence over the mind and will of another to the extent that the professed action is not freely done but is in truth the act of the one who procures the result[.]” *In re Estate of Loftin*, 285 N.C. 717, 722 (1974) (citations omitted). Before proceeding with a tort action for malicious interference with an inheritance, however, a plaintiff must either exhaust all probate remedies or demonstrate their inadequacy. *Compare Finks v. Middleton*, 251 N.C. App. 401, 409 (2016) (“[O]ur case law recognizes that the purpose of a caveat proceeding is limited and where adequate remedy cannot be obtained in a caveat proceeding, the plaintiff is entitled to proceed with a tort claim.” (citation modified)) *with Shoaf v. Shoaf*, 219 N.C. App. 471, 477 (2012) (holding that a pending caveat proceeding did not bar the plaintiff’s separate civil claim for constructive fraud because the latter action did not challenge the validity of the decedent’s “will or

require either a determination of [the decedent's] capacity to execute a will as of 18 October 2006 or the extent to which [the d]efendant procured the contested will by undue influence").

Plaintiffs assert that N.C.G.S. § 36C-6-604(a)'s time-bar is inapplicable in this case on the basis that Plaintiffs sought monetary damages for "interference with an inheritance or gift by way of undue influence." In determining whether Plaintiffs' Third Claim of Relief is time-barred pursuant to N.C.G.S. § 36C-6-604(a), however, "we are guided by the principle that the statute of limitations is not determined by the remedy sought, but by the substantive right asserted by plaintiffs." *Baars v. Campbell Univ., Inc.*, 148 N.C. App. 408, 414 (2002); *but see Hayes v. Ricard*, 244 N.C. 313, 320 (1956) ("The nature of the action is not determined by what either party calls it, but by the issues arising on the pleadings and by the relief sought."). In *Fox v. Fox*, for example, after reviewing the plaintiff's breach of fiduciary claim as alleged in her complaint, this Court determined that her claim was essentially two separate claims: one claim challenging the validity of the trust and the other a claim for breach of trust against the defendants as trustees. 283 N.C. App. 336, 343–44 (2022). The claim challenging the trust's validity was against the defendants individually and was based on the defendants' "scheme" to have the settlor change his trust for the benefit of the defendants and their children, at the expense of the plaintiff. *Id.* at 344. The plaintiff, however, did not initiate the action until six years after the settlor's death; thus, her claim contesting the validity of the revocable trust was time-barred

pursuant to N.C.G.S. § 36C-6-604(a). *Id.*

Plaintiffs in the instant case claim they are not contesting the Revocable Trust. In fact, Plaintiffs concede the Revocable Trust is valid. By the same stroke, however, Plaintiffs assert that the Third Claim of Relief “arises from actions Defendants took in secret after the creation of the Trust, after Ms. Dedmon became incapacitated in 2013, to interfere with Plaintiffs’ inheritance,” such as “procuring the Second and Third Amendments though undue influence”

Similar to *Fox*, careful examination of Plaintiffs’ complaint in the instant case shows the Third Claim of Relief, in essence, challenges the validity of the terms of the Revocable Trust. Plaintiffs made the following, relevant averments under the Third Claim of Relief in their complaint:

55. Starting in 2010, progression of [Ms. Dedmon’s] cognitive decline was noted by the caretakers at the assisted living facility . . . where she was a resident from 2010 through May 2014 until she was withdrawn from that facility by Defendant Griffing. Plaintiffs and Defendants also noted her progressive cognitive decline over this period.

56. In or about January 2013, September 2013, January 2014, and May 2014, three physicians submitted reports, opinions or otherwise noted in writing that [Ms.] Dedmon had dementia (Alzheimer’s) and/or lacked sufficient cognitive ability to handle her affairs, specifically including financial affairs, which information was then timely distributed to and known by Defendants.

57. In 2013, under the express terms and definitions of the [Revocable] Trust via First Amendment, Betty S. Dedmon was deemed to be incapacitated or incompetent within the

meaning thereof, and was not thereafter restored to competency during her lifetime, within the meaning thereof.

....

66. On or about July 3, 2014, Betty S. Dedmon executed the Second Amendment prepared by Defendant Griffing, upon the improper insistence of and under the undue influence of [Don] Sr. and [Don] Jr., during the period of her incompetency or incapacity as defined in each of the First Amendment and Second Amendment. This fact of incompetency or incapacity at that time was known by Defendants.

....

68. The Second Amendment secured at the improper insistence of [Don] Sr. and [Don] Jr. provided for distribution to [Don] Sr. a one-third interest in the [F]arm . . . and upon [Don] Sr.'s death before that of Betty S. Dedmon, the [Farm] was to pass to [Don] Jr. Each of [Don] Sr. and [Don] Jr. retained a conditional first right of refusal to purchase each Plaintiff's one-third interest in the [Farm]. The [Revocable] Trust prior to the Second Amendment had distribution of entire [Farm] to the Plaintiffs in equal shares. This change was known and intended by [Don] Sr. and [Don] Jr.

69. In or about March of 2015, [Plaintiff Elder] met with Defendant Griffing and expressed her grave concerns over the issues of the incapacitation and dementia of Betty S. Dedmon, safety concerns for Betty S. Dedmon, the exclusion of Plaintiffs from her care and affairs, and the interfering and overwhelming influence of [Don] Sr. and [Don] Jr. over Betty S. Dedmon.

70. On or about June 18, 2015 Betty S. Dedmon executed the Third Amendment prepared by Defendant Griffing, Betty S. Dedmon executed the Second [sic] Amendment prepared by Defendant Griffing, upon the improper insistence of and under the undue influence of [Don] Sr.

and [Don] Jr., during the period of her incompetency or incapacity as defined by each of the First, Second and Third Amendments. This fact of incompetency or incapacity at that time was known by Defendants.

....

72. The Third Amendment secured at the improper insistence of [Don] Sr. and [Don] Jr. provided for distribution of the [Farm] outright to [Don] Sr. and upon [Don] Sr.'s death prior to that of Betty S. Dedmon, the [Farm] was to be distributed outright to [Don] Jr. [Don] Sr. has disclaimed his interest, if any, in the [Farm] to [Don] Jr. Also, the Third Amendment purported to provide for distribution of the Condominium to Don's Trust. These changes were known and intended by [Don] Sr. and [Don] Jr.

....

75. The Second Amendment and Third Amendment as prepared by Defendant Griffing were executed by Betty S. Dedmon at the improper insistence of and undue influence of [Don] Sr. and [Don] Jr. during her period of her incapacity or incompetency as set forth and defined in each Amendment, which continued thereafter until her death. In furtherance of this improper influence, [Don] Sr. suggested, coordinated and arranged the meetings for Betty S. Dedmon with Defendant Griffing to have executed the Second Amendment and Third Amendment while [Don] Sr. was present.

....

77. The effect of the Second Amendment and Third Amendment is to change or attempt to change the distribution, the devises and bequests to each Plaintiff in the First Amendment and [the Daughters' Trust] to the sole benefit of [Don] Sr., [Don] Jr., and Don's Trust, as to the [Farm], certain equipment and personal property, and the Condominium. [Don] Sr. and [Don] Jr. wrongfully secured the execution of the Second Amendment, [d]eed . .

. and Third Amendment to benefit themselves through their undue influence and malicious and improper motives.

78. Betty S. Dedmon had no contractual or legal competency or capacity to execute the Second Amendment or Third Amendment at the time of each's execution or to ratify the same thereafter, which fact of incompetency or incapacity was known by Defendants prior to the execution of each such document or transaction and thereafter.

79. By corrupt design [Don] Sr. and [Don] Jr. secured the execution of the [d]eed . . . Second Amendment and Third Amendment to have the distribution of Estate assets and the Condominium changed to their benefit. Neither Defendant Griffing, [Don] Sr. nor [Don] Jr. advised the Plaintiffs of changes in the Second Amendment and Third Amendment or of the [d]eed . . . They surreptitiously had Betty S. Dedmon make those changes to the [Revocable] Trust and to execute the [d]eed . . . By doing so, they corruptly changed the receipts of the [Revocable] Trust beneficiaries and attempted to change the beneficiary of the Condominium to their benefit. Each Plaintiff was intentionally not made aware of the attempted [d]eed . . . transfer and changes to the [Revocable] Trust by way of the Second Amendment and Third Amendment. This discovery of such actions and documents by Plaintiffs was well after the death of Betty S. Dedmon and the undue influence exercised by [Don] Sr. and [Don] Jr. until 2021 and thereafter.

....

86. Each of [Don] Sr. and [Don] Jr. exercised undue influence over Betty S. Dedmon from 2013 to her death in 2018 during her period of defined incompetence or incapacity, resulting in substantial gifts to them and the execution of the Second Amendment, Third Amendment, and [d]eed . . . which undue influence became known to Plaintiffs only in 2021 and thereafter.

....

95. Defendants [Don] Sr. and [Don] Jr. had the selfish motive to have Betty S. Dedmon execute the Second Amendment, Third Amendment, and [d]eed . . . to distribute or attempt to distribute real estate and other residuary properties otherwise passing to each Plaintiff under the [Daughters' Trust] and First Amendment then pass to or for the benefit of [Don] Sr., [Don] Jr. or Don's Trust. [Don] Sr. was aware of and angry at the fact that the First Amendment distributed certain [Revocable] Trust assets such as the [Farm] to each Plaintiff and that the Condominium was held for the benefit of Plaintiffs.

These allegations essentially challenge the validity of the Revocable Trust because they challenge the validity of the Second and Third Amendments. Critically, underlying the Third Claim of Relief is a requisite determination that the Dedmon Defendants procured the Second and Third Amendments by way of undue influence. *See Shoaf*, 219 N.C. App. at 477. The practical effect of the Third Claim of Relief would, therefore, invalidate part of the terms of the Revocable Trust, i.e., the Second and Third Amendments. A challenge to the validity of the Second and Third Amendments, as part of the Revocable Trust, should have been initiated before the statutorily prescribed time period for bringing a trust contest expired in July of 2021. And even if Plaintiffs lacked formal notice of the Second and Third Amendments until 2021, as alleged in paragraph 79, Plaintiffs nevertheless had three years "to determine whether they have an interest that [would] be affected by the trust[.]" *See* N.C.G.S. § 36C-6-604 off. cmt. ("The maximum possible time for bringing a contest is three years from the settlor's death. This should provide potential contestants with ample time in which to determine whether they have an interest that will be affected

by the trust, even if formal notice of the trust is lacking.”). By allowing Plaintiffs’ “undue influence claim” to proceed, this Court would be permitting the issue of undue influence, which would have been grounds to contest the Revocable Trust, to be litigated after the maximum statutorily prescribed time period for bringing a trust contest expired. Moreover, Plaintiffs’ allegations do not establish that they were entitled to proceed with a tort claim due to the inadequacy of relief in a trust contest. *See Wilder v. Hill*, 175 N.C. App. 769, 772 (2006). Although Plaintiffs sought monetary damages, it is the substantive right asserted by Plaintiffs, not the relief sought, that determines which statute of limitations should be applied. *See Baars*, 148 N.C. App. at 414. To allow Plaintiffs to proceed on the Third Claim of Relief solely based on the relief Plaintiffs sought would be to permit Plaintiffs to circumvent the well-established procedures for contesting a trust.

As such, we conclude that the Third Claim of Relief is a claim challenging the validity of the Revocable Trust that was filed more than three years after Ms. Dedmon’s death. Therefore, the Third Claim of Relief is time-barred pursuant to N.C.G.S. § 36C-6-604(a). *See Fox*, 283 N.C. App. at 344.

2. Second Claim of Relief

Next, Plaintiffs argue that the trial court erred by granting summary judgment in Defendant Griffing’s favor. Specifically, Plaintiffs assert that the trial court erred by holding “there are no substantive claims left in the action with the dismissal of the Undue Influence Claim[,]” because, in Plaintiffs’ words, “there was a remaining

substantive breach of fiduciary duty claim against [Defendant] Griffing in his capacity as trustee of the [Revocable] Trust and his abuses of the General Power of Attorney.” In response, Defendant Griffing argues that he, in his capacity as trustee, could not have distributed the Revocable Trust’s assets while there was a “pending judicial proceeding contesting the validity of the trust”;⁴ but, since the trial court dismissed the Third Claim of Relief as time-barred, the challenges to the Revocable Trust were finally resolved, and therefore, the trial court properly dismissed the Second Claim of Relief to allow an orderly distribution of the Revocable Trust assets.

“A successful claim for breach of fiduciary duty requires proof that ‘(1) the defendant[] owed the plaintiff a fiduciary duty; (2) the defendant breached that fiduciary duty; and (3) the breach of fiduciary duty was a proximate cause of injury to the plaintiff.’” *Chisum v. Campagna*, 376 N.C. 680, 706 (2021) (citation omitted). A trustee under any trust is a fiduciary, *see* N.C.G.S. § 32-2 (2025), who owes certain duties to the beneficiaries of that trust, *see* N.C.G.S. § 36C-8-801 (2025). Some of these duties include the duty to “[p]rovide reasonably complete and accurate information as to the nature and amount of the trust property” to a qualified beneficiary, N.C.G.S.

⁴ Defendant Griffing concedes that Plaintiffs are entitled to the Residuary from the Revocable Trust; however, he did not distribute the Residuary to Plaintiffs because, pursuant to N.C.G.S. § 36C-6-604, he could have faced liability for distribution of the Revocable Trust property while this case was pending. Under N.C.G.S. § 36C-6-604(b)(1), a “trustee shall not distribute trust property to any beneficiary in contravention of the rights of any person who may be affected by the outcome of a pending or possible judicial proceeding if, at the time the distribution is made,” the “trustee knows of a pending judicial proceeding contesting the validity of all or part of the terms of the trust or contesting the identity of the beneficiaries eligible to receive distributions therefrom.” N.C.G.S. § 36C-6-604(b)(1) (2025).

§ 36C-8-813 (2025), and the duty to “administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with this Chapter[.]” N.C.G.S. § 36C-8-801.

Here, in viewing the evidence in the light most favorable to Plaintiffs, there are genuine issues of material fact regarding Plaintiffs’ Second Claim of Relief. Notably, none of the parties submitted affidavits or depositions on this issue because all parties had agreed that the only issue before the trial court was whether N.C.G.S. § 36C-6-604’s time-bar applied in this case. In fact, Plaintiffs’ counsel told the trial court that he had “agreed to take all three of their depositions after this hearing because it was solely limited to . . . the application of 36C-6-604[.]” Plaintiffs’ counsel did acknowledge that Defendant Griffing had previously given them accounting; critically, there was still a question as to whether that accounting was complete and accurate. Defendant Griffing, who had the burden of proving he was entitled to judgment as a matter of law, however, did not present any evidence that this accounting was complete and accurate. Rather, Defendant Griffing’s “sole summary judgment argument” was that, “if Codefendant’s summary judgment motion is granted, there’s nothing substantive left in the case. Because we’ve understood this to involve the trust throughout this case.” Based on our review of the Record, it is too early in this proceeding for summary judgment on this issue. Consequently, the trial court’s grant of summary judgment in Defendant Griffing’s favor is reversed.

C. Dedmon Defendants’ Cross-Appeal

On cross-appeal, Dedmon Defendants assert that the trial court erred by denying their motions to dismiss because Plaintiffs' claims were barred by the applicable statute of limitations.

Based on our conclusion that Plaintiffs' Third Claim of Relief is barred by N.C.G.S. § 36C-6-604, Dedmon Defendants' cross-appeal is moot. "A case is 'moot' when a determination is sought on a matter which, when rendered, cannot have any practical effect on the existing controversy." *Roberts v. Madison Cty. Realtors Ass'n, Inc.*, 344 N.C. 394, 398–99 (1996) (citation omitted). "The general rule is that an appeal presenting a question which has become moot will be dismissed." *Thomas v. N.C. Dep't of Hum. Res.*, 124 N.C. App. 698, 705 (1996) (citation omitted).

As discussed, Plaintiffs' Third Claim of Relief was time-barred pursuant to N.C.G.S. § 36C-6-604(a). Because we affirm the trial court's order granting summary judgment in the Dedmon Defendants' favor, however, further determination of the Dedmon Defendants' cross-appeal would not have "any practical effect on the existing controversy." *See Roberts*, 344 N.C. at 398–99. As such, we dismiss the Dedmon Defendants' cross-appeal as moot. *See Thomas*, 124 N.C. App. at 705.

IV. Conclusion

For the forgoing reasons, we affirm the trial court's order dismissing Plaintiffs' First Claim of Relief. Additionally, because we conclude that Defendants were entitled to judgment as a matter of law with respect to the Third Claim of Relief, but not entitled to summary judgment on the Second Claim of Relief, we affirm the trial

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court's order in part, reverse in part, and remand for further proceedings.

AFFIRMED IN PART; REVERSED IN PART AND REMANDED; CROSS-
APPEAL DISMISSED.

Chief Judge DILLON and Judge MURRY concur.