

IN THE SUPREME COURT OF THE STATE OF IDAHO

Docket No. 52886-2025

**In the Matter of the Estate of Deborah
Bowen, Deceased.**

**TRAVIS LYLE BOWEN, in his capacity as
Personal Representative of the Estate of
Deborah Bowen,**

Plaintiff-Appellant,

V.

DANA PENROD, individually, as Trustee or Former Trustee of the LYLE BOWEN TRUST, and as Personal Representative of the ESTATE OF LYLE BOWEN,

Defendant-Respondent on Appeal,

and

**VICTORIA LYNN CALL, SHAYNE
MARTELL BOWEN, and TANYA
CLEMENT,**

Defendants.

Appeal from the District Court of the Seventh Judicial District of the State of Idaho, Bonneville County. Dane H. Watkins, Jr., District Judge.

The decision of the district court is affirmed.

Hawley Troxell Ennis & Hawley LLP, Boise; and Wright Law Offices, PLLC, Idaho Falls, for Appellant. Stephen L. Adams argued.

Kirton McConkie, Idaho Falls, for Respondent Dana Penrod as Personal Representative of the Estate of Lyle Bowen; and Merrill & Merrill, Chartered, Pocatello for Respondent Dana Penrod, Individually. Nathaniel H. Wadsworth argued.

ZAHN, Justice.

This case concerns a dispute between siblings Travis Bowen and Dana Penrod regarding the assets of their late sister, Deborah Bowen. After Deborah's passing, Travis¹ filed a petition for probate of Deborah's estate and was appointed personal representative. Travis, in his capacity as personal representative, filed a petition in Deborah's probate proceeding alleging that Penrod sold Deborah's assets and kept the proceeds. Penrod denied that she had sold any estate assets, and the parties ultimately stipulated to a dismissal of Travis' petition.

Nearly two years later, Travis, again in his capacity as personal representative, filed a complaint in Deborah's probate proceeding, again alleging that Penrod had improperly sold Deborah's assets. Penrod filed a motion to dismiss Travis' complaint on the basis that it was barred by the statute of limitations. The magistrate court granted the motion. Travis appealed the decision to the district court, which affirmed. Travis now appeals to this Court.

For the first time on appeal, Travis argues the district court, and consequently this Court, do not have subject matter jurisdiction to hear his appeal because the magistrate court's "Final Judgment" did not constitute a final judgment under Idaho Rule of Civil Procedure 54(a). Travis also asserts several arguments for why his complaint was not barred by the statute of limitations. For the reasons discussed below, we hold that we have jurisdiction to consider this appeal, and we affirm the district court's intermediate appellate decision.

I. FACTUAL AND PROCEDURAL BACKGROUND

Deborah passed away in April 2018. Prior to her passing, Deborah had lived with her father, Lyle, for about thirteen years. Travis and Penrod are Deborah's siblings and Lyle's children. After Deborah's passing, Travis petitioned for formal probate and was appointed personal representative of her estate. Travis was concerned with the disposition of some of Deborah's assets, including a vehicle that Deborah had transferred to Penrod.

One of Deborah's daughters testified in a declaration that in 2020, Penrod informed Deborah's children that Penrod was soliciting bidders for different items of personal property located inside Deborah's and Lyle's shared home. Deborah's daughter believed some of these items belonged to Deborah but she and her four other siblings had not received the items. Lyle, through his attorney, informed Travis that Deborah's children had been given multiple

¹ Because Travis, his sister Deborah, and their father Lyle shared the same last name, we refer to Travis by his first name to avoid confusion.

opportunities to recover Deborah's property and he believed that any items left in the house at that point belonged to him.

Travis sent letters to multiple individuals that he believed to be in possession of Deborah's assets, including Penrod, and asked them to detail the items they received from Deborah's estate. Penrod and two other individuals responded that they did not possess any assets from Deborah's estate. The other individuals did not respond.

Prior to Lyle's death, Penrod had been appointed as trustee for Lyle's trust. Travis questioned Penrod's conduct as trustee of Lyle's trust, prompting Lyle to instruct Travis to cease contact with Penrod. While the probate of Deborah's estate was pending, Lyle died. Following Lyle's death, Penrod was appointed personal representative of Lyle's estate.

Travis later filed a "Verified Petition to Require Production of Information and Return of Property" with an attached schedule of assets that Travis thought belonged to Deborah. In the petition, Travis alleged that Penrod held an auction and sold assets belonging to Lyle's and Deborah's estates. Travis further alleged that additional assets of Deborah's estate had been distributed outside of the auction. Travis sought return of the assets or the monetary value of the assets to Deborah's estate.

Penrod and the other respondents identified in the petition answered the petition and denied that the assets identified on the schedule belonged to Deborah. They also asserted that the only family members who had taken Deborah's assets were her heirs. Travis subsequently stipulated to dismiss the petition, and the magistrate court entered an order dismissing the petition without prejudice.

Two years after the order dismissing the petition, Travis notified Penrod's attorney that he intended to depose Penrod regarding missing assets, which prompted Penrod's attorney to move for a protective order. After the motion for protective order was filed, Travis filed a four-count complaint against Penrod, in her individual, personal representative, and trustee capacities. Travis alleged claims (1) to recover assets of Deborah's estate under Idaho Code sections 15-3-708 and 15-3-709, (2) for unjust enrichment, (3) to impose a constructive trust, and (4) for an accounting of Deborah's estate. The factual basis for all four claims was that, sometime around July 2020, Penrod held an auction, in her capacity as the personal representative for Lyle's estate, during which Penrod sold some of Deborah's assets.

In response, Penrod filed a motion to dismiss pursuant to Idaho Rule of Civil Procedure 12(b)(6), arguing that Travis' claims were really conversion claims and as such, were barred by the statute of limitations in Idaho Code section 5-218. Following a hearing on the motion, the magistrate court agreed and dismissed Travis' complaint with prejudice in a document titled "Final Judgment." Travis subsequently appealed to the district court, which affirmed the magistrate court's decision. This appeal timely followed.

II. ISSUES ON APPEAL

1. Whether this Court has subject matter jurisdiction over Travis' appeal.
2. If this Court has subject matter jurisdiction over this appeal, whether the magistrate court erred when it dismissed Travis' claims as untimely.
3. Whether Penrod is entitled to fees on appeal.

III. STANDARDS OF REVIEW

We will dismiss an appeal for lack of jurisdiction if the lower court's decision was a non-appealable order or judgment. *Est. of Holland v. Metro. Prop. & Cas. Ins. Co.*, 153 Idaho 94, 99, 279 P.3d 80, 85 (2012).

This Court reviews a district court's intermediate appellate decision by reviewing the record from the magistrate court and affirming or reversing the decision of the district court. *Erickson v. McKee (In re Est. of McKee)*, 153 Idaho 432, 436, 283 P.3d 749, 753 (2012). Conclusions of law are freely reviewed, and this Court defers to the magistrate court's factual determinations where they are supported by substantial and competent evidence. *Id.*

IV. ANALYSIS

A. This Court has subject matter jurisdiction over Travis' appeal.

Travis' first assignment of error is that the magistrate court's "Final Judgment" was not a final judgment for purposes of Idaho Rule of Civil Procedure 54(a) because it did not close the probate proceeding and therefore, it failed to decide all the claims in the case. Consequently, he maintains that the district court did not have subject matter jurisdiction over Travis' initial appeal and this Court does not have subject matter jurisdiction to consider Travis' subsequent appeal. Penrod first asserts that Travis waived this argument because he failed to raise it below and, second, that the district court had subject matter jurisdiction over the appeal because the magistrate court's "Final Judgment" resolved all the claims raised in Travis' complaint. We agree with Penrod's second point and hold that we have subject matter jurisdiction to consider Travis' appeal.

We first note the unusual procedural posture of this appeal. Travis, after twice appealing the magistrate court's decision dismissing his complaint, now asserts for the first time that neither the district court nor this Court had subject matter jurisdiction to consider the very appeals that he filed. Travis explains that this unusual argument arises from the fact that he is now represented on appeal by new counsel from a different law firm, who did not appear before the magistrate court or the district court. While Travis concedes that he is challenging subject matter jurisdiction for the first time on appeal to this Court, it is well-established that subject matter jurisdiction is an issue that may be raised at any time, including by a trial court or an appellate court. *Ackerschott v. Mountain View Hosp., LLC*, 166 Idaho 223, 237, 457 P.3d 875, 889 (2020). We are unpersuaded by Penrod's argument that Travis waived this argument by failing to raise it below.

Turning to the merits of the argument, because Travis has appealed an intermediate appellate decision of the district court, his subject matter jurisdiction challenge implicates two levels of appeal: (1) his first appeal to the district court and (2) his subsequent appeal of the district court's appellate decision to this Court. Working backward, Idaho Appellate Rule 11(a)(2) provides that appeals may be taken to this Court from an intermediate appellate decision of the district court. Travis does not challenge the applicability of this rule but instead argues that this Court lacks subject matter jurisdiction because the district court never had subject matter jurisdiction to consider his first appeal from the magistrate court's decision.

Idaho Rule of Civil Procedure 83(a)(2) permits an appeal to be taken to the district court from "a final judgment in a civil action or a special proceeding commenced, or assigned to, the magistrate's division of the district court[.]" I.R.C.P. 83(a)(2)(A). Travis argues that the magistrate court's decision dismissing his complaint does not satisfy the definition of "judgment" contained in Rule 54(a) because the magistrate court's decision did not close the probate and therefore, the probate proceeding remained pending. According to Travis, the failure to close the probate meant that the magistrate court's decision dismissing his complaint failed to resolve all claims pending in the probate proceeding. In Travis' view, the decision dismissing his complaint will not become a final judgment until the magistrate court closes the probate proceeding.

The plain language of Idaho's Uniform Probate Code indicates otherwise. Idaho Code section 15-3-106 authorizes magistrate courts handling a probate matter to "determine any other controversy concerning a succession or to which an estate, through a personal representative, may be a party." I.C. § 15-3-106; *Idaho Dep't of Health & Welfare v. Peterson (In re Est. of Peterson)*,

157 Idaho 827, 832, 340 P.3d 1143, 1148 (2014) (quoting I.C. § 15-3-106). Section 15-3-107 provides that, except in cases of supervised administration, “each proceeding before the court or registrar is independent of any other proceeding involving the same estate[.]” I.C. § 15-3-107(1) & cmt. (noting this section is meant to give the probate court concurrent jurisdiction over any matter to which the estate may be a party, including actions for property alleged to belong to the estate).

Travis has not asserted, either in his opening brief or his reply brief before this Court, that the probate proceeding for Deborah’s estate was a supervised probate. To the contrary, Penrod asserted in her response brief that Deborah’s estate *was not* a supervised probate proceeding. Although Travis asserted at oral argument before this Court that the parties had earlier stipulated that Deborah’s estate was a supervised probate, we can find nothing in the record before us to support his assertion. As a result, we conclude that section 15-3-107 applies to the underlying probate proceeding and to Travis’ complaint.

Read together, sections 15-3-106 and 15-3-107 provide that separate cases may be commenced within a probate case and that they are to be treated as independent actions. Because each civil proceeding is independent of the probate proceeding and any other civil proceeding filed within the probate, any final judgment issued in connection with such a civil proceeding is independent of any other final judgment entered in the probate proceeding. The logical consequence of this is that once a final judgment is entered in the independent civil proceeding, that judgment may be appealed even though the underlying probate proceeding is still open.

Though this Court has not previously addressed the interplay between sections 15-3-106 and 15-3-107 and the definition of “judgment” contained in Idaho Rule of Civil Procedure 54(a), our sister states have concluded that each independent action commenced within a probate proceeding can result in a final, appealable judgment before the closure of the probate proceeding itself. *In re Est. of Newalla*, 837 P.2d 1373, 1376–77 (N.M. Ct. App. 1992) (“[T]he Probate Code teaches that as a practical matter each petition in a probate file should ordinarily be considered as initiating an independent proceeding, so that an order disposing of the matters raised in the petition should be considered a final, appealable order.”); *Est. of Sheltra*, 238 A.3d 234, 238 (Me. 2020) (agreeing with the consensus of other jurisdictions, stating that “an order disposing of the matters raised in [an independent] petition should be considered a final, appealable order . . .” (citations omitted)); *Schmidt v. Schmidt*, 540 N.W.2d 605, 607 (N.D. 1995) (“Because each proceeding in

an unsupervised probate is considered independent of other proceedings involving the same estate, [to appeal,] there need be finality only as to that proceeding, not the entire estate.”); *see also Miller v. Est. of Prater*, 141 Idaho 208, 213, 108 P.3d 355, 360 (2005) (noting that Idaho’s probate code was adopted from the Uniform Probate Code).

We are persuaded by the plain language of sections 15-3-106 and 15-3-107 and the corresponding comments, as well as the decisions of our sister states, that the magistrate court’s “Final Judgment” dismissing Travis’ complaint was a final judgment for purposes of Rule 54(a). Travis commenced a separate civil action within the probate proceeding, seeking to obtain the return of estate property so he could distribute the property in his role as personal representative. Section 15-3-107 indicates that this an adversarial claim and is independent of any other proceeding involving the estate. The magistrate court’s “Final Judgment” fully adjudicated all claims raised in Travis’ complaint, and because that proceeding was independent of the probate proceeding itself, the decision constituted a final judgment for purposes of Rule 54(a). As a result, the district court had subject matter jurisdiction over Travis’ intermediate appeal and, by extension, pursuant to Idaho Appellate Rule 11(a)(2), this Court has subject matter jurisdiction over Travis’ appeal from the district court’s intermediate appellate decision.

B. The district court did not err when it dismissed Travis’ claims as untimely.

Travis next argues that the district court erred when it dismissed his claims as untimely. The district court concluded that Travis’ four claims all relied on the allegations that Penrod had wrongfully removed or sold property of Deborah’s estate at an auction held in July 2020 and that all four claims sought to recover that property or its value. The three-year statute of limitations in Idaho Code section 5-218 is applicable to claims “for taking, detaining or injuring any goods or chattels, including actions for the specific recovery of personal property.” I.C. § 5-218(3). The magistrate court equated Travis’ claims to a claim for conversion and cited the Idaho Court of Appeals decision in *McCormack v. Caldwell*, 152 Idaho 15, 20, 266 P.3d 490, 495 (Ct. App. 2011), to conclude that a conversion action accrues when the property is taken, not when the plaintiff discovers the taking. Relying on the allegations in Travis’ complaint, the magistrate court

concluded that because the property was allegedly taken in July 2020 when it was sold at auction, Travis' complaint, filed over three years later in May 2024, was barred.

Travis asserts a variety of arguments for why the magistrate court erred in determining his claims were untimely:

1. The magistrate court erroneously determined that his claims began to run in July 2020.
2. The complaint related back to the first petition that Travis voluntarily dismissed.
3. The accounting claim is similar to a continuing tort, thus, the harm continued to accrue over time.
4. Travis did not own the property alleged to have been wrongfully taken, therefore, he could not maintain a claim for conversion, so the magistrate court erred when it equated his claims to conversion claims.
5. The magistrate court should have converted Penrod's motion to dismiss to a motion for summary judgment and considered additional evidence not offered by the parties, which could have been found in the record of the probate proceeding.
6. The magistrate court should have applied the four-year, catch-all statute of limitations found in Idaho Code section 5-224.

Penrod argues that all but the last argument are unpreserved because they were not raised before the district court on intermediate appeal. In response, Travis asserts that Penrod has misunderstood his arguments.

We agree with Penrod and decline to consider all but the last argument raised by Travis: that the magistrate court erred in failing to apply the four-year, catch-all statute of limitations found in section 5-224. Our review of Travis' briefing on intermediate appeal reveals that the first five arguments he now seeks to raise on appeal to this Court were not raised before the district court on intermediate appeal. His failure to do so means they are not preserved for his appeal to this Court. *Fed. Home Loan Mortg. Corp. v. Butcher*, 157 Idaho 577, 581, 338 P.3d 556, 560 (2014) ("An issue not raised in an intermediate appeal will not be decided by a higher court." (citation modified)). We are not persuaded by Travis' argument that Penrod has simply "misconstrued," "misunderstood," or "misstated" his arguments.

Travis' only preserved argument is that the magistrate court erred in applying section 5-218's three-year statute of limitation. Travis argues that because the claims in his complaint arose under section 15-3-709, he has raised a statutory cause of action rather than one similar to

conversion. Thus, he maintains that, since section 15-3-709 does not identify a limitation period, the magistrate court should have applied the four-year limitation period in section 5-224. The magistrate court disagreed, concluding that section 15-3-709 did not create a separate cause of action and construed Travis' claims as ones for conversion, subject to the three-year limitation period in section 5-218.

We are unpersuaded by Travis' argument that section 15-3-709 creates a cause of action independent of a conversion claim. Importantly, the text of section 15-3-709 does not create an independent cause of action at all. Rather, it grants legal authority to the personal representative to collect and recover estate property:

Except as otherwise provided by a decedent's will, every personal representative has a right to, and shall take possession or control of, the decedent's property, except that any real property or tangible personal property may be left with or surrendered to the person presumptively entitled thereto unless or until, in the judgment of the personal representative, possession of the property by him will be necessary for purposes of administration. The request by a personal representative for delivery of any property possessed by an heir or devisee is conclusive evidence, in any action against the heir or devisee for possession thereof, that the possession of the property by the personal representative is necessary for purposes of administration. The personal representative shall pay taxes on, and take all steps reasonably necessary for the management, protection and preservation of, the estate in his possession. He may maintain an action to recover possession of property or to determine the title thereto.

I.C. § 15-3-709. Nothing in this statute suggests the creation of a statutory cause of action. Rather, it gives a personal representative legal authority to possess or control the property as necessary for administration of the decedent's estate. I.C. § 15-3-709 cmt. (stating that this section deals with the personal representative's duty and right to possess assets); see *Martin v. Telma V. Garrett Living Tr.*, 170 Idaho 1, 7, 506 P.3d 237, 243 (2022) (“[T]he legislature has mandated that the ability to claw back property that was improperly removed from the estate is vested in the personal representative.”).

Having determined that section 15-3-709 does not provide an independent cause of action, we look to the substance of the claim pleaded, rather than the designation by the parties, to determine the applicable statute of limitations. *Dep't of Health & Welfare v. Beason*, 173 Idaho 672, 678, 546 P.3d 684, 690 (2024). Specifically, we look to the source of the damages to determine the cause of action, rather than the remedy sought or the type of damages incurred. *Id.*

Here, the source of the damages alleged by Travis was the taking or removal of personal property from Deborah's estate. The three-year statute of limitations in section 5-218(3) applies to "[a]n action for taking, detaining or injuring any goods or chattels, including actions for the specific recovery of personal property." I.C. § 5-218(3). Travis' claims fall squarely within section 5-218's three-year limitation.

Before we conclude, we take this opportunity to note that the procedure utilized to dismiss Travis' complaint may not be consistent with our rules of civil procedure. Penrod did not file an answer to Travis' complaint but instead filed a motion to dismiss pursuant to Idaho Rule of Civil Procedure 12(b)(6). Rule 12(b) provides that every defense must be raised in a responsive pleading except for those identified in Rule 12. The statute of limitations is not one of the defenses identified in Rule 12. Instead, the statute of limitations is one of the defenses identified in Rule 8(c), which provides that the statute of limitations must be affirmatively stated in a responsive pleading. I.R.C.P. 8(c)(1)(Q). Travis did not raise this as an issue on intermediate appeal or before this Court. Therefore, we need not address that issue here. However, our decision today should not be read to hold that a statute of limitations defense may be initially raised in a Rule 12(b) motion to dismiss.

C. Penrod is not entitled to attorney fees on appeal.

Penrod's response brief includes a concluding sentence requesting an award of attorney fees on appeal pursuant to Idaho Code section 12-121. Although Penrod identified the request for fees as an additional issue on appeal, she presented no argument in support of her request aside from the statutory citation. We have repeatedly held that a request for fees must be supported by authority *and* argument. *Marlar v. Gearhart*, 175 Idaho 262, ___, 564 P.3d 1195, 1202 (2025). Given Penrod's failure to provide argument in support of her request, we decline to grant her request. *Id.*

V. CONCLUSION

For the reasons discussed above, we affirm the district court's intermediate appellate decision affirming the magistrate court's dismissal of Travis' complaint with prejudice.

Chief Justice BEVAN, and Justices BRODY, MOELLER, and MEYER CONCUR.