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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0771**

Daniel Ashbach,
Appellant,

vs.

Warren Peterson, et al.,
Respondents.

**Filed February 12, 2021
Affirmed
Cochran, Judge**

Ramsey County District Court
File No. 62-CV-18-194

Gary Bodelson, Minneapolis, Minnesota (for appellant)

Richard J. Thomas, Chad J. Hintz, Burke & Thomas, PLLP, Arden Hills, Minnesota (for respondents)

Considered and decided by Cochran, Presiding Judge; Jesson, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

Appellant brought legal-malpractice and related claims against respondents arising out of respondents' legal representation in relation to a family business. Appellant challenges the district court's grant of summary judgment in favor of respondents. Appellant asserts that the district court erred when it determined that he lacked standing to

bring his claims, that his claims were also time-barred, and that he did not demonstrate “but-for” causation on his malpractice claim. Appellant also challenges the district court’s denial of his own motion for partial summary judgment. Because we conclude that appellant lacked standing to bring some of his claims and that his remaining claims were time-barred, we affirm.

FACTS

This case arises out of work performed by respondent Warren Peterson, an attorney, for business entities formed by appellant Daniel Ashbach and his family. At all relevant times, respondent Peterson worked for respondent PFB Law (collectively respondents). The following summarizes the undisputed facts.

Appellant has two siblings, one of whom is Gerald Ashbach. Following the death of their father, the Ashbach siblings formed two business entities intended to protect the family assets from estate taxes when their mother died. In approximately 1997, the Ashbach siblings and their mother formed a limited partnership, the Ashbach Family Limited Partnership (AFLP), which was funded with family assets. A year later, the Ashbach siblings formed a Minnesota corporation named Ashbach Enterprises, Inc. (AEI). AEI became the general partner of AFLP, and the Ashbach siblings were limited partners. Gerald managed AEI and its assets and, through AEI, also managed much of AFLP’s activities and assets. Peterson advised the Ashbachs on the formation of the business entities and acted as the attorney for both AFLP and AEI. Following the formation of AEI, the Ashbach siblings formed an employee stock ownership plan (ESOP), and all stock in AEI was transferred to the ESOP so that the ESOP became AEI’s sole shareholder. The

Ashbach siblings were the three participants in the ESOP and appellant held a one-third interest. Gerald managed the activities and assets of the ESOP.

A central activity of the Ashbach business entities was to develop and sell lots in a real-estate development in Colorado. The land was originally purchased by AFLP but was subsequently transferred to AEI. Gerald wanted 40 acres of the Colorado property for himself. In 2002, Gerald conveyed 40 acres of the property from AEI to himself, without payment or consideration. AEI did not authorize the conveyance. Gerald then obtained mortgages that created a lien on the 40-acre property and began to live on the property. In 2003, an accountant told Gerald that he would suffer tax consequences for conveying the property to himself. This prompted Gerald to convey the 40-acre property, now encumbered by the mortgages, back to AEI. Appellant had no knowledge of either conveyance. He asserts that Peterson advised Gerald that he could make the 2002 conveyance.

Later, following a dispute between appellant and Gerald, Gerald agreed to purchase the 40-acre property. The parties agreed, in an April 2005 Memorandum of Understanding (MOU), that Gerald would pay \$333,333 for the property, plus 5.6% interest running from May 1999. The parties also agreed that Gerald would pay the entire purchase price for the property by May 2007 and that title would only transfer to Gerald once the full price was paid. Also as part of the MOU, appellant agreed to purchase from AFLP its interest in a resort in Minnesota for \$305,000. Appellant asserts that Peterson represented each of the Ashbach siblings in the agreement and drafted all documents associated with the agreement, including the MOU.

Despite the MOU, in July 2006, Gerald again conveyed title to the 40-acre property to himself without authorization or payment. He did so through a conveyance document that falsely stated that he had fully paid the purchase price to AEI. Gerald then built a home for himself on the property and obtained another mortgage on the property, which he used to finance a personal business project. AEI's records continued to list the 40-acre property as a corporate asset. Appellant asserts that Peterson also advised Gerald that he could make this conveyance to himself.

In 2005, the Ashbach siblings' mother died. Respondents assert that, under the mother's will, appellant elected to take certain real estate. Respondents contend that appellant's choice to take that real estate indebted him to his siblings because the value of the property exceeded appellant's share of his mother's estate.

AFLP was terminated in approximately 2009, and its remaining assets were distributed to the partners. Appellant's distribution totaled \$107,758. AEI was dissolved and its affairs wound up between December 2012 and April 2014. Gerald had still not paid any amount for the 40-acre property. In December 2012, Peterson prepared a promissory note that he backdated to July 10, 2006, which deferred payment of the purchase price for the 40-acre property from the previously agreed-upon May 2007 date to December 2018. The promissory note was then assigned to the Ashbach siblings. At the time of the liquidation of AEI, respondent Peterson informed appellant and his siblings that the promissory note was the only remaining asset of the corporation. This surprised appellant, who believed he would receive a substantial amount of money from AEI's liquidation.

In 2014, Gerald sold the 40-acre property. Appellant states that the sale price was \$2.9 million.

Appellant sued Gerald in 2015 for breaches of fiduciary duty and the duty of good faith and fair dealing, alleging that Gerald had failed to disclose and provide records and accountings of AFLP's and AEI's assets, liabilities, and investments. After a trial, the district court found that Gerald had breached his fiduciary duty and his duty of good faith and fair dealing to appellant and awarded appellant compensatory damages for the wrongful conveyance of the 40-acre property.

Appellant then commenced this action in December 2017 against Peterson and his law firm alleging various claims, contained in ten counts, related to Peterson's alleged involvement in Gerald's conveyance of and failure to pay for the 40-acre property and related to the management of the Ashbach entities and appellant's distributions from those entities. The complaint included claims of legal malpractice, breach of fiduciary duty, fraudulent misrepresentation, aiding and abetting the tortious conduct of another, and aiding and abetting a breach of fiduciary duty. Appellant asserted the claims as an individual, rather than raising them in a derivative action to enforce a right of the Ashbach business entities. Respondents moved for summary judgment on all ten counts, and appellant moved for partial summary judgment on Counts IV and IX (claims alleging aiding and abetting the tortious conduct of another). The district court granted respondents' motion for summary judgment on all ten counts and denied appellant's motion for partial summary judgment. The court concluded that (1) appellant lacked standing to personally raise all of the claims because the claims are properly brought only in a derivative suit,

(2) regardless, all of the claims were barred by the applicable statute of limitations, and (3) aspects of Counts I-V related to the allegedly fraudulent promissory note failed as a matter of law because appellant failed to show “but-for” causation. This appeal follows.

DECISION

Appellant argues that the district court erred by granting respondents’ motion for summary judgment on all counts on the basis that he lacked standing to bring each claim, that all claims were time-barred, and that he did not meet his burden to establish “but-for” causation on his claims concerning the allegedly fraudulent promissory note. He further argues that the district court erred by denying his motion for partial summary judgment on Counts IV and IX. We address each of appellant’s arguments in turn and organize our discussion based on the claims raised under Counts I-V and those raised under Counts VI-X.

Summary judgment “is appropriate when there is no genuine issue of material fact and a party is entitled to judgment as a matter of law.” *Henson v. Uptown Drink, LLC*, 922 N.W.2d 185, 189-90 (Minn. 2019) (quotation omitted). Appellate courts review a grant of summary judgment de novo. *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017). “When conducting this review, we view the evidence in the light most favorable to the nonmoving party.” *Henson*, 922 N.W.2d at 190 (quotation omitted). To survive summary judgment, the nonmoving party must “extract *specific*, admissible facts from the record that demonstrate that a genuine issue of material fact exists.” *Beecroft v. Deutsche Bank Nat’l Tr. Co.*, 798 N.W.2d 78, 82 (Minn. App. 2011) (quotation omitted), *review denied* (Minn. July 19, 2011). “A genuine issue of fact exists

when reasonable minds can draw different conclusions from the evidence presented.” *328 Barry Ave., LLC v. Nolan Props. Grp., LLC*, 871 N.W.2d 745, 751 (Minn. 2015). “A fact is material if its resolution will affect the outcome of a case.” *Rochester City Lines, Co. v. City of Rochester*, 868 N.W.2d 655, 661 (Minn. 2015) (quotation omitted). “[W]e may affirm a grant of summary judgment if it can be sustained on any grounds.” *Doe v. Archdiocese of St. Paul*, 817 N.W.2d 150, 163 (Minn. 2012).

I. The district court did not err by granting respondents’ motion for summary judgment on Counts I-V.

The first five counts of appellant’s complaint are based upon allegations concerning the 40-acre property in Colorado. These counts alleged that respondents engaged in the following: (I) attorney malpractice; (II) fraudulent misrepresentation and failure to disclose; (III) breach of fiduciary duty and duty of fair dealing and good faith; (IV) aiding and abetting the tortious conduct of another; and (V) aiding and abetting a breach of fiduciary duty. Appellant contends that the district court erred by granting respondents’ motion for summary judgment on each of these counts because he had standing to bring each claim, the claims were not time-barred, and he met his burden to show “but-for” causation on the aspects of his claims relating to the allegedly fraudulent promissory note. We conclude that appellant lacked standing to bring Counts I-V in a direct action. Because appellant lacked standing to bring the claims, we need not consider the “but-for” causation issue or whether the claims were time-barred.

“Minnesota has long adhered to the general principle that an individual shareholder may not directly assert a cause of action that belongs to the corporation.”

Wessin v. Archives Corp., 592 N.W.2d 460, 464 (Minn. 1999). “When a shareholder asserts a cause of action belonging to the corporation, the shareholder must seek redress in a derivative action on behalf of the corporation rather than in a direct action by the individual shareholder.” *Id.* (quotation omitted). In bringing a derivative action, a shareholder must comply with certain procedural requirements set forth in Minn. R. Civ. P. 23.09 that do not pertain to direct actions, including a requirement that the complaining shareholder “allege with particularity the efforts . . . made . . . to obtain the desired action from the directors’ of the corporation and the failure of the corporation to take such action.” *In re Medtronic, Inc. S’holder Litig.*, 900 N.W.2d 401, 406 (Minn. 2017) (quoting Minn. R. Civ. P. 23.09).

If a shareholder suffers an injury not shared by the corporation, the claim is properly brought in a direct action. *Id.* But when the shareholder’s injury “is only by reason of injury to the corporation,” the shareholder may only raise the claim in a derivative lawsuit. *Id.* at 408-09. To determine whether a claim is direct or derivative, courts thus consider two issues: (1) “who suffered the injury alleged” and (2) “who would receive the benefit of any recovery.” *Id.* at 408. In making these determinations, courts look “not to the theory in which the claim is couched, but instead to the injury itself.” *Id.* at 407 (quotation omitted).

The district court concluded that Counts I-V are “traditional derivative claims” because “AEI is the entity which suffered the injury alleged and it is AEI which would have received the benefit of any recovery.” The court reached this conclusion because it agreed with respondents that “the gist of [the claims in Counts I-V] pertains to the fact that

Gerald and Peterson caused harm to AEI by taking its property.” Consequently, the district court determined that appellant lacked standing to bring Counts I-V, noting that appellant “did not commence this action in accordance with Minn. R. Civ. P. 23.09,” and granted summary judgment in favor of respondents on Counts I-V.

Appellant contends that Counts I-V were properly brought in a direct action because the claims are based on the personal damage he incurred in 2013 at the time of AEI’s liquidation when he was not distributed his share of the value of the 40-acre property. He argues that, at that point, AEI and the ESOP were dissolved and therefore “divested themselves of any claims or rights to the assets which had formerly been owned by AEI.” As a result, appellant argues, AEI “no longer had any claim in regard to the assets” and, therefore, “[t]he only possible injured parties at that time became the persons who were the assignees/beneficiaries of the liquidated and terminated shareholder, including Daniel Ashbach.”

We are not persuaded by appellant’s argument that his claims are direct, rather than derivative, simply because AEI was dissolved when appellant was personally harmed by a reduced distribution from the corporation. As the supreme court explained in *In re Medtronic*, the proper analysis for determining whether a claim must be direct or derivative considers the nature of the injury, not the theory under which the claim is couched. *In re Medtronic*, 900 N.W.2d at 407-08. Following the analysis set forth in that decision, regardless of the various theories under which appellant framed his claims, he alleged only one type of harm in Counts I-V: the financial loss he incurred when AEI was liquidated because the 40-acre property was no longer an asset of AEI. It is readily apparent that this

injury was an indirect result of the injury AEI incurred when Gerald wrongfully conveyed the 40-acre property from AEI to himself in 2002 and then again in 2006. Appellant does not allege that he had any personal ownership of the 40-acre property at any time. Rather, it is undisputed that AEI owned the property. Accordingly, it was AEI that was directly injured by the wrongful conveyance of the property because the conveyance depleted AEI's assets. And any injury appellant incurred after liquidation in 2013 was an indirect consequence of the earlier injury to AEI. Appellant was injured only by reason of injury to the corporation, and therefore was required to bring his claims in Counts I-V in a derivative action.

Appellant attempts to characterize his injury as one that was unique to him and not shared by AEI because AEI no longer had a claim to any of the assets after its dissolution. But the *direct* injury here occurred prior to AEI's dissolution—i.e., when the wrongful conveyances occurred. The injury appellant later incurred when he received a reduced distribution of corporate assets reflects an *indirect* injury, derived from AEI's earlier injury, rather than any unique, direct harm to appellant. Moreover, Minnesota permits former shareholders of a corporation to bring actions on behalf of the corporation after it is dissolved (unless the claims are barred by a statute of limitations). Minn. Stat. § 302A.783 (2018) ("After a corporation has been dissolved, any of its former officers, directors, or shareholders may assert or defend, in the name of the corporation, any claim by or against the corporation."). The fact that AEI was dissolved at the time that appellant was personally injured has no bearing on whether appellant's claims are direct or derivative.

Appellant also argues that the Minnesota Supreme Court's decision in *Young v. Blandin*, 9 N.W.2d 313 (Minn. 1943), supports his position that his claims are direct because, according to appellant, the case "established that a stockholder has personal standing to recover damages for the failure to properly liquidate and distribute the assets of a corporation." In *Young*, a corporation's majority shareholder and sole managing officer took possession of the corporate assets for the purpose of liquidation. *Id.* at 315-16. The majority shareholder was tasked with paying the obligations of the corporation and distributing the remainder of the assets to the shareholders. *Id.* at 316. Instead, the majority shareholder made numerous risky and unauthorized investments with the proceeds from the sale of the assets, which diminished the distributions that the shareholders ultimately received. *Id.* A minority shareholder brought suit in a direct action. *Id.* at 314. The supreme court affirmed the district court's damages award in favor of the minority shareholder, holding that the majority shareholder violated his fiduciary duty to the shareholders to liquidate and distribute the corporate assets because he engaged in actions "inconsistent with the mere collection of assets, settlement of liabilities, and distribution of the proceeds." *Id.* at 317.

Young does not support appellant's argument. In *Young*, the only injury that occurred took place during the liquidation and distribution process. At that point, it was only the shareholders who were injured by the majority shareholder's misconduct because the terminated corporation no longer had an interest in the assets. In contrast, the present case involves an injury that clearly took place years before the corporation's liquidation at a time when the corporation had an interest in its assets. Any injury the ESOP beneficiaries

incurred during the liquidation and distribution process was an indirect result of that earlier injury to AEI. Accordingly, regardless of the theory under which appellant has framed his claim, the injury he alleges is not improper liquidation and distribution, but rather an indirect injury from a wrongful depletion of assets that occurred prior to AEI's dissolution. Appellant cites no other cases to support his position, and we are not aware of any. Appellant's argument that he suffered an injury not shared by AEI, and that he properly brought Counts I-V in a direct action, therefore is not persuasive.

In sum, AEI suffered an injury from Gerald's wrongful conveyance of the 40-acre property and any injury appellant suffered as a result was indirect and shared with the corporation. It is therefore AEI that would receive the benefit of any recovery. Accordingly, appellant was required to bring Counts I-V in a derivative action. Because it is undisputed that he failed to comply with the procedures of Minn. R. Civ. P. 23.09, we conclude that summary judgment in favor of respondents was appropriate.

II. The district court did not err by granting respondents' motion for summary judgment on Counts VI-X.

Counts VI-X of appellant's complaint are based upon three separate alleged injuries related to the distribution of AFLP's assets. First, appellant alleged that Peterson was involved in general mismanagement of AFLP's assets and that appellant was harmed by this mismanagement when AFLP's assets were liquidated and distributed in 2009. Second, appellant alleged that his distribution from AFLP was improperly reduced by \$245,000. Third, appellant alleged that his distribution from AFLP was further improperly reduced by a \$375,000 assessment against what he was owed. Regarding each of the claimed

injuries, Counts VI-X alleged that respondents engaged in the following: (VI) attorney malpractice; (VII) fraudulent misrepresentation and failure to disclose; (VIII) breaches of fiduciary duty and the duty of good faith and fair dealing; (IX) aiding and abetting the tortious conduct of another; and (X) aiding and abetting a breach of fiduciary duty. Appellant contends that the district court erred by granting respondents' motion for summary judgment on each of these counts on the bases that he lacked standing to bring each claim and the claims were time-barred.

A. Appellant lacked standing to bring his claim of general mismanagement of corporate assets in a direct action.

Appellant argued to the district court that Peterson was involved in mismanaging AFLP and AEI assets and that appellant was thereby injured by a diminished distribution when AFLP was liquidated in 2009. Specifically, he argued that there should have been a balance of at least seven million dollars for distribution at the time AFLP was liquidated, rather than the 1.9 million dollars that existed. He therefore contended that he was “damaged in an amount of 38.39% of the approximately 5 million dollars or more of wrongfully expended or distributed or otherwise unaccounted for AFLP and AEI related assets.” On appeal, appellant argues that the district court erred by concluding that this claim was derivative and that he therefore lacked standing to raise it in a direct lawsuit.

The applicable law on standing is similar here to that discussed with respect to Counts I-V. A limited partner may bring a direct action if he suffers an “injury that is not solely the result of an injury suffered or threatened to be suffered by the limited partnership.” Minn. Stat. § 321.1001(b) (2018).

The district court concluded that appellant lacked standing to bring this claim. The court noted that Counts VI-X all involve “the diversion of corporate funds.” It then determined that appellant’s allegations set forth in those counts “all relate to the assets of AEI and AFLP” and that “[a]ny injury that [appellant] may have suffered indirectly is inseparable from and based only upon an injury suffered by the Ashbach entities.” The district court therefore granted summary judgment in favor of respondents on Counts VI-X because appellant failed to raise the claims in a derivative action.

Similar to appellant’s argument regarding Counts I-V, he asserts that he has standing to raise the claims in Counts VI-X because each of the claims relates to injuries he uniquely suffered when AFLP was liquidated in 2009. We are not persuaded. If the assets of AEI and AFLP were mismanaged, any resulting injury appellant later suffered at the time of AFLP’s liquidation was *solely* a result of the earlier injuries suffered by those entities. Appellant therefore may not raise his claim related to general mismanagement of assets in a direct action, and summary judgment was proper for all aspects of Counts VI-X that alleged damages on that basis.

B. Appellant’s remaining claims that his distribution from AFLP was improperly reduced were time-barred.

In addition to his claim of general mismanagement, appellant argued in Counts VI-X that Peterson was involved in improperly reducing his distribution from AFLP by two separate amounts. First, he asserted that Peterson wrongfully directed that his distribution be reduced by approximately \$245,000. Second, appellant alleged that his distribution from AFLP was further reduced due to an approximately \$375,000 assessment against what

he was owed. This amount was based on appellant's promise in the 2005 MOU to purchase AFLP's interest in a Minnesota resort. Appellant argued that he did not owe that debt to AFLP because Gerald breached the MOU by conveying the 40-acre property to himself without paying for it. Respondents assert that the district court properly concluded that appellant's claims were barred by the applicable statute of limitations. While appellant had standing to bring these claims because the alleged injuries are unique to him and not shared with the Ashbach entities, we agree with respondents that the district court properly concluded that the claims were time-barred by the statute of limitations.

The statute of limitations for Counts VI-X is six years. Minn. Stat. § 541.05, subd. 1 (1),(5)-(6) (2018) (providing that the statute of limitations for fraud is six years, and that a six-year limitations period applies where no other limitations period is expressly prescribed). The limitations period begins running when a prospective plaintiff's cause of action accrues. *Hansen v. U.S. Bank Nat'l Ass'n*, 934 N.W.2d 319, 327 (Minn. 2019). Minnesota courts follow the "some damage" rule of accrual. *Hansen*, 934 N.W.2d at 327. That rule "requires that some damage has occurred as a result of the alleged [wrongful conduct], but does not require that a prospective plaintiff be aware of all the operative facts giving rise to a cause of action." *Id.* (quotation omitted). The supreme court has "generally defined the occurrence of some damage as the occurrence of *any compensable damage*, whether specifically identified in the complaint or not." *Id.* (emphasis in original) (quotation omitted).

Here, the district court determined, and appellant does not dispute, that he incurred "some damage" regarding Counts VI-X in 2009 upon the liquidation and distribution of

AFLP's assets. This is because any failure to distribute to appellant the amount to which he was entitled would have inflicted "some damage" on appellant at that time. Instead, appellant argues that the statute of limitations for his claims in Counts VI-X was tolled under the equitable doctrine of fraudulent concealment.

The doctrine of fraudulent concealment provides that "the statute of limitations does not run during the time that the defendant fraudulently conceals from the plaintiff the facts constituting the cause of action." *Minn. Laborers Health & Welfare Fund v. Granite Re, Inc.*, 844 N.W.2d 509, 514 (Minn. 2014) (quotation omitted). To toll the statute, the fraudulent concealment generally must consist of a "positive affirmative act." *Id.* (quotation omitted). However, "when fraudulent concealment occurs during a fiduciary relationship, the plaintiff need not show affirmative acts of concealment as a prerequisite to tolling the statute of limitations." *Cohen v. Appert*, 463 N.W.2d 787, 790 (Minn. App. 1990), *review denied* (Minn. Jan. 24, 1991). This is because a fiduciary relationship involves a "high degree of trust." *Id.* But this doctrine "only tolls the limitations period until the concealment is or could have been discovered through reasonable diligence." *Id.* at 790-91. The party alleging fraudulent concealment has "the burden of proving that concealment could not have been discovered sooner by reasonable diligence and was not the result of his own negligence." *Id.* at 791.

The district court rejected appellant's argument that fraudulent concealment tolled the statute of limitations with respect to Counts VI-X. It noted that appellant "received at least four letters from Peterson regarding the distribution over more than one year's time, from March of 2009 until the final distribution of AFLP's assets occurred in November of

2010.” The court concluded that because the letters “discussed valuations, offsets, calculations and distributions,” appellant “can hardly claim that he was denied a reasonable opportunity to discover whatever he claims might have been concealed from him by Peterson or Gerald with regard to the adequacy of his distribution.”

On appeal, appellant does not identify any affirmative actions on the part of the respondents or Gerald that would constitute fraudulent concealment with respect to Counts VI-X. Instead, appellant argues that a fact issue exists concerning whether respondents owed a fiduciary duty to appellant. He contends that because Peterson did not explicitly disclose “all facts that were relevant to the amount distributed” to him, Peterson engaged in fraudulent concealment. We are not persuaded.

Even assuming that respondents owed appellant a fiduciary duty, the district court did not err by concluding that appellant failed to meet his burden to show that he could not have discovered the alleged concealment using reasonable diligence. As the district court emphasized, Peterson sent four letters to appellant and/or appellant’s personal attorneys, both preceding and during the course of AFLP’s termination and liquidation. The first letter, dated March 5, 2009, indicates that Peterson enclosed summaries of the assets of AFLP, the estate of appellant’s mother, and a schedule relating to distributions. It further states that “the schedules assume you are acquiring the real estate adjacent to your home.” The real estate in question consisted of lots owned by appellant’s mother that were located adjacent to appellant’s home. The second letter, dated November 12, 2009, is addressed to one of appellant’s personal attorneys. The letter notes that Peterson had previously met with the attorney to discuss distribution issues, including appellant’s “elect[ion] to take as

a part of his estate the lots surrounding his home.” The letter further states that “the value of the lots is greater than a 1/3 share of the estate assets and therefore [appellant] is indebted to [his siblings]. Presumably, the cash in the partnership can be used to satisfy the indebtedness owing to [appellant’s siblings].” This statement apparently refers to the lots that appellant received from his mother’s estate, which ultimately resulted in the \$245,000 reduction to his AFLP distribution. The third letter, dated December 17, 2009, is addressed to another of appellant’s personal attorneys. It notes that Peterson “would be happy to review” the “Partnership calculations” with the attorney. The fourth letter, dated November 19, 2010, notifies appellant that “[w]e are in the process of . . . making the final distributions.” It includes several pages of attachments, including a ledger showing appellant’s final distribution as \$107,758.

The letters from Peterson informed appellant of what his distribution would be, contemplated a reduction in his distribution due to the property he received from his mother’s estate, and invited appellant and his attorneys to contact Peterson if they had further questions. Appellant therefore knew or should have known at the time he received the letters in 2009 and 2010 that his distribution may have been reduced by a certain amount, even if he did not know exactly how much. A person exercising reasonable diligence would have inquired further, and there is no indication that appellant raised any questions at that time. Therefore, the record supports the district court’s conclusion that appellant had a “reasonable opportunity to discover whatever claims might have been concealed from him by Peterson or Gerald with regard to the adequacy of his distribution” and appellant’s failure to discover his claims was the result of his failure to inquire. *See*

Cohen, 463 N.W.2d at 791 (stating that “the party claiming fraudulent concealment . . . has the burden of proving that concealment could not have been discovered sooner by reasonable diligence and was not the result of his own negligence”). Accordingly, the district court did not err by concluding that there was no genuine dispute of material fact as to whether appellant could have discovered the alleged fraudulent concealment with reasonable diligence. And the court did not err by determining that appellant’s claims were time-barred.

III. The district court did not err by denying appellant’s motion for partial summary judgment on Counts IV and IX.

Appellant also argues that the district court erred by denying his motion for partial summary judgment on Counts IV and IX. Because we conclude that the district court properly granted summary judgment in favor of respondents on all counts, we determine that it did not err by denying appellant’s motion regarding Counts IV and IX.

Affirmed.