

IN THE SUPREME COURT OF OHIO

MARION J. FLETCHER

Plaintiff-Appellant,

vs.

ESTATE OF
ALDEN S. FLETCHER, III, et al.

Defendants-Appellees

CASE NO. 2015-0116

On Appeal from the Lake County Court
Of Appeals, Eleventh Appellate District

Court of Appeals Case No.: 2013-L-084

**REPLY MEMORANDUM ON JURISDICTION
OF DEFENDANT/APPELLEE**

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This is Not a Case of Great Public or General Interest, and Raises No
Substantial Constitutional Questions

In this case the Court of Appeals held that Appellant's claims against the Estate of her former husband are time-barred pursuant to Revised Code 2117.12, because Appellant failed to commence her action in the Domestic Relations Court within two months after the Executor rejected her claims. Appellant's contention that this is a case of great public interest, raising substantial Constitutional questions, is premised upon a misreading of the Court of Appeals decision. Appellee knows of no great public or general interest, or substantial Constitutional concerns, raised by the decision on appeal.

Argument on Propositions of Law

Proposition of Law No. 1: Once a Domestic Relations Court terminates a marriage pursuant to its Judgment Entry of Divorce, the Court may enforce its orders against a party/decedent's estate.

Appellant's Proposition of Law No. 1 is inapplicable to this case. The Court of Appeals did not hold that the Domestic Relations Court is unable to enforce its orders against a party/decedent's estate. The Court of Appeals simply held that Appellant's claims against the Appellee Estate of Alden Fletcher are time-barred because Appellant missed the filing deadline imposed by Revised Code Section 2117.12. Case Law cited by Appellant is inapplicable because there is no issue concerning a Domestic Relation's Court's authority to enforce its orders against a decedent's estate.

The Court of Appeals correctly applied the two-month statute of limitations imposed by Revised Code 2117.12 to Appellee's rejected claims against the Estate. In fact, Appellant does not contend that Section 2117.12 is inapplicable to her claims. Nor does she deny that five (5) months passed between the time her claims were formally rejected by Appellee, and the date she finally commenced action on those claims in the Domestic Relations Court. Instead, Appellant presents an argument in support of her appeal which is inapplicable to this case.

The Court of Appeals affirmed the Domestic Relations Court's order dismissing Appellant's claims against the Estate, and also affirmed the order allowing the Estate's claim to one-half of the decedent's 401K account. Appellant contends that it is incongruous for the Court of Appeals to affirm the trial court's order dismissing her claims against the Estate, and at the same time affirm the order imposing a constructive trust to protect the Estate's one-half interest in decedent's 401K account (Appellant

does not appeal the affirmation of the order imposing the constructive trust, but merely cites it as an example of an alleged inconsistency in the reasoning of the Court of Appeals). Although Revised Code Sections 2117.06 and 2117.12 impose certain deadlines upon persons asserting claims against an estate, Chapter 2117 imposes no special filing deadlines or limitations on an executor bringing an action to enforce the rights of a decedent. Therefore, it was not incongruous for the Court of Appeals to affirm the trial court's order allowing the Executor to bring an action on behalf of the Estate in the Domestic Relations Court (to protect the Estate's rights to one-half of decedent's 401K account). Appellant likewise had a right to bring an action against the Estate in Domestic Relations Court, but waived that right by failing to file her action within the two-month time limit imposed by Revised Code Section 2117.12.

In her Memorandum in Support of Jurisdiction Appellant cites numerous cases bolstering her contention that the trial court's reliance on *Diemer* is misplaced. This argument is not relevant, because the Court of Appeals did not adopt the reasoning of the trial court. The trial court applied the "fixed rights and liabilities" test established by *Coffman v. Finney*, 65 Ohio St. 61, (1901), and followed in *Diemer v. Diemer*, 99 Ohio App. 3d 54, 649 N.E. 2d 1285 (8th Dist. 1994). Applying that test, the Domestic Relations Court determined that it lacked jurisdiction, because Appellant's \$40,000 claim constituted a new action, and could not be litigated as an action to enforce the divorce decree.

The Court of Appeals examined the jurisdictional issue de novo and affirmed the decision of the trial court, but on different grounds. In affirming the decision of the Domestic Relations Court, the Eleventh District Court of Appeals held that the Domestic

Relations Court lacked jurisdiction to enforce Appellant's claims because Appellant failed to assert her claims in the Domestic Relations Court in a timely fashion, after those claims had been formally rejected by the Executor, pursuant to Revised Code Section 2117.12. Writing for the Majority of the Court of Appeals, Hon. Judge Diane Grendell noted:

{¶35} The procedure set forth in R.C. 2117.12 has been regularly applied in situations where a claim is asserted against a decedent's estate based on a final decree of divorce. *See, e.g., Caldwell v. Brown*, 109 Ohio App.3d 609, 610, 672 N.E.2d 1037 (2nd Dist.1996) (“[t]he claim was expressly predicated upon provisions in a divorce decree”); *Harmer v. Smith*, 2nd Dist. Clark No. 3101, 1994 Ohio App. LEXIS 3200, 2 (July 20, 1994) (claim based on “the decedent's failure to have maintained certain policies of life insurance that * * * he was required to maintain under the terms of the divorce decree”); *Lindsay v. Royse*, 12th Dist. Butler No. CA92-06-111, 1993 Ohio App. LEXIS 1221, 3 (Mar. 1, 1993) (claim “represent[ed] an arrearage of sustenance alimony payments accumulated prior to and after the [obligor's] death”). *Fletcher v. Fletcher*, 2013-L-084, 11th Dist. Ct. of App. (2014).

Appellant offers no case authority challenging the applicability of Revised Code 2117.12 in the case *sub judice*. Appellant mentions the appellate court's rationale for the decision on which Appellant now seeks reversal in the following sentence, and only in this single sentence:

While the Court of Appeals cited R.C. §2117.12 having been regularly applied in situations where a claim is asserted against a decedent's estate based on a final decree of divorce, it certainly doesn't stand for the proposition that Probate Court is the only forum in which a domestic relations court order may be enforced.
Memorandum of Appellant, at 10.

The Court of Appeals did not hold that Appellant's only recourse was to assert her claims in the Probate Court, as Appellant suggests. The ruling below holds that Appellant filed her claims in the Domestic Relations Court too late. Appellant failed to

file her claims in the Domestic Relations Court within two months after the Executor rejected her claims, as required by R. C. 2117.12.

Ohio Revised Code Section 2117.12 provides as follows:

2117.12 Action on rejected claim barred. When a claim against an estate has been rejected in whole or in part but not referred to referees, or when a claim has been allowed in whole or in part and thereafter rejected, the claimant must commence an action on the claim, or that part of the claim that was rejected, within two months after the rejection if the debt or that part of the debt that was rejected is then due, or within two months after that debt or part of the debt that was rejected becomes due, or be forever barred from maintaining an action on the claim or part of the claim that was rejected... Revised Code 2117.12, in pertinent part.

In *Ward v. Patrizi*, 2011-Ohio-5100, 2010-G-2994, the Eleventh District Court of Appeals addressed the interaction between ORC 2117.06 and 2117.12, and the requirement that claimants bring an action in the proper court, within two months after a claim is rejected by the estate representative:

{¶18} The trial court correctly noted there is a specific statutory process for the presentation of claims to an estate. Pursuant to R.C. 2117.06(B), Patrizi was required to present her claims to the administrator within six months of Richard's death. Thereafter, the administrator was required to decide whether to allow or reject Patrizi's claims within 30 days of when they were presented. R.C. 2117.06(D). If the claims were rejected, Patrizi had the opportunity to contest that decision by "commencing an action on the claim." R.C. 2117.12... *Kraus v. Hanna*, 11th Dist. No. 2002-P-0093, 2004-Ohio-3928, at ¶19. (Citations omitted.) *Ward v. Patrizi*, 2011-Ohio-5100, 2010-G-2994.

Marion Fletcher initially notified the Estate of Alden Fletcher of her claim, within six months after Mr. Fletcher's death, as required by Revised Code 2117.06; but subsequently failed to properly commence an action against the Estate on her rejected claim within the two month time limit imposed by Revised Code 2117.12. Appellant's attempts to pursue her rejected claim against the Estate of Alden Fletcher in the Lake

County Probate Court failed because the Probate Court is an improper forum in which to bring an action on a rejected claim. This Court further explained, in *Ward v. Patrizi*, that the action required to be commenced within two months after a decedent's estate rejects a claim must be filed in the General Division of the Common Pleas Court, rather than the Probate Division:

{¶18} ...While R.C. 2117.12 does not specify what court an action to contest the rejection of a claim is to be filed, Ohio courts have held that such actions should be filed in the general division of the court of common pleas, rather than the probate court. *Kraus v. Hanna*, 11th Dist. No. 2002-P-0093, 2004-Ohio-3928, at ¶19. (Citations omitted.) *Ward v. Patrizi*, 2011-Ohio-5100, 2010-G-2994.

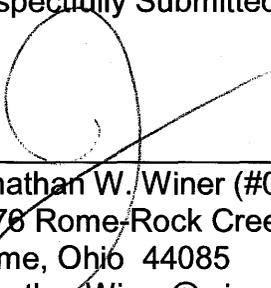
Appellant neglected to file an action in the General Division or the Domestic Relations Division within two months after notice of rejection of her claim, as required by law. Appellant's Statement of Claim was filed with the Probate Court on November 3, 2011. When that Claim was rejected in whole on November 25, 2011, Appellant had exactly two months to file a lawsuit against the Estate, pursuant to Revised Code 2117.12. She failed to do so. Her claims are forever time-barred as a matter of law, as the Court of Appeals correctly held.

It was April 27, 2012 when Appellant finally asserted an action on her \$40,000.00 claim against the Estate in the Domestic Relations Court. By April of 2012 the action was barred as a matter of law, because Appellant filed the action some five months after her claims had been rejected by the Executor, i.e. three months after the expiration of time allowed under Revised Code 2117.12.

CONCLUSION

Appellant failed to protect her rights to bring an action against the Estate, by failing to timely and properly assert her claim pursuant to Revised Code 2117.12. Appellant's failure to protect her rights, and the legal consequences of this failure, are not matters of great public interest or concern, and do not raise Constitutional questions.

Respectfully Submitted,



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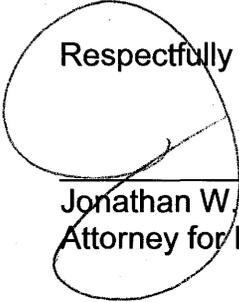
CERTIFICATE OF SERVICE

A copy of the foregoing Reply Memorandum on Jurisdiction of Defendant/Appellee was sent via ordinary U.S. mail on this 18th day of February, 2015 to:

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Respectfully submitted,



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