

IN THE SUPREME COURT OF OHIO

JAMES A. WILSON,)
)
 Appellee,) No. _____
)
 v.) On Appeal from Cuyahoga County
) Court of Appeals, Eighth
 WILLIAM LAWRENCE, Executor,) Appellate District
)
 Appellant.) Court of Appeals
) Case No. 15-102585
)
)
)

**MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT WILLIAM LAWRENCE, EXECUTOR
OF THE ESTATE OF JOSEPH T. GORMAN**

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**EXPLANATION OF WHY THIS CASE IS OF PUBLIC
OR GREAT GENERAL INTEREST**

Ohio Rev. Code 2117.06(A)-(C) establishes the procedures required for presenting a claim against a decedent's estate and a six-month limitations period for the presentment of claims after which all unrepresented claims are "forever barred." For decades, Ohio courts have held that the purpose of the presentment statute is "both to facilitate the *prompt administration*" of decedents' "estates and *to bar* claimants who, through indifference, carelessness, or a dilatory attitude, fail to make an effort to file their claims on time" with the executor of the estate. *See Secrest v. Citizens Natl. Bank of Norwalk*, 2003-Ohio-4731, ¶ 17, 154 Ohio App. 3d 245 (6th Dist. Ct. App.) (emphasis added) (citing, *inter alia*, *Prudential Ins. Co. v. Joyce Bldg. Realty Co.*, 143 Ohio St. 564, syl. ¶2 (1944)). With that purpose in mind, Ohio courts also have long held that when a would-be claimant has "a claim against an estate, it is incumbent upon him" to ascertain who and where the court-appointed executor is and present his claim to that executor. *See Winkle v. Trabert*, 174 Ohio St. 233, syl. ¶2 (1963); *Reid v. Premier Health Care Servs. Inc.*, 2d Dist. Montgomery No. 17437, 1999 WL 148191, *2.

Contrary to those longstanding principles, the Eight District Court of Appeals, in its decision below, held that the procedural requirement in Rev. Code 2117.06(A)(1)(a) that a claimant present his claim "*to the executor* in writing" can be fulfilled even when a claimant fails to identify the executor and fails to deliver his claim to the executor as long as, through some happenstance, the executor ultimately receives notice of the claim prior to the six-month deadline. *See Wilson v. Lawrence*, 8th Dist. Ct. App. No. 102585, 2015 Ohio 4677, ¶32 (November 12, 2015) (Boyle, J., dissenting) (explaining that the panel majority's holding "essentially shifts the standard from presentment to one of knowledge" and such a "shift contravenes well-established precedent"). The Eighth District's decision below cannot be

squared with either the purpose of Rev. Code 2117.06(A)-(C) – i.e., to facilitate the prompt and efficient administration of estates – or the longstanding principle that it is the claimant’s responsibility to find the executor and deliver his claim to him.

The Court of Appeals held that a plaintiff with a claim against a decedent’s estate can meet his burden under Ohio Rev. Code 2117.06(A)(1)(a) to “present” his claim “[t]o the executor” when he delivers his claim only to third parties, never appointed as executors, who then forward the claim to the court-appointed executor. *See id.* at ¶23. In making that decision, the Eighth District reasoned that because the executor received notice of the claim, the claim was “presented” to the executor, despite the fact that the statute specifically requires that a claimant “present” (i.e., deliver) the claim herself. Only one other Ohio Court of Appeals has addressed the legal question in this case – i.e., whether a claimant’s obligation to present a claim to a decedent’s estate can be fulfilled when a third party forwards the claim to the executor for the claimant. In *Jackson v. Stevens*, the Fourth District Court of Appeals held exactly the opposite of what the Eighth District held here, explaining that “notice” of a claim is not logically or legally the same as presentment under the statute and that the claimant has a statutory duty to deliver the claim, in writing, to the court-appointed executor that he cannot pass off even to a willing third party. *See* 4th Dist. No. 1231, 1980 WL 350961, *2-3 (Jan. 24, 1980).¹

The Eighth District’s new “notice” standard guts the procedural requirements of Ohio Rev. Code 2117.06(A)(1)(a), all but eliminating the obligation “to present” the claim to a court-appointed executor. The “softened” standard applied by the Eighth District also runs directly afoul of well-established precedent holding that an executor’s actual knowledge of a pending claim does not render it timely “presented” in writing to the executor. *See, e.g., In re*

¹ The conflict between the *Jackson* decision and the Eighth District’s decision below is the subject of a pending Motion to Certify a Conflict pursuant to Ohio App. R. 25.

Estate of Greer, 197 Ohio App.3d 542, 2011-Ohio-6721, ¶ 13 (1st Dist.); *In re Estate of Curry*, 10th Dist. Franklin No. 09AP-469, 2009-Ohio-6571, ¶ 12-15; *Reid*, 1999 WL 148191, *2; *Ziegler v. Curtis*, 13 Ohio App. 484, 487 (1st Dist. 1921).

The Eighth District's decision calls into question the continuing validity of nearly century-old precedents, repeatedly cited and relied upon by other Ohio Courts of Appeal, supporting the commonsense proposition that the statute's presentment requirement does indeed obligate a would-be plaintiff to ascertain who and where the court-appointed executor is and to deliver his claim to him in writing. The Court should take this opportunity to reaffirm the longstanding principles underlying its decades-old decision in *Winkle v. Trabert* and to eliminate the loop hole created by the Eighth District's decision that compromises the very purpose of Ohio Rev. Code 2117.06(A)-(C) to ensure the prompt and efficient administration of estates.

STATEMENT OF THE CASE AND KEY FACTS

In this case, Appellee James Wilson ("Appellee") attempted to present a breach of contract claim against the Estate of Joseph T. Gorman, pursuant to Ohio Revised Code 2117.06(A)(1)(a). That provision sets forth one of three options that creditors have for initiating a claim against a decedent's estate. It requires a would-be claimant to "present" his claim "[t]o the executor or administrator in writing" within six months of the decedent's death. Ohio Rev. Code 2117.06(A)(1)(a); *see also* Ohio Rev. Code 2117.06(B)-(C). To comply, Appellee was required to present his claim to Appellant William Lawrence, the court-appointed executor of the Estate of Joseph T. Gorman (collectively, the "Estate").

Following Mr. Gorman's death on January 20, 2013, Appellee failed to ascertain who or where the executor was and failed to present any claim to the executor prior to the six-month deadline set forth in Ohio Rev. Code 2117.06(B)-(C). Instead, on July 11, 2013, just nine days before the statutory deadline, Appellee sent a letter to Randall Myeroff and Patricia Clark,

both of whom were connected to the decedent but were never appointed as executors of the Estate. Appellee's letter was forwarded to the executor by Myeroff and Clark. Appellee, for his part, never ascertained the identity of the Estate's executor until long after the July 20, 2013 deadline when his claim was rejected for his failure to properly present it in accordance with Ohio Rev. Code 2117.06(A)(1)(a).

On November 14, 2013, Appellee filed his Complaint in the Cuyahoga County Court of Common Pleas. (R.1).² On September 8, 2014, after the completion of discovery, the Estate moved for summary judgment on the grounds that the undisputed evidence demonstrated that Appellee failed to present his claim in writing to the executor of the Estate within the six-month deadline mandated by Rev. Code §2117.06(A)-(C). (R.18).

On January 27, 2015, the Trial Court granted summary judgment to the Estate, holding that Appellee failed to present his claim to the Estate in accordance with Rev. Code §2117.06(A)(1)(a). (R.27). In its decision, the Trial Court explained that Appellee's letter, "addressed and delivered to two individuals who were not in fact personal representatives of the decedent's estate was not legally sufficient as a matter of law under RC 2117.06." (R.27). The Trial Court concluded that the "letter does not factually or legally amount to notice of a claim *to the executor* in writing." (*Id.*) (emphasis added).

A panel majority of the Eighth District reversed the Trial Court's ruling. *See Wilson v. Lawrence*, 8th Dist. Ct. App. No. 102585, 2015 Ohio 4677 (November 12, 2015). The majority held that a plaintiff with a claim against a decedent's estate can meet his burden under Ohio Rev. Code 2117.06(A)(1)(a) to "present" his claim "[t]o the executor" when he delivers his

² The record entries are referred to herein as R.1, R.2, and so on to correspond with numbering set forth in the transcript of Docket and Journal Entries supplied to the Court of Appeals by the Court of Common Pleas on February 24, 2015.

claim only to third parties, never appointed as executors, who then forward the claim to the court-appointed executor. *See id.* at ¶23 (applying a “*softened* standard to the presentment requirements” of Ohio Rev. Code 2117.06) (emphasis added).³

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

Proposition Of Law No. 1: A plaintiff with a claim against a decedent’s estate can meet his burden under Ohio Rev. Code 2117.06(A)(1)(a) to “present” his claim “[t]o the executor or administrator in writing” only when he identifies the executor and delivers his claim to him; similarly, a claimant cannot meet his burden when he delivers his claim only to third parties, never appointed as executors, who then forward the claim to the court-appointed executor.

Appellee’s July 11, 2013 letter failed to adhere to the strict requirement under Rev. Code §2117.06(A)(1)(a) that he present his claim in writing “*to the executor.*” As the Trial Court held, the letter was presented – i.e., addressed and delivered – by Appellee to two individuals who have never been legal representatives of the Estate. Appellee never addressed or delivered the letter to the executor or any personal representative of the Estate because Appellee failed to ascertain the identity of the executor prior to the mandatory six-month deadline in Ohio Rev. Code 2117.06(B). Appellee’s letter, addressed to two individuals that he did not believe were the Court-appointed executor, was insufficient as a matter of law under Rev. Code §2117.06 (A)(1)(a), and his claim should be “forever barred.” Rev. Code §2117.06(C).

According to the Eighth District, however, the fact that the Estate’s executor, Mr. Lawrence, did in fact receive the claim prior to the six-month deadline should be deemed enough. That is, the Eighth District held that, while the Appellee failed to comply with his statutory duty to identify and locate the executor, that failure can be forgiven because, through happenstance, his claim ended up on the executor’s desk. In so holding, the Eighth District,

³ That decision directly conflicts with *Jackson v. Stevens*, 4th Dist. No. 1231, 1980 WL 350961, 1980 Ohio App. LEXIS 12905 (Jan. 24, 1980)). As explained above, that conflict is the subject of a pending motion to certify before the Eighth District.

rather than apply the plain letter of the Revised Code, ginned up a new “notice” standard that contravenes well-established precedent, calls into question firmly established principles applicable to the presentment of claims against decedent’s estates, and injects unnecessary uncertainty into the administration of estates.

The purpose of Ohio Rev. Code 2117.06(A)-(C) is not simply to put an estate on notice of a pending claim. Instead, the purpose of the statute is to ensure that claims are promptly and efficiently administered and to ensure that plaintiffs whose dilatory conduct delays or complicates the presentment regime are barred from pursuing their claims. *See Secrest v. Citizens Natl. Bank of Norwalk*, 2003-Ohio-4731, ¶ 17, 154 Ohio App. 3d 245 (6th Dist. Ct. App.). The procedural requirements of the statute, which include obligating a plaintiff to deliver written notice of a claim to the executor, ensure that claims are stated with adequate specificity and that a putative plaintiff must, at least, overcome some initial hurdle in attempting to present her claim against an estate.

The only logical result, when a claimant fails to determine who the executor is and fails to “present” his claim “in writing” to the executor, is to reject the claim. In *Jackson v. Stevens*, 4th Dist. No. CA 1231, 1980 WL 350961, the Fourth District Court of Appeals did just that. There, the Court held that there was “no presented claim” where a plaintiff sent a written notice of his claim to a third party who then forwarded it to the executor within the six-month timeframe because Ohio law “specifically requires presentment *to the executor*” and not to “a person other than the fiduciary.” 4th Dist. No. CA 1231, 1980 WL 350961, *2 (emphasis added); *see also id.* at *3 (explaining that Ohio courts have “determined that the fact that the representative has knowledge of the claim is not sufficient to excuse failure to present”); *Ziegler v. Curtis*, 13 Ohio App. 484, 486 (1921) (holding that although an “executor may have

knowledge of a claim, . . . if it is not presented for allowance or rejection, the estate may be closed without” accounting for the claim.).⁴ On the legal issue here, *Jackson* is indistinguishable and undeniably the correct approach.

Indeed, the statute requires that a claimant “present” her claim *to the executor*. The word “present,” as used in that section, means that a would-be plaintiff can only meet his burden by finding the executor, addressing his claim to him, and delivering the claim to the executor in writing. The word “present,” as a matter of simple English, means to “give something to someone” or, perhaps more apt here, to “formally deliver” something. NEW OXFORD AMERICAN DICTIONARY 1340 (2d ed. 2005); *see also* AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 1388 (4th ed. 2004) (defining the transitive verb “present” to mean “to introduce” or to “furnish” to someone). Rev. Code 2117.06(A)(1)(a) thus mandates that the claimant *deliver* the claim “*to the executor*,” not to someone associated with the decedent in hopes that the claim will be forwarded.

As Ohio Courts of Appeals have held for decades, the “statute places the burden upon the claimant to present” – i.e., deliver – his claim to “the probate officer.” *Beacon Mut. Indem. Co. v. Stalder*, 95 Ohio App. 441, 446 (1954); *id.* at 446 (“presentation [of a claim] must be to the administrator [or executor] in his capacity as an officer of the Probate Court.”). The statute does not allow a claimant to deliver his claim to anyone other than an executor or

⁴ Numerous decisions of the Ohio courts of appeals are in accord. *See In re Estate of Greer*, 197 Ohio App.3d 542, 2011 Ohio 6721, ¶13 (1st Dist.) (executrix’s actual knowledge of claims within that [six-month] period” did not “render[] claims timely.”); *In re Estate of Curry*, 10th Dist. No. 09AP-469, 2009 Ohio 6571, ¶¶12-14 (rejecting Plaintiff’s contention that “because the eventual administrator had actual knowledge of the claim before the time for its presentation had expired, appellant’s claim should be deemed valid”); *Reid v. Premier Health Care Servs., Inc.* 2nd Dist. No. 17437, 1999 WL 148191, *2 (Mar. 19, 1999) (claimant’s “submission of the claim” was invalid despite the fact that the administrator had actual knowledge of claim before the time allowed for its presentation expired”). Knowledge of the claim by the executor is not equivalent to valid presentment under the Ohio Probate Code.

administrator, and it does not permit a claimant to shift his burden of presentment onto third parties. That interpretation of the statute is firmly supported by the longstanding principle that it is a plaintiff's duty "to ascertain who and where the executor" is and address and deliver the claim to the executor in advance of the six-month deadline in Rev. Code §2117.06(B). *See Reid v. Premier Health Care Servs. Inc.*, 2nd Dist. Montgomery No. 17437, 1999 WL 148191, *2.

The Eighth District's interpretation of the statute, which permits a plaintiff to send his claim to someone other than the executor in the hopes that the executor might later receive it, is plainly at odds with all of those principles. In addition, the Eighth District's ruling simply does not jive with other sections of the Ohio Probate Code or the decisions of this Court interpreting those provisions. The Eighth District's decision relies on the fact that Appellee allegedly could not find the executor prior to the six-month deadline, despite the fact that the Ohio Probate Code provides a remedy for that purported dilemma. Under Rev. Code §2113.15, when "there is delay in granting letters testamentary or of administration," a creditor may petition the probate court to "appoint a special administrator."

This Court, in *Winkle v. Trabert*, expressly held, in light of that provision, that "if no administrator has been appointed," the burden is on the claimant "to procure the appointment of an administrator against whom he can proceed." *See Winkle v. Trabert*, 174 Ohio St. 233, syl. ¶2 (1963). A claimant cannot argue that he would have met his statutory burden of presentment except that he could not find an executor against whom he could proceed; instead, he must take action and secure the appointment of an administrator. Thus, the proper procedure, as expressly provided for under the Ohio Probate Code and reaffirmed in binding precedent of this Court, is for a plaintiff to petition the Probate Court to appoint an administrator. *See Winkle*, 74 Ohio St.

233, syl. ¶2. The proper procedure is emphatically not to send a claim to anyone previously associated with the decedent in the hopes that they might become the executor.

This Court should accept jurisdiction to make it clear that a would-be plaintiff must take action to ensure that she may proceed on her putative claims against a decedent's estate. A claimant cannot, as Appellee did in this case, simply throw up her hands and send a letter out into the ether hoping on hope that the executor will later receive it. Instead, a claimant must avail herself of the statutory procedures set forth either in Ohio Rev. Code 2117.06(A) *to find the executor* or those set forth in Ohio Rev. Code 2113.15 *to appoint one*. Permitting claims to proceed when a plaintiff has failed to take advantage of either of those procedures, as the Eighth District Court of Appeals did in this case, thwarts the obvious purpose of Ohio Rev. Code 2117.06(A) to ensure the efficient administration of estates by, in part, eliminating claims when plaintiffs fail to present their claims properly.

CONCLUSION

For all of the reasons set forth above, Appellant requests this Court to accept jurisdiction so that the above-described issue of public and great general interest can be reviewed.

Respectfully submitted,

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