

No. 2015-2081

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IN THE SUPREME COURT OF OHIO

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**JAMES A. WILSON,**  
*Plaintiff-Appellee,*

v.

**WILLIAM LAWRENCE, EXECUTOR OF THE ESTATE OF JOSEPH T. GORMAN**  
*Defendant-Appellant,*

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**ON APPEAL FROM THE CUYAHOGA COUNTY COURT OF APPEALS  
EIGHTH APPELLATE DISTRICT  
CASE NO. CA-15-102585**

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**APPELLEE JAMES A. WILSON'S MEMORANDUM OPPOSING JURISDICTION AS  
TO APPEAL OF WILLIAM LAWRENCE,  
EXECUTOR OF THE ESTATE OF JOSEPH T. GORMAN**

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I. **THE EXECUTOR’S APPEAL IS NOT OF PUBLIC OR GREAT GENERAL INTEREST**

Appellant William Lawrence (“Lawrence”), Executor of the Estate of Joseph T. Gorman, asserts that this matter is of public or great general interest since the purpose of the presentment statute is to facilitate the prompt and efficient administration of estates. In this matter the executor and his attorney actually received the written claim notice within the limitations period. Lawrence has failed to demonstrate any effect on the prompt resolution and efficiency of the administration of an estate where an executor actually receives the claim notice within the limitations period through a third party as opposed to directly. Revised Code 2117.06 does not bar or prevent one from presenting a claim through a third party. In fact, this Court has previously recognized that the method of presentment contemplated by R.C. 2117.06 does not preclude “another equally efficient method for the presentation of claims.” *Fortelka v. Meifert* (1964), 176 Ohio St. 476. Courts have determined presentment through third parties to be sufficient. *See, e.g., Hart v. Johnston*, 389 F.2d 239 (6th Cir. 1968).

Consequently, this is not a matter of public or great interest. The only limited question posed is whether presentment through a third party can suffice. The Court has previously addressed this issue and determined that “[w]here a statute ... is silent as to how notice is to be effectuated, written notice will be deemed to have been given when received.” *Edens v. Barberton Area Family Practice Ctr.* (1989), 43 Ohio St.3d 176, syllabus. Here, you have receipt of written notice within the limitations period and therefore, no issue of public or great general interest.

II. **STATEMENT OF THE CASE AND FACTS**

On September 2, 2011, Appellee James A. Wilson (“Wilson”) and decedent, Joseph T. Gorman (“Decedent”), entered into a written agreement (“the Agreement”) whereby Wilson agreed to sell Decedent Wilson’s 15% interest in Marine 1 LLC for the sum of \$300,000. Partial

payments were made to Wilson by Decedent totaling \$113,000. Decedent breached the Agreement by failing to make timely payment on the remaining amount due of \$187,000. Wilson performed all that was required of him under the Agreement, including ratifying an earlier agreement assigning Wilson's intellectual property rights to Marine 1 LLC.

Decedent passed away on January 20, 2013. On July 1, 2013, Lawrence was appointed executor of Decedent's estate. On July 11, 2013, within 6 months of Decedent's death, Wilson presented his claim against Decedent for breach of the agreement in writing via ordinary and certified mail. The notice was transmitted on the letterhead of counsel for Wilson, and stated the following:

To the heirs, administrators or executors of the Estate of; and the trustees or beneficiaries of the trust of; or any other creditors or interested persons in the proceeds of the Trust and/or Estate of Joseph T. Gorman, deceased:

The undersigned is legal counsel to James Wilson, on behalf of Mr. Wilson, and pursuant to R.C. §2117.06(B), you are hereby put on notice of the presentment of a claim by Mr. Wilson against the above noted parties, in the approximate amount of \$200,000, plus interest. Said amount is due and owing on a contract entered into by and between Mr. Gorman and Mr. Wilson on or about September 2, 2011, for the purchase of Mr. Wilson's 15% interest in Marine 1, LLC by Mr. Gorman. A copy of the contract is enclosed herein.

Kindly contact the undersigned at your earliest convenience to discuss this matter.

The notice was sent to the trustee of Decedent's trust and Decedent's business manager. The trustee received the notice on July 12, 2013, and immediately forwarded it to Lawrence and the attorney for the Decedent's estate. The business manager received the notice on July 16, 2013, and forwarded it to the attorney for the Decedent's estate the day it was received. Consequently, both Lawrence and the attorney for the estate received the claim notice within six months of Decedent's death.

The estate rejected the claim, asserting that it was not properly presented pursuant to R.C. 2117.06. Thereafter, Wilson proceeded with the instant lawsuit. The trial court granted Lawrence's motion for summary judgment on the presentment issue, and the Eighth District

Court of Appeal's reversed the summary judgment ruling, determining that a genuine issue of material fact existed as to whether the executor or attorney for the estate received Wilson's written claim notice prior to the July 20, 2013, deadline.

### III. ARGUMENT

#### A. Response to Defendant's Proposition of Law No. I: Revised Code 2117.06(A)(1)(a) is satisfied when the written notice of claim is actually received by the executor or counsel for the estate within the six month limitations period.

Revised Code 2117.06 provides, in pertinent part:

(A) All creditors having claims against an estate, including claims arising out of contract, out of tort, on cognovit notes, or on judgments, whether due or not due, secured or unsecured, liquidated or unliquidated, shall *present* their claims in one of the following manners:

(1) *After* the appointment of an executor or administrator and prior to the filing of a final account or a certificate of termination, in one of the following manners:

(a) *To the executor or administrator in a writing;*

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(B) Except as provided in section 2117.061<sup>1</sup> of the Revised Code, all claims shall be presented *within six months after the death of the decedent*, whether or not the estate is released from administration or an executor or administrator is appointed during that six-month period. Every claim presented shall set forth the claimant's address.

(Emphasis where indicated); R.C. 2117.06.

While Ohio law is strict on the time and notice elements of presentment, the *form* of the presentment has been less rigidly considered. *Children's Med. Ctr. v. Ward*, 87 Ohio App.3d 504, 509 (2nd Dist. 1993). In meeting one of the three requirements of R.C. 2117.06(A), "[a] claim against a decedent's estate *need not be in any particular form*; it is sufficient if it states the character and amount of the claim, enables the representatives to provide for its payment, and serves to bar all other claims by reason of its particularity of designation." *Id.* at 510.

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<sup>1</sup> R.C. 2117.061 involves the notice requirements for receipt of Medicaid benefits.

Clearly, R.C. 2117.06(A)(1) imposes no strict form requirements on presentment of claims. *Id.* Claims need only be “in a writing” and “presented” to the “executor” within the statutory time in R.C. 2117.06(B). *Id.* The evidence herein shows that Wilson’s notice was received by the executor and counsel for the estate within the statutory period.

This Court has expressly addressed this issue and has held: “*Where a statute ... is silent as to how notice is to be effectuated, written notice will be deemed to have been given when received.*” *Edens v. Barberton Area Family Practice Ctr.* (1989), 43 Ohio St.3d 176, syllabus. Here, you have receipt of notice within the limitations period. The fact that the notice was transmitted through Decedent’s trustee and business manager is irrelevant and immaterial.

Presentment to the executor through third parties has been deemed to suffice. In *Peoples Natl. Bank v. Treon*, 16 Ohio App.3d 410, 411 (2nd Dist. 1984), a claim against an estate was presented to the attorney appointed by the estate’s executor. The court held that a claim against an estate is properly presented where the claim is presented to the attorney appointed by the executor of the estate to represent them in the administration of the estate, despite the fact that the executor did not receive notice of the claim until after the time allowed by R.C. 2117.06.

In *Hart v. Johnston*, 389 F.2d 239 (6th Cir. 1968), the Sixth Circuit reversed a summary judgment ruling in favor of an estate where there was timely notice of the claim to the Decedent’s accountant, but not the executor. In doing so, the Sixth Circuit stated:

Since the law does not require a claimant or litigant to do a vain thing, the mandatory provisions of the statute requiring presentation in writing to the personal representative of claims against the estate he represents, are said to be *quite uniformly softened and not enjoined when the application of such provisions would run contrary to reason and common sense.* (Emphasis added).

Notions of reason and common sense dictate that if an executor actually receives a proper written claim notice within the statutory period, then the claim should not be time barred under R.C. 2117.06.

The only case that Lawrence has identified that arguable supports his position is *Jackson v. Stevens*, 4<sup>th</sup> Dist. No. CA 1231, 1980 WL 350961 (4th Dist. 1980), which is a 2-1 unreported summary opinion out of the Fourth District. The Eighth District Court of Appeals specifically noted that *Jackson* has not been relied on or cited as authority by any other reviewing court. Moreover, the Fourth District effectively overruled *Jackson* in *Reckner v. Armstrong*, 83-LW-0956 (4th Dist. 1983), when it transitioned into a softened standard of presentment. In *Reckner*, the Fourth District stated that a “claim against a decedent’s estate need not be in any particular form so long as it is in substantial compliance with [R.C.] 2117.06 ... and recognized by the fiduciary as a claim against the estate” and that a “reasonable assessment of the record supports the conclusion that the significance of the claim, as presented, was fully appreciated by the fiduciary and that the statute of limitation, therefore, at the time of such presentation, ceased to operate upon the claim.” *Reckner* citing *Gladman v. Carns*, 9 Ohio App.2d 135 (2nd Dist. 1964). In the instant matter, there can be no dispute that Lawrence fully appreciated the significance of Wilson’s claim prior to the expiration of the limitations period.

The Eighth District Court of Appeals recognized this softened standard, as other Ohio districts have, and determined that a claim is “presented” under R.C. 2117.06 when it is received by the executor, administrator or the attorney for the estate. *Wilson v. Lawrence*, 2015-Ohio-4677 (8th Dist. 2015) citing *Cannell v. Bulicek*, 8th Dist. Cuyahoga No. 41362, 1980 Ohio App. LEXIS 12203, \*2-3 (May 22, 1980); *See also In re Estate of McCracken*, 9 Ohio Misc. 195, 224 N.E.2d 181 (P.C. 1967); *Peoples Natl. Bank v. Treon*, 16 Ohio App.3d 410, 476 N.E.2d 372 (2nd Dist. 1984); *In re Estate of Clark*, 11 Ohio Misc. 103, 229 N.E.2d 122 (C.P. 1967) (holding that receipt of written notice of claim by the attorney for the executor constitutes statutory presentment).

Consequently, timely service of notice through a third party does not elevate this matter to a cause of great general interest. Actual receipt of notice is sufficient under the law.

**IV. CONCLUSION**

For the above reasons, this Court should reject jurisdiction since Appellant's proposition of law does not implicate any questions of public or great general interest.

Respectfully submitted,

*/s/ Joseph J. Triscaro*

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 26th day of January, 2016, a copy of this *Memorandum*

*Opposing Jurisdiction* was served via U.S. mail, postage prepaid, to the following persons:

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