

IN THE SUPREME COURT OF OHIO

JAMES A. WILSON,)	
)	
Appellee,)	Case No. 2015-2081
)	Case No. 2016-0180
v.)	
)	On Appeal from Cuyahoga County
WILLIAM LAWRENCE, Executor,)	Court of Appeals, Eighth
)	Appellate District
Appellant.)	
)	Court of Appeals
)	Case No. 15-102585
)	
)	

**APPELLANT WILLIAM LAWRENCE’S MEMORANDUM IN OPPOSITION TO
APPELLEE JAMES A. WILSON’S MOTION TO DISMISS CASE NUMBERS 2015-2081
AND 2016-0180 AS IMPROVIDENTLY ACCEPTED**

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ARGUMENT

Appellee James A. Wilson's Motion to Dismiss these consolidated appeals, Ohio Supreme Court Case Nos. 2015-2081 and 2016-0180 (the "Consolidated Cases"), should be denied. As explained below, the Court properly accepted the Consolidated Cases for consideration pursuant S. Ct. Prac. R. 7.08(B) and 8.02(D) because they present: (1) an issue of public and great general interest and (2) a direct conflict between two Ohio Courts of Appeal. Moreover, Appellee's motion relies, as his merit briefing does, on what appears to be either a fundamental misunderstanding of the applicable law and facts or intentional misrepresentations regarding the law and facts.

For those reasons, among others explained below, the Court should deny Appellee's motion and set the consolidated cases for oral argument.

A. The Jurisdictional Appeal, Case No. 2015-2081, Presents a Question of Public and Great General Interest.

This case presents a question of great general interest to Ohio's probate bar. A recent article in the Ohio Probate Law Journal directly addressed the issue presented here, highlighting the direct conflict between the Eighth District's decision and *Jackson v. Stevens*, 4th Dist. No. 1231, 1980 WL 350961, 1980 Ohio App. LEXIS 12905 (Jan. 24, 1980). The article explained that, even if *Wilson* is followed, the Eighth District's ruling leaves a great deal of uncertainty for creditors and estates alike:

Wilson v. Lawrence provides a cautionary tale about mailing or delivering a written creditor claim to a decedent's accountant, trustee, executive assistant or other third party. A creditor who fails to ascertain the identity of the executor or administrator and/or who fails to assure that a written description of the creditor's claim is delivered directly to the executor or administrator (or, at the very least, to the attorney of record for the executor or administrator) runs a serious risk of having the claim time-barred. From a creditor's point of view, even if the holding of the appeals court in *Wilson v. Lawrence* is followed (rather than the contrary holding in

Jackson v. Stevens), attempted “presentment” of a claim “indirectly” by delivering it to an accountant or other agent of the decedent runs the risk that such “indirect” claim letter may not be forwarded to the executor/administrator or attorney for the estate before the 6-month claims deadline expires. At worst, if *Jackson v. Stevens* is followed, no “indirect” presentment of a creditor’s claim will be honored, and the creditor’s claim would be time-barred even if it was forwarded to the executor or administrator (or to the estate’s attorney) within the 6-month claims period.

Kevin G. Robertson, *Difficulties in Presenting a Creditor’s Claim: Wilson v. Lawrence*, 26 NO. 4 OHIO PROB. L.J. NL 3 (Mar/Apr. 2016). The Ohio Probate Law Journal article underscores the need for a ruling resolving the conflict between *Wilson* and *Jackson*. Indeed, whether a would-be plaintiff may deliver his claim to a third party and rely on them to present his claim to the executor – despite his statutory duty “to present” his claim “to the executor” under Ohio Rev. Code §2117.06(A)(1)(a) – is an issue on which the probate bar needs clarity, especially in light of the conflict between *Wilson* and *Jackson*.

At a more fundamental level, people die every day in Ohio, often in debt. Therefore, the issue in this case will likely arise again. It is just as likely that the next time a creditor improperly serves a third party, never appointed as fiduciary, with his claim, the estate at issue will lack the resources to dispute the creditor’s improperly filed claim. In that scenario, the estate may be forced to acquiesce and settle because, in cases with lower stakes than those presented here and with no clarity on the rule in question, the costs of litigating the dispute could quickly eclipse the value of the claim. A clear answer on the question presented here – one that gives effect to the plain language of Ohio Rev. Code §2117.06(A) – may simplify the probate and estate process for many families in Ohio. For that reason, this case presents a question of public interest as well.

B. The Eighth District’s Decision Directly Conflicts with *Jackson v. Stevens*.

Appellee argues again in his motion, as he has done repeatedly at prior stages of this case, that the decision in *Jackson v. Stevens* does not necessarily conflict with the Eighth District’s ruling. He has claimed, again and again, that *Jackson* is not sufficiently “clear” in explaining its legal holding. In making that argument in his motion, Appellee tells the Court that it “is not clear from the decision whether the executor [in *Jackson*] received the written claim notice in proper form.” (Motion at 4.) Appellee is wrong.

The opinion in *Jackson* is *crystal clear* in explaining that “it was apparent that *copies of the claim letters were received by the executor* prior to the run of the §2117.06 . . . time limits.” See *Jackson*, 1980 WL 350961, *2 (emphasis added). Thus, just as in this case, the creditor in *Jackson* delivered his claim to a non-executor third party and relied on that third party to deliver his claim to the executor. *Jackson* held that such “[n]otice to the fiduciary” of the claim “is not logically or legally *presentment to* the fiduciary of the claim.” *Id.* (emphasis added). That is the exact opposite of the Eighth District’s holding.

C. *Edens v. Barberton Family Practice Ctr.* Had No Effect on *Jackson v. Stevens* and Has No Bearing on the Issue Presented in this Case.

Doggedly determined to blur the direct, obvious conflict between *Jackson* and the Eighth District’s decision, Appellee claims that *Edens v. Barberton Family Practice Ctr.*, 43 Ohio St.3d 176 (1989) “resolved any purported conflict between *Wilson* and *Jackson*.” (Motion at 4.) Appellee is wrong about that, too.

As explained in the Estate’s Reply Brief, “the precise issue” in *Edens* was “whether notice pursuant to R.C. 2305.11(B) is effective on the date it is mailed or on the date it is received.” *Id.* at 178. *Edens* held that “actual notice will alone satisfy” the notice requirement of that statute because “a notice sought to be served by mail is not effective until it comes into

the hands of the one sought to be served.” *Id.* at 179. Thus, the question in *Edens* was **when** a notice, properly sent to the correct party, is effective. The *Edens* court made no decision on whether a notice sent to a non-party to the dispute could be deemed sufficient. Instead, the only issue was whether delivery was timely made.

The issue here, as certified by the Eighth District, is “**whether a plaintiff with a claim against a decedent’s estate can meet his burden under R.C. 2117.06(A)(1)(a)** to present his claim to the executor or administrator in writing **when the claimant presents the claim to someone other than the fiduciary**, who then submits the claim to the fiduciary within the statutory time-frame under R.C. 2117.06.” (See Appellant’s Appx-45 (emphasis added).) Thus, the question is not whether the Appellee’s letter was received by the executor or when it was received by him. Instead, this case asks the Court to determine whether Appellee’s failure to identify the executor and to send any notice to him, to his attorney, or to anyone acting on behalf of the Estate (at any point in time), renders his “notice” letter ineffective as a matter of law. The ruling in *Edens* that notice under Rev. Code § 2305.11(B) is effective only at the time of actual receipt provides no insight into that question. Appellee’s argument on *Edens* should be rejected.

CONCLUSION

For all of the foregoing reasons, the Appellee's motion to dismiss should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing *Appellant William Lawrence's Memorandum in Opposition to Appellee James A. Wilson's Motion to Dismiss Case Numbers 2015-2081 and*

2016-0180 as *Improvidently Accepted* has been served by regular U.S. Mail, this 14th of July, 2016 upon the following:

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