

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

In re: :
Estate of Richard E. Curry, : No. 09AP-469
Deceased, : (Prob. No. 530016)
: (ACCELERATED CALENDAR)
(THI of Ohio at Columbus, LLC dba :
Columbus Health Care Center, :
Appellant). :

D E C I S I O N

Rendered on December 15, 2009

James R. Gucker, for appellant.

Daniel K. Balaloski, for appellee Audrey E. Curry-Hodge,
Administrator.

APPEAL from the Franklin County Court of Common Pleas,
Probate Division.

BRYANT, J.

{¶1} Appellant, THI of Ohio at Columbus, LLC dba Columbus Health Care Center, appeals from a judgment of the Franklin County Court of Common Pleas, Probate Division, that granted the application of Audrey E. Curry-Hodge, administrator of the estate of Richard E. Curry ("estate"), to dismiss appellant's claim against the estate.

Because appellant failed to file its claim within the time period prescribed in R.C. 2117.06, the probate court did not err in granting the administrator's application to dismiss.

I. Procedural History

{¶2} On July 18, 2008, appellant filed a Statement of Claim in the Franklin County Probate Court. According to the Statement of Claim, Richard E. Curry was admitted to Columbus Health Care Center on September 1, 2007, passed away at the facility on December 22, 2007, and, during his time as a resident at Columbus Health Care Center, amassed an unpaid account with a balance of \$10,744. The Statement of Claim asserted that the estate, "as successor to the indebtedness of Richard E. Curry," is indebted to appellant in the amount of \$10,744 plus interest. (Statement of Claim, ¶8.)

{¶3} The Statement of Claim also asserted that appellant's claim was presented to the estate on March 10, 2008 in accordance with R.C. 2117.06. To support that contention, appellant attached to the Statement of Claim a March 10, 2008 letter and claim that was submitted, initially by unclaimed certified mail and then by ordinary mail, to the "estate of Richard E. Curry, c/o Audrey E. Curry-Hodge 1652 Melrose Ave. Columbus, OH and 2130 Pine Cone Lane Columbus, OH." (Statement of Claim, ¶6.)

{¶4} Appellant's July 18, 2008 filings also requested that its attorney immediately be appointed the administrator of the estate, stating the estate needed to be opened to satisfy the \$10,744 debt owed to appellant. The parties ultimately agreed "that it would be most appropriate for a family member to serve as the estate's fiduciary." (Affidavit, ¶4.) Accordingly, when the court held a hearing in September 2008 on the application of appellant's attorney to administer the estate, the court, pursuant to the parties' agreement, appointed Audrey Curry-Hodge the estate's administrator.

{¶5} On April 15, 2009, Curry-Hodge, as fiduciary of the estate, filed an application to dismiss the estate. The application explained that the decedent died intestate on December 21, 2007. The administrator advised that the decedent's only asset appeared to be the real property known as 1652 Melrose Avenue in Columbus, and the property was transferred to the decedent's seven children pursuant to an affidavit filed with the county recorder in accordance with R.C. 317.22. The application stated the transfer was effective on or about January 25, 2008, and many of the heirs subsequently transferred their interest to Curry-Hodge, who then owned 6/7ths of that property.

{¶6} Noting the requirements of R.C. 2117.06, the administrator argued that appellant failed to present its claim within the time requirements set forth in R.C. 2117.06, rendering the claim "forever barred." (Application to Dismiss, 2.) Curry-Hodge thus requested the matter be dismissed since no valid claims against the estate existed and the estate had no assets to administer. On April 15, 2009, the probate court issued a judgment granting the administrator's application to dismiss.

II. Assignments of Error

{¶7} Appellant assigns two errors:

I. THE TRIAL COURT ERRED AS A MATTER OF LAW AND ABUSED ITS DISCRETION BY FINDING APPELLANT DID NOT HAVE A VALID CLAIM AGAINST THE ESTATE OF RICHARD E. CURRY.

II. THE TRIAL COURT ERRED AS A MATTER OF LAW AND ABUSED ITS DISCRETION TO THE PREJUDICE OF APPELLANT WHEN IT FAILED TO HOLD A HEARING ON APPELLEE'S MOTION TO DISMISS.

III. First Assignment of Error—Claim Against the Decedent's Estate

{¶8} In its first assignment of error, appellant contends its March 10, 2008 letter, sent through its attorney, constitutes a claim against the estate submitted within the time requirements set forth in R.C. 2117.06.

{¶9} Pursuant to R.C. 2117.06(A), "[a]ll creditors having claims against an estate, including claims arising out of contract, * * * shall present their claims" in one of the manners prescribed in R.C. 2117.06(A)(1). R.C. 2117.06(A)(1) provides that after the administrator or executor is appointed, and prior to a final account or certificate of termination being filed, the claim should be presented (a) to the executor or administrator in a writing, (b) to the executor or administrator in a writing and to a probate court by filing a copy of the writing with the court, or (c) in a writing sent by ordinary mail and addressed to the decedent that executor or administrator actually receives within the time prescribed in R.C. 2117.06(B). R.C. 2117.06(A)(1)(a), (b), or (c). According to R.C. 2117.06(B), "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." A claim "not presented within six months after the death of the decedent shall be forever barred as to all parties," and no payment may be made on the claim. R.C. 2117.06(C).

{¶10} Here, Curry-Hodge was not appointed administrator of the estate until more than one year after the decedent's death. Appellant therefore could not have presented a claim to the administrator within the time period specified in R.C. 2117.06. Strict application of the statutory language to the facts at issue dictates the trial court properly

concluded appellant's claim is forever barred because it was not filed within the time frame required under R.C. 2117.06.

{¶11} Appellant, however, points out that no administrator was appointed within the six months following the decedent's death. As a result, appellant contends, it had no one to notify of its claim. While appellant's contentions at first blush are persuasive, the Supreme Court of Ohio in *Wrinkle v. Trabert* (1963), 174 Ohio St. 233, paragraph two of the syllabus, addressed those circumstances and held that "[w]here one has a claim against an estate, it is incumbent upon him, if no administrator has been appointed, to procure the appointment of an administrator against whom he can proceed." Because appellant could have secured appointment of an administrator within the six-month time period allowed under R.C. 2117.06, the lack of an administrator on whom to serve its claim is not persuasive. Indeed, appellant attempted to avail itself of the remedy when it sought to have its attorney appointed administrator, but did so after the time period in R.C. 2117.06 expired.

{¶12} In an effort to circumvent such a result, appellant argues that it in reality advised the eventual administrator of its claim when it sent its March 10, 2008 letter to Curry-Hodge, albeit prior to her appointment as administrator. Appellant contends 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.

{¶13} The Second District addressed this precise argument in *Reid v. Premier Health Care Serv., Inc.* (Mar. 19, 1999), 2d Dist. No. 17437. There, Miami Valley Hospital contended the eventual administrator had actual knowledge of appellant's claim within the R.C. 2117.06 six-month timeframe, even though the administrator was not appointed to

that position until more than six months after the decedent died. The issue in *Reid* was whether Reid's appointment as administrator should relate back to Miami Valley Hospital's initial contact with Reid and "thereby effect its legitimization." *Id.* Appellant's argument parallels that of Miami Valley Hospital, as appellant contends that because Curry-Hodge eventually was appointed administrator of the decedent's estate and had actual knowledge of the claim within six months of the decedent's death, the probate court, in effect, should have given her appointment a retroactive effect back to the date appellant sent its claim to her on March 10, 2008.

{¶14} In resolving the issue, *Reid* pointed to *Wrinkle*, where the Supreme Court acknowledged a delay sometimes occurs between death and an administrator's appointment and "during this period rights oftentimes accrue which might well be lost to the estate if someone, even one without authority, could not act to protect such rights and have such acts subsequently validated by the proper appointment of an administrator." *Id.*, citing *Wrinkle* at 236. Accordingly, *Wrinkle* concluded " 'relation back' is necessary to protect estates and aid administrators in the fulfillment of their duties of administration." *Id.* The Supreme Court, however, contrasted such circumstances with those of persons with claims *against* an estate, observing that such a person "has it within his power to preserve such claim by instigating the appointment of an administrator to whom he can present such claim" under R.C. 2113.06. "If such a party fails through lack of diligence to procure such appointment within time to properly urge his claim, * * * the law should not come to his aid." *Id.*

{¶15} Applying *Wrinkle*, *Reid* discerned no reason "why the rule should be different in situations where an estate is simply not opened" within the R.C. 2117.06 time

period. *Id.* In accord with *Wrinkle*, *Reid* noted the "relation back" doctrine "in the context of appointment of an administrator applies only where its application results in a benefit to the estate." *Id.* Because the right in *Reid* was not one belonging to the estate, but to a person who sought to assert a claim against the estate, application of the "relation back" doctrine "would benefit [the claimant] rather than the estate." *Id.* Thus *Reid* concluded, as do we, that "there can be no application of the doctrine in this case." *Id.* Indeed, to do so "would defeat the purpose of the legislative enactments concerning the presentment of claims to an estate": "to assure the expeditious and efficient administration of the estate." *Id.* See also *Soc. Natl. Bank. v. Johnson* (Dec. 18, 1997), 8th Dist. No. 72002 (concluding that the eventual appointment of an administrator outside the time limits of R.C. 2117.06 did not excuse the claimant's failure to hasten appointment of an administrator under R.C. 2113.06, even though the administrator may have had actual knowledge of the claim within the R.C. 2117.06 time period).

{¶16} In the final analysis, appellant's attempt to avail itself of the statutory remedy was too late. Its claim is forever barred because it did not present it to the administrator within six months of the decedent's death. Appellant's first assignment of error is overruled.

IV. Second Assignment of Error – Hearing

{¶17} Appellant's second assignment of error asserts the probate court should have held a hearing before granting the administrator's application to dismiss the estate and, in effect, bar appellant's claim. To support its argument, appellant relies on R.C. 2117.06(l), which provides that "[i]f a creditor presents a claim against an estate in

accordance with" R.C. 2117.06(A)(1)(b), "the probate court shall not close the administration of the estate until that claim is allowed or rejected."

{¶18} Contrary to the statute on which appellant relies, appellant did not present its claim in accordance with the provisions of R.C. 2117.06(A)(1)(b). Appellant did not present its claim to the administrator in writing until after the six months prescribed under R.C. 2117.06(B) expired. Thus, the authority on which appellant relies does not compel the probate court to conduct a hearing before granting the administrator's motion. Appellant's second assignment of error is overruled.

{¶19} Having overruled both of appellant's assignments of error, we affirm the judgment of the probate court.

Judgment affirmed.

KLATT and McGRATH, JJ., concur.
