

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-000955-MR

CHARLES R. STREICH

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE MITCHELL PERRY, JUDGE
ACTION NO. 14-CI-001447

CAROLYN J. BALL AND KENNETH S.
BOHANNON, AS CO-ADMINISTRATORS
OF THE ESTATE OF RONALD LEE
BOHANNON; AND THERESA BOHANNON

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: CLAYTON, KRAMER, AND VANMETER, JUDGES.

CLAYTON, JUDGE: This is an appeal from a decision of the Jefferson Circuit Court dismissing the Appellant, Charles R. Streich's, action for attorney fees against a decedent. Based upon the following, we affirm the decision of the trial court.

BACKGROUND SUMMARY

Streich filed a proof of claim against the estate of Ronald Lee Bohannon asserting that he was owed attorney's fees due to his representation of Bohannon in an ongoing dispute with Thomas Calvert. Streich asserts that they entered into a contract for fees on January 26, 2011, which resulted in a bill for \$132,000.00. The billing statement was dated December, 2012. Thereafter, Streich contends that Bohannon secured his services a second time for which the billing was \$11,250.00. This billing statement was also dated December of 2012.

Ronald Bohannon died intestate on March 7, 2013. Kenneth Bohannon and Carolyn Ball were appointed Co-administrators of the Estate of Ronald Bohannon on March 21, 2013. On December 19, 2013, Streich filed a proof of claim against Bohannon's estate. On January 2, 2014, the Co-administrators of Bohannon's Estate disallowed the claim.

On March 13, 2014, Streich brought an action in the Jefferson Circuit Court for collection of the fees. The Appellees filed a motion to dismiss the action, arguing that the claim had been filed nine months after the administrators were appointed and was, therefore, untimely as a matter of law. The circuit court agreed and dismissed the case, holding that it did not have jurisdiction. Streich then brought this appeal.

STANDARD OF REVIEW

This is an appeal of an issue of law and we, therefore, review it *de novo*. *Osborne v. Commonwealth*, 185 S.W.3d 645 (Ky. 2006).

ANALYSIS

Streich argues that the six-month time period of Kentucky Revised Statutes (KRS) 396.011(1) to file a claim is enforceable only if the notice of disallowance of the claim includes the statutory warning that the claim would be barred if an action was not filed within sixty days. KRS 396.055(1) provides as follows:

Allowance or disallowance of claims – Notice – Effect.

(1) As to claims presented in the manner described in KRS 396.015 within the time limit prescribed in KRS 396.011, the personal representative may mail a notice to any claimant stating that the claim has been allowed or disallowed. If, after allowing or disallowing a claim, the personal representative changes his decision concerning the claim, he shall notify the claimant. The personal representative may not change a disallowance of a claim after the time for the claimant to commence an action on the claim has run and the claim has been barred. Every claim which is disallowed in whole or in part by the personal representative is barred so far as not allowed unless the claimant commences an action against the personal representative not later than sixty (60) days after the mailing of the notice of disallowance or partial allowance if the notice warns the claimant of the impending bar. Failure of the personal representative to mail notice to a claimant of action on his claim for sixty (60) days after the time for original presentation of the claim has expired has the effect of a notice of allowance, except that upon petition of the personal representative and upon notice to the claimant, the court at any time before payment of such claim may for cause shown

permit the personal representative to disallow such claim.
(Emphasis added)

KRS 396.011(1) addresses the time limitations for filing a claim against a decedent's estate which arose prior to the death of the decedent. It provides as follows:

All claims against a decedent's estate which arose before the death of the decedent, . . . if not barred earlier by other statutes of limitations, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented within six (6) months after the appointment of the personal representative. . . .

In interpreting a statute, a court must "give effect to the intent of the General Assembly." *Bowling v. Kentucky Dept. of Corrections*, 301 S.W.3d 478, 490-91 (Ky. 2009). "We derive that intent, if at all possible, from the language the General Assembly chose, either as defined by the General Assembly or as generally understood in the context of the matter under consideration." *Spencer v. Estate of Spencer*, 313 S.W.3d 534, 541 (Ky. 2010). Therefore, "[w]hen the statute is plain and unambiguous, the language of the statute is to be given full effect as written." *Modammed v. Commonwealth*, 202 S.W.3d 589, 590 (Ky. 2006).

The personal representatives were appointed in this case on March 21, 2013. The end of the six (6) month statutory period, pursuant to KRS 396.011, was September 21, 2013. Streich filed his proof of claim on December 19, 2013. This was clearly outside the period allowed by law. Under Kentucky law, a claim must

be filed within this period in order to be timely. *DeMoisey v. River Downs Inv. Co.*, 159 S.W.3d 820,822 (Ky. App. 2005).

The Estate argues that failure to file within this time period is a complete bar to recovery. As set forth above, Streich argues that, without the warning, the notice is fundamentally flawed. Streich relies upon the case of *Blackwell v. Blackwell*, 372 S.W.3d 874 (Ky. App. 2012). *Blackwell* involves an action in which the claim against the estate had been filed within the six-month statutory period. Streich admits that his was not. The court in *Blackwell* specifically set forth that its holding was specific to a claim filed within the six-month statutory time period and that it left to another day the issue currently before us. We, therefore, must examine this issue as one of first impression.

As set forth in *Blackwell*, “[t]he plain statutory language of KRS 396.055(1) does not suggest nor indicate the warning language is optional.” *Id.* at 881. The specific language of the statute, however, provides that it applies “...to claims presented in the manner described in KRS 396.015 within the time limit prescribed in KRS 396.011...” In this case, Streich did not present the claim within the time limit prescribed in KRS 396.011. Under the facts of this case, the proof of claim was untimely filed. The plain language of KRS 396.055(1), therefore, does not apply. Thus, the requirement of the statute that the language be set forth in the denial of the claim is not applicable. We, therefore, affirm the decision of the circuit court.

KRAMER, JUDGE, CONCURS.

VANMETER, JUDGE, CONCURS BUT WILL FILE SEPARATE
OPINION.

VANMETER, JUDGE, CONCURRING: I agree and concur in the result reached by the majority opinion. I write separately merely to observe that under certain factual circumstances a claim presented more than six months after the appointment of a personal representative may be presented and allowed.

KRS 396.011 is a “nonclaim” statute in that creditors are required to file claims against a probate estate within a specified time period, and their claims are generally barred if untimely filed. The initial six-month limitation, as provided by the statute, starts to run on the district court’s appointment of the personal representative. KRS 396.011(1). In *Tulsa Prof. Collection Servs., Inc. v. Pope*, 485 U.S. 478, 486-87, 108 S.Ct. 1340, 1345-46, 99 L.Ed.2d 565 (1988), the Court held that Oklahoma’s probate nonclaim statute is not a self-executing statute of limitations since state probate court action, *i.e.*, an order appointing personal representative, starts the running of the time limit. If a creditor’s identity “was known or ‘reasonably ascertainable,’ then the Due Process Clause requires that [creditor] be given notice by mail or other means as certain to ensure actual notice.” *Id.*, 485 U.S. at 491, 108 S. Ct. at 1348 (citation and quotation omitted). In this case, Streich did not raise this issue in the trial court and has not raised it in this appeal. In an appropriate case, upon this issue being raised, a trial court must analyze whether a creditor was a “known or reasonably ascertainable creditor” entitled to actual notice of the probate proceedings. *See Baptist Hosp. E. v. Craft*,

2003-CA-000080-MR, 2004 WL 68535 (Ky. App.2004). If the result of that analysis is that the creditor was known or reasonably ascertainable, then actual notice of probate proceedings is required. Failure to give such notice may thereby result in a valid proof of claim which otherwise would have been untimely after the initial six-month period.

BRIEF FOR APPELLANT:

Allen K. Gailor
Louisville, Kentucky

BRIEF FOR APPELLEES:

Thomas K. Stone
Louisville, Kentucky