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Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 11/15/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In the Matter of the Estate of:) 1 CA-CV 11-0656
)
) DEPARTMENT A
EDWARD BERNARD FIOCK,)
) **MEMORANDUM DECISION**
Deceased.)
) (Not for Publication -
) Rule 28, Arizona Rules of
) Civil Appellate Procedure)
_____)
DAWN MCBRIDE,)
)
) Claimant/Appellant,)
)
) v.)
)
) RICHARD E. FIOCK, as Personal)
) Representative of the ESTATE OF)
) EDWARD BERNARD FIOCK,)
)
) Defendant/Appellee.)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. PB2010-001773

The Honorable Richard L. Nothwehr, Judge *Pro Tempore*

AFFIRMED

Dawn McBride
In Propria Persona

Panama City Beach

Warner Angle Hallam Jackson & Formanek, PLC
By Sarah Elizabeth Price
J. Brent Welker
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Phoenix

T I M M E R, Presiding Judge

¶1 Appellant/Claimant Dawn McBride appeals the superior court's order dismissing her creditor's claim in the probate proceedings for Edward Bernard Fiock. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 McBride and Edward were half-siblings whose mother, Dorothy Odell Fiock, died in 1968.

¶3 Edward died on August 2, 2010. The superior court appointed Edward's cousin the personal representative for the estate (the "PR"). The PR published notice to Edward's creditors in accordance with Arizona Revised Statutes ("A.R.S.") section 14-3801(A) (West 2012).¹ Pursuant to the statutory procedure, all claimants were required to submit their claims to the PR no later than January 22, 2011.

¶4 On January 12, 2011, McBride filed a written claim against the estate for monies Edward's father, Richard Bernard Fiock, allegedly misappropriated from Dorothy's estate. McBride maintained she was the sole heir under the terms of Dorothy's

¹ Absent material revisions after the relevant date, we cite a statute's current version.

will, but Richard failed to probate the will and fraudulently kept Dorothy's assets for himself. She asserted Richard passed the assets to Edward when Richard died in 1972, and she sought to recover those monies from Edward's estate.

¶15 On April 13, 2011, McBride filed a request for an order directing the PR to pay her claim, which she asserted had been deemed allowed pursuant to A.R.S. § 14-3806(A) because the PR had not responded to the claim within sixty days. The PR immediately filed a notice of disallowance asserting McBride had not timely mailed her claim to the estate as required by A.R.S. § 14-3803 and arguing the claim was invalid.

¶16 The PR also filed a motion to dismiss McBride's claim for failure to state a claim. He asserted that because McBride's allegations concerned Richard's conduct in 1968, she had not set forth a valid claim against Edward's estate. In addition, the PR alleged McBride did not mail a copy of her claim to him or his counsel, but maintained that even if McBride had mailed the claim to him and he failed to respond within sixty days, A.R.S. § 14-3806(B) allowed him to rescind an allowance of claim prior to payment and within six months of presentation.

¶17 McBride asked the court to enter default judgment on her claim on the grounds the PR had not denied it within sixty days and it was therefore deemed allowed under A.R.S. § 14-

3806(A). She offered evidence she had mailed a copy of her claim to the PR within the time for filing claims with the estate. The PR then acknowledged he had received the claim, but denied opening it.

¶18 The superior court denied McBride's request for an order of default and granted the PR's motion to dismiss. It rejected the PR's argument that A.R.S. § 14-3806(B) permitted him to rescind a claim that had been deemed allowed by his failure to respond but ruled McBride did not properly submit her claim because she mailed it directly to the PR rather than to his counsel. The court determined McBride's claim was barred by the applicable statute of limitations and she had not presented good cause for her delay in asserting the claim.

¶19 After the court granted the motion to dismiss, but before it entered a signed formal order, McBride filed a motion to set aside the judgment. She submitted a January 11, 2011 letter from the PR to her in which the PR stated he "received your letter yesterday," and wrote, as relevant:

If you feel that you have money coming [to you] from a forty year old estate then I suggest that you hire an attorney and, perhaps, an accountant and have them investigate the merits of your claim. I can't help you.

McBride claimed this letter evidenced the PR's fraud on the court because it showed he opened her claim on January 10, 2011.

In response, the PR argued the January 11, 2011 letter served as the estate's disallowance of McBride's claim and she had not timely filed a petition for allowance of the claim in court as required by A.R.S. § 14-3806(A). The court treated McBride's motion as a motion for reconsideration and denied it after finding the January 11, 2011 letter was a notice of disallowance of McBride's claim.

¶10 McBride timely appealed the court's order dismissing her claim.

DISCUSSION

¶11 We review de novo the superior court's legal conclusions, but we will not disturb its factual findings unless they are clearly erroneous. *In re Estate of Newman*, 219 Ariz. 260, 265, ¶ 13, 196 P.3d 863, 868 (App. 2008). We do not reweigh the evidence and will only reverse if no substantial evidence supported the court's determination, that is, if there was no evidence upon which a reasonable person could reach the trial court's result. *In re Estate of Pouser*, 193 Ariz. 574, 579, ¶ 13, 975 P.2d 704, 709 (1999).

A. Failure to state a claim

¶12 McBride claimed Edward's estate owed her a debt because his father, Richard, misappropriated monies Dorothy left to McBride in her will and then passed those monies to Edward. The court accepted all McBride's allegations but determined her

claim was nevertheless barred by the applicable statute of limitations.

¶13 Arizona law prohibits the payment of a claim that was barred by any statute of limitations at the time of the decedent's death absent an express waiver by the personal representative and all successors whose interests are affected. A.R.S. § 14-3802. McBride alleged Richard fraudulently converted her property in 1968 when Dorothy died and later conveyed that money to Edward in 1972. Her claims were therefore subject to the two-year statute of limitations for conversion and the three-year statute of limitations applicable to claims for fraud and unjust enrichment. A.R.S. §§ 12-542, -543.² McBride did not assert her claim against Edward's estate until well after these time limitations expired. Nevertheless, she argues the statute of limitations was tolled during her minority and subsequent disability and, in the alternative, asserts her claim did not accrue until she discovered Richard's fraud.

² The parties do not discuss whether California's or Arizona's statutes of limitation apply to McBride's claim. Arizona courts follow the Restatement (Second) Conflict of Laws § 142 (1988) and will generally apply Arizona's statute of limitations to bar a claim. *Jackson v. Chandler*, 204 Ariz. 135, 136-37, ¶¶ 5-7, 61 P.3d 17, 18-19 (2003). Even under California law, however, the claims would be time-barred. See Cal. Civ. Proc. Code §§ 338(c)(1), (d) & 339(1).

¶14 McBride claims she was nineteen years old at the time of Dorothy's death in 1968 and was therefore a minor under California law when Richard converted Dorothy's assets. See A.R.S. § 12-502 (stating period of minority is not included in the period allowed for commencement of an action). Although McBride failed to timely file her claim after she reached the age of majority, she alleges the statute of limitations remained tolled because she was declared disabled in 1973 at the age of twenty-three. See *id.* (stating the period during which a person is of unsound mind is not included in the period allowed for commencement of an action). Arizona law, however, prohibits the extension of a limitations period by the connection of one disability with another. A.R.S. § 12-503 ("When the law of limitation begins to run it shall continue to run notwithstanding a supervening disability of the party entitled to sue or liable to be sued."). Further, we have reviewed the evidence McBride submitted regarding her disability, which was later sealed by the superior court. The court's determination that McBride failed to establish good cause for her delay in bringing her claim, is not clearly erroneous. See *In re Estate of Newman*, 219 Ariz. at 265, ¶ 13, 176 P.3d at 868; *Doe v. Roe*, 191 Ariz. 313, 326, ¶ 42, 955 P.2d 951, 964 (1998) ("In Arizona, unsound mind occurs when the person is unable to manage his

affairs or to understand his legal rights or liabilities.") (internal quotation marks omitted).

¶15 McBride argues in the alternative that she timely brought her claims because she only discovered Richard's fraud within the three years prior to Edward's death. A cause of action accrues when the plaintiff knows or with reasonable diligence should know the facts giving rise to the claim and that he or she has been damaged. *CDT, Inc. v. Addison, Roberts & Ludwig, C.P.A., P.C.*, 198 Ariz. 173, 176, ¶ 7, 7 P.3d 979, 982 (App. 2000). The plaintiff bears the burden of establishing that the discovery rule applies to delay application of the statute of limitations. *Logerquist v. Danforth*, 188 Ariz. 16, 19, 932 P.2d 281, 284 (App. 1996).

¶16 McBride did not present any evidence of when she discovered Dorothy's will, but she implicitly concedes she knew about it more than three years prior to Edward's death by stating she told Edward about the will and he refused to communicate with her for three years. When McBride discovered Dorothy's will, she knew or should have known the facts giving rise to her claim, i.e., that Richard failed to probate the will and kept Dorothy's assets for himself. Although McBride contends her knowledge of Dorothy's will was a "dead end" until she found Dorothy's 1968 petition for divorce in October 2008, once McBride found the will she had enough information to

realize Richard had failed to probate it, which should have caused her to investigate whether Richard improperly procured Dorothy's assets for himself. See *Walk v. Ring*, 202 Ariz. 310, 316, ¶ 24, 44 P.3d 990, 996 (2002) ("[T]he core question is whether a reasonable person would have been on notice to investigate.").

¶17 Accordingly, McBride's claim was untimely and the superior court properly dismissed it.

B. Timeliness

¶18 McBride contends the court should not have even considered the merits of her claim because the PR allowed it by not responding, and she was therefore entitled to judgment as a matter of law. "We will uphold a probate court's ruling if correct, even if the court reached the right conclusion for the wrong reason." *In re Estate of Wyttenbach*, 219 Ariz. 120, 125, ¶ 27, 193 P.3d 814, 819 (App. 2008).

1. Presentation of the claim

¶19 Arizona law prescribes the manner for presentation of a claim against an estate:

The claimant may deliver or mail to the personal representative a written statement of the claim indicating its basis, the name and address of the claimant and the amount claimed. The claim is deemed presented on receipt of the written statement of claim by the personal representative.

A.R.S. § 14-3804(1).

¶120 In this case, the PR published notice of Edward's estate and gave written notice to known creditors in accordance with Arizona law. See A.R.S. § 14-3801. These notices stated creditors must present their claims by delivering or mailing them to the PR's counsel at her business address.

¶121 McBride presented her claim by mailing it directly to the PR at his home in California. The PR initially denied receiving the claim, but after McBride produced a certified mail receipt bearing his signature, he acknowledged receipt, but denied opening the document. The superior court ruled McBride improperly submitted her claim to the estate by sending it directly to the PR rather than to the estate's attorney.

¶122 McBride properly presented her claim to Edward's estate. The statute only requires a claimant to deliver or mail her claim to the personal representative and does not allow the personal representative to impose additional conditions or otherwise restrict the manner of presentation. A.R.S. § 14-3804(A). Thus, while a personal representative may certainly direct creditors and other claimants to submit their claims to a specific address, when, as in this case, a claimant chooses to deliver or mail her claim directly to the personal representative, she has effectively presented it. To hold otherwise, especially when the personal representative actually received the claim, would contravene the statutory language and

be patently unfair.³ Accordingly, McBride properly presented her claim to the PR by mailing it to him on January 8, 2011.

¶123 The PR disallowed McBride's claim on January 11, 2011. McBride was therefore required to file a petition for allowance of the claim within sixty days of the mailing of the notice of disallowance. A.R.S. § 14-3806(A). The notice of disallowance was dated January 11, 2011 and McBride did not file her petition requesting an order directing payment of the claim until April 13, 2011. Accordingly, the claim was barred, see A.R.S. § 14-3806(A), and the superior court properly dismissed it on this basis alone.⁴

2. Rescission of an allowed claim

¶124 Alternatively, even assuming the PR failed to expressly deny McBride's claim, the superior court properly dismissed McBride's claim.

³ Even if the PR could require claimants to submit claims in a manner that differed from the statutory procedure, it is undisputed McBride did not receive notice as a known creditor and did not reside in Arizona when the PR published notice of Edward's estate in a Maricopa County newspaper. We therefore do not see how she could have known about any such extra-statutory requirements.

⁴ We reject McBride's argument that the court erroneously concluded the January 11, 2011 letter was a disallowance of her claim because the letter did not contain a warning that her claim would be barred if she did not commence an action in court within sixty days. Arizona has not adopted the language McBride cites from the Uniform Probate Code. See U.P.C. § 3-806; A.R.S. § 14-3806(A).

¶125 Section 14-3806(A) provides, in relevant part, as follows:

Failure of the personal representative to mail notice to a claimant of action on his claim for sixty days after the time for original presentation of the claim has expired has the effect of a notice of allowance.

A.R.S. § 14-3806(A). The next subsection, however, permits a personal representative to rescind the allowance of a claim at any time prior to payment, but not later than six months after presentation of the claim. A.R.S. § 14-3806(B).

¶126 After McBride filed her request for an order directing the PR to pay her claim, the PR immediately filed a disallowance of claim and maintained that even if McBride had properly presented her claim and it was allowed because he had not responded within sixty days, A.R.S. § 14-3806(B) permitted him to rescind that allowance. The superior court rejected the PR's argument, reasoning A.R.S. § 14-3806(B) only applies when a personal representative has affirmatively allowed a claim, not when he has failed to respond to a claim within the required period. We disagree.

¶127 The statute does not restrict the circumstances under which a personal representative may rescind an allowance of a claim or otherwise limit rescission to expressly allowed claims. A.R.S. § 14-3806(A), (B). Indeed, the statute does not

distinguish between expressly allowed claims or those implicitly allowed by the personal representative's failure to respond; a failure to respond simply "has the effect of a notice of allowance." A.R.S. § 14-3806(A). The plain language of the statute allows a personal representative to rescind the allowance of a claim within six months after presentation, provided the estate has not already paid the claim. A.R.S. § 14-3806(B); see also *In re Estate of Krichau*, 501 N.W.2d 722, 726 (Neb. Ct. App. 1992) (holding, pursuant to analogous statutory provisions derived from the Uniform Probate Code, personal representative of decedent's estate may disallow claim that has been allowed by failure to object); *In re Gaytan Estate*, 591 N.W.2d 310, 314 (Mich. Ct. App. 1998) (holding a similar provision "permits a claim that has been deemed allowed as a consequence of the personal representative's failure to disallow it within the statutory period to be disallowed subsequently by the personal representative"). Accordingly, by filing his disallowance of McBride's claim within six months after its presentation and before payment of the claim, the PR properly rescinded the allowance of the claim that resulted from his purported failure to deny it within sixty days of presentation. See A.R.S. § 14-3806(B).

CONCLUSION

¶128 For the foregoing reasons, we affirm. We deny McBride's request for an award of costs, because she is not the prevailing party on appeal.

/s/
Ann A. Scott Timmer, Presiding Judge

CONCURRING:

/s/
John C. Gemmill, Judge

/s/
Margaret H. Downie, Judge