

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DIVISION ONE
FILED: 05/24/2011
RUTH A. WILLINGHAM,
CLERK
BY: GH

In the Matter of the Estate of:) 1 CA-CV 10-0609
)
ANITA MARIE GARDNER,) DEPARTMENT B
)
Deceased.) **MEMORANDUM DECISION**
) (Not for Publication -
WELLS FARGO CARD SERVICES,) Rule 28, Arizona Rules of
) Civil Appellate Procedure)
Petitioner/Appellee,)
)
v.)
)
MICHAEL MEISNER, as Personal)
Representative of the Estate of)
Anita M. Gardner,)
)
Respondent/Appellant.)

Appeal from the Superior Court in Maricopa County

Cause No. PB 2009-000393

The Honorable Richard L. Nothwehr, Commissioner

AFFIRMED

Hammerman & Hultgren, P.C.
By Jon R. Hultgren
and Jennifer R. Spiegel
Attorneys for Petitioner/Appellee

Phoenix

Michael Meisner
Respondent/Appellant, *In Propria Persona*

Tucson

N O R R I S, Judge

¶1 Michael Meisner, as personal representative for the Estate of Anita M. Gardner (the "Estate"), appeals the probate court's order requiring him to satisfy a \$6693.39 creditor's claim asserted against the Estate by Wells Fargo Card Services ("Wells Fargo"). For the reasons discussed below, the probate court properly ordered Meisner to pay the claim because he failed to challenge it within the time frame required by Arizona law. We therefore affirm.

FACTS AND PROCEDURAL BACKGROUND

¶2 Anita M. Gardner, Meisner's mother, died intestate on December 30, 2008. On February 12, 2009, the probate court appointed Meisner personal representative for the Estate. Meisner estimated the Estate to be worth \$60,000. On March 18, 2009, Wells Fargo filed a creditor claim with the court for \$6693.39, representing the outstanding balance on a credit card Gardner had maintained with Wells Fargo.¹ Wells Fargo attached to its claim the account's statement and summary as of January 8, 2009. Meisner did not pay the claim.

¶3 On October 20, 2009, Wells Fargo mailed a formal demand letter to Meisner advising him that if he failed to dispute the validity of the debt within 30 days, it would assume the debt was valid. Having received no response, Wells Fargo

¹The record indicates Wells Fargo also mailed the claim to Meisner on February 23, 2009.

petitioned the court on November 9, 2009, for a citation requiring Meisner "to appear before this Court and show the condition of the Estate and the reasons why the [E]state cannot be distributed and closed." The court addressed the matter at a status conference on January 6, 2010.

¶4 At the status conference, Meisner apprised the court that the probate had "been informally closed." Wells Fargo informed the court that, according to county records, the Estate's sole asset, a townhouse, had been sold for \$102,000, with the sale proceeds partly used to satisfy a \$20,000 "obligation" on the property. Although Meisner admitted to distributing the remaining proceeds to "other creditors," he explained "there wasn't enough money to return to Wells Fargo" but acknowledged he had not informed Wells Fargo he would disregard its claim. Indeed, Meisner asserted his "intention was always to pay the claim."

¶5 The court ordered Meisner to file an accounting of the monies distributed following the sale of the townhouse. On February 1, 2010, Meisner did so. The accounting showed the sale had generated \$72,052 in proceeds and the Estate had liabilities and expenses totaling \$93,142. At a February 10, 2010 status conference, Wells Fargo objected to the accounting, specifically, Meisner charging the Estate \$28,250 for

miscellaneous administrative expenses, based in part on his hourly rate of \$200.

¶6 The court ordered Meisner to explain the propriety of the \$200 rate. On March 2, 2010, the court rejected Meisner's explanation and reduced his hourly rate to \$50.² The court further ordered Meisner to reimburse the Estate for the difference and to satisfy Wells Fargo's claim within 30 days.

¶7 By letter filed March 15, 2010, Meisner "point[ed] out three facts that invalidate and question the credibility of the claim" and requested the court dismiss Wells Fargo's claim or order Wells Fargo to provide further documentation in support of its claim. In response, Wells Fargo argued the court should disregard Meisner's challenges to the claim because he had failed to raise them within the time frame required by Arizona Revised Statutes ("A.R.S.") section 14-3806(A) (2005).

¶8 On May 20, 2010, with its claim still unpaid, Wells Fargo requested a hearing regarding Meisner's failure to comply with the probate court's March 2 order. Meisner subsequently filed several motions to dismiss "this case," asserting Wells Fargo had refused "to provide pre-trial discovery" and had not

²The court found Meisner had no specific training or experience as a personal representative and therefore was not entitled to a rate Meisner asserted was charged by other fiduciaries. The court also denied as unreasonable Meisner's charge to the Estate of \$12,600 in "compensation for attending to [Gardner]" during her last illness.

"given [him] due process under the law" because it had allegedly failed to give him "proper Notice of the Hearings" and the "required legal warnings." Meisner also argued the March 2 order should be dismissed because it was based on insufficient evidence.

¶9 At a hearing held July 1, 2010, the court denied Meisner's motions to dismiss and ordered him to provide a certified check to Wells Fargo's counsel by July 7, 2010. The court informed Meisner his objections to Wells Fargo's claim were "simply too late" and rejected his assertion he had not realized that "failing to act within that time period . . . would create an instant liability" for the estate, explaining: "When you were provided the order to personal representative, it outlined your responsibilities in terms of addressing claims that were presented to you." Consistent with its oral pronouncements, the superior court entered a "signed minute entry as its final order."³

¶10 Meisner paid the claim and timely appealed. We have jurisdiction pursuant to A.R.S. § 12-2101(J) (2003).

³In a letter titled "Counterclaim against the petitioner (debt collector)," Meisner requested an order directing Wells Fargo's counsel pay him \$1000 for purported violations of "the Fair Debt Collection Practices Act." Because Meisner made no argument regarding the "counterclaim" on appeal, any argument relating to it is waived and need not be considered. *State v. Carver*, 160 Ariz. 167, 175, 771 P.2d 1382, 1390 (1989) (failure to argue claim in opening brief "usually constitutes abandonment and waiver of that claim").

DISCUSSION

¶11 Meisner first argues Wells Fargo's claim was time-barred. We disagree.

¶12 We begin with a review of the time limits Arizona law imposes on an estate's personal representative when addressing claims filed by the estate's creditors. "The purpose of the statutory claims procedure is to facilitate and expedite the speedy and orderly administration of estates." *In re Estate of Levine*, 145 Ariz. 185, 188, 700 P.2d 883, 886 (App. 1985) (citing *In re Estate of Mast*, 21 Ariz. App. 21, 515 P.2d 48 (1973)). "Thus, all claims against the estate must be presented in the time and manner provided by statute." *Id.*

¶13 Under A.R.S. § 14-3801 (2005), a creditor must present a claim either within four months after the personal representative first publishes a notice to present claims or within 60 days after mailing or other delivery of notice of the personal representative's appointment, whichever is later. Then, pursuant to A.R.S. § 14-3806(A), a personal representative may notify a creditor if he or she decides to disallow the claim. That statute further provides that "[f]ailure 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).

¶14 Here, Meisner stated at the first hearing that he had notified each creditor by telephone "shortly after [his] mother's death, December 30th," and sent them copies of the death certificate and letter of personal representative "as quick as [he] could" after he obtained the death certificate "in February."⁴ Accordingly, Wells Fargo timely filed its claim well within the 60-day period established by A.R.S. § 14-3801(B). Further, the record reflects Meisner did not notify Wells Fargo that he had or intended to disallow Wells Fargo's claim within the 60-day period specified in A.R.S. § 14-3806(A). Indeed, during the January 6, 2010 hearing, Meisner admitted he had not informed Wells Fargo that he was disputing its claim. Accordingly, because Wells Fargo timely presented its claim to Meisner and he failed to disallow it within the statutory time frame, the claim was not time-barred.

¶15 Next, Meisner advances several arguments in support of his assertion the probate court "deprived [him] of property without due process of the law." Specifically, he contends the court failed to follow local practice rules and statutory

⁴We reject Meisner's argument Wells Fargo did not timely "commence a proceeding against [Meisner]." Wells Fargo did not, and was not required to, "commence a proceeding" in order to pursue its creditor's claim against the Estate; Wells Fargo was entitled to follow the statutory-claims procedure and did so.

procedures and allowed Wells Fargo to violate various notice and service requirements.

¶16 We need not address the specifics of these arguments because Meisner cannot show how any purported error deprived him of due process. As he correctly acknowledges, “[d]ue process requires notice and an opportunity to be heard at a meaningful time and in a meaningful manner.” *Huck v. Haralambie*, 122 Ariz. 63, 65, 593 P.2d 286, 288 (1979). The record reflects Meisner had notice of the hearings to address Wells Fargo’s position regarding its claim, appeared at the hearings, and argued the Estate should not have to pay Wells Fargo’s claim. The record thus demonstrates Meisner received notice and an opportunity, which he exercised, to be heard. On this record, the court did not deprive him of any property without due process.⁵

¶17 Finally, Meisner argues we should reverse the probate court’s order because Wells Fargo “refused discovery and failed to disclose evidence pursuant to *Rule 26.1* of the *A.R.S. Rule of Civil Procedure*.” Meisner also argues Wells Fargo “refused to

⁵We also reject Meisner’s argument the probate court lacked subject matter jurisdiction over this matter. Ariz. Const. art. 6, § 14, cl. 8 (“The superior court shall have original jurisdiction of . . . [m]atters of probate.”).

disclose fraudulent information”⁶ and points to exhibits he contends were improperly “permitted at the hearings.”

¶18 We see no basis to reverse based on any discovery and disclosure refusals. Meisner demanded discovery and raised these objections well after Wells Fargo’s claim had been allowed by operation of law. See *supra* ¶ 14. To quote the probate court, Meisner’s discovery and evidentiary objections -- first raised in the motions to dismiss dated May 27 and 28, 2010 -- were “simply too late.” We thus agree with Wells Fargo that because its claim had been allowed by operation of law, the Estate was not entitled to discovery and its objections to Wells Fargo’s claim were without merit. Thus, the probate court did not abuse its discretion in rejecting Meisner’s discovery demands and objections and denying his motions to dismiss. See *State v. Bernini*, 220 Ariz. 536, 538, ¶ 7, 207 P.3d 789, 791 (App. 2009) (“We will not disturb a trial court’s ruling on discovery and disclosure matters absent an abuse of discretion”); *Keenen v. Biles*, 199 Ariz. 266, 267, ¶ 4, 17 P.3d 111, 112 (App. 2001) (“We review a denial of a motion to dismiss for abuse of discretion.”).

⁶The record contains no support for Meisner’s argument the probate court “made a judgment knowing there were fraudulent transactions on the account.”

