ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
WENDELL L. GRIFFEN, JUDGE

DIVISION III

CA07-998

May 7, 2008

JANICE MAYO
APPELLANT

AN APPEAL FROM ARKANSAS COUNTY CIRCUIT COURT
[PR2005-91]

V.

HON. DAVID G. HENRY, JUDGE

The Estate of SCIPIO WOFFORD
APPELLEE

AFFIRMED

Janice Mayo appeals from the circuit court's determination that she is not an heir to the estate of Scipio Wofford, whom she alleges is her biological father. She asserts that the estate should be estopped from arguing that she failed to file a timely claim because Wofford's heirs deceived her into believing they would not challenge her status as an heir until after the 180-day deadline for filing a claim against the estate pursuant to Ark. Code Ann. § 28-9-209(d) (Repl. 2004) expired.[1] She also raises two constitutional arguments: 1) that the circuit

[1]Section 28-9-209(d) provides:

> An illegitimate child or his or her descendants may inherit real or personal property in the same manner as a legitimate child from the child's mother or her blood kindred. The child may inherit real or personal property from his or her father or from his or her father's blood kindred, provided that at least one (1) of the following conditions is satisfied and an action is commenced or claim asserted against the estate of the father in a court of competent jurisdiction within one hundred eighty (180) days of the death of the father:
>
> (1) A court of competent jurisdiction has established the paternity of the child or has determined the legitimacy of the child pursuant to subsection (a), (b), or (c) of this section;

court erred because the 180-day deadline under § 28-9-209(d) violates the equal protection clauses of the federal Constitution and the Arkansas Constitution; and 2) that she was denied due process because she did not receive proper notice of the petition to determine heirship, as required by Ark. Code Ann. § 28-40-111(a)(4)(A)(Repl. 2004).

We rejected a similar estoppel argument in *Rasberry v. Ivory et al.*, 67 Ark. App. 227, 998 S.W.2d 431 (1999). Further, appellant's constitutional arguments were not adequately raised below to preserve them for appellate review. Accordingly, we affirm the circuit court's determination that appellant is not an heir to Wofford's estate but do not reach the merits of her constitutional arguments.

I. Facts

Appellant purports to be a daughter born out of wedlock to Scipio Wofford, who died on August 17, 2005. Appellee is Wofford's estate; the co-administrators of the estate are Annette Bufford and Ray Wofford, children of the deceased. Appellant attended Wofford's funeral and was listed as Wofford's child in his obituary. She maintains that "she had always been acknowledged as the child of the deceased and fully expected to continue to do so" and that "there was little question of [her] identity until the proceedings" in this case.

---

(2) The man has made a written acknowledgment that he is the father of the child;

(3) The man's name appears with his written consent on the birth certificate as the father of the child;

(4) The mother and father intermarry prior to the birth of the child;

(5) The mother and putative father attempted to marry each other prior to the birth of the child by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid;

(6) The putative father is obligated to support the child under a written voluntary promise or by court order.

On February 13, 2007, the co-administrators of Wofford's estate filed a petition to determine heirship. The petition listed appellant as a person claiming an interest in the estate, but identified her as an "Alleged Daughter," and further alleged that appellant had not established paternity by any method prescribed under § 28-40-111(d)(1)-(6). Finally, the petition stated that no action had been commenced or claim asserted against the estate within 180 days of Wofford's death.

On March 7, 2007, appellant filed an entry of appearance and petition for inclusion as an heir, asserting that she was Wofford's natural child, born out of wedlock; that during Wofford's lifetime, he acknowledged in the presence of others that she was his daughter; and that, prior to the proceeding to determine heirship, Wofford's known heirs acknowledged appellant as their sister, visited extensively with her, and presented her to acquaintances as their sister. The estate responded that appellant's claims were barred by her failure to file a claim within 180 days of Wofford's death, as required by Ark. Code Ann. § 28-9-209(d).

At the hearing, the estate moved for a judgment on the pleadings, pursuant to appellant's failure to comply with § 28-9-209(d). Appellant argued that she had no notice within the 180-day period that the co-administrators of the estate intended to exclude her as an heir. She relied on the facts that she was included in Wofford's obituary as his child and received correspondence from family members acknowledging her as a sibling. She maintained that "she should not be held to the standard by letter of [§] 28-9-209" because she acted as soon as she received notice that the heirs intended to exclude her.

The estate countered that the *Rasberry* court rejected a similar estoppel argument and denied the out-of-wedlock child's claim because he did not file a claim against the estate within 180 days of the decent's death. Appellant acknowledged the *Rasberry* ruling, and also acknowledged that she was requesting the circuit court to "make new law."

Based on *Rasberry* and the "plain language" of § 28-9-209(d), the trial court granted

the estate's motion for judgment on the pleadings, and entered a written order denying appellant's request to be named as an heir. The court found that all persons legally entitled to notice had been properly notified of the heirship petition. It relied on the fact that appellant admitted that she knew that Wofford died on August 17, 2005, and attended his funeral, yet did not file her petition to be included as an heir until March 5, 2007. Thus, the court found that appellant's request was barred as untimely filed for failure to comply with § 28-9-209(d).

Appellant subsequently filed a motion for reconsideration, again relying on her estoppel argument. The trial court did not rule on this motion, so it was deemed denied. *See* Ark. R. App. P. – Civ. 4(b)(1). Appellant appeals from the original order denying her petition to be named as an heir and from the deemed denial of her motion for reconsideration.

II. Estoppel

Appellant asserts that, despite the time-bar in § 28-9-209(d), she should be permitted to assert her claim because her siblings induced her into believing that she would be treated as an heir during the relevant 180-day period. She maintains that Wofford acknowledged her as his daughter in front of others, that her siblings introduced her as their sister to acquaintances, and that she was named as his daughter in his obituary.

Appellant's estoppel argument is to no avail because we previously rejected a similar argument in *Rasberry, supra*. In *Rasberry,* the out-of-wedlock son claimed that the estate was estopped from relying on the deadline under § 28-9-209(d) because he had always been acknowledged to be the decedent's son, he was named as his son in the obituary, and was described as an heir in a deed executed by the decedent's wife and daughter in which they relinquished any claim to the homestead.

The *Rasberry* court did not squarely determine that estoppel would serve to circumvent

the requirement of asserting a claim within the requisite 180-day period. Rather, even assuming that estoppel did apply, it determined that the 180-day period expired before the son was described as an heir in the deed, and thus, he could not have relied on the description to his detriment. Further, it stated that *estoppel would not arise due to the mere fact that the son had been acknowledged as the decedent's son* because nothing in the record indicated that his siblings ever led him to believe that he was *not* born out of wedlock or that he could inherit from his father without filing a claim within the statutory period. In other words, the intent by a decedent or by a sibling to recognize an out-of-wedlock child as a rightful heir does not change the statutory requirements imposed on an out-of-wedlock child seeking to be declared a rightful heir.

The *Rasberry* court drew a distinction between *lineage* and *legitimacy*. The bottom line after *Rasberry* is, even if a decedent or siblings acknowledge an out-of-wedlock child's *lineage*, the estate is not thereafter estopped from relying on § 28-9-209(d), and the out-of-wedlock child must nonetheless file a claim within 180 days of the decedent's death and must prove paternity by one of the methods indicated in that statute.

Appellant essentially urges that we overturn our prior precedent in *Rasberry*, yet presents no compelling arguments to warrant such action. As such, we follow *Rasberry* in holding that Wofford's estate is not estopped from asserting that appellant's claim is time-barred.

III. Constitutional Arguments

We also hold that none of appellant's three constitutional arguments are preserved for appellate review. First, she essentially challenges the constitutionality of the disparate treatment in imposing a 180-day deadline on an out-of-wedlock child for filing a claim against an estate when that deadline is not imposed on known heirs. She argues that the 180-day limitation for an out-of-wedlock heir to file a claim against the estate of her father under

Ark. Code Ann. § 28-9-209(d) violates the equal protection clause of the Fourteenth Amendment of the federal Constitution and the equal protection clause of the Arkansas Constitution, found at Article 2, § 3.

However, appellant did not specifically assert an equal-protection challenge below. Her constitutional challenge was raised below as follows:

> [W]e feel like the result in the *Rasberry* case is unfair and inequitable. And ... if it were examined by the highest court that it would be found to be unconstitutional. We, therefore, believe that the Court ought to – even in the face of the *Rasberry* decision, deny the – estate's petition, as it were, to dismiss [appellant's] claim. And the Court ought to proceed with a hearing to allow her to establish the paternity. That's our position, Your Honor, that we feel like it's unconstitutional and inequitable.

Thus, although appellant cursorily challenged § 28-9-209(d) as unconstitutional, she did so in the context of the *Rasberry* case, which was an estoppel case. The *Rasberry* court did not address whether § 28-9-209(d) violated the Fourteenth Amendment of the federal Constitution or Article 2, § 3 of the Arkansas Constitution. Our law is well settled that issues raised for the first time on appeal, even constitutional ones, will not be considered. *See Tipton v. Aaron*, 87 Ark. App. 1, 185 S.W.3d 142 (2004).[2]

Appellant's final argument, a due-process argument, is that the trial court erred in granting the estate's judgment on the pleadings because she had no notice of the petition to determine heirship, as required by Ark. Code Ann. § 28-40-111(a)(4)(A) (Repl. 2004).[3]

---

[2]We note that a nearly-identical equal-protection claim that appellant raises has been rejected by the Arkansas Supreme Court. *See Boatman v. Dawkins*, 294 Ark. 421, 743 S.W.2d 800 (1988). We further note that classifications based on illegitimacy are permitted if they are substantially related to permissible State interests, *see Lalli v. Lalli*, 439 U.S. 259 (1978), and that the State has a substantial interest in the orderly settlement of estates and the dependability of titles to property passing under intestacy laws, *see Trimble v. Gordon*, 430 U.S. 762 (1977). Accordingly, the State may impose restrictions on the time and manner in which an out-of-wedlock child may bring a claim against an estate and is not required to permit a child born out of wedlock the same amount of time to bring a claim as it does a legitimate child.

[3]Section 28-40-111(a)(4)(A) provides that within one month after the first publication of the notice of the appointment of the personal representative, a copy of the notice shall be

However, this argument, too, is barred because appellant never claimed lack of notice due to the estate's failure to comply with § 28-40-111(a)(4)(A). *See, e.g., Boatman v. Dawkins*, 294 Ark. 421, 743 S.W.2d 800 (1988) (declining to address a lack-of-notice argument under § 28-40-111 where the party merely stated that she should have been listed and given notice but did not secure a ruling on the notice issue).

Here, appellant raised no § 28-40-111(a)(4)(A) argument below, but argued only that she lacked notice that her siblings intended to exclude her due to their behavior in seemingly accepting her as a sibling. Hence, because appellant failed to raise below the same constitutional arguments that she now raises, we decline to reach the merits of those arguments.

Affirmed.

GLADWIN and BAKER, JJ., agree.

---

served upon each heir and devisee whose name and address are known to or reasonably ascertainable by the personal representative.