



**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

KIM E. AYVAZIAN
MASTER IN CHANCERY

CHANCERY COURTHOUSE
34 The Circle
GEORGETOWN, DELAWARE 19947
AND
NEW CASTLE COUNTY COURTHOUSE
500 NORTH KING STREET, SUITE 11400
WILMINGTON, DELAWARE 19980-3734

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Robert C. McDonald, Esq.
Silverman, McDonald & Friedman
1010 North Bancroft Parkway, Suite 22
Wilmington, DE 19805

Jason C. Powell
Ferry Joseph & Pearce, P.A.
824 North Market Street Suite 1000
PO Box 1351
Wilmington, DE 19899

RE: IMO Estate of Ren Xiong Zheng, C.A. NO. 6444-MA

Dear Counsel:

Pending before me is Petitioner Wei Cou Jin's Motion to Set Aside Order to Dismiss, which was filed on January 30, 2012. Respondent Yan Shao, Administratrix of the Estate of Ren Xiong Zheng (hereinafter "decedent"), filed a Response in Opposition to Petitioner's Motion to Set Aside Order to Dismiss on February 9, 2012, arguing that Petitioner had failed to establish any reason that would justify this Court granting her relief from judgment, i.e., excusable neglect, extreme hardship or manifest injustice. *See* Chancery Court Rule 60(b). For the following reasons, I decline to set aside the Order to Dismiss that was entered on January 27, 2012.

This action was initiated on May 4, 2011, when Petitioner filed a Petition for Elective Share. Petitioner, who resides in the Peoples' Republic of China, alleges that she is the surviving spouse of decedent, who died intestate on June 30, 2008. Alias summons was served on the

Register of Wills on December 19, 2011. On January 6, 2012, Respondent moved to dismiss the petition for elective share as untimely under 12 Del. C. § 906. In the absence of any response or objection to the motion to dismiss, on January 27, 2012, I granted the order dismissing the action without prejudice.

On January 30, 2012, Petitioner filed her Opposition to Respondent's Motion to Dismiss contemporaneously with the Motion to Set Aside Order to Dismiss. In her belated response to the Motion to Dismiss, Petitioner alleges that she was not informed of decedent's death for several weeks, and that she was not timely made aware of the July 22, 2008 appointment of Respondent as personal representative of decedent's estate. Once Petitioner learned of the appointment, she allegedly filed a "Petition for the Appointment of Personal Representative and Petition for Elective Share" on February 27, 2009, which was not accepted by the Court. Thereafter, on April 8, 2009, Petitioner filed a Petition for Elective Share that was accepted as C.A. No. 4495-MA. The parties agreed to a dismissal without prejudice of that action on January 21, 2010, and it was dismissed on January 22, 2010. On April 28, 2010, Petitioner filed a second Petition for Elective Share (C.A. No. 5439-MA), which the parties again agreed to dismiss without prejudice, and the second petition was dismissed on October 18, 2010. According to Petitioner, the first stipulation of dismissal was based upon counsel's belief that the parties had reached a settlement, and the second stipulation of dismissal was to allow parallel litigation to proceed in Pennsylvania. Unable to resolve the Pennsylvania litigation, Petitioner filed the instant action on May 4, 2011.

Petitioner has provided no explanation as to why she failed to respond to the motion to dismiss in a timely fashion. Furthermore, no manifest justice would occur if I do not set aside the order of dismissal. None of the allegations contained in Petitioner's belated response to the motion to dismiss warrant setting aside the order of dismissal. While the elective share statute does not bar a wife from receiving her elective share

simply because she was living apart from her husband at the time of his death, *see Estate of Hughes*, 1982 WL 149630 (Del. Ch. April 13, 1982), it does set forth certain requirements which must be satisfied before the surviving spouse is entitled to receive an elective share. Section 906(a) of Title 12 clearly states:

The surviving spouse may elect to take an elective share in the elective estate by filing in the Court of Chancery and mailing or delivering to the personal representative a petition for the elective share within 6 months after the grant of letters testamentary or of administration. The Court, upon petition, may extend the time for election as it sees fit for cause shown by the surviving spouse before the time for election has expired.

Decedent died on June 30, 2008. Respondent, who also claims to be decedent's surviving spouse, was granted letters of administration by the Register of Wills of New Castled County on July 22, 2008. The six-month period for filing a petition for an elective share expired on or about October 22, 2008. No petition for an extension of time for election was ever filed during the sixth-month period. The first petition for an elective share was filed on April 8, 2009,¹ more than five months after the limitations period had expired, and therefore was untimely. The current petition was filed nearly two years after the limitations period had expired and is also untimely. Accordingly, the Motion to Set Aside Order to Dismiss is denied.

Very truly yours,

/s/ Kim E. Ayvazian

Kim E. Ayvazian
Master in Chancery

KEA/kekz

¹ Even if Petitioner had perfected her filing on February 27, 2009, her petition for an elective share still would have been untimely.