

Third District Court of Appeal

State of Florida

Opinion filed October 2, 2019.
Not final until disposition of timely filed motion for rehearing.

No. 3D18-1425
Lower Tribunal No. 17-1997

Jorge L. Cantero,
Appellant,

vs.

In Re: Estate of: Jane Althea Caswell,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Yvonne Colodny,
Judge.

Law Offices of Robin Bresky, Jeremy Dicker and Robin Bresky (Boca
Raton), for appellant.

Law Office of Hauser and Hauser, PLLC, Marc Hauser and David L. Hauser;
Fischer & Feldman, and Martin Feldman (Hollywood), for appellee.

Before LINDSEY, HENDON and GORDO, JJ.

GORDO, J.

Appellant, Jorge Cantero, appeals the trial court's order granting the motion to strike his claim against the Estate of Jane Althea Caswell as untimely. Mr. Cantero argues the trial court abused its discretion in finding he was not a reasonably ascertainable creditor, despite the personal representative and personal representative's attorney having actual knowledge of his claims. Based upon the record below, we find no abuse of discretion in the trial court's order and affirm.

The relevant facts set forth in the trial court's order are as follows:

Jane Althea Caswell ("Decedent") died on April 16, 2017, owning property located at 212 Golden Beach Drive, Golden Beach, Florida. Decedent was not married at the time of her death, and did not have children. In her will, Decedent appointed one of her four brothers, Errol W. Caswell, as Personal Representative ("PR").

Pursuant to Florida Statute § 733.2121, on June 7, 2017, PR properly published the Notice of Creditors. The creditors period expired on September 7, 2017. No creditor claims were filed in the Estate. PR filed a Verified Statement as to creditors on September 25, 2017, which averred no creditors. By order dated, August 28, 2017, the Court ordered the Golden Beach property to be sold.

On January 5, 2018, nearly four months after the expiration of the creditor claim period, Mr. Cantero filed a Statement of Claim/Correspondence in the trial court asserting he was entitled to all of the proceeds from the sale of Decedent's Golden Beach property. Mr. Cantero objected to the disbursement of proceeds from the sale of the Estate and later filed a Notice of Filing Civil Action against the personal representative.

As Mr. Cantero asserted that he was a reasonably ascertainable creditor entitled to personal service of Notice to Creditors and was not time-barred from filing a claim against the Estate, the trial court held an evidentiary hearing specifically on this issue.

During this hearing, the personal representative testified that he diligently searched the property and did not uncover any paperwork regarding Mr. Cantero's alleged interest in the property. The personal representative testified that he had only two conversations with Mr. Cantero, in which Mr. Cantero never brought up having any interest in the Golden Beach property. The first time they spoke, Mr. Cantero called to give condolences. After a few minutes, Mr. Cantero mentioned that he may have left some car parts in the garage. The personal representative told him the house was up for sale and he was welcome to go by the and check the garage. In the second call, Mr. Cantero advised he went to the house to go in the garage, but it was locked. The personal representative told him to contact his attorney, David Hauser, who had been handling the property. Mr. Hauser testified that Mr. Cantero called him once. The call lasted less than a minute. Mr. Cantero only mentioned having left some car parts in the garage over 20 years ago. Mr. Hauser advised him the family had cleaned out the garage in order to sell the home and did not find any car parts. Mr. Cantero never brought up any kind of ownership interest in the Golden

Beach property when he spoke to Mr. Hauser, nor did he indicate he wished to file a claim regarding the car parts.

Mr. Cantero testified that he was in a romantic relationship with Decedent when they decided to purchase the Golden Beach property in 1992. Mr. Cantero resided with Decedent in the Golden Beach property for nearly five years until they broke up. Mr. Cantero claimed he paid all the monies to purchase the property and continued to pay the mortgage premiums while he resided there. Mr. Cantero claimed he paid the down payment for the home and that he had a verbal agreement with Decedent that upon her death, the property would be transferred to him. However, Mr. Cantero admitted no documents existed to verify his assertions and Decedent would not have any documents in her possession to support his claim to the property.

The evidence adduced at the hearing was that the Golden Beach property was purchased in Decedent's name alone and for more than 20 years, Decedent herself lived at the property and made all necessary payments. Mr. Cantero even acknowledged that he moved out in 1997 and took no steps in the following 20 years to document his alleged interest in the property. Mr. Cantero presented no evidence that he paid the down payment or entered into a verbal agreement with Decedent. Thus, the trial court specifically found Mr. Cantero's testimony was not credible.

The trial court determined the personal representative complied with the requirements of section 733.2121, Florida Statutes, by properly publishing Notice to Creditors and making a diligent search to determine creditors. The court concluded Mr. Cantero's claim was not reasonably ascertainable and struck the claim as untimely. The trial court later held a limited hearing on Mr. Cantero's motion for rehearing and denied the motion.

Mr. Cantero argues the trial court abused its discretion in concluding he was not a reasonably ascertainable creditor because the personal representative and Mr. Hauser not only had actual knowledge of his interest in the Golden Beach property, but also of his claim to the car parts.

The trial court's striking of a claim against an estate as untimely is subject to an abuse of discretion standard. Soriano v. Estate of Manes, 177 So. 3d 677, 679 (Fla. 3d DCA 2015).

Mr. Cantero asserts that his two telephone calls to the personal representative sufficed to place the personal representative on notice of Mr. Cantero's interest in the Golden Beach property because he asked: "what was going on with the house?" and was referred to Mr. Hauser to inquire about entry into the house. However, Mr. Cantero presented no evidence that either the personal representative or his attorney knew that Mr. Cantero was claiming he ever paid for the home or had a verbal agreement with Decedent about the home. Mr. Cantero's basic inquiry was not

enough to trigger the personal representative to serve Mr. Cantero with Notice to Creditors. The present case is distinguishable from the cases relied upon by Mr. Cantero. See Simpson v. Estate of Simpson, 922 So. 2d 1027 (Fla. 5th DCA 2006) (finding the personal representative had actual knowledge of creditor's claim where testimony established she made statements about his stock interest); In re Estate of Ortolano, 766 So. 2d 330 (Fla. 4th DCA 2000) (finding appellant was a reasonably ascertainable creditor where it was undisputed that the personal representative knew of pending litigation against the deceased). Additionally, Decedent had a 19-page will, which did not mention Mr. Cantero or his purported interest in the house.

Moreover, the evidence did not establish that Mr. Cantero's attempt to retrieve the car parts he had left in the garage more than 20 years prior would rise to a claim against the Estate. At most, Mr. Cantero remained a "conjectural" creditor. See Tulsa Prof'l Collection Servs., Inc. v. Pope, 485 U.S. 478, 490 (1988).

After weighing the evidence, the trial court found that Mr. Cantero did not establish that the personal representative or his attorney were on actual notice of his claims. In its detailed order, the trial court struck Mr. Cantero's claim because, as a mere conjectural creditor, he was not entitled to personal service of Notice to Creditors and his claim was barred by section 733.702(1), Florida Statutes. Upon the record before us, we find no abuse of discretion.

Affirmed.