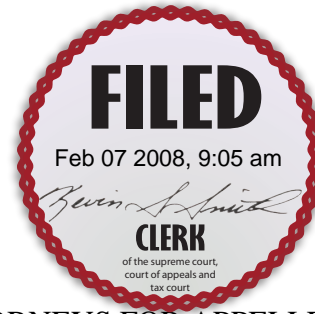


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

RYAN K. LEDBETTER
The Nice Law Firm
Nice & Ledbetter, LLP
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

ANNE HENSLEY POINDEXTER
AMY E. HIGDON
Campbell Kyle Proffitt, LLP
Carmel, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

JAY M. YOON,)
)
Appellant,)
)
vs.) No. 29A02-0706-CV-530
)
ESTATE OF SUNNY NAM EVERSOLL,)
JAY M. YOON, JR., Personal Representative,)
)
Appellee.)

APPEAL FROM THE HAMILTON SUPERIOR COURT
The Honorable William J. Hughes, Judge
Cause No. 29D03-0604-EU-65

February 7, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Jay M. Yoon (“Yoon”) appeals the trial court’s dismissal of his claim against the estate of his former wife, Sunny Nam Eversoll (“Eversoll”). We affirm.

Issue

Yoon raises one issue, which we re-state as: whether the trial court erred in dismissing his claim.

Facts and Procedural History

Yoon and Eversoll married and had three children, Jay M. Yoon, Jr. (“Yoon, Jr.”) and two daughters. In 2000, they divorced and entered into a Settlement Agreement. Eversoll died on March 16, 2006. On February 21, 2007, Yoon filed a claim against Eversoll’s estate based upon the Settlement Agreement. On appeal, Yoon acknowledges that “Appellant’s claim was filed in the estate administration proceedings eleven months and five days after the death of Sunny Nam Eversoll.” Appellant’s Brief at 1.

Yoon, Jr., as personal representative of the estate, moved to dismiss his father’s claim, arguing that it was filed later than allowed by statute. The trial court granted Yoon, Jr.’s motion to dismiss. Yoon now appeals.

Discussion and Decision

The relevant facts are not disputed. Yoon raises a question of law. Accordingly, our review is de novo. DePuy, Inc. v. Farmer, 847 N.E.2d 160, 164 (Ind. 2006).

In filing his claim, Yoon sought to enforce the Settlement Agreement. Indiana Code Section 29-1-14-1 restricts the filing of “all claims against a decedent’s estate, . . . whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract

or otherwise.” Ind. Code § 29-1-14-1(a) (emphasis added). Such claims are “barred if not filed within nine (9) months after the death of the decedent.” I.C. § 29-1-14-1(d). As noted above, Yoon has acknowledged on appeal that he did not file his claim within nine months of Eversoll’s death. Therefore, his claim is barred.

Yoon raises two arguments in his defense. Primarily, he asserts that he did not receive notice within nine months of Eversoll’s death. On that basis, he contends that the trial court deprived him of his due process rights by dismissing his claim. Our Supreme Court has held to the contrary.

[B]ecause the one-year provision is self-executing, the federal Due Process Clause is not implicated. See Tulsa Prof’l Collection Serv., Inc. v. Pope, 485 U.S. 478, 486-87 (1988) (“The State has no role to play beyond enactment of the limitations period. While this enactment obviously is state action, the State’s limited involvement in the running of the time period generally falls short of constituting the type of state action required to implicate the protections of the Due Process Clause.”). Therefore, actual notice is not required prior to the termination of a claim.

Estate of Decker v. Farm Credit Serv. of Mid-Am., ACA, 684 N.E.2d 1137, 1139-40 (Ind. 1997). In so holding, the Decker Court emphasized that the limitation applied “whether the creditor has received proper notice, improper notice, or no notice at all.” Id. at 1138.

Also, Yoon uses two sentences to argue that his claim is secured and that Indiana Code Section 29-1-14-1(e) therefore preserves his claim. However, his claim arises simply from a Settlement Agreement and is not secured. Regardless, Yoon misreads subsection (e). It states, “[n]othing in this section shall affect or prevent any action or proceeding to enforce any mortgage, pledge, or other lien upon property of the estate.” I.C. § 29-1-14-1(e). Thus, subsection (e) provides merely that the omission to file a timely claim in the estate

proceeding does not prevent the filing of a separate action to enforce a mortgage or other lien.

Conclusion

The trial court did not err in dismissing Yoon's claim.

Affirmed.

DARDEN, J., and CRONE, J., concur.