IN THE COURT OF APPEALS OF IOWA

No. 6-922 / 06-0273
Filed January 31, 2007

**IN THE MATTER OF THE ESTATE OF
EUNICE R. SCRIMSHER, Deceased,**

IOWA DEPARTMENT OF HUMAN SERVICES,
Appellant,

vs.

**ROBERT V. SCRIMSHER, Executor of the
ESTATE OF EUNICE R. SCRIMSHER, Deceased,**
Appellee.

Appeal from the Iowa District Court for Fremont County, J. C. Irvin, Judge.

The Department of Human Services appeals from the district court's denial of its application to reopen the estate of Eunice Scrimsher. **REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.**

Thomas J. Miller, Attorney General, and Barbara E.B. Galloway, Assistant Attorney General, for appellant.

Richard B. Maher, Omaha, for appellee.

Heard by Mahan, P.J., and Vaitheswaran and Eisenhauer, JJ.

EISENHAUER, J.

Is written notice of a probate proceeding required to be delivered to the Department of Human Services (the Department) before the statute of limitations on the recovery of medical assistance payments begins? That is the question of first impression presented to us in this case. We conclude written notice is required and therefore reverse and remand.

I. Background Facts and Proceedings. Robert V. Scrimsher predeceased his wife Eunice on May 17, 1999. He had received Title XIX medical assistance (Medicaid) in the amount of $20,671.23. Following his death, Eunice received a letter from the Department requesting repayment of his medical assistance debt. She sought and received a deferment of this debt because its repayment would cause her financial hardship. The debt was deferred and became due upon Eunice's death on October 22, 2002.

Eunice's son, Robert A. Scrimsher, was appointed executor of her estate. He did not send notice of probate to the Department. Probate notice was published in the local newspaper two consecutive weeks, with the second publication date of November 14, 2002. Eunice's home was sold, the estate's bills and expenses were paid, and the remaining estate was distributed equally to each of Eunice's five children in accordance with her will. The district court filed an order closing the estate and discharging the executor on July 24, 2003.

On April 12, 2004, Health Management Systems, Inc. (HMS), an agent for the Department, filed a petition on the Department's behalf to reopen the estate. It sought to recover from the estate or impose liability against the executor for distributing assets of the estate without paying the medical assistance debt. On

May 3, 2004, the district court ordered the estate reopened and Robert reappointed executor. HMS filed a claim in probate on May 27, 2004.

Trial was held on March 29, 2005. On July 5, 2005, the district court denied the Department's claim and closed the estate. The court found the Department's claim untimely as it was filed fifteen months after the date of second publication of the notice to creditors. The court concluded service of notice to the Department by ordinary mail was not required because the Department was not a known or reasonably ascertainable creditor. The Department appeals.

II. Scope and Standard of Review. This claim was tried as a law action. Iowa Code § 633.33 (2003). Accordingly, our review is for correction of errors at law. *Solbrack v. Fosselman*, 204 N.W.2d 891, 892 (Iowa 1973). We are bound by the court's findings of fact if supported by substantial evidence. Iowa R. App. P 6.14(6)(*a*).

III. Analysis. Iowa Code section 633.410 provides the statute of limitations on filing claims against a decedent's estate. It states in pertinent part:

> 1. All claims against a decedent's estate, other than charges, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract or otherwise, are forever barred against the estate, the personal representative, and the distributees of the estate, unless filed with the clerk within the later to occur of four months after the date of the second publication of the notice to creditors or, as to each claimant whose identity is reasonably ascertainable, one month after service of notice by ordinary mail to the claimant's last known address.
>
> 2. Notwithstanding subsection 1, claims for debts created under section 249A.5, subsection 2, relating to the recovery of medical assistance payments shall be barred under this section unless filed with the clerk within the later to occur of fifteen months after the date of the second publication of the notice to creditors, or two months after service of notice by ordinary mail, on the form prescribed in section 633.231 for intestate estates or on the form

> prescribed in section 633.304A for testate estates, to the entity designated by the department of human services to receive notice.

Iowa Code § 633.410.

The Department concedes its petition was filed more than fifteen months after the date of second publication of the notice to creditors. However, it contends the statute of limitations had not yet expired because two months had not passed since notice by ordinary mail. Because notice by ordinary mail had not been sent, it would be "the later to occur" for purposes of determining the statute of limitations. The district court rejected this argument, finding that notice by ordinary mail need only be sent to reasonably ascertainable creditors.

This is a case involving statutory interpretation. The goal of statutory interpretation is to discover the true intention of the legislature. *Gardin v. Long Beach Mortgage Co.*, 661 N.W.2d 193, 197 (Iowa 2003). Our first step in ascertaining the true intention of the legislature is to look to the statute's language. *Id.* We do not search beyond the express terms of a statute when that statute is plain and its meaning is clear. *State v. Snyder,* 634 N.W.2d 613, 615 (Iowa 2001). Moreover, we must read a statute as a whole and give it "its plain and obvious meaning, a sensible and logical construction." *Hamilton v. City of Urbandale,* 291 N.W.2d 15, 17 (Iowa 1980). Additionally, we do not construe a statute in such a way that would produce impractical or absurd results. *United Fire & Cas. Co. v. Acker,* 541 N.W.2d 517, 519 (Iowa 1995).

Applying the foregoing rules, we conclude the statute of limitation on the Department's claim had not expired because two months had not passed since the service of notice by ordinary mail. It is true that due process requires mailed notice of probate proceedings be given to all known or reasonably ascertainable

creditors. *Tulsa Prof'l Collection Servs., Inc. v. Pope,* 485 U.S. 478, 489, 108 S.Ct. 1340, 1347, 99 L.Ed.2d 565, 579 (1988); *In re Estate of Herron*, 561 N.W.2d 30, 32 (Iowa 1997). However, we cannot construe this requirement to mean that mailed notice of probate proceedings must be given *only* to known or reasonably ascertainable creditors. While section 633.410(1) limits the requirement of service of notice by ordinary mail to "each claimant whose identity is reasonably ascertainable," section 633.410(2) does not use this term. The legislature's failure to use this term in conjunction with the recovery of medical assistance payments cannot be construed as accidental or inconsequential. The plain terms of the statute set forth the statute of limitations for recovery of medical assistance payments with deadlines following both publication of notice and service of notice by ordinary mail, with the statute of limitations expiring following "the later to occur." The statute requires both notice by publication and notice by service. Therefore, a prudent executor should provide written notice of probate to the Department even when a medical assistance debt is not known. The trial court was informed that the Department has for years advised lawyers in the IOWA BAR JOURNAL to send notice of probate to the Department or risk personal liability of the executor of estates where medical assistance payments have been made.

Because the statute of limitations had not expired when the Department filed its petition, we reverse and remand to the district court for further proceedings.

REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.

Vaitheswaran, J., dissents.

VAITHESWARAN, J. (dissenting)

I respectfully dissent.

First, I am not convinced the Department of Human Services preserved error on its present contention that "[t]he concept of a 'reasonably ascertainable creditor' does not apply to the construction of the section 633.410(2) statute of limitations." In the district court, the attorney for the agent of the Department argued as follows:

> Essentially, our position is that the executor must give notice to creditors. Beyond mere publication, if they are reasonably ascertainable and reasonably diligent efforts can be made to identify the creditors, and that's pursuant to the United States Supreme Court case, landmark case of Tulsa Collection Services versus Pulp from 1988. We believe that the Medicaid debts are reasonably ascertainable debts.

That position is inconsistent with the Department's present argument. I am not convinced the Department can change horses in midstream. *See Clark v. Estate of Rice ex. rel. Rice*, 653 N.W.2d 166, 172 (Iowa 2002) (stating appellant was foreclosed from changing theory on appeal); s*ee also Top of Iowa Co-op v. Sime Farms, Inc.*, 608 N.W.2d 454, 470 (Iowa 2000) (stating we may raise failure to present error on our own motion).

Second, I agree with the district court that neither section 633.410(2) nor any other statutory provision cited by the parties imposes a duty on every executor to mail a notice to the Department "whether the executor has any reason to believe the estate owed any debts to the department."

For these reasons, I would affirm the district court.