

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of the Estate of MARY
VICTORIA DEMETER, deceased.

WAYNE KOVACS, Personal Representative,

Petitioner–Appellee,

v

MARGARET HUSBAND,

Respondent–Appellant.

UNPUBLISHED

November 26, 1996

No. 186537

LC No. 94-539699 SE

Before: Wahls, P.J., and Fitzgerald and L.P. Borrello,* JJ.

PER CURIAM.

Respondent Margaret Husband appeals as of right from a May 23, 1995, order denying her claim and allowing the final accounting of the estate of Mary Victoria Demeter. The trial court disallowed Husband’s claim because Husband did not serve notice of her claim on petitioner Wayne Kovacs as required by MCL 700.712(1); MSA 27.5712(1). We reverse.

While she was living, Demeter was declared a legally incapacitated person. Husband was appointed as her guardian, and attorney Eric Braverman was appointed conservator. When Demeter passed away in October, 1994, Kovacs was appointed personal representative, and Braverman was his attorney. At the time of Demeter’s death, Husband had an outstanding claim for services rendered as Demeter’s guardian. On October 31, 1994, Braverman, on behalf of Kovacs, sent out a notice to known creditors, including Husband. On the same date, Braverman sent a letter to Husband listing the amount which the estate owed her for guardian services rendered. Although Husband filed a claim against Demeter’s estate on December 12, 1994, there is no proof of service of Husband’s claim on Kovacs in the probate court file. Accordingly, the probate court found that Husband’s claim was not filed within the statutory parameters and allowed the final accounting of Demeter’s estate.

* Circuit judge, sitting on the Court of Appeals by assignment.

Husband argues that the probate court erred by disallowing her claim. We agree that the trial court's ruling should be reversed.

Presentation of a claim is governed by MCL 700.712(1); MSA 27.5712(1), which states, in part, that a claimant with a claim against a decedent's estate can present the claim by:

Delivering or mailing to the personal representative or proposed personal representative a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed, or by filing a written statement of the claim, in the form prescribed by supreme court rule, with the court and delivering or mailing a copy of the statement to the personal representative or proposed personal representative. The claim shall be considered presented on receipt of the written statement of claim by the personal representative or the filing of the claim with the court, whichever occurs first. [MCL 700.712(1)(a); MSA 27.5712(1)(a).]

Presentation of a claim must be made within four months of the date of the publication of notice to creditors. MCL 700.710; MSA 27.5710. It is not disputed that Husband filed a form entitled "Statement and Proof of Claim" with the Probate Court on December 12, 1994. In addition, it is not disputed that Braverman checked the probate court file when he filed an accounting, and saw Husband's claim in the file. However, in denying Husband's claim, the trial court relied on the fact that there was no proof of service on Kovacs or Braverman within four months of the notice to known creditors, which was sent on October 31, 1994.

Assuming *arguendo* that the probate court was correct in its holding for purposes of MCR 700.712; 27.5712,¹ this Court has been granted powers of miscellaneous relief in addition to its general powers. In particular, MCR 7.216(B) provides:

When any nonjurisdictional act is required to be done within a designated time, the Court of Appeals may permit it to be done after expiration of the period on motion showing that there was good cause for delay or that it was not due to the culpable negligence of the party or attorney.

Under the unique facts of this case, we hold that good cause for delay has been shown. On October 31, 1994, the same day that Braverman sent Husband the notice to known creditors, he also sent her an accounting "for services rendered with reference to the [decedent's] estate." This accounting detailed the entire \$10,080 debt which is the basis of Husband's claim. In addition, Braverman acted as conservator of Demeter's estate prior to her death. Braverman admitted at the hearing on Husband's claim that, prior to Demeter's death, he was negotiating to get a home equity loan or reverse mortgage on Demeter's house so he could pay the debts owed to Husband. Because of the prior dealings between Braverman and Husband and the fact that Braverman acknowledged the debt of Demeter's estate to Husband on the same date that he sent a notice to known creditors, we exercise our discretion to extend the strict notice requirements of MCR 700.712; MSA 27.5712 to permit Husband a reasonable amount of time to properly present her claim. MCR 7.216(B); *Stokus v Walled Lake Bd*

of Ed, 101 Mich App 431, 435; 300 NW2d 586 (1980); see *Napier v Jacobs*, 429 Mich 222, 239; 414 NW2d 862 (1987) (Levin, J.).

Reversed. We do not retain jurisdiction.

/s/ Myron H. Wahls

/s/ E. Thomas Fitzgerald

/s/ Leopold P. Borrello

¹ We take no position as to whether cases holding that substantial compliance with notice provisions of a statute or municipal charter would apply to the presentation of a claim statute here. See, e.g., *Meredith v City of Melvindale*, 381 Mich 572, 579-580; 165 NW2d 7 (1969); *Stacey v Sankovich*, 19 Mich App 688, 697; 173 NW2d 225 (1969); *Jackson v Detroit Bd of Ed*, 18 Mich App 73, 80; 170 NW2d 489 (1969).