

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

In re: :
Estate of Linda K. Monroe, deceased, :
 : No. 12AP-874
 : (P.C. No. 554545)
(Elizabeth Green, Administrator :
 : (REGULAR CALENDAR)
Appellant). :

D E C I S I O N

Rendered on April 23, 2013

*Frase, Weir, Baker and McCullough Co., L.P.A., and
Robert E. Weir, for appellant.*

APPEAL from the Franklin County Court of Common Pleas,
Probate Division

McCORMAC, J.

{¶ 1} On May 17, 2008, Elizabeth Green was a passenger in a car driven by Linda K. Monroe. Linda K. Monroe died on August 23, 2009. No estate was probated or opened until July 24, 2012, when Elizabeth Green requested the Franklin County Court of Common Pleas, Probate Division to appoint her as administrator of the estate in order to recover compensation for injuries received as a result of the automobile accident in 2008. On July 26, 2012, Green filed a petition for allowance of a contingent claim with the probate court. Her application read as follows:

PETITION FOR ALLOWANCE OF CONTINGENT CLAIM

Administrator, Elizabeth Green, through counsel, states that on July 24, 2012, she was appointed by this Court as Administrator of the Estate of Linda K. Monroe, deceased; that she has a contingent personal injury claim against the

decedent and, upon her death, against the decedent's Estate; that no payments have been made on the contingent claim; that Medicaid has a \$59,065.29 subrogation claim; and, that there is due to her on her contingent claim from the Estate a sum in excess of \$25,000.00.

WHEREFORE, Administrator Elizabeth Green, respectfully requests the Court to allow the contingent claim in excess of \$25,000.00 against the within Estate.

(Emphasis sic.)

{¶ 2} The probate court responded to that claim by entry of September 5, 2012, stating:

This matter came for hearing on September 5, 2012 to consider the claim of Elizabeth Green, Administrator of the above estate for allowance of her claim. The Court finds that the decedent died on August 23, 2009, and the Administrator was appointed on July 24, 2012, outside of the six month statute for presentment of claims under R.C. 2117.06. It is therefore ordered that the claim be disallowed.

{¶ 3} Green has filed a timely appeal to this court alleging the following assignment of error:

The Trial Court erred as a matter of law to the prejudice of Appellant by denying Appellant's claim against the Estate of Linda K. Monroe.

{¶ 4} In her statement of facts, Green alleges that on May 17, 2008, she was a "passenger of an automobile insured by Allstate Insurance Company and driven by Linda K. Monroe, who negligently operated said automobile, causing injury to Elizabeth Green." She further states that Monroe died owning real estate, a probate asset, and an automobile insurance policy issued by Allstate Insurance Company, a non-probate asset, with limits of liability of \$100,000/\$300,000.

{¶ 5} Green seeks only a recovery against Allstate and has no intention or ability to recover any damages for her injuries from estate assets.

{¶ 6} The probate court denied the claim solely on the basis that R.C. 2117.06(B) which, as pertinent here, provides:

Except as provided in section 2117.061 of the Revised Code, all claims shall be presented within six months after the death of the decedent, whether or not the estate is released from administration or an executor or administrator is appointed during that six-month period.

{¶ 7} In R.C. 2117.06(C), it is provided that:

Except as provided in section 2117.061 of the Revised Code, a claim that is not presented within six months after the death of the decedent shall be forever barred as to all parties, including, but not limited to, devisees, legatees, and distributees. No payment shall be made on the claim and no action shall be maintained on the claim, except as otherwise provided in sections 2117.37 to 2117.42 of the Revised Code with reference to contingent claims.

{¶ 8} R.C. 2117.061 is not applicable to this tort case, as it is only concerned with "Medicaid estate recovery program."

{¶ 9} The contingent claims referred to in R.C. 2117.37 to 2117.42 are claims that have not matured at the time of Monroe's death. The claim herein does not fall within these exceptions. The exceptions do not apply because the claim matured for appellant at the time of the automobile accident which occurred over one year prior to Monroe's death.

{¶ 10} The Supreme Court of Ohio decided the case of *Meinberg v. Glaser, Exr.*, 14 Ohio St.2d 193 (1968), where the plaintiff was seeking recovery from an automobile liability insurance company who provided coverage to the plaintiff for personal injuries received in an automobile accident on June 24, 1964. Just as in this case, and as previously stated, the contingent claim exceptions were clearly not applicable.

{¶ 11} In *Meinberg*, the Supreme Court found that the automobile liability policy was not an "asset of the estate" and that a plaintiff seeking to recover may proceed against the estate despite the fact that the claim was not presented against the estate within the periods provided by R.C. 2117.06. *Id.* at 199. The court held that the liability insurance policy was a non-probate asset and that recovery could only come from this non-probate asset.

{¶ 12} Based upon the holding in *Meinberg*, we find that the claim of Green is not barred by the provisions of R.C. 2117.06 and that Green's claim may be pursued against Monroe's estate to recover insurance liability assets from Allstate Insurance Company. In this claim, liability of Monroe must be established. The statute of limitations or any other defense that is applicable should be determined in the same manner as in other tort cases. While the *Meinberg* case refers to two years, that time is not set in stone because, after 1968, certain tolling provisions have been established, such as absence from the state, which may apply to extend the time. None of that evidence is before us. That evidence will be before the trial court on remand as in other tort claims. All we are adjudicating in this case is that Monroe's liability insurance is a non-probate asset and that the estate and its assets are fully protected from any expense or liability.

{¶ 13} Green's assignment of error is sustained.

{¶ 14} Having sustained Green's assignment of error, the judgment of the Franklin County Court of Common Pleas, Probate Division, is reversed and this cause is remanded for further proceedings consistent with this decision.

*Judgment reversed and cause
remanded for further proceedings.*

BRYANT and CONNOR, JJ., concur.

McCORMAC, J., retired, formerly of the Tenth Appellate District, assigned to active duty under the authority of the Ohio Constitution, Article IV, Section 6(C).
