

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

LCNB NATIONAL BANK,	:	
	:	
Plaintiff-Appellee,	:	CASE NO. CA2011-08-151
	:	
	:	<u>OPINION</u>
- vs -	:	9/10/2012
	:	
MADONNA R. CONNAUGHTON,	:	
Executrix of the Estate of	:	
John B. Connaughton, et al.,	:	
	:	
Defendants-Appellants.	:	

CIVIL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CV2010-03-1281

Mark T. Florence, 144 East Mulberry Street, P.O. Box 280, Lebanon, Ohio 45036, for plaintiff-appellee, LCNB National Bank

Fred S. Miller, Baden & Jones Building, 246 High Street, Hamilton, Ohio 45011, for defendant-appellant, Madonna R. Connaughton, Executrix of the Estate of John B. Connaughton

Steven Stitsinger and Daniel B. Fischer, 35 North "D" Street, Hamilton, Ohio 45013, for defendant-appellee, Katherine Hanson, Co-executor of the Estate of James R. Rutherford

Robert J. Byrne, 150 East Gay Street, 21st Floor, Columbus, Ohio 43215, for defendant, State Department of Taxation

Michael T. Gmoser, Butler County Prosecuting Attorney, Government Services Building, 315 High Street, 11th Floor, Hamilton, Ohio 45011, for defendant, Nancy E. Nix, Treasurer

HUTZEL, J.

{¶ 1} Defendant-appellant, Madonna R. Connaughton, executrix of the Estate of John B. Connaughton ("Connaughton Estate"), appeals from a judgment in the Butler County Court of Common Pleas granting summary judgment in favor of defendant-appellee, Katherine Hanson, co-executor of the Estate of James R. Rutherford ("Rutherford Estate"), and denying summary judgment to the Connaughton Estate. For the reasons outlined below, we reverse the decision of the trial court.

{¶ 2} On July 25, 2003, Connaughton and Rutherford executed a note and mortgage in favor of LCNB National Bank. Connaughton died on March 31, 2007, and Rutherford died on April 14, 2009. At some point following their deaths, payments were not timely made to LCNB. As a result, in March 2010, LCNB filed a foreclosure action on the mortgaged property. LCNB recognized that both Connaughton and Rutherford were in default according to the terms of the note. However, LCNB only sought judgment against the Rutherford Estate because it conceded that it did not file a timely claim against the Connaughton Estate. In a cross-claim, the Rutherford Estate alleged that if a judgment was entered against it, the Connaughton Estate would be liable to it for contribution or indemnification because the parties were co-signers on the note and mortgage.

{¶ 3} All three parties filed motions for summary judgment. LCNB's uncontested motion for summary judgment was granted, and a judgment entry and decree of foreclosure was filed against the Rutherford Estate in the amount of \$55,449.30, plus interest. In regard to the remaining motions, the trial court recognized that the parties agreed that they were jointly and severally liable on the note, but disagreed as to whether the claim against the Connaughton Estate was contingent. In order for the claim to be timely filed, the claim against the Connaughton Estate needed to be considered contingent. The trial court stated that a debt is contingent only when there is a triggering event or some condition precedent for

it to exist, and found that a sale of mortgaged property at a sheriff's sale is such an event. It stated that the claim would become a claim "*if and only if* the property issue is sold at a sheriff's sale and a deficiency judgment is rendered." (Emphasis sic.) The trial court ultimately found the claim against the Connaughton Estate to be contingent. With its interpretation of the law, the trial court necessarily granted the Rutherford Estate's motion for summary judgment, and denied the Connaughton Estate's motion for summary judgment. While an order of sale for the mortgaged property was issued, the property has not yet sold.

{¶ 4} The Connaughton Estate now appeals, and raises one assignment of error for review.

{¶ 5} Assignment of Error No. 1:

{¶ 6} THE TRIAL COURT ERRED TO THE PREJUDICE OF [THE CONNAUGHTON ESTATE] WHEN IT OVERRULED ITS MOTION FOR SUMMARY JUDGMENT AND GRANTED THE MOTION OF SUMMARY JUDGMENT FILED BY [THE RUTHERFORD ESTATE].

{¶ 7} The sole issue in this case is whether the claim against the Connaughton Estate is contingent. The Connaughton Estate argues that a claim is not contingent when the fact of liability is fixed and certain. Specifically, the Connaughton Estate asserts that this particular claim is not contingent because the liability for the debt was established at the time of default. In contrast, the Rutherford Estate argues that the claim is contingent because the specific amount owed is dependent upon the amount of a deficiency judgment rendered following the sheriff's sale of the mortgaged property. We agree with the Connaughton Estate.

{¶ 8} Initially, we note that an appellate court reviews a trial court's ruling on a motion for summary judgment independently and without deference to the trial court's determination. *Maraan v. Ball*, 12th Dist. No. CA2003-08-210, 2004-Ohio-1366, ¶ 6, citing *Brown v. Scioto*

Cty. Bd. of Commrs., 87 Ohio App.3d 704, 711 (4th Dist.1993). In reviewing a trial court's disposition of a summary judgment motion, an appellate court applies the same standard as that of the trial court. *Howard v. Kirkpatrick*, 12th Dist. No. CA2008-11-040, 2009-Ohio-3686, ¶ 9; *Maust v. Bank One Columbus, N.A.*, 83 Ohio App.3d 103, 107 (10th Dist.1992). Summary judgment is proper when there is (1) no genuine issue of material fact remaining for trial, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds can come only to a conclusion adverse to the nonmoving party, construing the evidence most strongly in that party's favor. See Civ.R. 56(C); *Touhey v. Ed's Tree & Turf, L.L.C.*, 194 Ohio App.3d 800, 2011-Ohio-3432, ¶ 7 (12th Dist.).

{¶ 9} Generally, claims against an estate must be presented within six months after the death of the decedent. R.C. 2117.06(B). However, contingent claims do not need to be presented except as provided in R.C. 2117.37 to 2117.42. R.C. 2117.06(H). R.C. 2117.37 provides such a time when a contingent claim must be presented. If a claim is contingent at the time of the decedent's death and a cause of action subsequently accrues, the claim must be presented either before the expiration of six months after the decedent's death or before the expiration of two months after the cause of action accrues, whichever is later. R.C. 2117.37. Consequently, as Connaughton died in 2007, unless the claim against the Connaughton Estate is contingent, the claim is time-barred.

{¶ 10} When a claim is contingent, liability "is dependent upon some uncertain future event which may or may not occur." *Pierce v. Johnson*, 136 Ohio St. 95, 98 (1939). What renders a claim contingent is the "element of dependency upon an uncertainty." *Id.* An unmatured claim can be contrasted against a contingent claim. "An unmatured claim is one where the liability is certain but the maturity or due date has not arrived; whereas, a contingent claim is one where the liability depends upon some indefinite or uncertain future event which may never happen and liability may never arise." *Keifer v. Kissell*, 83 Ohio App.

133, 137 (2nd Dist.1947). Consequently, "a contingent debt is one in which there is a triggering event or some condition precedent for the debt to exist." *In re Estate of Jarriett v. Parkview Fed. Sav. Bank*, 8th Dist. No.93289, 2010-Ohio-1434, ¶ 20.

{¶ 11} In its decision, the trial court relied on *Keifer*. In *Keifer*, the court found that a contingent claim existed. The executor of a surety's estate sought to recover from the administratrix of the principal's estate regarding a balance due on a note that was secured by a mortgage following the sale of the mortgaged property. The court stated that the claim of the surety's estate against the principal's estate was "unquestionably" contingent and a "typical contingency claim." *Keifer* at 137. Nevertheless, we find this case to be more analogous to *In re Estate of Jarriett*.

{¶ 12} In *In re Estate of Jarriett*, a bank appealed the trial court finding that a debt from an equity home line of credit was a contingent claim. *Id.* at ¶ 4. The appellate court reversed the trial court, finding that at all times the line of credit was "a discrete and ascertainable debt" that was based on a "sum certain" borrowed by the decedent. *Id.* at ¶ 21. The court held that the amount owed on a secured debt is not dependent upon the value of what the collateral might be worth in the event of a default. *Id.* at ¶ 22. Rather, the amount owed on the loan did not change and the amount owed was specifically stated in the initial complaint. *Id.* at ¶ 22. The court in *In re Estate of Jarriett* distinguished the facts from *Keifer*. The court stated that while *Keifer* involved a note and a mortgage, it also involved a surety. *Id.* at ¶ 23.

{¶ 13} Similar to *In re Estate of Jarriett*, in the case at bar, the amount borrowed by Connaughton and Rutherford was a sum certain of \$56,000. What is currently owed on note, \$55,499.30, is unquestioned. The trial court rationalized that because the amount owed to LCNB could not be ascertained until after the sale of the mortgaged property, the claim was contingent. However, the amount owed on the loan has never changed, and the amount owed on the debt is not dependent on how much money the mortgaged property might be

worth in the event of a default. Consequently, liability is not dependent upon the sale of the mortgaged property. Rather, both parties were liable on the debt with a sum certain at the time of default. In addition, this case does not involve a surety where the surety is primarily liable for the payment of another's debt. See *Smith v. Leis*, 106 Ohio St.3d 309, 2005-Ohio-5125, ¶ 62. Rather, it involves two co-signers who are jointly and severally liable on the note. Accordingly, we find that the claim against the Connaughton Estate is not contingent, and is therefore time-barred.

{¶ 14} We find that the trial court erred as a matter of law by finding the claim against the Connaughton Estate to be contingent. Consequently, the trial court erred when it denied the Connaughton Estate's motion for summary judgment and instead granted summary judgment in favor of the Rutherford Estate. The Connaughton Estate's sole assignment of error is sustained.

{¶ 15} The summary judgment granted in favor of the Rutherford Estate is reversed, and summary judgment is granted to the Connaughton Estate.

RINGLAND, P.J., and GRADY, J., concur.

Grady, J., of the Second Appellate District, sitting by assignment of the Chief Justice, pursuant to Section 5(A)(3), Article IV of the Ohio Constitution.

Judge Rachel A. Hutzler approved the issuance of this Opinion but died before its release.