

IN THE SUPREME COURT OF FLORIDA

Case No. SC13-2536

CAROL ANN JONES, as Personal Representative
Of the Estate of Henry Bruce Jones,

Petitioner,

v.

EDWARD I. GOLDEN,
Curator of the Estate of Katherine Jones,

Respondent.

PETITIONER'S REPLY BRIEF ON THE MERITS

Conflict of Decisions Certified by the Fourth District Court of Appeal
Case No. 4D12-2094; Circuit Court Case No.12-13101 (25)

ROBIN F. HAZEL
HAZEL LAW, P.A.
15800 Pines Blvd., Suite 3005
Pembroke Pines, Florida 33027
Phone: (954) 394-1903
Fax: (954) 442-4660

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ARGUMENT

I. RESPONDENT'S CLAIM WAS UNTIMELY BECAUSE IT WAS FILED OUTSIDE OF THE THREE-MONTH PERIOD FOLLOWING FIRST PUBLICATION OF THE NOTICE TO CREDITORS AND WAS NOT ACCOMPANIED BY A MOTION FOR EXTENSION OF TIME UNDER SECTION 733.702(3), FLORIDA STATUTES.

This case is not about whether the probate court erred in determining whether the Respondent is a known or reasonably ascertainable creditor. Rather, the issue in this case is whether Respondent, who was not served with actual notice, should have filed his claim within three months of publication, or alternatively, whether the Respondent's untimely statement of claim should have been accompanied by a motion for extension of time. Subsumed in that issue is the issue of whether the probate court, when presented with a facially untimely statement of claim, could accept that claim when it is unaccompanied by a motion for extension of time seeking to extend the time to file the claim based on fraud, estoppel or insufficient notice of the claims period.

Had the Respondent timely filed a motion for extension of time, then the probate court could have made the type of determination made in cases such as *Strulowitz v. Cadle Company, II, Inc.*, 839 So. 2d 876 (Fla. 4th DCA 2003), regarding whether the Respondent was a reasonably ascertainable creditor entitled to actual notice. The flaw in the Fourth District's decision in the case below is that it presupposes, based only on the Respondent's allegations, that the Respondent

was indeed a known or reasonably ascertainable creditor who did not need to file a motion for extension of time but could instead file his claim at any time within two years of the decedent's death.

Nothing in the language of the statute allows a probate court to accept on face value every claim by anyone who says he or she is a known or reasonably ascertainable creditor. If such a claim is made outside of the three month window following publication, then it must be accompanied by a motion for extension of time alleging insufficient notice of the claims period, fraud or estoppel. *See Lubee v. Adams*, 77 So. 3d 882, 884 (Fla. 2d DCA 2012); *Souder v. Malone*, 143 So. 3d 486, 489 (Fla. 5th DCA 2014); *Morgenthau v. Andzel*, 26 So. 3d 628, 632 (Fla. 1st DCA 2009). In the absence of a motion for extension of time, the Respondent's claim was untimely and unauthorized and the probate court properly refused to consider the Respondent's claim or the allegation that he was a known creditor.

Any alleged creditor, even one who claims to be a reasonably ascertainable creditor entitled to actual notice, must comply with the provisions of sections 733.702 (1), (3), Florida Statutes. *Lubee*, 77 So. 3d at 884. Section 733.702 complies with constitutional due process requirements because when properly followed, all potential creditors are given notice and an opportunity to be heard.

Nevertheless, the Respondent argues that he should not be required to comply with the extension provision of section 733.702(3), which section provides, in relevant part:

Any claim not timely filed as provided in this section is barred even though no objection to the claim is filed unless the court extends the time in which the claim may be filed. An extension may be granted only upon grounds of fraud, estoppel, or insufficient notice of the claims period.

(emphasis added) § 733.702(3), Fla. Stat. The Respondent argues, and the Fourth District Court found, that because the Respondent claims to be a known or reasonably ascertainable creditor but was not served with actual notice of the claims period, the portion of section 733.702 that requires a creditor to file its claim within 30 days of receipt of actual notice is not triggered and therefore the extension provision of section 733.702(3) does not apply.

The plain language of the statute does not permit the conclusion reached by the Fourth District. Nothing in the plain language of the statute allows a court to simply assume that anyone claiming to be a known creditor is permitted to file a statement of claim at any time within two years of a decedent's death in the absence of a motion for extension of time. Section 733.702(1) specifically provides that a claim is barred if it is not filed "on or before the later date that is three months after the time of first publication . . . or . . . 30 days after the date of service on the creditor" § 733.702(1), Fla. Stat. If a creditor does not receive

actual notice, as is the case here, then the only applicable time period under section 733.702(1) is the period following publication of notice. Therefore, a creditor that files a claim outside of that three month period must file a motion for extension of time in order for his claim to be heard. *See Simpson v. Estate of Simpson*, 922 So. 2d 1027, 1028 (Fla. 5th DCA 2006) ("If the personal representative fails to serve notice upon a known or reasonably ascertainable creditor, the creditor may seek an extension of time in which to file his claim based on fraud, estoppel or insufficient notice of claims period." (citing § 733.702(3), Fla. Stat.)).

If a creditor such as the Respondent believes that he was entitled to actual notice, the statute provides that the Respondent could have filed a motion for extension of time based on insufficient notice of the claims period, fraud or estoppel. Under Respondent's interpretation of the statute where he is not required to file a motion for extension of time, the portion of the statute that allows a creditor to claim insufficient notice of the claims period is rendered meaningless or is perhaps limited to unknown creditors who do not receive notice by publication. Indeed, it would be improper to reach any interpretation or application of the statute that renders any portion of the statute meaningless or places limitations on the application of the statute where such limitation is not contemplated by the plain language of the statute. *See generally Larimore v. State*, 2 So. 3d 101, 106 (Fla. 2008) ("a statute should be interpreted to give effect to every clause in it, and to

accord meaning and harmony to all of its parts. . . . Equally important is the elementary principle of statutory construction that significance and effect must be given to every word, phrase, sentence and part of the statute if possible, and words in a statute should not be construed as mere surplusage." (citations and internal quotation marks omitted)).

The Respondent's claim, which was filed 19 months after first publication, was untimely. Under the plain language of section 733.702(1), Florida Statutes, the Respondent was required file a motion for extension of time in order to have his claim heard. The Respondent's argument the he should be allowed to file a motion for extension of time more than five years after the decedent's death, and after the Personal Representative moved to strike the untimely claim, is without support in the law. It is not logical to conclude that a statute that so clearly imposes a two-year statute of repose would allow a motion for extension to file a claim to be filed more than five years after a decedent's death. If the Respondent's argument is accepted, any creditor who files a claim outside of the time limits set in section 733.702(1) and who fails to contemporaneously file an motion for extension of time with that untimely claim can simply move for an extension of time after the timeliness of his claim is challenged, even if that occurs many years later. There is no support in the law for Respondent's position.

CONCLUSION

For the foregoing reasons, the Petitioner, CAROL ANN JONES, as Personal Representative of the Estate of Harry Bruce Jones, respectfully requests that this Court reverse the decision of the Fourth District Court of Appeal and reinstate the probate court's Final Order finding the Respondent's Statement of Claim untimely under Sections 733.702 and 733.710, Florida Statutes.

Respectfully Submitted,

HAZEL LAW P.A.
15800 Pines Blvd., Suite 3005
Pembroke Pines, Florida 33027
Phone: (954) 394-1903
Fax: (954) 442-4660

By: /s/ Robin F. Hazel
Robin F. Hazel, Esq.
Florida Bar No. 843881
robinhazel_esq@yahoo.com
hazellawpa@gmail.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing was served via E-Mail on William H. Glasko, Esq., Golden & Cowen, P.A., Counsel for Respondent, Palmetto Bay Law Center, 17345 South Dixie Highway, Miami, Florida 33157, at bill@palmettobaylaw.com, John W. Little, III, The Real Property Probate Trust Law Section of the Florida Bar, Amicus Curiae, jlittle@gunster.com and kbell@gunster.com, Gerald B. Cope, Amicus Cure, at gerald.cope@akerman.com and Robert Goldman, Amicus Cure, at rgoldman@gfsestatelaw.com on this 10th day of November, 2014.

/s/ Robin F. Hazel

Robin F. Hazel, Esq.

CERTIFICATE OF COMPLIANCE

Undersigned counsel certifies that TIMES NEW ROMAN, 14 pt., is used in this brief.

/s/ Robin F. Hazel

Robin F. Hazel, Esq.