

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-000189-MR

ENGLE FUNERAL HOME, INC.

APPELLANT

v. APPEAL FROM PERRY CIRCUIT COURT
HONORABLE DOUGLAS C. COMBS, JUDGE
ACTION NO. 02-CI-00328

PEGGY STERLING, ADMINISTRATOR
OF THE ESTATE OF FIELDEN CORNETT,
DECEASED

APPELLEE

OPINION
REVERSING AND REMANDING

** **

BEFORE: BARBER, DYCHE, AND McANULTY, JUDGES.

BARBER, JUDGE: The Appellant, Engle Funeral Home, Inc.

("Engle"), appeals from a summary judgment of the Perry Circuit Court entered in favor of the Appellee, Peggy Sterling, Administrator of the Estate of Fielden Cornett, Deceased. We reverse and remand for further proceedings.

Fielden Cornett died on March 18, 1996. Ronald Cornett, one of his children, made the arrangements and signed a

contract with Engle for funeral goods and services dated March 18, 1996. On June 24, 1996, Ronald Cornett was appointed Executor, but later removed, and Peggy Sterling was appointed personal representative, thereafter. Engle filed a claim against the Estate for funeral expenses, but admittedly not within six months of the appointment of the personal representative.

On June 21, 2002, Engle filed a complaint in the Perry Circuit Court against the Estate seeking a judgment for the funeral expenses owed under the contract, plus interest. On January 7, 2003, the Perry Circuit Court entered the following Order and Final Judgment:

This matter came on for hearing on cross motions for summary judgment. The Court having considered both motions, the memoranda, and arguments of counsel finds that there exists no genuine issue of material fact that plaintiff Engle Funeral Home entered into a contract with Ronald Cornett individually, and that it failed to comply with K.R.S. 396.035, which required it to submit a proof of claim for payment within six months of the appointment of Ronald Cornett as Executor of the Estate of Fielden Cornett. Defendant Estate is entitled to judgment as a matter of law. For these reasons, summary judgment in favor of defendant is granted and the plaintiff's complaint be, and the same hereby is, dismissed with prejudice.

On January 24, 2002, Engle filed a notice of appeal. On appeal, Engle asserts that the circuit court erred, because the sixth-month time limitation to file a claim against an

estate set forth in KRS 396.011 does not apply. Engle maintains that KRS 396.011 applies only to claims that arose during the decedent's lifetime. The Estate asserts that Engle misperceived the basis of the trial court's ruling, because the trial court does not refer to KRS 396.011. We note, however, that the Estate argued that the six-month bar in KRS 396.011 applied, in its memorandum of authorities filed in the trial court.

KRS 396.035, cited by the trial court, requires that a claim be presented to the personal representative as a condition precedent to filing suit. The statute provides:

No action shall be brought against a personal representative on a claim against decedent's estate unless the claimant shall have first presented his claim in the manner described in KRS 396.015. The foregoing limitation shall be in addition to that limitation on the commencement of an action against a personal representative set forth in KRS 395.270.¹

The methods for presenting a claim to the personal representative are outlined in KRS 396.015(1), and include delivering or mailing a written statement of the claim to the personal representative, or filing a written statement of the claim with the clerk of the court.

KRS 396.011(1) is a statute of limitation for presenting certain claims against a decedent's estate:

¹ KRS 396.270 provides that no action shall be commenced against any executor or administrator before two months have run after the date of qualification of the first personal representative.

All claims against a decedent's estate which arose before the death of the decedent, excluding claims of the United States, the state of Kentucky and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented within six (6) months after the appointment of the personal representative, or where no personal representative has been appointed, within two (2) years after the decedent's death. (Emphasis added)

Engle asserts that the sixth-month limitation is not a bar, because the statute only applies to those claims that arose prior to the decedent's death. In response, the Estate cites *Rose v. Rose*² as holding that that the "funeral bill was an enforceable claim against the estate if properly presented. . . ." *Rose* was decided long before the enactment of the current statutory scheme. The issue there was whether the widow was liable as administratrix for payment of a funeral bill. She had distributed the estate believing that her son had paid the bill, in accordance with their agreement, with proceeds from her husband's life insurance policy naming the son as beneficiary. The court held that there was no indication the administratrix had distributed the estate in bad faith.

² 287 Ky., 224, 152 S.W.2d 603 (1941).

The quotation from *Rose*, cited in the Estate's brief, is in the context of which debts were properly payable out of settlement proceeds recovered for the decedent's death:

The record is not clear as to the source of the \$2,750 item received by the administratrix, but there is an intimation in the proof and briefs that she instituted an action for damages against the person responsible for her husband's death and that the case was settled by the payment to her of \$2,750 by the defendant's insurance carrier. If the action was one falling within the purview of section 6 of our Statutes, the debts of the decedent existing at the time of his death were not payable out of the fund recovered without the consent of the beneficiaries of the recovery. That section provides in part that if the deceased leaves a widow and children, the amount recovered, less funeral expenses and the cost of administration and such costs about the recovery, including attorney fees as are not included in the recovery from the defendant, shall be for the benefit of and go one-half to such widow and the other one-half to the children of the deceased. . . . Regardless of the nature of the recovery, the funeral bill was an enforceable claim against the estate if properly presented and in the absence of an agreement that it should be paid out of other funds as claimed by appellee.³

Whether funeral expenses are subject to the statutory requirements for presenting a claim against a decedent's estate has been discussed at 17 A.L.R. 4th 530,⁴ *Claims for expenses of last sickness or for funeral expenses as within contemplation of statute requiring presentation of claims against decedent's*

³ *Id.*, at 604-05

⁴ 1982.

estate, or limiting time in bringing action. Section 2 of the annotation provides an overview:

As a general rule, it is clear that claims against the estate of a decedent must be presented in accordance with local statutory requirements. The word "claims," as used in nonclaim statutes, has been construed to mean debts or demands of a pecuniary nature that could have been enforced against the deceased in his lifetime and could have been reduced to a simple money judgment. Thus, it has been held that claims for the expenses of a decedent's last illness, having arisen during his lifetime, must be presented pursuant to statutory requirement . . . and that if such claims are rejected, an action thereon must be commenced within the time limit established by statute or be forever barred. . . . It has been said to be unnecessary to present a claim that does not arise until after the death of the testator or intestate. Therefore, certain courts have held that claims for funeral expenses need not be filed as required by statute for other claims, since funeral expenses clearly are incurred after the death of the decedent . . ., especially where the statute specifically refers to debts incurred during the deceased's lifetime; and those courts so holding have said that with regard to those claims rejected by the personal representative of an estate, action thereon need not be commenced within the statutory time limit. . . . On the other hand, other courts have held that a claim for funeral expenses must be filed pursuant to the statute . . ., and that a failure to file suit after rejection of a claim for funeral expenses within the time set by the statute will bar recovery thereon.

The annotation refers us to an old Kentucky case, *Stout v Bradley*,⁵ as holding that funeral expenses must be presented in

⁵ 260 Ky., 275, 82 S.W.2d 201 (1935).

accordance with the statutory requirements; however, we cannot conclude from our reading of the case that the issue was actually litigated. *Stout* involved a suit against the personal representative's attorneys to require them to pay the funeral bill out of the attorneys' fee they had collected. The court refused to set aside the settlement of the estate where the bill for the decedent's funeral expenses had not been presented or filed by the undertakers.

In another old Kentucky case, *Lay v. Lay*,⁶ the court held that the verification requirements of Kentucky's nonclaim statutes did not apply to burial expenses. There, as here, a family member had contracted for the burial prior to appointment of a personal representative.

As to the claim of L. C. Lay it is shown that he was sick in a hospital at the time of his stepfather's death and that his mother looked after the burial of the latter and that in so doing she incurred the burial expense of \$100; that the brothers and sisters of the deceased failed to pay this bill, and that after his recovery and at the urgent insistence of his mother, who was greatly distressed about it, he paid the bill and took a receipt therefor.

In doing this we cannot say that he acted as a volunteer. It has always been recognized as one of the first duties of the living to see that the dead are properly interred. The care and religious solemnity with which such obsequies were attended in ancient times are a matter of history. The Roman law made the cost of burial a charge

⁶ Ky., 255 S.W. 1054, 1055 -1056 (1923).

against the heirs, if not otherwise paid, and under the common law it has always been recognized to be just and proper for the expense of decent interment to be paid out of the estate of the decedent, when he left property sufficient for that purpose. 8 R. C. L. pp. 688-690.

Under our statute a burial bill is made a preferred claim against the estate. Naturally a moral, if not a legal obligation rested upon the widow to see that such interment was had, and, when in the absence of a personal representative she did this, there can be no doubt that the estate became liable to her or to the one with whom she contracted for the reasonable expense of such burial. In view of the relationship existing between the parties we can see no reason why her son at her request should not pay this bill, take an assignment thereof, and be subrogated to her rights therein; as it is not intimated that the prices charged were unreasonable the chancellor did not err in so holding.

Complaint is made that there was no verification or demand made upon the claims allowed as required by sections 3870-3872, Ky. Statutes. This being a suit against the heirs, no demand was necessary. *Hill's Adm'r v. Grizzard*, 133 Ky., 818, 119 S.W. 168. **Nor was it necessary for L. C. Lay to make verification thereof as section 3870, Ky. Statutes, applies only to obligations that were created by the decedent, and not by those created by a personal representative, or persons acting in his stead.** *Berry v. Graddy*, 1 Metc. 553; *Crenshaw v. Duff*, 113 Ky., 912, 69 S.W. 962, 24 Ky. Law Rep. 718. (Emphasis added) ⁷

This holding is consistent with a recent decision of this Court construing KRS 396.011, *Batson v. Clark*.⁸ *Batson* involved a claim for breach of a lease and conversion. There, a dispute arose when the executor of the landlord's estate decided

⁷ *Id.*, at 1055-56.

⁸ Ky. App., 980 S.W.2d 566 (1998).

to change the terms of the lease and sell the property before expiration of the lease term. *Batson* contains a detailed discussion of Kentucky's nonclaim statutes:

Batson [the Executor of Margaret's estate] argues that because appellees did not file their claim [for breach of the lease and conversion] against . . . [the] estate within six (6) months after Batson's appointment as executor, their claim was barred in the first place under KRS 396.011(1). . . .

. . .

We disagree with Batson's position. In fact, we do not consider appellees' allegations to be probate-type "claims" at all, i.e., they arose *after* the death of the decedent . . . , and represent obligations created . . . by the executor himself for actions he took after Margaret's death. In other words, appellees' cause of action accrued against the executor of Margaret's estate, not against Margaret. **As used in probate statutes, such as KRS 396.011, which limit the time frame in which creditors may present their claims against an estate ("nonclaim" statutes, as they are routinely called), the word "claim" generally refers to "debts or demands against the decedent which might have been enforced against him during his lifetime"** 31 Am.Jur.2d *Executors and Administrators* § 603 (1989) (Emphasis added). Margaret took no action during her lifetime which would have prompted this litigation and, thus, appellees could not have enforced these claims against Margaret during her lifetime because they had not yet accrued. KRS 396.035 states in part that "[n]o action shall be brought against a personal representative on a claim against decedent's estate unless the claimant shall have first presented his claim [to the personal representative] in the manner described in KRS 396.015." . . . Kentucky's case law interpreting [the precursor to KRS 396.035] . . . supports our conclusion that appellees' claims were not

subject to formal presentation in the first place.

. . .

In the present case, appellees' claim is against Margaret's executor and, as such, we do not believe appellees' claims are subject to the deadlines set out in KRS 396.011(1) Further, we do not believe the fact that appellees actually filed a claim against the estate, later denied by Batson, is significant. Based upon the above-cited case law, **appellees' allegations are not in that class of "claims" which must be filed against the estate prior to bringing suit. Thus, appellees had no obligation to file an initial claim against Margaret's estate, despite the fact they did.** (Emphasis added)

Consistent with the reasoning in *Batson*, we conclude that Engle's claim is not subject to the six-month limitation in KRS 396.011(1) for presenting claims under KRS 396.035, because it is not a claim "against a decedent's estate which arose before the death of the decedent" Accordingly, we do not reach Engle's remaining argument.⁹

We believe that the applicable statute in the case *sub judice* is KRS 396.205 entitled "Limitation on actions not otherwise barred" which provides:

Notwithstanding any other statute to the contrary, no cause of action on any claim not otherwise barred by the provisions of KRS 396.011 and KRS

⁹ We do note a recent law review article on the subject. Noel, Mark A., *DUE PROCESS AND KENTUCKY'S NON-CLAIM STATUTES: A CALL FOR LEGISLATIVE REVISION*, 91 Ky.L.J. 231, Kentucky Law Journal 2002-2003 Notes.

396.055(1), or any other applicable statute of limitations, shall be brought against the personal representative or against any distributee after the expiration of two (2) years from the date of the order of discharge of the personal representative. The foregoing limitation shall not preclude an action by any claimant against the personal representative or any distributee for fraud.

We cannot determine from the record before us whether or not KRS 396.205 bars Engle's claim. Thus, we reverse and remand for further proceedings consistent herewith.

McANULTY, JUDGE, CONCURS.

DYCHE, JUDGE: CONCURS IN RESULT.

BRIEF FOR APPELLANT:

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London, Kentucky

BRIEF FOR APPELLEE:

Nancy M. Collins
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