

## WASHINGTON, SC.

**SUPERIOR COURT**

**(FILED: November 25, 2014)**

**In Re: Estate of RALPH E. SPALTHOLZ,** :  
**Resident decedent of Richmond, Rhode Island** : **C.A. No. WP 2012-0232**

## DECISION

**K. RODGERS, J.** This probate appeal arises from the denial of a Petition for Leave to File Claim Out of Time pursuant to G.L. 1956 § 33-11-5 filed by Appellant, Dorene R. Schulz (Schulz or Appellant). Schulz's Petition was denied by the Town of Richmond Probate Court (Richmond Probate Court). Appellee, Renee L. Spalholz (Spalholz), the Executrix of the Estate of Ralph E. Spalholz (the Executrix, the Estate and Decedent, respectively), maintains that Schulz's Petition was properly denied.

The parties have briefed the issues raised and have presented supporting documents. Neither party contends that factual issues exist which require an evidentiary hearing. On October 29, 2014, this Court issued an Order stating that the issues raised by the parties would be decided on the record presently before the Court and without the need for further briefing or evidentiary hearing.

Jurisdiction is pursuant to § 33-23-1. For the reasons set forth herein, judgment shall enter for the Estate.

# I

## Facts and Travel

Schulz is Decedent's only surviving sibling and is a resident of Illinois. Their brother, W. John Spaltholz (John), was a resident of South Dakota and died intestate on

December 24, 2000. John was unmarried and had no children. Under South Dakota laws of intestacy, Schulz and Decedent were John's heirs-at-law and sole beneficiaries. Schulz was appointed as the personal representative of John's estate.

John's estate consisted of certain real estate located in Platte, South Dakota (South Dakota Property) and two parcels of farmland in Maple Park, Illinois (Illinois Property, and collectively, the Properties). All three parcels passed to Schulz and Decedent as tenants in common. According to Schulz, she and Decedent agreed to and did secure a mortgage on the Illinois Property for approximately \$100,000 in order to pay certain estate taxes as well as debts and liabilities of John. Schulz alleges that, although the Properties generated income at various times, the income was insufficient to cover all the expenses; Schulz used her personal funds to pay such uncovered expenses. Additionally, Schulz maintains that she loaned Decedent the sum of \$17,300 in 2001 and paid for miscellaneous items for which she was to be reimbursed by Decedent.

Decedent was a resident of Richmond at the time of his death on February 13, 2009. Schulz attended Decedent's funeral and was in communication with Decedent's wife, the Executrix, subsequent to the funeral. On May 7, 2009, Decedent's Last Will and Testament, dated March 9, 1985, was admitted to probate and the Executrix was qualified by the Richmond Probate Court to serve in such capacity. The first publication of the notice of qualification of Executrix by the Clerk of the Richmond Probate Court was on May 14, 2009. Accordingly, the so-called creditors' claim period pursuant to § 33-11-5(a) expired on November 14, 2009.

Counsel for the Executrix sent two letters to Schulz, both of which were received without undue delay. The first letter, dated August 17, 2009, provides in pertinent part:

“Enclosed please find a copy of a Certificate of Appointment, issued by the Probate Court for the Town of Richmond, Rhode Island, appointing Renee L. Spaltholz as Executrix of her late husband’s estate. Ms. Spaltholz has retained this office to represent her and the estate.

“I have also enclosed a copy of Ralph’s Will, showing he left everything to Renee, including his interest in the property he held jointly with you in South Dakota and Illinois. In looking through Ralph’s personal papers, it appears that he also had at least one joint checking account and a loan on the property in Illinois.”

“It would save a lot of time and money, if you would be so kind to forward this office any paper work you have on the joint accounts; the lease agreement and the loan.” Appellant’s Mem., at Ex. A.

Hearing no reply from Schulz, counsel for the Executrix sent a second letter to Schulz dated September 22, 2009. That letter reads in pertinent part:

“As you know, your Sister-In-Law, Renee, is handling your brother/her husband’s estate, and this office is representing her.

“In my letter to you of August 17, 2009, I asked you to forward to this office any paper work, or information, you have on the joint accounts you had with Ralph, and the properties in Illinois and South Dakota. I do have some papers, but I need to know what the status is with regard to any leases or loans on the property. Renee informs me that she has been speaking with you about the properties but has not received anything either.

“Any information, or documents you could provide will save a lot of time and money in resolving any issues with these properties.” Appellant’s Mem., at Ex. B.

Schulz did not respond in any way to counsel’s second letter.

The Executrix filed an inventory of Decedent’s Estate on or about March 2, 2010, which included both Properties. In or about February 2011, Executrix opened an ancillary estate in South Dakota in order to dispose of Decedent’s interest in the South

Dakota Property, which was effectuated on or about March 14, 2011. Appellant did not file a claim in the South Dakota estate proceeding. The Executrix has not yet opened an ancillary estate in Illinois to dispose of Decedent's interest in the Illinois Property, but intends to do so.

Schulz's present counsel filed a Petition for Leave to File Claim Out of Time in the Probate Court on December 15, 2011, and attached a copy of her claim. Schulz's claim maintains that the Estate is indebted to her for approximately \$235,000. See generally Appellant's Mem., Ex. D at Ex. A attached thereto. The Executrix objected to Schulz's Petition. The Petition was denied on March 13, 2012, without explanation, findings of facts or any other articulated basis. Appellant's Mem., at Ex. D. Appellant timely appealed the denial to this Court.

To date, the Estate has not been fully distributed. Appellant asserts that her claim against the Estate currently amounts to approximately \$108,000. Appellant's Mem., at 5.

## **II**

### **Standard of Review**

Section 33-23-1 of the Rhode Island General Laws authorizes a person aggrieved by an order or decree of a probate court to appeal to the Superior Court in the county in which the probate court is located. In hearing a probate appeal, "the [S]uperior [C]ourt is not a court of review of assigned errors of the probate judge, but is rather a court for retrial of the case de novo." In re Estate of Paroda, 845 A.2d 1012, 1017 (R.I. 2004) (citing Malinou v. McCarthy, 98 R.I. 189, 192, 200 A.2d 578, 579 (1964)); see also § 33-23-1(d). Further, "[t]he findings of fact and/or decisions of the probate court may be

given as much weight and deference as the superior court deems appropriate, however, the superior court shall not be bound by any such findings or decisions.” Sec. 33-23-1(d).

### **III**

#### **Analysis**

##### **A**

#### **Notice**

Appellant contends that she should not be barred from filing her claim out of time because, as a creditor of Decedent’s Estate, she did not receive adequate notice of the commencement of probate as required by § 33-11-5.1. The Executrix responds that Schulz’s claim is barred by both §§ 33-11-5 and 33-11-50.

The process and timing of filing claims against a decedent’s estate is governed by § 33-11-1, et seq. There are several particular statutes that are implicated in the instant case.<sup>1</sup> First, the so-called creditor’s claim period provides as follows:

“(a) Claims shall be presented within six (6) months from the first publication or be forever barred, subject to extensions granted pursuant to subsection 33-11-5(b).

“(b) A creditor who, by reason of accident, mistake, excusable neglect or lack of adequate notice of decedent’s estate, failed to present a claim within six (6) months from the first publication, may before distribution of the estate, petition the probate court for leave to present a claim out of time. For purposes of this section, notice of commencement of probate pursuant to § 33-11-5.1 at least sixty (60) days before the expiration of the six (6) months claim period

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<sup>1</sup> Likewise, there are a number of provisions in title 33, chapter 11 that are not implicated in the instant appeal, including, by way of example, the proof needed to support a claim, the disallowance of a claim, and the payment of a claim allowed or proved. The issues on appeal only seek a determination whether Appellant should be given her day in probate court to present the merits of her claim, not whether she is entitled to the relief she seeks in her claim. See McAlpine’s Estate v. McAlpine’s Estate, 120 R.I. 135, 142, 386 A.2d 179, 183 (1978).

shall be deemed adequate. Upon hearing after notice to the decedent's personal representative, heirs and beneficiaries (if any), the probate court may in its discretion, grant leave to present the claim out of time upon such terms as the court prescribes. Any claim presented out of time, if allowed, shall be paid out of the assets remaining in the personal representative's hands when notice of the petition was received." Sec. 33-11-5.

Section 33-11-5.1 next provides in pertinent part:

"(a) If the identity of a creditor of the decedent's is known to or reasonably ascertainable by the personal representative, the personal representative shall, within a reasonable period of time after qualification, take such steps as are reasonably necessary to ensure that such creditor receives or has received notice of the commencement of the decedent's estate. The sending of a notice in the form contained in subsection (b) by the personal representative to the creditor at his/her or its last known address, by first class mail, postage prepaid, shall be deemed a means, but not the exclusive means, of satisfying the requirements of this section. The personal representative is not liable to a creditor or to a successor personal representative of the decedent for giving or failing to give notice under this section." Sec. 33-11-5.1. (emphasis added).

Finally, § 33-11-50 provides:

"No personal representative shall be held to answer to the suit of a creditor of the decedent, except to a suit on the fiduciary's bond, or as is otherwise provided, unless the suit is commenced within two (2) years from the date of the first publication and before any order of distribution has been made on the estate of the decedent." Sec. 33-11-50.

The Supreme Court recently considered the impact of an administratrix's failure to provide notice to a creditor as required by § 33-11-5.1 and the passage of the two-year period set forth in § 33-11-50. In In re Estate of Manchester, 66 A.3d 426 (R.I. 2013), the decedent passed away in January 2004, having been the recipient of medical assistance benefits totaling approximately \$95,000 in the twenty months preceding her

death. Id. at 428. The medical assistance payments were made on the decedent's behalf pursuant to Title XIX of the federal Social Security Act, 42 U.S.C. §§ 1396 through 1396v. Id. The Rhode Island Department of Human Services (DHS) sought reimbursement for the medical assistance payments it had paid on the decedent's behalf<sup>2</sup> by contacting the decedent's daughter shortly after the decedent's death and requesting that DHS be notified as soon as the decedent's estate was opened. Id. On June 10, 2004, the probate court appointed the decedent's two daughters, including the daughter to whom DHS had sent its earlier written request, as co-administratrixes of the estate. Id. Neither administratrix notified DHS that her mother's estate had commenced. Id. Over three years after the commencement of the decedent's estate, on June 21, 2007, an agent or employee of DHS telephoned the probate court and learned that the decedent's estate had been opened several years earlier. Id.

On August 9, 2007, DHS filed its petition to file a claim out of time with the probate court pursuant to § 33-11-5(b). Id. Over the estate's objection, the probate court granted DHS's petition to file its claim out of time and ultimately entered an order allowing DHS's claim for the unpaid medical assistance benefits. Id. The estate filed a timely appeal to the Superior Court, arguing that DHS's claim was barred by two statutory provisions: (1) G.L. 1956 § 9-1-21, which operates to extinguish all actions for or against a deceased person within three years of the date of death; and (2) § 33-11-50. Id. at 429. The superior court granted DHS's motion for summary judgment, finding that

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<sup>2</sup> Rhode Island General Laws § 40-8-15(a) provides that the total sum of medical assistance paid under Title XIX of the federal Social Security Act on behalf of a recipient over the age of fifty-five at the time of receiving such assistance shall constitute a lien on the estate of said recipient upon his or her death.

DHS was not time-barred from presenting its claim to the estate because it “had ‘lack of adequate notice of decedent’s estate.’” Id.

The Supreme Court affirmed summary judgment in favor of DHS. The Supreme Court concluded that DHS’s claim fell within one of the exceptions that allow a claim to be filed more than six months from the first publication of the commencement of the estate inasmuch as it did not receive “adequate notice of decedent’s estate.” Id. (quoting § 33-11-5(b)). The Court found that DHS had six months after it received actual notice in which to file its claim with the probate court, reasoning as follows:

“Although the estate opened on June 10, 2004, DHS was not so notified until three years later, in June 2007. Two months later, in August 2007, DHS then appropriately petitioned the probate court to file a claim out of time.

...

“As we previously held in Estate of Santoro, 572 A.2d at 301, a known or reasonably ascertainable creditor is not statutorily barred from filing a claim outside the [§ 33-11-5(a)] six-month statute of limitations if it did not receive actual notice of the commencement of probate. Here, there is no dispute that DHS was a reasonably ascertainable creditor; in fact, it was a known creditor. Therefore, the statute of limitations was not triggered until June 21, 2007—the date it received notice that the estate had been opened. Because it filed its claim only two months after receiving notice—well within the above-referenced six-month window—its claim was not time-barred.” Id. at 431-32 (emphasis added).

Importantly, then, our Supreme Court appears to accept that, while written notice of the decedent’s estate was not sent in the form prescribed in § 33-11-5.1(b), DHS received “actual notice” by way of its own telephonic inquiry directed to the probate court on June 21, 2007, which thus started the six-month clock ticking on the filing of DHS’s claim.

In the instant case, the Executrix, through counsel, first provided written notice to Schulz on August 17, 2009 that the Decedent's estate was commenced. It is undisputed that the August 17, 2009 written notice did not conform to the content of the notice set forth in § 33-11-5.1(b). Nonetheless, the August 17, 2009 notice did constitute actual notice to Schulz that the Decedent's estate had been opened, thus triggering the six-month statute of limitations for filing claims. See Estate of Manchester, 66 A.3d at 432. In other words, as the Supreme Court accepted the claimant's own telephonic inquiry directed to the local probate court as actual and adequate notice of the commencement of the probate estate, see id. at 431-32, then so, too, must this Court accept that the written communication to Appellant on behalf of the Executrix and enclosing the Executrix's Certificate of Appointment from the Richmond Probate Court constitutes actual and adequate notice for purposes of §§ 33-11-5 and 33-11-5.1. Appellant, then, had six months from August 17, 2009, or until February 17, 2010, in which to file a claim with the Richmond Probate Court. However, her claim was not filed until December 2011, more than twenty-eight months after having been provided actual and adequate notice that Decedent's Estate had been opened.

The courts<sup>3</sup> are "given a wide, although not unlimited, discretion in the matter of filing claims against estates out of time." McAlpine's Estate, 120 R.I. at 141, 386 A.2d at 182 (emphasis added). In exercising such discretion, this Court must also consider the intent of § 33-11-5 to accelerate the settlement of estates. Id. at 143, 386 A.2d at 183; Tillinghast v. Iverson, 50 R.I. 23, 26, 144 A. 673, 674 (1929); Thompson v. Hoxsie, 25 R.I. 377, 55 A. 930, 931 (1903). This Court concludes that Appellant's Petition for

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<sup>3</sup> Because this appeal is reviewed de novo, this Court has the same discretion as the probate courts in granting or denying a request to file a claim out of time.

Leave to File Claim Out of Time, filed twenty-two months beyond the six-month statute of limitations, which had been triggered by actual notice to Appellant that Decedent's Estate had commenced, flies in the face of the intent of § 33-11-5. Having full knowledge of her own claims against Decedent and the initiation of Decedent's Estate, Schulz failed to act with any degree of diligence required under § 33-11-5.<sup>4</sup> Appellant's Petition for Leave to File Claim Out of Time more than two years after receiving the first of two notices that Decedent's Estate had been opened must be denied.

## **B**

### **Distribution of the Estate**

Appellant further argues that because the Estate has not been fully distributed, there is no prejudice to allowing her claim to be filed out of time. In essence, Appellant asks this Court to exercise its discretion and permit the filing of her claim out of time because there remain funds in the Estate from which her claim may be paid. Appellant evidently subscribes to the notion, "no harm, no foul." Under the circumstances presented, this Court disagrees.

The distribution of an estate does not alter, in any way, the discretion that the court may exercise in granting or refusing permission to file a claim out of time; rather, the distribution of an estate simply leaves a court without jurisdiction to entertain a

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<sup>4</sup> Because this Court reaches its Decision based upon § 33-11-5, it is unnecessary to consider the Executrix's alternative argument that Schulz's Petition is barred under § 33-11-50. Had this Court reached that issue, consistent with the holding in Estate of Manchester, 66 A.3d at 431, this Court would have deemed the two-year statute of limitations in § 33-11-50 inapplicable as that statute of limitations applies only to suits filed in court and not to claims admitted to probate court as Schulz has attempted to do here.

request to file a claim out of time. Chatigny v. Gancz, 84 R.I. 255, 257, 123 A.2d 140, 141 (1956).

To permit Appellant to file a claim twenty-eight months after receiving actual and adequate notice of the opening of Decedent's Estate defeats the intent of § 33-11-5 to secure the speedy settlement of Decedent's Estate. Although recognizing that "a certain latitude" may be afforded to Appellant, Appellant sat on her rights for years without bringing a claim she knew existed from the moment her brother passed away. Additionally, Appellant elected not to file a claim in the South Dakota ancillary estate governing the disposition of the South Dakota Property, and she may still protect her claim as it relates to the Illinois Property when Executrix opens an ancillary estate in that jurisdiction. Thus, Appellant is not wholly without a remedy. Accordingly, this Court denies Appellant's Petition for Leave to File Claim Out of Time.

#### **IV**

#### **Conclusion**

For the foregoing reasons, the March 13, 2012 Order of the Richmond Probate Court is affirmed. Appellant's Petition for Leave to File Claim Out of Time is denied.

Counsel for the Estate shall prepare a judgment consistent with this Decision.



**RHODE ISLAND SUPERIOR COURT**  
*Decision Addendum Sheet*

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**TITLE OF CASE:** In Re: Estate of Ralph E. Spaltholz

**CASE NO:** C.A. No. WP 2012-0232

**COURT:** Washington County Superior Court

**DATE DECISION FILED:** November 25, 2014

**JUSTICE/MAGISTRATE:** Kristin E. Rodgers

**ATTORNEYS:**

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