

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

CATHERINE DANA nka JOHNSON
Plaintiff - Appellee

And

STARK COUNTY JOB AND FAMILY
SERVICES,

Intervenor - Appellee

-vs-

PATRICK TAYLOR

Defendant - Appellant (deceased)

And

KATHLEEN TAYLOR

Defendant – Appellant

JUDGES:

Hon. W. Scott Gwin, P.J.

Hon. William B. Hoffman, J.

Hon. Craig R. Baldwin, J.

Case No. 2017CA00229

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Stark County Court
of Common Pleas, Family Court
Division, Case No. 1996DR0983

JUDGMENT:

Reversed

DATE OF JUDGMENT:

July 23, 2018

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Baldwin, J.

{¶1} Defendant-appellant Kathleen Taylor appeals from the November 17, 2017 Judgment Entry of the Stark County Court of Common Pleas, Family Court Division.

STATEMENT OF THE FACTS AND CASE

{¶2} Appellee Catherine Dana nka Catherine Johnson and Patrick Taylor were married on December 12, 1986 and three children were born as issue of the marriage. On June 24, 1996, appellee filed a complaint for divorce. A Judgment Entry of Divorce was filed on September 17, 1997 which approved and adopted the parties' Separation Agreement. The Separation Agreement granted Patrick Taylor, who had been a firefighter, his interest in his Police and Fireman's Disability and Pension Fund of Ohio. As memorialized in a Judgment Entry filed on September 21, 2001, the Ohio Police and Fireman's Disability and Pension Fund of Ohio was joined as a defendant and was restrained from distributing Patrick Taylor's interest in the fund until further order. All of the children were emancipated as of August 28, 2009. Child support was terminated pursuant to a Termination Order filed on October 28, 2009.

{¶3} Appellant Kathleen Taylor and Patrick Taylor were married on February 2, 2010. Patrick Taylor died intestate in Franklin County, Ohio on January 25, 2015 in Franklin County, Ohio. The Franklin County Probate Court, via an Entry filed on May 19, 2017, relieved the estate from administration and awarded appellant Patrick's benefit plan held by the Ohio Police and Fireman's Disability and Pension Fund of Ohio which was worth \$28,805.00. On July 10, 2017, appellant filed a motion in the Stark County Court of Common Pleas, Family Court Division, asking that she be added as a defendant. On the same date, she filed a motion asking for a partial release of the restraining order so that

she could receive the pension since the Administrator of the pension refused to release because of the 2001 restraining order.

{¶4} Pursuant to an Order filed on July 10, 2017, the trial court ordered the partial release of the September 21, 2001 restraining order. Appellant Kathleen Taylor was added as a new party defendant as memorialized in a Judgment Entry filed on July 21, 2017. However, the order of intervention filed on July 21, 2017 was vacated and a hearing scheduled pursuant to a Judgment Entry filed on August 2, 2017 due to conflicting orders.

{¶5} On August 2, 2017, Stark County Child Support Enforcement Agency filed a Motion to Intervene because it had an interest in the subject of the action. On the same date, it filed a motion opposing the partial release of the restraining order. In its motion, it asked that if or when the restraining order was lifted, the trial court direct that \$48,209.31, be applied to child support arrearages. The Motion to Intervene was granted by the trial court on August 2, 2017.

{¶6} Appellee, on August 10, 2017, filed a Motion for Disbursement of Funds, asking for an order from the trial court directing the Ohio Police and Fireman's Disability and Pension Fund to release all funds being held for Patrick Taylor to her "as and for his spousal support arrearage." In her affidavit, she alleged that she was owed \$40,290.00 in spousal support arrearages. Appellant filed a memorandum in opposition to the same on August 21, 2017, arguing that the Franklin County Probate Court had jurisdiction over the disbursement of Patrick Taylor's estate. The Magistrate, in an Order filed on August 24, 2017, vacated the prior partial release of the restraining order and scheduled the matter for a pretrial on October 2, 2017. Intervenor-appellee Stark County Job and Family Services filed a brief in support of lump sum intercept on September 6, 2017.

{¶17} Following the pretrial, the parties were directed to file a legal memorandum. Appellee filed a brief on November 2, 2017 and appellant filed her brief on November 3, 2017 pertaining to the partial release of the restraining order.

{¶18} The trial court, via a Judgment Entry filed on November 17, 2017, granted the Child Support Enforcement Agency's Motion for a Lump Sum Intercept and appellant's motion for a partial release of the restraining order. The trial court directed the Child Support Enforcement Agency to prepare the appropriate order. On December 8, 2017, the Child Support Enforcement Agency filed a Motion to Intercept Lump Sum Payment. An Order granting the same was filed on December 8, 2017 which required the Ohio Police and Fireman's Disability and Pension Fund to forward the lump sum payment "equal to the arrears of \$48,125.14 through December, 2017."

{¶19} Appellant now appeals, raising the following assignments of error on appeal:

{¶110} I. THE TRIAL COURT ERRED AS A MATTER OF LAW BECAUSE THE TRIAL COURT LACKED JURISDICTION TO MAKE AN ORDER UPON DECEDENT PATRICK TAYLOR'S ESTATE WHEN THE PROBATE COURT OF FRANKLIN COUNTY, OHIO HAD ISSUED AN ORDER OVER THE ESTATE OF PATRICK TAYLOR.

{¶111} II. THE TRIAL COURT ABUSED ITS DISCRETION AND ERRED AS A MATTER OF LAW BY GRANTING THE CHILD SUPPORT ENFORCEMENT AGENCY'S MOTION FOR A LUMP SUM INTERCEPT, AS THE OBLIGOR WAS DECEASED AND WAS NOT RECEIVING A LUMP SUM PAYMENT PURSUANT TO O.R.C. 3121.12(A).

I

{¶112} Appellant, in her first assignment of error, argues that the trial court did not have jurisdiction to issue the November 17, 2017 Judgment Entry granting the Motion for Lump Sum Intercept and motion for partial release of the restraining order. We agree.

{¶13} We review a trial court's determination as to its ability to exercise jurisdiction over a matter de novo. *Burns v. Daily*, 114 Ohio App.3d 693, 701, 683 N.E.2d 1164 (11th Dist.1996). “Where a matter falls within the exclusive jurisdiction of the probate court, no other court may exercise jurisdiction over the matter.” *Biro v. Biro*, 6th Dist. Ottawa No. OT–10–017, 2010–Ohio–5169, ¶ 13, citing *Caudill v. Caudill*, 29 Ohio App.3d 51, 52, 502 N.E.2d 703 (10th Dist.1986).

{¶14} R.C. 2101.24 states in relevant part, as follows: “(A)(1) Except as otherwise provided by law, the probate court has exclusive jurisdiction:...(c) To direct and control the conduct and settle the accounts of executors and administrators and order the distribution of estates.” (Emphasis added). Pursuant to R.C. 2117.06(A) “All creditors having claims against an estate, including claims arising out of contract, out of tort, on cognovit notes, or on judgments, whether due or not due, secured or unsecured, liquidated or unliquidated, shall present their claims” to the executor of the estate. See *Fletcher v. Estate of Fletcher*, 2014–Ohio–5377, 25 N.E.3d 379, (11th Dist.). “[A]ll claims shall be presented within six months after the death of the decedent.” R.C. 2117.06(B).

{¶15} When a claim against an estate has been rejected in whole or in part * * *, “the claimant must commence an action on the claim, or that part of the claim that was rejected, within two months after the rejection if the debt or that part of the debt that was rejected is then due, or within two months after that debt or part of the debt that was rejected becomes due, or be forever barred from maintaining an action on the claim or part of the claim that was rejected.” R.C. 2117.12. In *Fletcher*, supra., the claimant presented her claim to the executor of the estate of her deceased ex-husband seeking the return of half of her ex-husband's retirement benefits, which had been subject to equal distribution under a qualified domestic relations order that remained unexecuted subsequent to her ex-husband's death, after his ex-wife received the entirety of the

benefits as the named beneficiary. After the claim was rejected in whole by the executor, she filed a motion with the Lake County Court of Common Pleas, Domestic Relations Division, seeking to assert her claim against the estate based on the divorce decree between the claimant and the decedent. The 11th District Court of Appeals held that since she had asserted her claim in domestic relations court more than two months after its rejection by the executor, it was forever barred pursuant to R.C. 2117.12. The court, in *Fletcher*, stated in relevant part, as follows in paragraph 35: “The procedure set forth in R.C. 2117.12 has been regularly applied in situations where a claim is asserted against a decedent's estate based on a final decree of divorce. See, e.g., *Caldwell v. Brown*, 109 Ohio App.3d 609, 610, 672 N.E.2d 1037 (2nd Dist.1996) (“[t]he claim was expressly predicated upon provisions in a divorce decree”); *Harmer v. Smith*, 2nd Dist. Clark No. 3101, 1994 WL 380499, 1 (July 20, 1994) (claim based on “the decedent's failure to have maintained certain policies of life insurance that * * * he was required to maintain under the terms of the divorce decree”); *Lindsay v. Royse*, 12th Dist. Butler No. CA92–06–111, 1993 WL 64162, 1 (Mar. 1, 1993) (claim “represent[ed] an arrearage of sustenance alimony payments accumulated prior to and after the [obligor's] death”).

{¶16} We find, based on the foregoing, that the Probate Court had exclusive jurisdiction over claims made against the estate of Patrick Taylor, the decedent, and that the trial court did not have jurisdiction. As noted by appellant, the Child Support Enforcement Agency and appellee are claimants to the estate of Patrick Taylor and should have filed their claims with the Franklin County Probate Court. The trial court lost jurisdiction to distribute or intercept the retirement funds at issue in this case upon the decedent's death.

{¶17} Appellant's first assignment of error is, therefore, sustained.

II

{¶18} Appellant, in her second assignment of error, contends that the trial court abused its discretion and erred as a matter of law by granting the Motion for a Lump Sum Intercept filed by the Child Support Enforcement Agency since when the obligor, Patrick Taylor, was deceased and was not receiving a lump sum payment pursuant to R.C. 3121.12(A).

{¶19} Based on our disposition of appellant's first assignment of error, appellant's second assignment of error is moot.

{¶20} Accordingly the judgment of the Stark County Court of Common Pleas, Family Court Division, is reversed.

By: Baldwin, J.

Gwin, P.J. and

Hoffman, J. concur.

[Cite as *Johnson v. Taylor*, 2018-Ohio-2925.]