[Cite as *Sharon Regional Health Sys. v. Estate of Diez,* 2006-Ohio-5647.]

THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

TRUMBULL COUNTY, OHIO

SHARON REGIONAL HEALTH SYSTEM,	:	**O P I N I O N**
Plaintiff-Appellant,	:	**CASE NO. 2006-T-0036**
- vs -	:	
THE ESTATE OF: BARBARA DIEZ, ROXANNE D. GROSS, EXECUTRIX,	:	
Defendant-Appellee.	:	

Civil Appeal from the Court of Common Pleas, Case No. 03 CV 1242.

Judgment: Affirmed.

James E. Sanders, 185 High Street, N.E., Warren, OH 44481 (For Plaintiff-Appellant).

James A. O'Brien, 7337 Warren-Sharon Road, P.O. Box 9, Brookfield, OH 44403 (For Defendant-Appellee).

CYNTHIA WESTCOTT RICE, J.

{¶1} Appellant, Sharon Regional Health System, appeals the judgment entry of the Trumbull County Court of Common Pleas awarding summary judgment in favor of appellee, Roxanne D. Gross, Executrix of the Estate of Barbara Diez. We affirm.

{¶2} The decedent, Barbara Diez, had received medical services from appellant for several years prior to her death on March 20, 1997. At the time of her death, the decedent was making payments on her account to appellant. However, after learning of the decedent's passing, appellant mailed a letter to appellee's attorney,

James O'Brien, evidencing a claim against the estate for alleged medical bills still owed. Appellee maintains the letter was never received. Moreover, appellee testified she did not learn of the alleged debt until March 25, 2003, the date on which appellant resubmitted its claim to the estate. On April 22, 2003, appellee rejected appellant's claim.

{¶3} On May 23, 2003, appellant filed the instant action to recover the alleged outstanding debt. On May 11, 2004, appellant filed its motion for summary judgment. After a series of continuances, appellee filed her motion for summary judgment on December 1, 2005. Appellee's motion was premised upon appellant's failure to bring its breach of contract claim within the relevant six year statute of limitations prescribed for oral contracts. On February 9, 2006, appellant filed its response to appellee's motion for summary judgment. On February 13, 2006, the trial court awarded appellee's summary judgment and dismissed appellant's complaint.

{¶4} Appellant now appeals and assigns one error for our review:

{¶5} "The Trial Court erred as a matter of law in granting Summary Judgment in favor of the Defendant/Appellee, the Estate of Barbara Diez."

{¶6} Summary judgment is proper where:

{¶7} "*** (1) no genuine issue as to any material fact remains to be litigated, (2) the moving party is entitled to judgment as a matter of law, and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the nonmoving party, that conclusion is adverse to the party against whom the motion for summary judgment is made." *Mootispaw v. Eckstein,* 76 Ohio St.3d 383, 385, 1996-Ohio-389.

{¶8} The moving party to a Civ.R. 56 motion bears the initial burden of providing the court with a basis for the motion and identifying evidence within the record which demonstrate the absence of an issue of fact on a material element of the nonmoving party's claim. *Dresher v. Burt*, 75 Ohio St.3d 280, 296, 1996-Ohio-107. If the moving party satisfies its burden, the nonmoving party has the reciprocal burden of providing evidence to demonstrate an issue of material fact. If the nonmoving party fails to satisfy his or her burden, then summary judgment is appropriate. Civ.R. 56(E). Appellate courts review a trial court's award of summary judgment de novo. *Shnarrs v. Girard Bd. of Education*, 11th Dist. No. 2005-T-0046, 2006-Ohio-3881, at ¶13.

{¶9} Here, both parties concede the issue on appeal is when the six-year statute of limitations commenced upon the unwritten contract in question.[1] Appellant asserts the limitations period did not commence until April 22, 2003, the date on which the appellee, as executrix, formally rejected appellant's claim on the unpaid account. As such, appellant concludes the instant matter is well within the statutory window. Appellee, on the other hand, asserts that the cause of action accrued on March 20, 1997, the date of the decedent's death and therefore the limitations period expired on March 20, 2003, the six-year anniversary of her death.

{¶10} While we disagree with the manner in which the parties frame the issue, we must first point out that the record is unclear as to whether appellee, acting as executrix, or her attorney received notice of the claim set forth in the letter dated May 16, 1997. The letter was addressed to Attorney O'Brien (which is an acceptable means of presenting a claim against an estate under R.C. 2117.06, see, e.g., *Peoples National*

Bank v. Treon (1984), 16 Ohio App.3d 410, 411). However, appellee, in her answer, denied appellant properly submitted its claim and asserted appellant's cause of action was barred by the applicable statute of limitations. Moreover, during her deposition, appellee vehemently denied she received any notice of the bill on which appellant's claim was premised until March 25, 2003. At the deposition, the following exchange occurred:

{¶11} "Q. You do not feel that the estate is obligated to pay that debt [of $27,580.45]?

{¶12} "A. No.

{¶13} "***

{¶14} "Q. Can you give me the basis for your belief that they are not owed?

{¶15} "A. They did not bill me.

{¶16} "Q. First off you have a question on billing. Is that the only reason?

{¶17} "A. They didn't send me something to pay until last year.

{¶18} "Q. I understand that. If the hospital had billed you immediately after your mother's death, would you have paid this bill?

{¶19} "A. I would have tried.

{¶20} "***

{¶21} "Q. You don't have any issue now with the legitimacy and you did not have any issue with the legitimacy of the debt right after your mother's death; correct?

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1. Both R.C. 2305.07 and the corrolary Pennsylvania statute sets the statute of limitations for claims based upon unwritten contracts at six years.

{¶22} "A. Had I received that bill in the year following her death I would have looked into the charges and made sure that they were accurate. I would have asked for an itemization and checked the dates. As you can see, years are missing and –

{¶23} "Q. Absolutely.

{¶24} "A. Just normal bill paying.

{¶25} "Q. And that would have been your duty as a fiduciary to make sure they were valid bills?"

{¶26} "A. Yes.

{¶27} "Q. But sitting here today, other than requesting an itemization you have no reason to doubt the validity of the documents I have shown you?

{¶28} "A. I have reason to doubt. This is very vague."

{¶29} Alternatively, appellant maintains appellee, acting as executrix, did receive the notice via its May 16, 1997 letter asserting its claims and avers the receipt is demonstrated by an affidavit filed by Jeannie A. Croyle, its credit office supervisor. The affidavit to which appellant refers is no where to be found in the record. Although appellant maintains the affidavit was attached to its motion for summary judgment, the motion in question has no affidavits nor other exhibits appended to it. Without a greater indicia of proof demonstrating presentment was properly effectuated by its May 16, 1997 missive, appellant may not rely upon that letter as a basis for its argument that it perfected a proper statutory presentation.

{¶30} The record *does* reveal appellant presented (or, viewing the allegations in its favor, "resubmitted") a claim on March 25, 2003; this claim was received and duly rejected on April 22, 2003. However, under the circumstances, this claim is a statutory

nullity as it is well outside the one-year statutory window for submitting claims against the estate. See, R.C. 2117.06.[2] In this respect, appellant's claims are statutorily deficient.

{¶31} However, assuming arguendo, appellee received the May 16, 1997 notice and was aware of the claim, we believe the six-year statutory period set forth in R.C. 2305.07 is irrelevant to the instant matter.

{¶32} Generally, an estate is obligated to put a creditor on notice via "plain and unequivocal" rejection of its claim. See, e.g., *Caldwell v. Brown* (1996), 109 Ohio App.3d 609, 612. However, the purpose of this requirement is to "provide a short time period within which litigation against an estate must be commenced." Id. That said, we believe this requirement is triggered only when an estate is ambiguous as to whether the claim will be allowed. It would seem an estate's non-response offers no evidence at all of its intentions regarding the alleged debt. In such a situation, we believe no response within the thirty day window can serve as a constructive rejection

{¶33} In *Children's Medical Ctr. v. Ward* (1993), 87 Ohio App.3d 504, supra, the court observed:

{¶34} "Silence by an executor, in response to a submitted bill, does not save an improperly presented claim from being time-barred. On the other hand, if the claim is properly presented, silence by an executor should not bar the claimant from joining the class of creditors of the estate, or prevent the creditor from suing on the claim.

{¶35} "***

2. Current R.C. 2117.06(B) allows only six months for a claimant to submit its claim against the state. However, the version of R.C. 2117.06(B) in effect at the time of the decedent's death afforded claimants one year to present their claims against the estate.

{¶36} "[Thus,] an executor with actual knowledge of a legitimate debt of the estate, who personally receives a proper statement of that debt under R.C. 2117.06(A) and does not accept the claim within the thirty-day time period prescribed by R.C. 2117.06(D), effects a constructive rejection of the claim." *Ward*, supra, at 508.

{¶37} Assuming, as appellant entreats us to do, the claim was properly presented on May 16, 1997 *and* appellee was aware of the legitimate debt, we hold appellant was on constructive notice of the rejection and was required to move forward with its suit within two months from the point of the rejection pursuant to R.C. 2117.12. R.C. 2117.12 provides a specific limitation period for claims that are rejected. It states, in relevant part:

{¶38} "When a claim against an estate has been rejected in whole or in part but not referred to referees, or when a claim has been allowed in whole or in part and thereafter rejected, 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."

{¶39} Here, once the thirty-day period for responding to appellant's May 16, 1997 claim (i.e. June 15, 1997), appellant had two months to file its claim in the general division. Appellant failed to do so. Moreover, there is no record evidence that appellant attempted to reassert the claim or demand a response from appellee after the thirty-day

window passed.[3] The state of the evidence shows appellant waited mutely for appellee to accept or reject its claim for over six years at which point it submitted a separate claim. We believe appellant's "wait and see" approach improper.[4]

{¶40} Under the circumstances, we believe such an interpretation is reasonable as it offers a bright-line rule expediting the management of alleged debts accrued by a decedent and affording a claimant the opportunity to protect its rights by swiftly moving forward with a purportedly valid claim.

{¶41} Appellant's sole assignment of error is not well taken.

{¶42} For the reasons set forth above, appellant's assignment of error is overruled and the decision of the Trumbull County Court of Common Pleas is therefore affirmed.

DONALD R. FORD, P.J.,

COLLEEN M. O'TOOLE, J.,

concur.

3. Appellant could have re-presented its claim at any point and demanded a response within five days pursuant to R.C. 2117.11, which provides in relevant part: "A claim is rejected if the executor or administrator, or a distributee who receives the presentation of a claim as provided in division (A)(2) of section 2117.06 of the Revised Code, on demand in writing by the claimant for an allowance of the claim within five days, which demand may be made at presentation or at any time after presentation, fails to give to the claimant, within that five-day period, a written statement of the allowance of the claim. The rejection shall become effective at the expiration of that period.

4. By way of observation, even were appellant's approach proper, it is hard to imagine how it could expect secure payment on the alleged debt at such a late date, i.e., the probate court had likely distributed the balance of the decedent's assets and thus, absent some claim that appellee was responsible for the debt in the estate's stead, the claim was a practical nullity.