

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STAFFORD LAW CO., L.P.A., :
 :
 Plaintiff-Appellee, :
 : No. 109377
 v. :
 :
 ESTATE OF RUBY J. COLEMAN, :
 ET AL., :
 :
 Defendants-Appellants.

JOURNAL ENTRY AND OPINION

JUDGMENT: REVERSED AND REMANDED
RELEASED AND JOURNALIZED: April 1, 2021

Civil Appeal from the Cuyahoga County Court of Common Pleas
Case No. CV-19-916355

Appearances:

Stafford Law Co., L.P.A. and Joseph G. Stafford, *for
appellee.*

Harvey B. Bruner Co., L.P.A. and Harvey B. Bruner, *for
appellant.*

MARY EILEEN KILBANE, J.:

{¶ 1} Defendant-appellant the Estate of Ruby J. Coleman (“the Estate”) appeals from the trial court’s decision granting plaintiff-appellee Stafford Law Co.

L.P.A.'s ("Stafford") motion for summary judgment. For the reasons that follow, we reverse.

Factual and Procedural History

{¶ 2} This case stems from a fee dispute for legal services rendered by Stafford. An overview of earlier and directly related proceedings is essential to understand the facts and circumstances of this case. Ruby J. Coleman ("the decedent") hired Stafford to represent her in various proceedings against her husband, Charles B. Coleman ("Coleman"). Specifically, Stafford represented the decedent in her divorce proceedings against Coleman initiated in 2015. Stafford also represented the decedent in a domestic violence case and a related civil case, both against Coleman. The domestic violence case was resolved with a consent agreement and a five-year domestic violence civil protection order against Coleman, issued on November 4, 2016.

{¶ 3} Less than three months later, the decedent passed away on January 14, 2017. At the time of her death, the divorce case and the related civil case were still pending. The decedent's divorce from Coleman was not finalized at the time of her death, and Coleman was appointed as the administrator of the Estate.

{¶ 4} Stafford claims that the decedent owed it \$41,678.01 plus 18 percent interest, for legal services rendered pursuant to their agreement. On April 18, 2017, Stafford filed a written statement of claim in probate court. The claim identified Coleman as the Estate's personal representative, and the certificate of service reflects that a copy of the claim was sent to Coleman care of his attorney at the

attorney's office. On November 29, 2017,¹ the Estate rejected Stafford's claim, stating that the claim was rejected because it was not properly presented to Coleman and therefore was not presented as mandated by the requirements of R.C. 2117.06.

{¶ 5} On January 17, 2018, Stafford filed suit against the Estate in the General Division of the Cuyahoga County Court of Common Pleas in Case No. CV-18-891660. On June 15, 2018, while the case was pending in the general division, Stafford filed a motion for the Estate to pay the claim in the Probate Division of the Cuyahoga County Court of Common Pleas. On July 5, 2018, the Estate filed a motion for summary judgment in the general division, arguing that R.C. 2117.06 provides that a claim upon an estate must be presented to the administrator or executor of the estate, and not to an agent of the administrator or executor. On July 19, 2018, Stafford filed a notice of voluntary dismissal, which stated that it was more appropriate for the probate court to decide the matter.

{¶ 6} On October 25, 2018, the parties appeared at a hearing in probate court. On October 29, 2018, the probate court magistrate issued a judgment entry stating that the motion was "settled and dismissed." No written settlement agreement is contained in the record for this appeal.

{¶ 7} On February 25, 2019, Stafford filed a motion to enforce the settlement agreement in the probate court. On April 12, 2019, the Estate filed a

¹ We note that although this rejection was outside of the thirty-day limit described in R.C. 2117.06(D), the statute goes on to provide that an administrator's failure to allow or reject a claim within that time shall not prevent them from doing so after that time. R.C. 2117.06(D); *Saber Healthcare v. Hudgins*, 9th Dist. Summit No. 29698, 2020-Ohio-5603, ¶ 14.

“motion to strike, or in the alternative, leave to respond.” The Estate asserted that in filing its motion to enforce the settlement agreement, Stafford “failed to even attempt proper service upon either attorney” of record. The same day, the Estate filed a brief in opposition to Stafford’s motion to enforce the settlement agreement. The Estate argued that no settlement agreement was ever reached.

{¶ 8} A hearing on Stafford’s motion to enforce the settlement agreement was held on May 8, 2019, in probate court. During the hearing, the court expressed concern that the magistrate did not have jurisdiction to entertain Stafford’s June 15, 2018 motion for the Estate to pay the claim. The court discussed in detail having an evidentiary hearing on the issue of whether a settlement agreement had been reached on a future date. Counsel for both parties discussed what witnesses would need to be called at such a hearing. Ultimately, the court informed counsel that it would make a determination as to whether it had jurisdiction to enter the October 29, 2018 judgment entry stating the claim was settled and dismissed. If the court determined that it had jurisdiction, an evidentiary hearing would take place. No such hearing was held, and the court never heard evidence as to either the settlement or the presentation of the claim.

{¶ 9} On May 28, 2019, the probate court issued a judgment entry vacating its October 29, 2018 judgment entry for lack of jurisdiction. Despite the court’s determination that it lacked jurisdiction over a rejected claim, the judgment entry went on to find that no written settlement agreement was submitted to the court and further that the terms of any settlement were not otherwise recorded or made a part

of the record. Relevant to this appeal, the court inexplicably went on to state that it agreed with Stafford that the claim was properly presented to the Estate because it was presented to Coleman's counsel. Despite this, the court found that Stafford did not cite to any authority that would have allowed the probate court to proceed on a rejected claim. Therefore, the probate court determined that it was without jurisdiction to consider the claim. In light of this conclusion, the probate court vacated the October 29, 2018 judgment entry finding that Stafford's motion for the Estate to pay the claim was "settled and dismissed" because the court was without jurisdiction to enter an order resolving the claim. Finally, the court dismissed Stafford's motion for the Estate to pay the claim and motion to enforce settlement agreement.

{¶ 10} On June 5, 2019, Stafford filed a complaint in the General Division of the Cuyahoga County Court of Common Pleas. The complaint alleged that the decedent breached her agreement with Stafford, and the Estate has continued to refuse to pay Stafford the amount owed. The complaint further alleged unjust enrichment. On June 14, 2019, the Estate filed an answer and a motion to transfer the case to the original judge in accordance with Loc.R. 15.0(I). The court granted this motion on June 20, 2019.

{¶ 11} On August 14, 2019, Stafford filed an amended complaint. On August 27, 2019, the Estate filed an answer to the amended complaint. On September 20, 2019, the Estate filed a motion for summary judgment. The Estate reiterated its earlier argument that R.C. 2117.06, and the corresponding case law requires a

creditor with a claim against an estate to present the claim to the administrator or executor of the estate and not to an agent thereof. The Estate further argued that Stafford's failure to properly present the claim could not be cured because R.C. 2117.06 provides that all claims against an estate shall be presented within six months after the death of the decedent.

{¶ 12} On October 18, 2019, Stafford filed a motion for summary judgment and brief in opposition to the Estate's motion for summary judgment. Stafford argued that its claim satisfied the requirements of R.C. 2117.06, and further, the Estate had not challenged any substantive aspect of Stafford's breach-of-contract or unjust-enrichment claims. Stafford also argued that the presentment issue is barred by res judicata because the probate court found that the claim had been properly presented to the Estate.

{¶ 13} On November 11, 2019, the Estate filed a motion to strike, or in the alternative, reply in opposition to Stafford's motion for summary judgment. On November 12, 2019, Stafford filed a brief in opposition to the Estate's motion to strike. On November 14, 2019, the trial court denied the Estate's motion to strike but accepted the filing as a brief in opposition.

{¶ 14} On December 16, 2019, the trial court held a hearing on the parties' motions for summary judgment. On December 17, 2019, the trial court granted Stafford's motion for summary judgment and denied the Estate's motion for summary judgment. On December 18, 2019, the trial court, relying on the probate court's May 28, 2019 judgment entry, issued a corresponding decision and order.

{¶ 15} This appeal follows. The Estate presents two assignments of error for our review.

Assignments of Error

I. The trial court erred in refusing to determine the issue of whether the claim was presented properly to the estate.

II. The trial court erred when it failed to find that the Appellee did not properly present its claim.

Legal Analysis

{¶ 16} In its first assignment of error, the Estate argues that the trial court erred in failing to make an independent determination on the issue of whether the claim was properly presented to the Estate, instead relying upon the probate court's May 28, 2019 judgment entry vacating its earlier decision and finding that the probate court was without jurisdiction to hear the matter. In response, Stafford argues that the Estate's arguments regarding the presentation of the claim are barred by res judicata.

{¶ 17} On May 8, 2019, the probate court held a hearing on Stafford's motion to enforce a settlement agreement. Following that hearing, the probate court issued a judgment entry on May 28, 2019, in which it vacated a prior decision referring to the case as having been "settled and dismissed," finding that it lacked jurisdiction to enter such an order resolving the claim because the claim had been rejected by the Estate. It is well-settled that probate court is without jurisdiction to entertain an action on a rejected claim. *Gibbons v. Price*, 33 Ohio App.3d 4, 7, 514 N.E.2d 127 (8th Dist.1986); *Estate of Haueter*, 11th Dist. Geauga No. 2016-G-0071, 2016-Ohio-

7164, ¶ 19. Nevertheless, despite this clear acknowledgement that it lacked jurisdiction, the court went on to make a finding related to presentment. Relevant to this appeal, the probate court's judgment entry stated that it agreed with Stafford "that the Claim was properly presented to the Estate in that the Claim was presented to counsel for the Executor [sic]."

{¶ 18} In order for res judicata to apply in the way Stafford argues it does here, "the prior adjudication must be by a court of competent jurisdiction." *Bank One, N.A. v. Johnson*, 2d Dist. Greene No. 03CA0039, 2003-Ohio-6906, ¶ 29, citing *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 1995-Ohio-331, 653 N.E.2d 226. The adjudication that Stafford and the trial court relied on here was the probate court's determination that it lacked jurisdiction over a rejected claim. Because the probate court lacked jurisdiction over the rejected claim, its extraneous statement as to the presentation of the claim is a nullity. Therefore, the statement cannot be used as the basis for a subsequent decision by the trial court.

{¶ 19} The trial court's summary judgment decision in this case appears to have been heavily influenced by the aforementioned statement by the probate court. In its decision, the trial court cited the probate court's statement that the claim had been properly presented. The trial court went on to state that the probate court "has jurisdiction over how claims are made against the Estate and found the claim to be properly made." Although R.C. 2101.24(A)(1)(c) provides that the probate court has exclusive jurisdiction "to direct and control the conduct and settle the accounts of executors and administrators and order the distribution of estates[.]" it is equally

clear that a probate court lacks subject matter jurisdiction over a rejected claim. *Kraus v. Hanna*, 11th Dist. Portage No. 2002-P-0093, 2004-Ohio-3928, ¶ 18. A court must first have jurisdiction before it can decide any issues presented. Therefore, the Estate's first assignment of error is sustained.

{¶ 20} In its second assignment of error, the Estate argues that the trial court erred when it failed to find that Stafford did not properly present its claim.

{¶ 21} We review summary judgment rulings de novo, applying the same standard as the trial court. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 1996-Ohio-336, 671 N.E.2d 241. We accord no deference to the trial court's decision and conduct an independent review of the record to determine whether summary judgment is appropriate.

{¶ 22} Under Civ.R. 56, summary judgment is appropriate when no genuine issue exists as to any material fact and, viewing the evidence most strongly in favor of the nonmoving party, reasonable minds can reach only one conclusion that is adverse to the moving party, entitling the moving party to judgment as a matter of law. On a motion for summary judgment, the moving party carries an initial burden of identifying specific facts in the record that demonstrate their entitlement to summary judgment. *Dresher v. Burt*, 75 Ohio St.3d 280, 292-293, 662 N.E.2d 264 (1996).

{¶ 23} If the moving party fails to meet this burden, summary judgment is not appropriate; if the moving party meets this burden, the nonmoving party has the reciprocal burden to point to evidence of specific facts in the record

demonstrating the existence of a genuine issue of material fact for trial. *Id.* at 293. Summary judgment is appropriate if the nonmoving party fails to meet this burden.

{¶ 24} As an initial matter, we acknowledge that the fees requested by Stafford were not disputed by the Estate. The sole issue in this case is whether the claim for those fees was properly presented to the Estate pursuant to R.C. 2117.06.

{¶ 25} R.C. 2117.06 provides in relevant part:

(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 in one of the following manners:

(1) After the appointment of an executor or administrator and prior to the filing of a final account or a certificate of termination, in one of the following manners:

(a) To the executor or administrator in a writing;

(b) To the executor or administrator in a writing, and to the probate court by filing a copy of the writing with it;

(c) In a writing that is sent by ordinary mail addressed to the decedent and that is actually received by the executor or administrator within the appropriate time specified in division (B) of this section.

The dispute here is whether Stafford's claim was properly presented "to the executor or administrator in a writing" where it was sent to Coleman's attorney's office.

{¶ 26} The Ohio Supreme Court has strictly interpreted R.C. 2117.06(A)(1)(a), stating that the mandate is "not ambiguous" and is a clear and unequivocal command that all creditors shall present their claims to the executor or administrator in a writing. *Wilson v. Lawrence*, 150 Ohio St.3d 368, 2017-Ohio-

1410, 81 N.E.3d 1242, ¶ 12. The court made clear that “‘shall’ means must” and therefore R.C. 2117.06 creates an obligation for claimants to follow the statutory scheme. *Id.* at ¶ 13, quoting *Application of Braden*, 105 Ohio App. 285, 286, 148 N.E.2d 83 (1st Dist.1957). The court reasoned that such a strict interpretation is warranted because the state has a strong interest in the administration of estates, and further, the requirements of R.C. 2117.06 “protect the vital interests of the estate and its beneficiaries, as well as the estate’s creditors, by ensuring the orderly, efficient, and legally proper administration of the estate by ‘a probate fiduciary, an officer of the Probate Court.’” *Id.* at ¶ 14 and 15, quoting *Beacon Mut. Indemn. Co. v. Stalder*, 95 Ohio App. 441, 445, 447, 120 N.E.2d 743 (9th Dist.1954).

{¶ 27} In *Wilson*, the Ohio Supreme Court specifically held that a claim against an estate must be timely presented in writing to the executor or administrator of the estate, and “delivery of the claim to a person not appointed by the probate court who gives it to the executor or administrator fails to present a claim against the estate.” *Id.* at ¶ 22. In *Wilson*, the claimant’s attorney sent a letter addressed to the decedent’s personal secretary and to the decedent’s accountant. *Id.* at ¶ 4. The record reflected that the decedent’s personal secretary forwarded the letter to the executor of the estate and the estate’s counsel upon receipt. *Id.* The Ohio Supreme Court reversed this court’s decision finding that a claim is deemed presented when “other individuals connected with the estate receive the claim.” *Id.* at ¶ 7, citing *Wilson v. Lawrence*, 2015-Ohio-4677, 49 N.E.3d 826, ¶ 22 (8th Dist.). Instead of adopting this court’s “softened standard,” the Ohio Supreme Court

adopted a strict interpretation of R.C. 2117.06, holding that subsection (A) is “a clear and unequivocal command” that a claim is presented directly to the administrator or executor of the estate, and not to an agent of the administrator or executor. *Id.* at ¶ 12 and 16, citing *Beacon Mut. Indemn. Co.*

{¶ 28} Stafford argues that this case is distinguishable from *Wilson* because unlike the claim in this case, the claim in *Wilson* was not served on the attorney for the estate. In support of this argument, Stafford cites a decision from the Sixth District Court of Appeals in which the executor of an estate testified at trial that a claim was given to the attorney for the estate and that the executor rejected the claim; the court held that the claim satisfied the presentment requirements of R.C. 2117.06(A)(1)(a) because it was presented to the executor’s attorney. *Hatfield v. Heggie*, 6th Dist. Ottawa No. OT-19-023, 2020-Ohio-1156, ¶ 17, citing *Caldwell v. Brown*, 109 Ohio App.3d 609, 611, 672 N.E.2d 1037 (2d Dist.1996); *Peoples Natl. Bank v. Treon*, 16 Ohio App.3d 410, 411, 476 N.E.2d 372 (2d Dist.1984). Notably, *Hatfield* did not cite the Supreme Court’s holding in *Wilson*. We cannot reconcile the holdings in *Hatfield* and *Wilson*, and we decline to apply a more relaxed standard from another appellate district in favor of binding precedent from the Ohio Supreme Court.

{¶ 29} Because the claim in this case was not presented to the executor of the Estate in accordance with the requirements of R.C. 2117.06(A), we find that the trial court erred in granting summary judgment in favor of Stafford. The Estate’s second assignment of error is sustained.

{¶ 30} Judgment reversed and remanded.

It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY EILEEN KILBANE, JUDGE

MICHELLE J. SHEEHAN, P.J., and
EILEEN T. GALLAGHER, J., CONCUR