IN THE SUPREME COURT OF OHIO
CASE NOS. 2015-2081 and 2016-0180

JAMES A. WILSON,
Appellee,

v.

WILLIAM LAWRENCE, *Executor*,
Appellant,

ON APPEAL FROM THE CUYAHOGA COUNTY COURT OF APPEALS
EIGHTH APPELLATE DISTRICT
CASE NO. CA-15-102585

CONSOLIDATED MERIT BRIEF OF APPELLEE JAMES A. WILSON

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STATEMENT OF FACTS

I. RELEVANT FACTUAL HISTORY

The facts of this case are largely undisputed. On September 2, 2011, James A. Wilson ("Wilson") and decedent Joseph T. Gorman ("Gorman") entered into a written agreement whereby Wilson agreed to sell Gorman a 15% interest in Marine 1 LLC, a Michigan limited liability company, for the sum of $300,000.00 ("the Agreement"). (Tr.d. at 22, Ex. 1, Affidavit of James A. Wilson, ¶2; Tr.d. at 23, Ex. A, Affidavit of James A. Wilson, ¶2).[1] Partial payments were made to Wilson by Gorman totaling $113,000; however, no further payments were received. (Tr.d. at 22). The sum of $187,000, plus interest from September 2, 2012, remains due and outstanding. (Tr.d. at 23, Ex. A, Affidavit of James A. Wilson, ¶¶ 5-7, Exs. 2-7).

Gorman died on January 20, 2013. On July 1, 2013, William Lawrence ("Executor") was appointed executor of the Gorman estate (the "Estate"). (Tr.d. at 22, Ex. 2).

On July 11, 2013, within 6 months of Gorman's death, Wilson, via certified and ordinary mail, presented his claim against the Estate (the "Claim Notice Letter"). The Claim Notice Letter was transmitted via ordinary and certified mail on the letterhead of counsel for Wilson, and stated the following:

> To the heirs, administrators or executors of the Estate of; and the trustees or beneficiaries of the trust of; or any other creditors or interested persons in the proceeds of the Trust and/or Estate of Joseph T. Gorman, deceased:
>
> The undersigned is legal counsel to James Wilson, on behalf of Mr. Wilson, and pursuant to R.C. §2117.06(B), you are hereby put on notice of the presentment of a claim by Mr. Wilson against the above noted parties, in the approximate amount of $200,000, plus interest. Said amount is due and owing on a contract entered into by and between Mr. Gorman and Mr. Wilson on or about September 2, 2011, for the purchase of Mr. Wilson's 15% interest in Marine 1, LLC by Mr. Gorman. A copy of the contract is enclosed herein.
>
> Kindly contact the undersigned at your earliest convenience to discuss this matter.

[1] "Tr.d." shall refer to the Transcript of Docket and Journal Entries.

(Tr.d. at 22, Ex. 3; Appx. at 1).[2]

Consequently, the Claim Notice Letter set forth the following information: (1) a notice to the "heirs, administrators, or executors of the Estate of … or any other creditors or interested persons in the proceeds of the … Estate of Joseph T. Gorman, deceased;" (2) that the claimant was James Wilson; (3) the contact information for claimant's counsel; (3) that the letter was pursuant to R.C. 21107.06; (4) that the amount in dispute was approximately $200,000, plus applicable interest; and (5) that the contract involved Gorman's purchase of Marine 1, LLC. *Id.* A copy of the pertinent Agreement was also enclosed with the notice.

The Claim Notice Letter was transmitted to the trustee of Gorman's trust, Randall S. Myeroff ("Myeroff"), and Gorman's business manager, Pat Clark ("Clark"). Myeroff received the Claim Notice Letter on July 12, 2013, within 6 months of Gorman's death, and immediately forwarded it to the Executor and attorney for the Estate, James A. Goldsmith ("Goldsmith"). (Tr.d. at 22, Exs. 4-5; Ex. 5, Deposition of Randall Myeroff, pp. 6-7, 10).

Clark received the Claim Notice Letter on July 16, 2013, also within 6 months of Gorman's death, and immediately forwarded it to Goldsmith the day she received it. (Tr.d. at 22, Exs. 6-7; Ex. 6, Deposition of Pat Clark, p. 34).

Consequently, the Executor and the attorney for the Estate received the Claim Notice letter within 6 months of Gorman's death.

On September 24, 2013, the Estate rejected Wilson's claim. In doing so, it stated that the claim "will not be considered as it was not presented to the Executor of the Estate in accordance with Ohio Revised Code §2117.06(B)." (Tr.d. at 22, Ex. 8). Thereafter, Wilson timely filed suit in accordance with the provisions of R.C. 2117.12.

[2] "Appx." shall refer to the corresponding page of the appendix.

II. RELEVANT PROCEDURAL HISTORY

On November 14, 2013, Wilson filed a Complaint against the Estate for breach of the Agreement. (Tr.d. at 1). In response thereto, the Estate filed a motion to dismiss for failure to state a claim upon which relief can be granted, based upon allegations that the Estate was not notified of the claim within the statutory parameters of R.C. 2117.06. (Tr.d. at 6). After further briefing by both parties concerning the motion to dismiss, the trial court denied the Estate's motion to dismiss. (Tr.d. at 14). In doing so, the trial court stated that "[m]ovant grounds his motion on a statute of [limitations] defense which is almost always subject to factual determinations outside the reach of [12(B)(6)] motions." *Id.*

The case proceeded through discovery. On September 8, 2014, the Estate filed a motion for summary judgment on the same basis, specifically alleging that Wilson's claims are barred based upon his failure to comply with R.C. 2117.06. (Tr.d. at 18). Wilson also filed his own summary judgment motion on November 6, 2014, setting forth the validity of the contract between Wilson and Gorman, the breach of the contract, and the damages associated with such breach. (Tr.d. at 23).

After briefing on the summary judgment motions was completed, on January 27, 2015, the trial court granted the Estate's motion for summary judgment, and denied Wilson's summary judgment motion. (Tr.d. at 27). The trial court determined that Wilson did not satisfy the requirements of R.C. 2117.06 for presenting claims against an estate within the applicable time period. *Id.* The ruling was appealed to the Eighth District Court of Appeals.

On November 12, 2015, the Eighth District reversed the trial court's summary judgment ruling, and determined that a genuine issue of material fact existed as to whether the Executor or attorney for the Estate received Wilson's written claim notice prior to the July 20, 2013, deadline. The Eighth District determined that a claim is "presented" under R.C. 2117.06 when it

is received by the executor, administrator or the attorney for the estate. *Wilson v. Lawrence*, 2015-Ohio-4677 (8th Dist. 2015) citing *Cannell v. Bulicek*, 8th Dist. Cuyahoga No. 41362, 1980 Ohio App. LEXIS 12203, *2-3 (May 22, 1980); *See also In re Estate of McCracken*, 9 Ohio Misc. 195, 224 N.E.2d 181 (P.C. 1967); *Peoples Natl. Bank v. Treon*, 16 Ohio App.3d 410, 476 N.E.2d 372 (2nd Dist. 1984)*; In re Estate of Clark*, 11 Ohio Misc. 103, 229 N.E.2d 122 (C.P. 1967) (holding that receipt of written notice of claim by the attorney for the executor constitutes statutory presentment).

Subsequent to the Eight District's ruling, the Executor filed a motion to certify a conflict between the Eighth District's decision and *Jackson v. Stevens*, 4th Dist. No. CA 1231, 1980 WL 350961 (4th Dist. 1980). On January 28, 2016, the Eighth District granted the motion, and certified the following question to this Court:

> Whether R.C. 2117.06 allows for substantial compliance in the presentment requirements of a claim against an estate. If so, whether a plaintiff with a claim against a decedent's estate can meet his burden under R.C. 2117.06(A)(1)(a) to "present" his claim "[t]o the executor or administrator in writing" when the claimant presents the claim to someone other than the fiduciary, who then submits the claim to the fiduciary within the statutory time-frame under R.C. 2117.06.

On December 28, 2015, the Executor filed a notice of appeal and memorandum in support of jurisdiction with this Court, which Wilson opposed.

On March 23, 2016, this Court accepted the certified question for review and consolidated the certified question case with the Executor's jurisdictional appeal.

III. LAW AND ARGUMENT

PROPOSITION OF LAW NO. I: A CLAIMANT MEETS HIS BURDEN UNDER R.C. 2117.06(A)(1)(a) WHEN AN EXECUTOR, ADMINISTRATOR OR ATTORNEY FOR THE ESTATE RECEIVES WRITTEN NOTICE OF THE CLAIM WITHIN THE STATUTORY TIME-FRAME UNDER R.C. 2117.06(B).

CERTIFIED QUESTION OF LAW: WHETHER R.C. 2117.06 ALLOWS FOR SUBSTANTIAL COMPLIANCE IN THE PRESENTMENT REQUIREMENTS OF A CLAIM AGAINST AN ESTATE. IF SO, WHETHER A PLAINTIFF WITH A CLAIM AGAINST A DECEDENT'S ESTATE CAN MEET HIS BURDEN UNDER R.C. 2117.06(A)(1)(A) TO "PRESENT" HIS CLAIM "[T]O THE EXECUTOR OR ADMINISTRATOR IN WRITING" WHEN THE CLAIMANT PRESENTS THE CLAIM TO SOMEONE OTHER THAN THE FIDUCIARY, WHO THEN SUBMITS THE CLAIM TO THE FIDUCIARY WITHIN THE STATUTORY TIME-FRAME UNDER R.C. 2117.06.

A. Ohio Law Dictates a Softened Standard for Presentment under R.C. 2117.06.

Revised Code 2117.06 sets forth certain time limitations for presentment of creditor's claims against a decedent's estate. Revised Code 2117.06 provides, in pertinent part:

> (A) All creditors having claims against an estate, including claims arising out of contract … 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) Except as provided in section 2117.061[3] of the Revised Code, all claims shall be presented ***within six months after the death of the decedent***, whether or not the estate is released from administration or an executor or administrator is appointed during that six-month period. Every claim presented shall set forth the claimant's address.

(Emphasis where indicated); R.C. 2117.06; Appx. at 2.

In *Fortelka v. Meifert* (1964), 176 Ohio St. 476, 479, this Court stated that "[t]he purpose and object of the law requiring the presentation of claims against an estate to the executor or administrator is manifestly to secure an expeditious and efficient administration of an estate by

[3] R.C. 2117.061 involves the notice requirements for receipt of Medicaid benefits.

promptly providing such a fiduciary with necessary information relating to the existence, amount and character of all indebtedness of the estate." Timely receipt of a written claim notice by an executor or administrator within the time limitations promulgated by R.C. 2117.06, as in this case, cannot be said to delay the expeditious and efficient administration of an estate.

Moreover, the *Fortelka* Court recognized that the method of presentment contemplated by R.C. 2117.06 does not preclude "another equally efficient method for the presentation of claims." *Id.* at 480. In doing so, the Court stated, "Since the law does not require a claimant or litigant to do a vain thing, the mandatory provisions of the state requiring presentation in writing to the personal representative of claims against the estate he represents, are said to be quite uniformly softened and not enjoined when the application of such provisions would run contrary to reason and common sense." *Id.* Consequently, there is a long history of established law recognizing a softened standard when presenting claims under R.C. 2117.06, which was applied by the Eighth District in this case.

Substantial compliance, as opposed to strict compliance, will suffice for purposes of presentment under R.C. 2117.06. In *Gladman v. Carns*, 223 N.E.2d 378, 9 Ohio App.2d 135 (2nd Dist. 1964), the Second District held that substantial compliance is sufficient as it relates to the form of the claim notice. In *Gladman*, the court noted that a "claim against a decedent's estate need not be in any particular form; it is sufficient if it states the character and amount of the claim, enables the representatives to provide for its payment, and serves to bar all other claims by reason of its particularity of designation." *Id.* at 138. The court further provided that the statute of limitations ceased to operate upon a claim when the significance of the claim, as presented, was fully appreciated by the fiduciary. *Id.*

In *Reckner v. Armstrong*, 83-LW-0956 (4th Dist. 1983),[4] the Fourth District, utilizing a substantial compliance standard, determined that presentation of copies of cancelled checks evidencing a loan was a sufficient writing in order to comply with R.C. 2117.06.

In *Estate of Noubar Shields Abdalian v. Abdalian*, 82-LW-2305 (8th Dist. 1982), the Eighth District concluded that a claim against a decedent's estate need not be in any particular form as long as there has been substantial compliance with R.C. 2117.06. In *Abdalian*, a claim was filed orally with counsel for the fiduciary of the estate during the statutory period. Later, there was correspondence between the parties dealing with and about the claim past the statutory period. The Eighth District determined that there were sufficient indicia of a "writing" to fall within the purview of R.C. 2117.06, and that the claimant substantially complied with said statute and fulfilled its legislative purpose as outlined in *Fortelka*.

Based upon the foregoing, a substantial compliance standard should be used when determining whether Wilson complied with the notice requirements promulgated by R.C. 2117.06(A)(1)(a).

B. <u>This Court Should Reaffirm its Decision in *Edens v. Barberton* (1989), 43 Ohio St.3d 176, 539 N.E.2d 1124.</u>

This Court held in *Edens v. Barberton* (1989), 43 Ohio St.3d 176, 539 N.E.2d 1124, that "[w]here a statute such as R.C. 2305.11(B) is silent as to how notice is to be effectuated, written notice will be deemed to have been given when received."

Revised Code 2305.11(B)(1), as interpreted by the Court at that time, read as follows:

> An action upon a medical, dental, optometric, or chiropractic claim shall be commenced within one year after the action accrued, except that, if prior to the expiration of that one-year period, a claimant who allegedly possesses a medical, dental, optometric, or chiropractic claim ***gives*** to the person who is the subject of that claim written notice that the claimant is considering bringing an action upon the claim, that action may be commenced against the person notified at any time within one hundred eighty days after the notice is so given." (Emphasis where indicated.)

[4] Appellant is claiming that a conflict exists between the Fourth District and Eighth District.

By comparison, the statute at issue in this case, R.C. 2117.06(A)(1)(a), reads as follows:

> All creditors having claims against an estate, including claims arising out of contract … shall ***present*** their claims … [a]fter the appointment of an executor or administrator and prior to the filing of a final account or a certificate of termination … [t]o the executor or administrator in a writing." (Emphasis where indicated.)

Both provisions are silent as to how notice is to be effectuated, and therefore according to *Edens*, notice is deemed to have been given when received. The ordinary meaning of statutory language is presumed. *State, ex rel. Carson, v. Jones* (1970), 24 Ohio St.2d 70, 53 O.O.2d 116, 263 N.E.2d 567. When interpreting such language, the words or terms will "be given their common, ordinary and accepted meaning in the connection in which they are used." *Baker v. Powhatan Mining Co*. (1946), 146 Ohio St. 600, 606, 33 O.O. 84, 87, 67 N.E.2d 714, 718. *See, also, In re Appropriation for Hwy. Purposes* (1969), 18 Ohio St.2d 214, 47 O.O.2d 445, 249 N.E.2d 48, paragraph one of the syllabus. The terms "give" and "present" are analogous to one another. According to Roget's 21st Century Thesaurus, Third Edition, Copyright 2013, and Merriam-Webster's Thesaurus,[5] "present" is a synonym of "give."

In R.C. 2117.06(A)(1)(a) the General Assembly used the word "present," which has several meanings, including "to bring or introduce into the presence of someone," and "to ***give***."[6] "Give" is synonymous with "present," and not with "mail" or "post." *Edens* at 180; *see, also, Wallis v. Crook Cty. School Dist*. (1973), 13 Or.App. 174, 509 P.2d 44. Revised Code 2117.06 also requires a written notice. Written notice carries with it the implication of receipt or delivery. *Baldwin v. Fidelity Phenix Fire Ins. Co*., 260 F.2d 951, 953 (6th Cir. 1958).

From the use of the word "present," it appears that the General Assembly intended that the claim notice would be effective when actually received and not when merely mailed. Consequently, it matters not to whom it was mailed, but who received the notice. Thus, where a

[5] http://www.merriam-webster.com/thesaurus/give

[6] http://www.merriam-webster.com/dictionary/present

statute such as R.C. 2117.06(A)(1)(a) is silent as to how notice is to be effectuated, written notice will be deemed to have been presented when received.

In further support of the General Assembly's intention to remain silent as to how notice is to be effectuated under R.C. 2117.06(A)(1)(a) one need only compare the subsections of such statute. Subsection (A)(1)(a), the subsection relevant to the Court's analysis herein, provides that the notice be "[t]o the executor or administrator in writing." Subsection A(1) (c), which is an alternative method for a claimant to provide notice of a claim, provides that the notice be "[i]n 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 …"

Subsection A(1)(c) requires that the notice be sent via ordinary mail while subsection A(1)(a) is silent as to the manner and method of delivery. Subsection A(1)(c) requires that the notice be addressed to the decedent, while subsection A(1)(a) is silent in regards to the addressee. Therefore, the General Assembly's silence as to the method of delivery in subsection A(1)(a) is a clear indication that there is no requirement as to the manner of delivery. Moreover, the General Assembly's silence as to the identification of addressee is a clear indication that there is no requirement related to whom the notice is addressed to. The General Assembly intentionally left silent the method of delivery and the identification of the addressee, and pursuant to *Edens*, any notice under such a provision shall be deemed to have been presented or given when received.

Ohio has long followed *Moore v. Given* (1884), 39 Ohio St. 661, paragraph two of the syllabus, on this issue, which held that "[w]here a statute requires notice of a proceeding, but is silent concerning its form or manner of service, actual notice will alone satisfy such requirement." *See, also*, *State, ex rel. Peake, v. Bd. of Edn*. (1975), 44 Ohio St.2d 119, 73

O.O.2d 437, 339 N.E.2d 249.

In *Castellano v. Kosydar* (1975), 42 Ohio St.2d 107, 71 O.O.2d 77, 326 N.E.2d 686, this Court distinguished provisions in which a manner of providing notice is given from those in which such manner is not prescribed. The statutory provision at issue in *Castellano* stated that notice could be served personally or by registered or certified mail. This Court noted that such a statute was different from the type addressed in *Moore*, which does not prescribe the manner of service. Since R.C. 2117.06(A)(1)(a) does not prescribe the manner of service, this case is analogous to *Moore* and not *Castellano*, and thus, actual notice will alone satisfy the requirement.

The Estate's comparison between Civ.R. 4.1 and R.C. 2117.06(A)(1)(a) is misplaced. Civ.R. 4.1 provides for the manner and method of service (*e.g.* service by United States certified or express mail, service by commercial carrier service, personal service and residence service) while R.C. 2117.06(A)(1)(a) is silent on the issue. Consequently, Civ.R. 4.1 is governed by *Castellano* while R.C. 2117.06(A)(1)(a) is governed by *Moore*, which provides that actual notice is sufficient.

In the case before you, notice was received by the Executor and the attorney for the Estate within the time limitations prescribed by R.C. 2117.06. Accordingly, this Court should reaffirm *Moore* and *Edens*, and hold that where a statute such as R.C. 2117.06(A)(1)(a) is silent as to how notice is to be effectuated, written notice will be deemed to have been presented when received.

Consistent with *Moore* and *Edens*, the Eighth District held that if either the Executor or the attorney for the Estate received the claim prior to the deadline, then, the claim was timely presented to the executor pursuant to R.C. 2117.06. *Wilson v. Lawrence*, 2015-Ohio-4677 (8th Dist.), ¶24.

C. **Timely Receipt of a Written Claim Notice is Sufficient and Such Notice Need Not be in any Particular Form.**

While Ohio law is strict on the time and notice elements of presentment, the ***form*** of the presentment has been less rigidly considered. *Children's Med. Ctr. v. Ward*, 87 Ohio App.3d 504, 509 (2nd Dist. 1993). In meeting one of the three requirements of R.C. 2117.06(A), "[a] claim against a decedent's estate ***need not be in any particular form***; it is sufficient if it states the character and amount of the claim, enables the representatives to provide for its payment, and serves to bar all other claims by reason of its particularity of designation." *Id*. at 510. (Emphasis added).

Clearly, R.C. 2117.06(A)(1) imposes no strict form requirement for presentment of a claim. *Id.* Claims need only be "in a writing" and "presented" to the "executor or administrator" within the statutory time in R.C. 2117.06(B). *Id.* The evidence here shows that Wilson's Claim Notice Letter was received by the Executor and counsel for the Estate prior to the end of the 6 month statutory period, and thus met the time and notice requirements.

In *Children's Med. Ctr. v. Ward*, 87 Ohio App.3d 504, 509 (2nd Dist. 1993), the decedent died on April 25, 1990. Defendant was appointed administrator of the estate on May 8, 1990. In that same month, the administrator ***received*** three computer generated billing statements from plaintiff, which included plaintiff's name, address, the amount due and the responsible party. The court determined that plaintiff's presentment was valid under R.C. 2117.06(A)(1) "because the claim was timely sent, in a writing, to the administrator, and because under all of the prevailing circumstances, the notice to the administrator in her personal capacity constituted notice to the administrator in her capacity as fiduciary of the estate. She could not have been unaware of [plaintiff's] intention to seek payment from the decedent's estate." Likewise, the Executor and counsel for the Estate herein could not have been unaware of

Wilson's claim prior to the running of the 6 month limitations period, as they had the Claim Notice Letter in their possession prior to the expiration of such period.

In *Children's Med. Ctr.*, the court relied upon *Fortelka v. Meifert* (1964), 176 Ohio St. 476. In *Fortelka*, supra, this Court recognized that the method of presentment contemplated by R.C. 2117.06 does not preclude "another equally efficient method for the presentation of claims." ***There is no required method for presentment***. Timely receipt of a claim notice is sufficient under R.C. 2117.06.

Timely receipt of the claim notice by the attorney for an estate, which also occurred in this matter, has also been deemed proper notice under R.C. 2117.06. In *Peoples Natl. Bank v. Treon*, 16 Ohio App.3d 410, 411 (2nd Dist. 1984), a claim against an estate was presented to the attorney appointed by the estate's executor. The claim was captioned "Claim against Estate," and was addressed to the attorney "for the Estate of ..." The court held that a claim against an estate is properly presented where the claim is presented to the attorney appointed by the executor of the estate to represent him or her in the administration of the estate, despite the fact that the executor did not receive notice of the claim until after the time allowed by R.C. 2117.06. In the instant matter, the attorney for the Estate received Wilson's Claim Notice Letter prior to the 6 month statutory period.

It is axiomatic that the form of presentment is not strictly prescribed. The claim need not be in any particular form; it is sufficient if it states the character and amount of the claim, enables the representative to provide for its payment, and serves to bar all other claims by reason of its particularity of designation. *Gladman v. Carns*, 9 Ohio App.2d 135, 138 (2nd Dist. 1964). It has previously been determined that a claim notice which is "actually received" by the executor or administrator meets the requirements of R.C. 2117.06. See *Children's Medical Center v. Ward*, supra, at 510. Here, not only did the Executor "actually receive" the claim notice within the

statutory period, but also, the Estate's attorney "actually received" the notice within such period. A claim presented to the executor's attorney satisfies the statutory presentment requirements. *See Peoples Natl. Bank v. Treon*, 16 Ohio App.3d 410, syllabus (2nd Dist. 1984).

There is no legal precedent precluding service of the claim notice through a third party. In fact, the Sixth Circuit Court of Appeals reversed a summary judgment ruling in such a case. In *Hart v. Johnston*, 389 F.2d 239 (6th Cir. 1968), at the time of decedent's death, the decedent Hatley was indebted to the plaintiff for the sum of approximately $13,000, the balance owing on a loan. Defendant was appointed administrator of Hatley's estate. An accountant had been engaged in taking care of the books of the Hatley business, Hatley's Harley-Davidson Sales, and continued in the business' employ by the administrator, to provide the same service for him as administrator of the Hatley estate. Subsequent to Hatley's death, plaintiff, not knowing of this event, attempted to correspond with decedent by letter addressed to his place of business. Mr. Gaab, the said accountant, answered plaintiff's letter, informing plaintiff of Hatley's death. Plaintiff and Gaab thereafter continued to correspond, and in one letter to Gaab plaintiff requested: "Please do the best you can, take care of my part as you would want me to do if we changed places and I will be satisfied." Gaab notified the administrator of plaintiff's debt within the statutory period. After the statutory period for presentment had passed, defendant invoked the statute of limitations set forth in R.C. 2117.06, and notified plaintiff that the claim was rejected.

The Sixth Circuit determined that there were issues of material fact not appropriate for summary judgment as to whether the claim was presented to the administrator and reversed a summary judgment ruling in favor of the administrator. In doing so, the Sixth Circuit stated:

> Since the law does not require a claimant or litigant to do a vain thing, the mandatory provisions of the statute requiring presentation in writing to the personal representative of claims against the estate he represents, are said to be ***quite uniformly softened and not enjoined when the application of such provisions would run contrary to reason and common sense***. *Hart v. Johnston*,

389 F.2d 239 (6th Cir. 1968). (Emphasis added).

Notions of reason and common sense dictate that if an executor receives a proper written claim notice within the statutory period, then the claimant should not be time barred under R.C. 2117.06.

Here, we have a Claim Notice Letter: (1) setting forth the character and amount of the claim – a breach of a contract related to the sale of Marine 1 LLC in the approximate amount of $200,000; (2) enabling the representative to provide for payment – the notice was on the letterhead of Wilson's counsel and requested that the recipients contact counsel to discuss the matter; (3) serving to bar all other claims due to its particularity of designation – the notice is sufficiently particular and encloses the subject Agreement; (4) in writing – the notice was written; (5) presented to the executor – the Executor and counsel for the Estate received it; and (6) presented within the statutory time period – the notice was received within 6 months of the date of death of decedent by the Executor and attorney for the Estate.

No case has provided that a claimant is precluded from advancing its claim for presenting the notice through a third party. The only requirement is that the notice be presented within the statutory framework of R.C. 2117.06. Here, both the Executor and counsel for the Estate received the notice prior to the end of the 6 month limitations period. Consequently, there can be no dispute as to whether they were timely presented with the claim.

D. The Estate's Position that the Eighth District's Decision will Lead to Inefficient Administration of Estates Lacks Merit.

The Estate argues that the Eighth District's decision in *Wilson v. Lawrence*, 2015-Ohio-4677 (8th Dist.), cannot be squared away with either purpose of R.C. 2117.06(A)-(C) – i.e., to facilitate the prompt and efficient administration of estates – or the longstanding principle that it is incumbent upon the claimant to find the executor and deliver his claim to him. First, the Estate fails to recognize the simple truth that timely receipt of the written claim notice has

absolutely no detrimental effect on the prompt and efficient administration of the estate. Second, in this case, the claim notice was timely delivered to the Executor and therefore, the claimant's duty was satisfied. Thus, both purposes of R.C. 2117.06, as contended by the Estate, have been fulfilled.

In the case of *In re Estate of Heider*, 2010-Ohio-4820, ¶13 (3rd. Dist. 2010), the court stated that "the purpose of R.C. 2117.06 is to put both creditors and the Estate on notice that claims need to be filed in a timely manner in order to facilitate the settling of the Estate in a reasonable amount of time." Consistent with these pronouncements, we see that R.C. 2117.06 does ***not*** require that the executor be named in the writing; nor that it be sent to any particular address; nor that it be sent through the mail; nor that the writing be directly delivered to the executor by the claimant himself. The purpose of R.C. 2117.06 is to notify the Estate of potential claims in a timely manner. Such purpose is unequivocally achieved when the Estate receives the written claim notice within the statutory period.

The cases upon which Estate relies upon are inapposite to this matter. For the basis of the Estate's argument that Wilson has not fulfilled his duty under R.C. 2117.06, the Estate relies upon *In re Estate of Greer*, 2011-Ohio-6721 (1st Dist.), *In re Estate of Curry*, 2009-Ohio-6571 (10th Dist.) and *Reid v. Premier Health Care Servs., Inc.*, 2nd Dist. No 17437, 1999WL 148191 (Mar. 19, 1999). All of these cases are clearly distinguishable from the present matter.

In the case of *In re Estate of Greer*, 2011-Ohio-6721 (1st Dist.), there was ***no notice*** of the subject claim whatsoever to the executor ***prior to the 6 month limitation period***. The decedent, Joan C. Greer, died on December 9, 2008. The claimant did not notify the estate of its claim until it attempted to open Greer's estate on March 18, 2010, well after the applicable 6 month term for presentment. In fact, there was no executor ever in place prior to the 6 month period. In the instant matter, the Executor had been appointed and had been presented with the

claim within the applicable statutory period.

In the case of *In re Estate of Curry*, 2009-Ohio-6571 (10th Dist.), the decedent passed away on December 22, 2007, leaving an unpaid balance to his medical facility. The medical facility submitted a notice of claim within 6 months, but ***before*** any executor or administrator was appointed. The administrator was not appointed until more than a year after the decedent's death, and therefore the claimant could not have presented a claim to the executor within the time period specified in R.C. 2117.06. In the instant matter, the Executor was appointed by the probate court prior to receiving notice of the claim.

Reid v. Premier Health Care Servs., Inc., 2nd Dist. No 17437, 1999WL 148191 (Mar. 19, 1999) involved a similar fact pattern, and since the administrator was not appointed for more than one year after the decedent's death, the claimant could not comply with R.C. 2117.06. These cases are not relevant to these proceedings, since there was no executor or administrator appointed until after the limitations period.

Likewise, the Estate's persistent argument that Wilson failed to present his claim "to the executor" is unfitting. The written Claim Notice Letter was addressed as follows: "To the heirs, administrators or executors of the Estate of; and the trustees or beneficiaries of the trust of; or any other creditors or interested persons in the proceeds of the Trust and/or Estate of Joseph T. Gorman Deceased." Timely presentment to the Executor and attorney for the Estate through third parties (the decedent's trustee and business manager), is not a basis to preclude Wilson's claim under R.C. 2117.06.

Preventing service of notices through third parties is a very slippery slope. Almost all manners of service under the Civil Rules are through third parties. Civ.R. 4.1(A) provides methods of service through the clerk of courts via certified mail, express mail or a commercial carrier service. Civ.R. 4.1(B) and (C) provide methods of service through the sheriff, bailiff or

the clerk. The principal purpose of service is notice. A great burden will be placed upon our courts if we are no longer permitted to provide service through third parties.

The main purpose and goal of any type of service is receipt thereof. The Estate relies upon cases which provide that where a plaintiff fails to complete service of process in accordance with one of the methods provided in Civ.R. 4.1, it simply does not matter that a party has actual knowledge of the lawsuit. However, the Estate fails to recognize that service was actually completed upon the Estate under R.C. 2117.06 when it timely received Wilson's written notice of claim. If the Estate only had verbal notice from the trustee or business manager that there was a claim notice from Wilson, maybe it would have an argument. However, the Estate had in its possession the actual written claim notice prior to the end of the limitations period.

Lastly, there was no need for Wilson to set up Gorman's Estate under *Winkle v. Trabert* (1963), 174 Ohio St. 233, 188 N.E.2d 587. The *Winkle* Court held that where one has a claim against an estate, it is incumbent upon him, if no administrator or executor has been appointed, to procure the appointment of an administrator against whom he can proceed. *Id*. at 237-38. Since an executor had already been appointed at the time Wilson served his claim's notice, *Winkle* is inapplicable.

E. <u>No Conflict Exists</u>.

The Estate based its motion to certify a conflict upon *Jackson v. Stevens*, 4th Dist. No. CA 1231, 1980 WL 350961 (4th Dist. 1980). *Jackson* involved a 2-1 unreported summary opinion out of the Fourth District. Although it is not clear from the opinion, it appears that the claimant in *Jackson* sent her claim notice to a person that she mistakenly believed was the executor. The claimant then initiated suit against this supposed third party executor, and when the claimant was apprised of her error she attempted to bring suit against the actual executor well after the statutory period of R.C. 2117.06. Consequently, the claim was rejected as being filed untimely

under R.C. 2117.06. *Jackson* should not be used as a basis for a motion to certify since its facts are unclear, its record is undeveloped and its findings are vague. Also, R.C. 2503.20 has been relied upon as the basis for denying a motion to certify where there was claimed to be a conflict with an unreported case. *See Bevan v. Century Realty Co*., 64 Ohio App. 58 (7th Dist. 1940); *In re Rhodell Washington*, 94-LW-5816, Case No. 65755 (8th Dist. 1994).

Further, *Jackson* does not identify the form of the claim notice and thus it is difficult to reconcile its facts with the facts herein. Consequently, it is unlikely that the claim notice was addressed to the "heirs, administrators or executors of the Estate of; and the trustees or beneficiaries of the trust of; or any other creditors or interested persons in the proceeds of the Trust and/or Estate" as it was in the instant case. It also appears that there were communications regarding the claim in *Jackson* with the attorney for the estate. However, *Jackson* predated *Peoples Natl. Bank v. Treon*, 16 Ohio App.3d 410 (2nd Dist. 1984), which held that a claim against an estate is properly presented where the claim is presented to the attorney appointed by the executor of the estate to represent them in the administration of the estate, despite the fact that the executor did not receive notice of the claim until after the time allowed by R.C. 2117.06.

Lastly, there can be no conflict since the Fourth District effectively overruled *Jackson* in *Reckner v. Armstrong*, 83-LW-0956 (4th Dist. 1983), and this Court effectively overruled *Jackson* in *Edens v. Barberton* (1989), 43 Ohio St.3d 176, 539 N.E.2d 1124.

Reckner transitioned the Fourth District from a strict compliance standard when applying R.C. 2117.06 to a softened standard of presentment. In *Reckner*, the administrator argued that the claim was presented beyond the time limitations of R.C. 2117.06, and that the notice was not sufficient because it was not in writing, did not contain the address of the claimant and that the suit was not timely filed. The notice in *Reckner* was in the form of copies of checks provided to the administrator by the claimant. The Fourth District found that this form of notice was

sufficient, and in doing so, stated that a "claim against a decedent's estate need not be in any particular form so long as it is in ***substantial compliance*** with Section 2117.06, Revised Code, and recognized by the fiduciary as a claim against the estate" and that a "reasonable assessment of the record supports the conclusion that the significance of the claim, as presented, was fully appreciated by the fiduciary and that the statute of limitation, therefore, at the time of such presentation, ceased to operate upon the claim." *Reckner* citing *Gladman v. Carns*, 9 Ohio App.2d 135 (2nd Dist. 1964). Therefore, this softened standard is now the rule of law in the Fourth District.

Moreover, *Edens* was decided after *Jackson*, and held that where a statute is silent as to how notice is to be effectuated, written notice will be deemed to have been given when received. Consequently, if the executor had actually received timely notice in the *Jackson* case, such notice is deemed sufficient under *Edens*.

Consequently, no current conflict exists between the Eighth and Fourth Districts regarding the application of R.C. 2117.06(A)(1)(a). Substantial compliance is the standard utilized by both districts, and timely receipt of the written claim notice will be deemed sufficient presentment under *Edens*.

IV. CONCLUSION

It is undisputed that Wilson sent a letter "To the heirs, administrators or executors of the Estate of … Joseph T. Gorman, deceased;" that the letter was on behalf of Wilson; that the correspondence contained all of the contact information for the attorney of Wilson; that the letter identified an amount due and owing on a certain contract in the approximate amount of $200,000; that the specific contract was attached to the letter; and that the letter was received by the Executor and the Estate's counsel prior to the 6 month statutory period. Wilson substantially complied with R.C. 2117.06 and fulfilled the statute's legislative purpose as outlined in Fortelka.

The fact that the letter may not have been sent directly to the Executor is irrelevant as it fulfilled its purpose, *i.e.*, notifying the Executor and his attorney of the claim prior to the 6 month limitations period. *Edens* and *Moore* dictate that the written notice shall be deemed sufficiently presented upon timely receipt by the Executor or attorney for the Estate.

For all of the foregoing reasons, the decision of the Court of Appeals for the Eighth District should be affirmed.

Respectfully submitted,

/s/ *Joseph J. Triscaro*
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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of June, 2016, a copy of this *Merit Brief* was served via U.S. mail, postage prepaid, to the following persons:

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APPENDIX

Page

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July 11, 2013

Via Certified and Ordinary U.S. Mail

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Cohen and Company
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Cleveland, Ohio 44115

Pat Clark
Moxahela, LLC
3201 Enterprise Parkway
Beachwood, Ohio 44122

To the heirs, administrators or executors of the Estate of; and the trustees or beneficiaries of the trust of; or any other creditors or interested persons in the proceeds of the Trust and/or Estate of Joseph T. Gorman, deceased:

The undersigned is legal counsel to James Wilson, on behalf of Mr. Wilson, and pursuant to R.C. §2117.06(B), you are hereby put on notice of the presentment of a claim by Mr. Wilson against the above noted parties, in the approximate amount of $200,000, plus interest. Said amount is due and owing on a contract entered into by and between Mr. Gorman and Mr. Wilson on or about September 2, 2011, for the purchase of Mr. Wilson's 15% interest in Marine 1, LLC by Mr. Gorman. A copy of the contract is enclosed herein.

Kindly contact the undersigned at your earliest convenience to discuss this matter.

Very truly yours,

DeMARCO & TRISCARO, LTD.

Robert P. DeMarco

RPD/dmk
Enclosure
cc: James Wilson

§ 2117.06. Presentation and allowance of creditor's claims - pending action against decedent.

Ohio Statutes

Title 21. COURTS - PROBATE - JUVENILE

Chapter 2117. PRESENTMENT OF CLAIMS AGAINST ESTATE

Current with legislation signed by the Governor as of 4/5/2016

§ 2117.06. Presentation and allowance of creditor's claims - pending action against decedent

(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. For purposes of this division, if an executor or administrator is not a natural person, the writing shall be considered as being actually received by the executor or administrator only if the person charged with the primary responsibility of administering the estate of the decedent actually receives the writing within the appropriate time specified in division (B) of this section.

(2) If the final account or certificate of termination has been filed, in a writing to those distributees of the decedent's estate who may share liability for the payment of the claim.

(B) Except as provided in section 2117.061 of the Revised Code, all claims shall be presented within six months after the death of the decedent, whether or not the estate is released from administration or an executor or administrator is appointed during that six-month period. Every claim presented shall set forth the claimant's address.

(C) Except as provided in section 2117.061 of the Revised Code, a claim that is not presented within six months after the death of the decedent shall be forever barred as to all parties, including, but not limited to, devisees, legatees, and distributees. No payment shall be made on the claim and no action shall be maintained on the claim, except as otherwise provided in sections 2117.37 to 2117.42 of the Revised Code with reference to contingent claims.

(D) In the absence of any prior demand for allowance, the executor or administrator shall

allow or reject all claims, except tax assessment claims, within thirty days after their presentation, provided that failure of the executor or administrator to allow or reject within that time shall not prevent the executor or administrator from doing so after that time and shall not prejudice the rights of any claimant. Upon the allowance of a claim, the executor or the administrator, on demand of the creditor, shall furnish the creditor with a written statement or memorandum of the fact and date of the allowance.

(E) If the executor or administrator has actual knowledge of a pending action commenced against the decedent prior to the decedent's death in a court of record in this state, the executor or administrator shall file a notice of the appointment of the executor or administrator in the pending action within ten days after acquiring that knowledge. If the administrator or executor is not a natural person, actual knowledge of a pending suit against the decedent shall be limited to the actual knowledge of the person charged with the primary responsibility of administering the estate of the decedent. Failure to file the notice within the ten-day period does not extend the claim period established by this section.

(F) This section applies to any person who is required to give written notice to the executor or administrator of a motion or application to revive an action pending against the decedent at the date of the death of the decedent.

(G) Nothing in this section or in section 2117.07 of the Revised Code shall be construed to reduce the periods of limitation or periods prior to repose in section 2125.02 or Chapter 2305. of the Revised Code, provided that no portion of any recovery on a claim brought pursuant to that section or any section in that chapter shall come from the assets of an estate unless the claim has been presented against the estate in accordance with Chapter 2117. of the Revised Code.

(H) Any person whose claim has been presented and has not been rejected after presentment is a creditor as that term is used in Chapters 2113. to 2125. of the Revised Code. Claims that are contingent need not be presented except as provided in sections 2117.37 to 2117.42 of the Revised Code, but, whether presented pursuant to those sections or this section, contingent claims may be presented in any of the manners described in division (A) of this section.

(I) If a creditor presents a claim against an estate in accordance with division (A)(1)(b) of this section, the probate court shall not close the administration of the estate until that claim is allowed or rejected.

(J) The probate court shall not require an executor or administrator to make and return into the court a schedule of claims against the estate.

(K) If the executor or administrator makes a distribution of the assets of the estate pursuant to section 2113.53 of the Revised Code and prior to the expiration of the time for the presentation of claims as set forth in this section, the executor or administrator shall

provide notice on the account delivered to each distributee that the distributee may be liable to the estate if a claim is presented prior to the filing of the final account and may be liable to the claimant if the claim is presented after the filing of the final account up to the value of the distribution and may be required to return all or any part of the value of the distribution if a valid claim is subsequently made against the estate within the time permitted under this section.

Cite as R.C. § 2117.06

History. Effective Date: 04-08-2004; 04-07-2005