

**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**

**APPELLEE JAMES A WILSON'S MOTION TO DISMISS CASE NUMBERS
2015-2081 AND 2016-0180 AS IMPROVIDENTLY ACCEPTED**

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INTRODUCTION

On March 23, 2016, this Court accepted a certified question for review and consolidated the certified question case with Appellant's jurisdictional appeal. However, even after accepting an appeal, the Court may later find that there is no conflict, that there is no substantial constitutional question or question of public or great general interest, and dismiss the appeal as improvidently accepted.

Now that Appellant has filed its merit and reply briefs, it is clear that he has not raised any issue warranting this Court's review. Appellant has not presented this Court with a constitutional issue or any conflict among the lower Ohio courts. Nor has he raised a question of great general interest. To the contrary, this matter is well settled under *Edens v. Barberton* (1989), 43 Ohio St.3d 176, 539 N.E.2d 1124, which provided that "[w]here a statute ... is silent as to how notice is to be effectuated, written notice will be deemed to have been given when received." The subject case relates to notice under R.C. 2117.06(A)(1)(a), which is silent as to the manner and method of notice. The subject statute simply provides that notice shall be timely presented "[t]o the executor or administrator in a writing." Since the executor timely received Appellee's written notice in this matter, no conflict can be said to exist. Appellant's alleged conflict case, *Jackson v. Stevens*, 4th Dist. No. CA 1231, 1980 WL 350961 (4th Dist. 1980), is a rogue case effectively overruled by *Edens*. Any purported conflict between the districts has been resolved through *Edens*. Moreover, the matters in dispute herein are questions of interest primarily to the parties, as opposed to a question of public or great general interest.

Consequently, this Court should dismiss these consolidated appeals as improvidently accepted under S.Ct.Prac.R. 7.10 and S.Ct.Prac.R. 8.04. See *State v. Sutton*, 132 Ohio St.3d 1529, 2012-Ohio-4381 (Ohio 2012); *CSAHA/UHHS-Canton, Inc. v. Aultman Health Found*, 134 Ohio St.3d 1481, 2013-Ohio-902 (Ohio 2013); *State v. Smith*, 137 Ohio St.3d 1470, 2014-Ohio-176 (Ohio 2014) (granting dismissal on appellee's motions).

STATEMENT OF THE CASE AND FACTS

The determination of this case is based upon whether Appellee complied with the presentment requirements under R.C. 2117.06(A)(1)(a). The relevant factual history is as follows:

- The decedent died on January 20, 2013.
- On July 1, 2013, William Lawrence was appointed executor of decedent's estate.
- On July 11, 2013, within 6 months of decedent's death, claimant James A. Wilson sent a claim notice letter out via certified and ordinary mail.
- The claim notice letter stated the following, in pertinent part:

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.

- The claim notice letter was received by the executor and attorney for the estate prior to July 20, 2013.¹

The Eighth District 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

¹ Appellant conceded such receipt at oral argument before the Eighth District Court of Appeals.

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).

ARGUMENT

There is No Conflict or Question of Public or Great General Interest Warranting This Court's Review.

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 2117.061² 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.

When analyzing whether a claimant has complied with R.C. 2117.06, a substantial compliance standard is utilized rather than a strict one. *See Fortelka v. Meifert* (1964), 176 Ohio St. 476; *Gladman v. Carns*, 223 N.E.2d 378, 9 Ohio App.2d 135 (2nd Dist. 1964); *Reckner v. Armstrong*, 83-LW-0956 (4th Dist. 1983); *Estate of Noubar Shields Abdalian v. Abdalian*, 82-LW-2305 (8th Dist. 1982).

Timely receipt of a proper claim notice by the executor and/or attorney for the estate substantially complies with R.C. 2117.06 in that it fulfills the legislative purpose of the statute outlined in *Fortelka*, which is to secure an expeditious and efficient administration of an estate

² R.C. 2117.061 involves the notice requirements for receipt of Medicaid benefits.

by promptly providing the fiduciary with necessary information relating to the existence, amount and character of all indebtedness of the estate. Timely receipt of a written claim notice cannot be said to delay the expeditious and efficient administration of an estate, even if it is through a third party.

Appellant 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 even though the actual executor had notice of the claim. It is not clear from the decision whether the executor actually received the written claim notice in proper form.

Edens v. Barberton (1989), 43 Ohio St.3d 176, 539 N.E.2d 1124, has resolved any purported conflict between *Wilson* and *Jackson*. 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.” Since R.C. 2117.06(A)(1)(a) is silent as to how notice is to be presented, notice under R.C. 2117.06(A)(1)(a) will be deemed to have been given when received. Consequently, since the executor in the instant case received the written claim notice within the 6 month limitation period, no conflict can be said to exist. *Edens* has effectively overruled *Wilson*.

Appellant’s argument that Appellee’s notice is defective because it was not addressed directly to the executor or attorney for the estate is tenuous. No case has dictated 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 six month limitations period. Consequently, there can be no conflict as to whether they were timely presented with the claim.

CONCLUSION

This Court should dismiss Appellant's consolidated appeals as improvidently accepted.

Respectfully submitted,

/s/ Joseph J. Triscaro

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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of July, 2016, a copy of this *Motion to Dismiss* was served via U.S. mail, postage prepaid, to the following persons:

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