IN THE SUPREME COURT OF OHIO

STAFFORD LAW CO., L.P.A.,	)	On Appeal from the Cuyahoga County Court of Appeals, Eighth Appellate District
Appellant,	)	
v.	)	Court of Appeals Case No. CA-20-109377
ESTATE OF RUBY J. COLEMAN, et al,	)	21-0821
Appellees.	)	

MEMORANDUM IN OPPOSITION TO JURISDICTION

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EXPLANATION OF WHY THIS CASE IS NOT OF PUBLIC OR GREAT GENERAL INTEREST

This appeal of the Eighth District Court of Appeals Decision and underlying trial court's judgment entry are not of great public or general interest. This Court has already provided ample guidance for creditors who wish to properly present claims upon an estate. The Appellant law firm is, or ought to be, sophisticated enough to understand the clear holding that this Court handed down in *Wilson v. Lawrence*. *Wilson v. Lawrence*, 150 Ohio St.3d 368, 2017-Ohio-1410. Indulging doomed appeals would go against public and general interests. While the conflicting decision in *Hatfield v. Heggie* provides enough justification to prevent this appeal from reaching frivolity, this Court has already resolved this legal issue in its entirety. *Hatfield v. Heggie*, 6th Dist. No. OT-19-023, 2020-Ohio-1156.

Appellant does present an argument that an appeal of *Hatfield v. Heggie* would be of great public and general interest. That case was wrongly decided. But this Court should not accept the present appeal in lieu of hearing that case.

Appellant's memorandum in support of jurisdiction does not seem to find much to say in regard to the interests at stake in this case. Instead, Appellant diverts from a cohesive explanation of the interests at stake to provide a summary of some largely moot procedural history, as well as to make an attack on Appellee's decision to not file a meaningless challenge. The one interest which Appellant does highlight is the interest of creditors seeking to press claims on estates. While that interest may have been invoked before the *Wilson v. Lawrence* decision, it is now overly broad. The more precise interest at stake in Appellant's plea is that of creditors who fail to properly adhere to the plain language of relevant statutes, and who do not lend credence to explicit rulings from this Court. That narrow set of circumstances does not create a compelling interest, nor one that is prevalent enough to warrant this Court's review.

ARGUMENT IN OPPOSITION OF JURISDICTION

Appellee's Response to Appellant's Proposition of Law No. 1:
The Appellate Court correctly determined that the Probate Court lacked subject matter jurisdiction over the issue of presentation and correctly refused to apply the doctrine of *res judicata*.

The Probate Court lost subject matter jurisdiction as soon as the claim was rejected by the estate. In an intriguing tactic, Appellant acknowledges this fact by citing, albeit incorrectly, to the 11th District's decision in *Ward v. Patrizi. Ward v. Patrizi*, 11th Dist. Geauga No. 2010-G-2994, 2011-Ohio-5100. The quote, which ought to be attributed to *In re Estate of Vitelli*, highlights the well settled concept that a "probate court lacks subject matter jurisdiction to enter an order adjudicating a claim against an estate where that claim has been rejected by the estate." *In re Estate of Vitelli*, 110 Ohio App. 3d 181, 673 N.E.2d 948 (1996). The Appellant attempts to warp the holding from *Estate of Haueter*, improperly attributed, to suggest that the probate court loses subject jurisdiction to adjudicate ***only*** the merits of a creditor's claim after rejection. *Estate of Haueter*, 11th Dist. Geauga No. 2016-G-0071, 2016-Ohio-7164, ¶ 10. Yet none of the law appellant cites actually stands for that proposition.

Appellant's incorrect citation of *Estate of Haueter* is not a meaningless error. The *Estate of Haueter* court cited *Bank One, N.A. v. Johnson* in the portion of the holding which Appellant references. *Estate of Haueter*, citing *Bank One, N.A. v. Johnson*, 2nd Dist. Greene NO. 03-CA-0039, 2003-Ohio-6906 (Ct. App.), ¶ 27. *Bank One, N.A.* was decided by the 2nd District seven years after it decided *In re Estate of Vitelli.* In *Bank One, N.A.*, the court introduced the "merits" language into this string of cases. In determining whether the probate court had jurisdiction, the court reasoned:

> R.C. 2117.17 authorizes the probate court to approve the action of an executor in allowing a claim. However, if the court disapproves

> the executor's allowance of the claim, ***or if the executor rejects the claim, for whatever reason,*** the claimant must commence an action on the claim within two months or be forever barred. Id.; R.C. 2117.12. ***That action must be commenced in the general division of the court of common pleas.*** *In re Estate of Vitelli* (1996), 110 Ohio App.3d 181, 673 N.E.2d 948. Therefore, the probate court lacks subject matter jurisdiction to adjudicate the merits of a creditor's claim against a decedent's estate. Id.

Bank One, N.A. v. Johnson, 2nd Dist. Greene NO. 03-CA-0039, 2003-Ohio-6906 (Ct. App.), ¶ 27, emphasis added.

The 2nd District went on to add that for the probate court to have jurisdiction, "the matter in issue must be one properly before the probate court. The merits of a creditor's claim is not such a matter." *Bank One, N.A. v. Johnson*, ¶ 28. The 2nd District's language indicates that the probate court lacks the jurisdiction to adjudicate the merits of a claim, as it loses jurisdiction to the court of common pleas when the claim is rejected by the executor. Yes, losing subject matter jurisdiction necessarily means that a court has lost the jurisdiction to adjudicate on the merits. But it is unsupported fallacy to suggest that the *Haueter* court's assertion limits the loss of subject matter jurisdiction to only adjudications on the merits, regardless of how Appellant chooses to italicize and bold that portion of the decision.

Even if this Court decides that the probate court could have properly exercised subject matter jurisdiction, the doctrine of *res judicata* is not applicable. As noted by the Appellate Court, the probate court issued a judgement entry on May 28, 2019 stating *inter alia*, "that it lacked jurisdiction." The appellate court went on to note that this was a "clear acknowledgement that it lacked jurisdiction." For *res judicata* to apply to this issue it would have to be one that was "raised previously or could have been raised previously in an appeal." State v. Houston, 1995-Ohio-317, 73 Ohio St. 3d 346, 652 N.E.2d 1018. Further, *res judicata* only applies when the judgment at issue is rendered "by a court of competent jurisdiction." State ex rel. Rose v. Ohio Dep't of Rehab. & Corr., 2001-Ohio-95, 91 Ohio St. 3d 453, 746 N.E.2d 1103. Given that the

probate court itself stated that it lacked jurisdiction, Appellee had no way of knowing that *res judicata* could potentially be implicated. Moreover, it would have been frivolous for the Appellee to file an appeal after being told that the probate court lacked jurisdiction.

Even if this Court does find that appealing a nullified order is possible, requiring Appellee to do so would be unjust and pose a substantial burden on parties throughout the legal system. Parties would be forced to comb through every court decision that acknowledges a lack of jurisdiction and file appeals on any grounds that they think could theoretically be brought back up after further litigation. That would lead to absurd results for clients, lawyers, and judges. The public has the right to rely on the statements of its judiciary without the fear of hidden detriment.

Finally, Appellant's preclusion of *Bank One, N.A.* from its memorandum also deprived this Court of a very similar *res judicata* argument, and its subsequent rejection:

> The Probate Court's prior determination that the claims Bank One presented to the executor were invalid creates no res judicata bar to the action that Bank One subsequently filed in the general division. In order for the res judicata bar to apply, the prior adjudication must be by a court of competent jurisdiction. *Grava v. Parkman.* Because the Probate Court lacked jurisdiction to adjudicate a rejection of Bank One's claims, or to declare that they should be rejected, the Probate Court's determination was a nullity that cannot bar Bank One's action on the claim or deprive the general division court of jurisdiction to determine the claim for relief the action presents.

Bank One, N.A. v. Johnson, ¶ 29.

A probate court's lack of jurisdiction makes all of its determinations null. The court of common pleas had complete jurisdiction to review the claim without the influence of the probate court's judgment. *Res judicata* does not apply.

Appellee's Response to Appellant's Proposition of Law No. 2:

A creditor's presentation of a claim upon the executor, in care of his attorney, and the executor's attorney does not constitute proper service under Ohio Revised Code Section 2117.06.

This Court need look no further than its own holding in *Wilson* to find ample support for rejecting Appellant's proposition. As noted above, the incorrect decision in *Hatfield* is insufficient cause for this Court to grant jurisdiction. There is no disagreement to resolve between courts of appeal, merely one circuit that was likely unaware of this Court's decision in *Wilson* when it rendered its ruling.[1]

Appellant claims that this Court held that "a creditor's claim fails under Ohio Revised Code Section 2117.06 when it is addressed and presented to an individual lacking any authority over the estate." *Memorandum in Support* at 12. While that was indeed noted by this Court, it was just one of the reasons provided for the holding that is clearly laid out in the next paragraph:

> For these reasons, we hold that a claim against an estate must be timely presented in writing to the executor or administrator of the estate in order to meet the mandatory requirements of R.C. 2117.06(A)(1)(a), and under that subdivision, 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.

Wilson, 2017-Ohio-1410 at 22.

Appellant looks past this plain holding based on the plain language of a statute to construct a wholly new interpretation of the law. Appellant conflates the portion of the above holding that references a person "appointed by the probate court" as being equivalent to an "officer of the court." While Michael J. O'Brien is undoubtedly an officer of the court, he was not appointed by the probate court in any capacity. Nor did Mr. O'Brien directly represent the estate, a fact which Appellant admits to by addressing Mr. O'Brien as "his attorney," i.e. the

[1] Appellee attempted to locate the briefs in support and opposition of the *Hatfield* appeal. Unfortunately, it seems that the briefs were either not required by the Sixth District in this instance, or they were simply not retained. However, it is worth noting that the *Wilson* case was never mentioned in any of the available documentation from *Hatfield*, including the complaint, answer, trial court judgment entry, and Sixth District judgment entry.

attorney of Charles B. Coleman, Sr., not an attorney representing Ruby J. Coleman's estate. *Memorandum in Support* at 3.

Further, the fidelity of the fiduciary, mentioned with great emphasis by Appellant, did not carry the weight in this Court's decision that Appellant suggests. While it is true that fidelity was noted by this Court by citing to the Ninth District's opinion in *Stadler*, Appellant focuses on truthfulness as if it was the only issue of concern raised by that court. *Id.* at 16, quoting *Stadler*, 95 Ohio App. at 445-46. Rather, fidelity was merely one facet of the concerns of timeliness, accountability, and duty that pervaded the Ninth District's opinion in *Stadler*, as well as this Court's decision in *Wilson*.

This Court has acknowledged the importance of "expeditious and efficient administrations of estates," (*Id.* at 14) concurring with the *Stadler* court which identified the purpose of the statute as effecting a "speedy administration of estates." *Stadler* at 446.And as the Ninth District noted, that purpose "would be defeated if the court's officer were compelled to delay the administration until he had received the report of his agent or his various agents." The prompt administration of an estate serves a large set of interests, ranging from the rights of the potentially numerous creditors to receive punctual payment, to the need of the administrator to not spend an inordinate amount of time settling the affairs of a loved one.

In regards to claim receipt and processing, accountability lies with the administrator. *Id.* If agents of the administrator are deemed to be proper recipients, who is accountable to the claimant and probate court if there is a delay in processing, or if the agent fails to deliver the claim to the administrator? Courts would have to litigate through facts and various areas of the law to find a just conclusion.

Moreover, the nebulous issue of duty lingers, especially when the agent at issue is an attorney. While an attorney certainly owes a duty to the legal system, his first duty is to his client's interests. In a case like this, where the attorney is representing the administrator and not the estate, the attorney may have to confront complex ethical dilemmas that would easily be avoided under the *Wilson* decision. Ohio law favors appointing kin of the deceased as administrators. R.C. 2113.06. As such, it is highly likely that the client administrator will have a pecuniary interest in whatever remains of the estate after creditor claims are addressed. The attorney may then be faced with the reality that a speedy delivery of the claim to his client, is actually not in his client's pecuniary interest. And, especially in light of the accountability issues described above, one would be hard pressed to prove that the attorney had put his client in any legal jeopardy by stalling the claim either.

In any case, wading into the mire of litigating these sorts of matters would take the system of estate administration far from its goals of efficiency and expediency. Given these considerations of timeliness, accountability, and duty, the Appellant's presentment did not meet the standard set out in *Wilson*, did not comply with the plain language of the statute, and did not parallel the legislature's intent.

CONCLUSION

The Eight District Court of Appeals correctly applied Revised Code Section 2771.06 and this Court's decision in *Wilson* to this case. Appellant was required to deliver the claim directly to the Appellee but failed to do so. As such, the claim was not properly presented under controlling Ohio law.

The Appellate Court was unable to reconcile the decision of the Sixth District Court of Appeals in *Hatfield* solely because the *Hatfield* court made no mention of *Wilson*. Given the obvious relevance of the *Wilson* holding to the facts in *Hatfield*, it strains credulity to suggest, as the Appellant seems to, that the Sixth District was aware of *Wilson* when it rendered its judgement. It is far more likely that the Sixth District was not made aware of the *Wilson* holding by either of the parties in *Hatfield*.

The Probate Court's erroneous comments on presentment carry no legal weight whatsoever. By its own admission, the Probate Court had no jurisdiction over the issue. The Appellate Court agreed with that determination of jurisdiction. Further, well established law stands for the proposition that the Probate Court lost subject matter jurisdiction in its entirety as soon as the claim was rejected by the Appellee. Appellant's argument that the Probate Court only lost jurisdiction to judge matters on their merits is not supported by law or logic. As such, the trial court had no grounds to rely upon the Probate Court's findings.

This Court recognized conflicts between District Courts of Appeal on this issue in 2017, and chose to hear *Wilson* to resolve that conflict. The Second District's *Caldwell* opinion was one such conflicting opinion. *Caldwell v. Brown*, 2nd Dist. No. 15526, 109 Ohio App. 3d 609, 611 (1996). While *Caldwell* was not explicitly named as being overruled in *Wilson*, this Court recognized the conflict that *Caldwell* presented and resolved it. The resolution provided by *Wilson* overruled *Caldwell* in all but name, making *Caldwell* decisively bad precedent. Appellant similarly strains the definition of precedent by heavily relying on *Hatfield*. Both *Hatfield* and *Caldwell* were decided in appellate courts other than the Appellate Court which heard the case at hand. To count either of them as having significant precedential value, let alone a greater value than that of a ruling opinion from this Court, would be fallacious, as is Appellant's belief that moving parties can dictate what is required of this Court. *Memorandum in Support* at 14-15.

It is well established in Ohio, under the plain reading of Ohio Revised Code Section 2117.06 and the clear holding of *Wilson*, that a claim upon the administrator's attorney does not satisfy the statutory presentment requirement. The doctrine of *stare decisis* is heavily implicated here. This Court already made the correct judgment on the issue of presentment in *Wilson*. Requiring direct presentment to the administrator results in the most expedient claims process that could reasonably be expected, while fairly addressing the interests of all parties involved in resolving an estate. The meaning of the statute is obvious to any person who might read it. Its meaning should be particularly apparent to the legally sophisticated creditor who has read this Court's decision in *Wilson*. If Appellant had simply followed the law, he might have been paid in full. If the judiciary altered the law for the sake of those who fail to understand its plain meaning, our entire statutory system would be undone.

For these reasons, the Appellee, Charles B. Coleman, Sr., respectfully requests that this Court deny Appellant's request for an Order accepting its appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Memorandum in Opposition of Jursidiction has been served via email and regular U.S. Mail, postage prepaid, to the following this 21st day of July, 2021:

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