[Cite as *Maplewood at Chardon, L.L.C. v. Stinn*, 2023-Ohio-2539.]

IN THE COURT OF APPEALS OF OHIO
ELEVENTH APPELLATE DISTRICT
GEAUGA COUNTY

MAPLEWOOD AT CHARDON, LLC, Plaintiff-Appellee, - vs - MICHAEL E. STINN, FIDUCIARY OF THE ESTATE OF PAUL PRIMEAU, Defendant-Appellant.	**CASE NO. 2023-G-0005** Civil Appeal from the Court of Common Pleas Trial Court No. 2022 M 000104

O P I N I O N

Decided: July 24, 2023
Judgment: Affirmed

W. Cory Phillips and *David S. Brown*, Rolf Goffman Martin Lang, LLP, 31105 Bainbridge Road, Suite 4, Cleveland, OH 44139 (For Plaintiff-Appellee).

Michael E. Stinn, pro se, 21300 Lorain Road, Fairview Park, OH 44126 (Defendant-Appellant).

MATT LYNCH, J.

{¶1} Appellant, Michael E. Stinn, Fiduciary of the Estate of Paul Primeau, appeals the Orders of the Geauga County Court of Common Pleas, denying his Motion for Summary Judgment, Motion for Reconsideration, and Motion to Dismiss and granting appellee, Maplewood at Chardon, LLC's, Motion for Summary Judgment. For the following reasons, we affirm the decision of the court below.

{¶2} On February 21, 2022, Maplewood at Chardon filed a Complaint against Stinn for Breach of Contract, Action on an Account, and/or Unjust Enrichment based on

a Residency and Services Agreement entered into by Maplewood at Chardon and Carmine Camino as power of attorney for Paul Primeau. Maplewood at Chardon sought damages in the amount of $15,967.28 plus fees, interest, and costs. Stinn answered the Complaint on February 28, 2022.

{¶3} On March 14, 2022, Stinn filed a Motion for Summary Judgment on the grounds that the claim was not properly presented pursuant to R.C. 2117.06 and that the claim was not properly commenced pursuant to R.C. 2117.12.

{¶4} On April 27, 2022, the trial court denied Stinn's Motion. The court noted the following "undisputed facts[1]":

> 1. On June 28, 2019, Carmine Camino, Esq., as Decedent's [Primeau's] POA, signed the underlying contract under which the claim for money is due.
>
> 2. Decedent died on November 23, 2020, with the Debt due and owing to Plaintiff.
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> 3. On February 24, 2021, Attorney Camino was appointed Administrator of the Decedent's Estate.
>
> 4. Plaintiff had until May 23, 2021 ("Presentment Deadline"), in which to present its claim to the Administrator.
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> 5. Plaintiff did communicate with Attorney Camino regarding the Debt via email both before and after he became Administrator, some of which included Decedent's account statements attached.
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> 6. Plaintiff sent two of the emails, including attached account statements, to Attorney Camino after the latter was appointed as Administrator and prior to the May 23, 2021, Presentment Deadline. Specifically, these were dated April 15, 2021, and May 16, 2021.
>
> 7. On January 8, 2021, prior to becoming Administrator, Attorney Camino acknowledged Plaintiff's claim via email.
>
> 8. On August 1, 2021, Attorney Camino died.

1. Citations to the docket have been omitted.

> 9. On December 9, 2021, Defendant was appointed Administrator of Decedent's Estate.
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> 10. Defendant rejected Plaintiff's claim via a letter dated December 21, 2021.
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> 11. Plaintiff "filed its Complaint and requested service of process on February 21, 2022."

{¶5} On June 8, 2022, Stinn filed a Motion for Reconsideration of the denial of his Motion for Summary Judgment. The trial court denied the Motion for Reconsideration on June 29, 2022.

{¶6} On January 5, 2023, Maplewood at Chardon filed a Motion for Summary Judgment. Stinn opposed the Motion and filed a Motion to Dismiss based on the arguments raised in the Opposition. On February 9, 2023, the trial court granted Maplewood's Motion for Summary Judgment and rendered judgment in favor of Maplewood at Chardon on the Complaint.

{¶7} On February 17, 2023, Stinn filed a Notice of Appeal. On appeal, he raises the following assignments of error:

> [1.] The trial court erred in denying Michael E. Stinn, Fiduciary of the Estate of Paul Primeau's Motion for Summary Judgment.
>
> [2.] The trial court erred in denying Michael E. Stinn, Fiduciary of the Estate of Paul Primeau's Motion for Reconsideration.
>
> [3.] The trial court erred in granting Maplewood at Chardon's Motion for Summary Judgment.
>
> [4.] The trial court erred in denying Michael E. Stinn, Fiduciary of the Estate of Paul Primeau's Motion to Dismiss.

{¶8} The assignments of error will be consolidated for the purposes of considering Stinn's arguments on appeal.

{¶9} "Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Civ.R. 56(C). "A trial court's entry denying a motion for summary judgment is an interlocutory order and subject to reconsideration any time before the entry of final judgment in the case." *Hendrickson v. JGR Properties, Inc.*, 12th Dist. Butler No. CA2008-02-056, 2008-Ohio-6192, ¶ 8.

{¶10} "[A] motion to dismiss filed after the pleadings have closed * * * is appropriately considered a motion for judgment on the pleadings pursuant to Civ.R. 12(C)." *State ex rel. Midwest Pride IV, Inc. v. Pontious*, 75 Ohio St.3d 565, 569, 664 N.E.2d 931 (1996). To grant judgment on the pleadings the trial court must determine "that no material factual issues exist and that the movant is entitled to judgment as a matter of law." *Id.* at 570.

{¶11} The standard of review for a ruling on a motion for summary judgment as well as for a judgment on the pleadings is de novo. *Rowe v. Hoist & Crane Serv. Group Inc.*, 8th Dist. Cuyahoga No. 110921, 2022-Ohio-3130, ¶ 35. "De novo review requires an independent examination of the record and law without deference to the trial court's decision." *Id.*

{¶12} Stinn's first argument on appeal is that Maplewood at Chardon failed to properly present its claim against the estate within the prescribed statutory period.

{¶13} "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." R.C. 2117.06(A)(1)(a)[2]. "[A]ll 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." R.C. 2117.06(B). "[A] claim that is not presented within six months after the death of the decedent shall be forever barred as to all parties * * *." R.C. 2117.06(C). "The language unambiguously states that all creditors *shall* present their claims in writing to the executor or administrator * * *." *Wilson v. Lawrence*, 150 Ohio St.3d 368, 2017-Ohio-1410, 81 N.E.3d 1242, ¶ 12.

{¶14} In the present case, the period within which Maplewood at Chardon had to present its claim was between February 24, 2021 (the appointment of Attorney Camino as Administrator) and May 23, 2021 (the six-month anniversary of Primeau's death).

{¶15} On January 18, 2021, Sharon Baker, the business office manager for Maplewood at Chardon, emailed Camino a statement of money owed by Primeau. Camino responded the same day: "[P]lease note that I have received the statement, and that * * * Mr. Primeau's estate will have to be filed and processed in the Probate Court. It will take some time to complete the process and resolve any remaining obligations including that of Maplewood." Baker subsequently emailed updated statements to Camino on April 15 and May 16, 2021.

{¶16} Stinn maintains that the April 15 and May 16 emailed statements do not satisfy the requirements of R.C. 2117.06. "Maplewood at Chardon, LLC did not send a

2. Unless otherwise noted, citations to R.C. 2117.06 will refer to the statute as it existed prior to April 3, 2023.

writing addressed to the decedent, by ordinary mail, that was actually received by the Executor of the Estate of Paul A. Primeau, nor did it file a copy of any claim with the Geauga County Probate court before the six-month anniversary of Paul A. Primeau's death." Appellant's Brief at 19.

{¶17} We find no deficiency in Maplewood at Chardon's presentment of its claim. Preliminarily, there is no requirement that Maplewood at Chardon deliver its claim by ordinary mail, the executor actually received the claim, or a copy of the claim be filed with the probate court. Presentment of a claim by filing it with the probate court or in a writing actually received by the executor or administrator are alternative forms of presentment provided for by the statute. *See* R.C. 2117.06(A)(1)(b) and (c). Maplewood's Motion for Summary Judgment did not cite to or rely on compliance with subdivisions (b) or (c). Rather, Maplewood at Chardon presented its claim pursuant to R.C. 2117.06(A)(1)(a).

{¶18} Under R.C. 2117.06(A)(1)(a), "[c]laims need only be 'in a writing' and 'presented' to the 'executor or administrator' within the statutory time in R.C. 2117.06(B)." *Children's Med. Ctr. v. Ward*, 87 Ohio App.3d 504, 510, 622 N.E.2d 692 (2d Dist.1993); *Wilson*, 150 Ohio St.3d 368, 2017-Ohio-1410, 81 N.E.3d 1242, at syllabus ("[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)"). "No strict form requirements are imposed for the presentment of claims to an executor." *H&R Accounts, Inc. v. Steel*, 2d Dist. Montgomery No. 21213, 2006-Ohio-2331, ¶ 25. "[I]t 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." *Soc. Natl. Bank v. Johnson*, 8th Dist. Cuyahoga No. 72002, 1997 WL 781741, *3. "Billing statements have been deemed sufficient." *Id.*

{¶19} The account statements emailed to Camino on April 15 and May 16 satisfied the requirements of R.C. 2117.06(A)(1)(a) as they constituted writings, stating the amount of the claim with provision for payment by check to Maplewood at Chardon, to the administrator of Primeau's estate. R.C. 1306.06(C) ("[i]f a law requires a record to be in writing, an electronic record satisfies the law").

{¶20} Stinn also makes the argument that the statements attached to the April 15 and May 16 emails were not actually presented to Camino in his capacity as administrator/executor of Paul A. Primeau's estate. Rather, "Sharon Baker of Maplewood Senior Living sent an e-mail and Statements to Paul A. Primeau's Attorney-in-Fact [Camino], as it had done before Mr. Primeau's death or to the Responsible Party or to the personal guarantor or to an attorney-at-law." Whatever the case, Stinn maintains the statements were presented to Camino "in some capacity other than Executor of the Estate of Paul A. Primeau." Appellant's Brief at 22.

{¶21} Stinn's arguments are unconvincing. He implies that Baker was not a representative of Maplewood at Chardon because the emails originated from the address "@maplewoodsl.com." This is immaterial. Baker identified herself by affidavit as the "Business Office Manager for Plaintiff, Maplewood at Chardon, LLC" and "responsible * * * for overseeing the billing services to Plaintiff's residents." The statements provide for payment to "Maplewood at Chardon."

{¶22} Moreover, Baker's understanding of the capacity in which Camino was representing the decedent was immaterial. He was, at the time the April 15 and May 16

emails were sent, the duly appointed administrator of Primeau's estate regardless of whether Baker was aware of it. There is no requirement in the statute that the creditor know or identify the administrator of the estate as such. To impute such a requirement would be contrary to the jurisprudence that, when applying a statute, the court must "give effect only to the words the legislature used, making neither additions to, nor deletions from, the statutory language." *Wilson*, 150 Ohio St.3d 368, 2017-Ohio-1410, 81 N.E.3d 1242, at ¶ 11. With respect to R.C. 2117.06(A), "[t]he language unambiguously states that all creditors *shall* present their claims in writing to the executor or administrator, 'and no apparent purpose could be served by attempting to torture it into something else.'" (Citation omitted.) *Id.* at ¶ 12.

{¶23} Again, we reiterate that Maplewood at Chardon satisfied the presentment requirement of R.C. 2117.06(A).

{¶24} Stinn's second argument is that Maplewood at Chardon failed to properly commence an action on its claim within the prescribed statutory period.

{¶25} "When a claim against an estate has been rejected * * *, the claimant must commence an action on the claim * * * within two months after the rejection * * * or be forever barred from maintaining an action on the claim * * *. * * * For the purposes of this section, the action of a claimant is commenced when the complaint and praecipe for service of summons on the executor or administrator * * * have been filed." R.C. 2117.12.

{¶26} In the present case, Stinn rejected Maplewood at Chardon's claim on December 21, 2021. Maplewood at Chardon filed its Complaint on February 21, 2022, two months from the date of rejection. Stinn was served with the Complaint on February 25, 2022.

{¶27} Stinn claims that Maplewood at Chardon failed to satisfy the commencement requirement of R.C. 2117.12 because no praecipe for service of summons was filed with the Complaint. Maplewood at Chardon counters, and we agree, that the statutory requirement that a praecipe be filed with the Complaint has been superseded by the Rules of Civil Procedure. *Yancey v. Pyles*, 44 Ohio App.2d 410, 339 N.E.2d 835 (1st Dist.1975), syllabus ("[t]he provisions of Civ.R. 3(A) and Civ.R. 4 are fully applicable to proceedings brought under R.C. 2117.12, so that the requirement that a praecipe be filed, to either commence an action or generate the process of issuing a summons, is eliminated"); *Soc. Bank & Trust v. Estate of Miller*, 6th Dist. Lucas No. CV 92-0720, 1994 WL 660154, *3 ("for practical purposes compliance with the requirements of Civ.R. 3 and Civ.R. 4 have been substituted for the filing of a praecipe following the general elimination of the use of a praecipe in instituting suits"); *compare Seger v. For Women, Inc.*, 110 Ohio St.3d 451, 2006-Ohio-4855, 854 N.E.2d 188, ¶ 7 ("[b]ecause the Civil Rules govern procedure in Ohio, Seger did not need to comply with the praecipe requirement of R.C. 2305.17").

{¶28} Civil Rule 1(A) provides that "[t]hese rules prescribe the procedure to be followed in all courts of this state in the exercise of civil jurisdiction at law or in equity." More specifically, Civil Rule 73(A) provides that the "Rules of Civil Procedure shall apply to proceedings in the probate division of the court of common pleas" and "all of the Rules of Civil Procedure, though not specifically mentioned in this rule, shall apply except to the extent that by their nature they would be clearly inapplicable." "Civ.R. 4 through 4.6 shall apply in any proceeding in the probate division of the court of common pleas requiring service of summons." Civ.R. 73(C). Under the Civil Rules, "[a] civil action is commenced

by filing a complaint with the court, if service is obtained within one year from such filing upon a named defendant * * *." Civ.R. 3(A). "Upon the filing of the complaint the clerk shall forthwith issue a summons for service upon each defendant listed in the caption." Civ.R. 4(A). Because Civil Rule 3(A) does not require the filing of a praecipe to commence a civil action, Maplewood at Chardon did not need to comply with the praecipe requirement of R.C. 2117.12. Stinn does not cite authority contrary to *Yancey* and *Soc. Bank & Trust* on this issue. *See also Seger* at ¶ 7, citing Section 5(B), Article IV of the Ohio Constitution ("[a]ll laws in conflict with such rules [governing practice and procedure prescribed by the supreme court] shall be of no further force or effect after such rules have taken effect").

{¶29} Stinn argues that, even if Civil Rules 3(A) and 4(A) govern the commencement of the suit, Rule 4(A) was not complied with because the clerk issued the Summons to Stinn as an individual, rather than in his capacity as administrator of Primeau's estate. Stinn acknowledges that the Complaint is appropriately captioned "MICHAEL E STINN, FIDUCIARY OF THE ESTATE OF PAUL PRIMEAU * * *, Defendant," and that he is identified therein as "the Fiduciary of Paul Primeau's Estate, which is pending in Geauga County Court of Common Pleas, Probate Division." The caption as reproduced in the Summons, however, identifies the defendant as "MICHAEL E STINN" without further qualification. According to Stinn, then, "[s]ervice [has] not been perfected on Michael E. Stinn, Fiduciary of the Estate of Paul A. Primeau." Appellant's Brief at 33. Stinn concludes, therefore, that the case has not been properly commenced and the trial court lacks personal jurisdiction over Stinn as administrator. We disagree.

{¶30} The Summons issued in the present case advised Stinn "that a complaint (a copy of which is hereto attached and made a part hereof) has been filed against you in this court." While Stinn as an individual is captioned in the Summons, both the caption and the substance of the Complaint which was duly made a part of the Summons resolve any ambiguity as to whether Stinn was being sued as an individual or in his capacity as estate administrator. *Compare Porter v. Fenner*, 5 Ohio St.2d 233, 215 N.E.2d 389 (1966), paragraph two of the syllabus ("[w]here in a timely brought action to contest a will, a defendant is designated in the body of the petition as the executor of the deceased testator's estate, but in the caption of the petition, in the precipe for summons and in the summons which is served on him he is named in an individual capacity, and it is apparent that his sole relation to the estate is that of executor, there is sufficient compliance with the provisions of [the statute requiring the executor be made a party to the action], to bring him into the action as executor").

{¶31} The assignments of error are without merit.

{¶32} For the foregoing reasons, the Orders of the Geauga County Court of Common Pleas, denying Stinn's Motion for Summary Judgment, Motion for Reconsideration, and Motion to Dismiss and granting Maplewood at Chardon's Motion for Summary Judgment, are affirmed. Costs to be taxed against the appellant.

JOHN J. EKLUND, P.J.,

EUGENE A. LUCCI, J.,

concur.