COURT OF APPEAL, FIRST DISTRICT, DIVISION 4, CALIFORNIA

Clark v. Kerby

Clark v. Kerby, 4 Cal.App.4th 1505 (Court of Appeal First District Division 4 California 1992) · No. No. A052837

SUMMARY

California's former nonclaim statute (Prob. Code former §§ 9050, 9100) violated due process under *Tulsa Professional Collection Services v. Pope* (1988) 485 U.S. 478, because it permitted barring claims of known or reasonably ascertainable creditors who received only publication notice rather than actual notice of administration. The court held that a creditor's or its attorney's knowledge of the decedent's death does not constitute constructive knowledge of administration, as the duty to file a claim is triggered only by commencement of administration and proper notice. The case was remanded to determine whether the creditor was known or reasonably ascertainable, and if so, the claim could not be time-barred.

CASE DETAILS

COURT	Court of Appeal, First District, Division 4, California
WRITING FOR THE COURT	ANDERSON; POCHE; REARDON
JURISDICTION	California
DOCKET	No. A052837
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from trial court order barring creditor's claim against decedent's estate.
PRECEDENTIAL VALUE	published
PARTIES	James Edward Clark, Jr. v. Myrna Kerby, as Personal Representative, etc.

TOPICS

probate procedure · probate · creditor claims · constitutional law · civil procedure

PRACTICE AREAS

Probate · Constitutional Law

QUESTIONS PRESENTED

1. Whether the notice requirements under California's former nonclaim statute (former Probate Code §§ 9050, 9100) comport with the due process standards announced in Tulsa Professional Collection Services v. Pope, 485 U.S. 478 (1988), as to known or reasonably ascertainable creditors.

HOLDINGS

1. The former nonclaim statute's notice provisions do not comport with due process as to known or reasonably ascertainable creditors because they do not require actual notice to such creditors.

KEY QUOTATIONS

> *"Constructive knowledge through publication of a notice of death or other information that does not come to the attention of the creditor is not knowledge for the purpose of subdivision (a)(1). The standard applicable to the creditor's attorney is different. The creditor is not held responsible for any actual knowledge the attorney may have of the decedent's death unless the attorney is representing the creditor in the matter involving the decedent."* (at 1514)

> *"implements the rule of Tulsa ..., that the claim of a known or reasonably ascertainable creditor whose claim is not merely conjectural but who is not given actual notice of administration may not be cut off by a short claim filing requirement."* (at 1514 (fn. 8))

FACTUAL BACKGROUND

On April 20, 1988, Vernon Copeland died in a car accident while towing a camp trailer. Clark, a potential personal injury claimant, was a creditor of Copeland's estate. The personal representative did not give Clark actual notice of administration. Clark learned of the estate proceedings and filed a claim within 26 days, but the trial court barred the claim as untimely.

PROCEDURAL HISTORY

The trial court barred Clark's claim against Copeland's estate for failure to file a timely claim under California's former nonclaim statute. Clark appealed, arguing that the notice provisions violated due process.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for determination of whether Clark was a known or reasonably ascertainable creditor of Copeland's estate, and for further proceedings if necessary consistent with Tulsa and this opinion.

CASES CITED

- Tulsa Professional Collection Services v. Pope, 485 U.S. 478 (1988)

CITED IN

- Clark v. Kerby, Clark v. Kerby, 4 Cal.App.4th 1505, 1514, 6 Cal.Rptr.2d 440 (1992)
- Clark v. Kerby, Clark v. Kerby, 4 Cal.App.4th 1505 (1992)

OPINION

Clark v. Kerby, 4 Cal.App.4th 1505, 6 Cal.Rptr.2d 440 (Cal. App. 1992) Page 440 6 Cal.Rptr.2d 440 4 Cal.App.4th 1505 James Edward CLARK, Jr., Plaintiff and Appellant, v. Myrna KERBY, as Personal Representative, etc., Defendant and Respondent. No. A052837. Court of Appeal, First District, Division 4, California. March 31, 1992.

As Modified on Denial of Rehearing April 21, 1992. Review Denied June 25, 1992. Page 441 [4 Cal.App.4th 1507] David L. DeVore, Feldman, Shaw & DeVore, South Lake Tahoe, for plaintiff and appellant. James A. Jackson, Graham, Cone, McKinney, Roberts & Jackson, Mendocino, for defendant and respondent. ANDERSON, Presiding Justice. This case raises the question whether the requirements under our former "nonclaim" statute regarding notice to decedent's creditors comport with the due process standards announced by the United States Supreme Court in Tulsa Professional Collection Services v. Pope (hereafter Tulsa) (1988) 485 U.S. 478, 108 S.Ct.

1340, 99 L.Ed.2d 565. We conclude they do not as to known or reasonably ascertainable creditors. Accordingly, we reverse the trial court's decision to bar the claim of appellant James Edward Clark, Jr., and remand for determination of the factual question: was [4 Cal.App.4th 1508] Clark a known or reasonably ascertainable creditor of the estate of Vernon Robert Copeland?

1 I. STATUTORY SCHEME GOVERNING THESE PROCEEDINGS Under our "nonclaim" statute and, except as otherwise provided therein, creditors must file their claims against a decedent's estate in the manner and within the time provided in the Probate Code 2; failure to file a timely claim generally bars action on the creditor's claim. (§ 9002.)

However, the creditor's duty to file a claim is not triggered unless the personal representative gives proper notice. At the operative times, the personal representative was required to mail notice of administration of decedent's estate to all creditors known to the representative within four months of issuance of letters. (Former § 9050, 3 added by Stats.1987, ch. 923, § 93, p. 3016, oper.

July 1, 1988.) As to the rest of the world, including unknown creditors, publication of the statutory notice of death and petition to administer estate was sufficient notice (see former § 333). The period for filing a claim 4 against the estate in turn was dictated by the type of notice due: if actual notice were due, the creditor had 30 days from the date of notice of administration to file the claim; all other creditors had to file their claim within the four-month period following issuance of letters.

(Former § 9100, subd. (a), added by Stats.1987, ch. 923, § 93, p. 3017, oper. July 1, 1988.) Where no action for personal injuries or death was pending at the time of decedent's death and the creditor had not filed a claim within the specified time, the creditor could apply to file the claim if application were made within one year of accrual of the cause of action.

5 (Former § 720, added by Stats.1987, ch. 923, § 38, pp. 2984- 2985, oper. July 1, 1988.) II. FACTS AND PROCEDURE While towing a camp trailer on April 20, 1988, Vernon Copeland was traveling northbound on U.S. Highway 101 at an allegedly unsafe speed.

The [4 Cal.App.4th 1509] trailer started whipping from side to side, causing Page 442 fastease --- Page Break --- --- Page Break --- --- Page Break --- --- Page Break --- Clark v. Kerby, 4 Cal.App.4th 1505, 6 Cal.Rptr.2d 440 (Cal. App. 1992) The fact remains that Gardenal's office never received notice of administration from decedent's personal representative, and did not acquire knowledge of the estate proceedings until the day before that extended period expired.

A creditor's claim was filed within 26 days of learning of the administration. There is still the question whether a creditor's or attorney's knowledge of decedent's death somehow dilutes the constitutional requirements set forth in Tulsa.

The creditor there was (1) a subsidiary of the hospital where decedent died after a four- or five-month stay, as well as (2) the assignee of a claim for "expenses of last illness" connected with his stay. The creditor filed its claim four and one-half years after decedent's death. With these facts we find it hard to conjure that the creditor or its parent was unaware of decedent's death during this lengthy hiatus.

The Supreme Court did not concern itself with the issue of knowledge of death (as opposed to notice of administration), whether on the part of the creditor or its attorney. [4 Cal.App.4th 1514] Nevertheless, the rationale of Tulsa is that as a practical matter creditors need actual notice because they may not know of their debtor's death or the initiation of probate proceedings.

On the other hand, the self-interest of the personal representative runs counter to calling attention to the expiration of the claim period. (Tulsa, supra, 485 U.S. at p. 489, 108 S.Ct. at p. 1347.) Tulsa puts the burden on the personal representative to notify known or reasonably ascertainable creditors. Indeed, Gardenal in his deposition commented that he interpreted Tulsa as putting the obligation on the representative to notify the creditor of the opening of the estate so the creditor could file a claim.

It has never been the debtor's death that triggers the duty to file a claim; rather, it is the commencement of administration and publication or actual notice. Thus, even if an attorney for a creditor knows that the debtor died, unless administration has commenced there is neither need nor procedure for filing a claim. 9 The Commission, in commenting on current section 9103, with its provision for filing a late claim if neither the creditor nor the attorney representing the creditor in the matter had actual knowledge of administration, notes: "Constructive knowledge through publication of a notice of death or other information that does not come to the attention of the creditor is not knowledge for the purpose of subdivision (a)(1).

The standard applicable to the creditor's attorney is different. The creditor is not held responsible for any actual knowledge the attorney may have of the decedent's death unless the attorney is representing the creditor in the matter involving the decedent." (Cal.Law Revision Com. com., Deering's Ann.Prob.Code, § 9103, op. cit. supra, at p. 592.) Page 446 We find this comment troublesome because for the first time it speaks of knowledge of death rather than knowledge of administration.

Again, for Tulsa and our nonclaim statute, the starting point for analyzing the notice and claim rules is the commencement of administration. Actual knowledge of someone's death can never amount to constructive knowledge of administration; after all, administration might never occur.

We reverse the judgment and remand: (a) for a determination of whether Clark was a known or reasonably ascertainable creditor of Copeland's estate, [4 Cal.App.4th 1515] and (b) for further proceedings if necessary, consistent with Tulsa and this opinion. Costs on appeal to Clark. POCHE and REARDON, JJ., concur. 1 Respondent herein is Myrna Kerby, as personal representative for the estate.

2 Unless otherwise indicated, all statutory references are to the Probate Code. 3 Under this statute, the personal representative was deemed to have knowledge of a creditor if the representative were aware that the creditor had --- Page Break --- Clark v. Kerby, 4 Cal.App.4th 1505, 6 Cal.Rptr.2d 440 (Cal. App. 1992) demanded payment from the decedent or the estate.

4 The term "claim" includes a demand for payment based on tort liability of the decedent. (Former § 9000, subd. (a)(1), added by Stats.1987, ch. 923, § 93, p. 3015, oper. July 1, 1988.) 5 Additionally, under certain circumstances enumerated in the general "late claim" statute, a creditor who was out of state during the entire claims-filing period could petition to file a late claim.

(Former § 9103, subd. (a)(1), added by Stats.1987, ch. 923, § 93, p. 3017, oper. July 1, 1988, amended by Stats.1988, ch. 113, § 15.1, p. 476.) 6 Under the Oklahoma statute, upon appointment as executor or executrix and issuance of letters testamentary, the executor or executrix had to publish notice to creditors of the deceased; the creditor then had two months to file a claim or, subject to limited exceptions, he or she would be forever barred from pursuing a claim.

(Tulsa, supra, 485 U.S. at p. 481, 108 S.Ct. at p. 1342.) 7 As to such actions where the defendant dies on or after January 1, 1991, Code of Civil Procedure section 353 prescribes a one-year statute of limitations from the date of death for all claims against the decedent. (Code Civ.Proc., § 353, subd. (b).)

For those dying on or after July 1, 1988, but before January 1, 1991, as did Copeland, the limitation period runs before the earlier of (1) January 1, 1992, or (2) one year after issuance of letters or the time otherwise limited for commencement, whichever is later. (Code Civ.Proc., § 353, subd. (d)(1), (2).) 8 In the words of the Commission, this new provision "implements the rule of Tulsa..., that the claim of a known or reasonably ascertainable creditor whose claim is not merely conjectural but who is not given actual notice of administration may not be cut off by a short claim filing requirement."

(Cal.Law Revision Com. com., Deering's Ann.Prob.Code, § 9392, op. cit. supra, at p. 674.) 9 We recognize that a creditor, as an "interested person," could petition the court to commence proceedings to administer a decedent's estate. (§§ 48, 8000.)

However, as a practical matter, the required contents of the action--including identifying information about each heir and devisee of decedent, to the extent known or reasonably ascertainable by the petitioner; the character and estimated value of the estate and a copy of the will, if any--are such that most creditors would not be in a position to complete the petition on their own.

Moreover, as a matter of due process, a creditor should not have to perform the very act of which he is entitled to notice.