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

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reversed_and_remanded
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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)