

SUPREME COURT OF NEBRASKA

In re Estate of Richard N. Cooper, Deceased, Joe M. Richardson,
Successor Personal Representative of the Estate of Richard N.
Cooper, Deceased, et al. v. First Tennessee Bank, National Association

275 Neb. 297 (2008) · No. S-06-1016 · Decided March 28, 2008

SUMMARY

The Nebraska Supreme Court held that a corporate claimant’s filing of a statement of claim in a probate proceeding did not constitute the unauthorized practice of law because it was an administrative filing rather than the commencement of a legal proceeding. The court also held that an out-of-state attorney’s filing of a demand for notice was not unauthorized practice under Nebraska’s temporary-practice rule because it was reasonably related to the attorney’s Tennessee practice and involved minimal risk. The court reversed the county court’s order striking both filings and remanded with directions to reinstate them.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Miller-Lerman, J.; Heavican, C.J.; Wright, J.; Connolly, J.; Gerrard, J.; Stephan, J.; McCormack, J.
JURISDICTION	Nebraska
DECIDED	March 28, 2008
DOCKET	S-06-1016
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	First Tennessee appealed the Douglas County Court's order striking its statement of claim and demand for notice from a probate proceeding on the ground that the filings constituted the unauthorized practice of law.
STANDARD OF REVIEW	In probate matters, absent an equity question, the appellate court reviews for error appearing on the record made in the county court. Questions of law are reviewed independently.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; binding precedent in Nebraska.

PARTIES

First Tennessee Bank, National Association v. Joe M. Richardson, successor personal representative of the estate of Richard N. Cooper, deceased, et al., W.G. Yates & Sons Construction Company

TOPICS

probate procedure

probate

statutory interpretation

plain meaning rule

appellate procedure

PRACTICE AREAS

probate

unauthorized practice of law

statutory interpretation

appellate procedure

QUESTIONS PRESENTED

1. Whether the filing of a statement of claim against a decedent's estate by a corporate claimant's nonlawyer employee constituted the unauthorized practice of law.
2. Whether the filing of a demand for notice in a probate proceeding by an attorney licensed in another state but not Nebraska constituted the unauthorized practice of law.

HOLDINGS

1. Filing a statement of claim under Neb. Rev. Stat. § 30-2486(1) is an administrative act distinct from commencing a legal proceeding and does not, by itself, constitute the practice of law or require filing by a Nebraska-licensed attorney.
2. An attorney licensed in another United States jurisdiction may temporarily file a demand for notice in Nebraska when the service arises out of or is reasonably related to the attorney's practice in the jurisdiction where admitted; under these circumstances, the filing did not constitute unauthorized practice of law.

KEY QUOTATIONS

“Giving the language in subsections (1) through (3) a consistent, harmonious, and sensible construction, see Citizens for Eq. Ed. v. Lyons-Decatur Sch. Dist., 274 Neb. 278, 739 N.W.2d 742 (2007), it is apparent that the filing of a claim is a separate and distinct act from the initiation of a legal proceeding to pursue payment of the claim.”

“The filing of a statement of claim is an administrative step by which the personal representative is advised, in accordance with the probate statutes, of the identities of the creditors and the amounts of their claims.”

FACTUAL BACKGROUND

Richard N. Cooper died testate on November 3, 2005, and his will was admitted to probate on November 17. First Tennessee, a national banking association headquartered in Memphis, claimed approximately \$1,035,537.32 from the estate. Its manager of special assets filed a prescribed statement-of-claim form, and its Tennessee attorney later filed a demand for notice; neither individual was licensed to practice law in Nebraska. Another estate claimant moved to strike both filings.

PROCEDURAL HISTORY

Richard N. Cooper's will was admitted to probate in the Douglas County Court. First Tennessee filed a statement of claim through a bank employee and a demand for notice through a Tennessee attorney who was not admitted in Nebraska. W.G. Yates & Sons Construction Company moved to strike both filings, and after an evidentiary hearing the county court granted the motions. The Nebraska Supreme Court reversed and remanded with directions to reinstate both filings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reinstate First Tennessee's statement of claim and demand for notice in the probate file.

CASES CITED

- In re Trust Created by Hansen, 274 Neb. 199, 739 N.W.2d 170 (2007)
- In re Estate of Lamplough, 270 Neb. 941, 708 N.W.2d 645 (2006)
- Citizens for Eq. Ed. v. Lyons-Decatur Sch. Dist., 274 Neb. 278, 739 N.W.2d 742 (2007)
- Summit Pool Supplies, Inc. v. Price, 461 So. 2d 272 (Fla. App. 1985)
- In re Estate of Piper, 59 Ill. App. 3d 325, 375 N.E.2d 477, 16 Ill. Dec. 604 (1978)
- In re Estate of Feuerhalm, 215 Neb. 872, 341 N.W.2d 342 (1983)
- Mulinex v. Roberts, 261 Neb. 800, 626 N.W.2d 220 (2001)
- State ex rel. Wright v. Barlow, 131 Neb. 294, 268 N.W. 95 (1936)
- State ex rel. Hunter v. Kirk, 133 Neb. 625, 276 N.W. 380 (1937)
- Spier v. Thomas, 131 Neb. 579, 269 N.W. 61 (1936)
- Holdrege Co-op Ass'n v. Wilson, 236 Neb. 541, 463 N.W.2d 312 (1990)