DISTRICT OF COLUMBIA COURT OF APPEALS

Nethken v. Peerless Insurance Co.

978 A.2d 603 (D.C. 2009) · Decided August 20, 2009

SUMMARY

The District of Columbia Court of Appeals held that heirs' claim against an administrator's surety bond was time-barred because fraud had not been established by clear and convincing evidence. Although the court recognized that the discovery rule may apply to fraud involving the distribution of an intestate estate, the evidence did not show that the administrator knowingly concealed the heirs or intended to deceive them. The court reversed the judgment against Peerless Insurance Company.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Kramer, Associate Judge; Fisher; Kramer; Thompson
JURISDICTION	District of Columbia
DECIDED	August 20, 2009
DISPOSITION	reversed
PROCEDURAL POSTURE	The Nethkens prevailed after a bench trial on their claim against Peerless's surety bond for the administrator of Mary Nethken's estate. Peerless cross-appealed the finding of fraud, the refusal to dismiss as untimely, and related rulings; the Nethkens cross-appealed the denial of prejudgment interest and legal expenses.
STANDARD OF REVIEW	The appellate court reviewed factual findings after the bench trial for clear error or lack of evidentiary support and reviewed legal conclusions de novo.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Frank K. Nethken, Roy Nethken, Ranee Nethken, Shirley Nethken Smeltzer, Patricia Hartsfield Schmertzler v. Peerless Insurance Company

TOPICS

probate procedure · estate administration · intestacy · fraud · statute of limitations

PRACTICE AREAS

probate | estate administration | fraud | statute of limitations | civil procedure

QUESTIONS PRESENTED

1. Whether the discovery rule applies to a fraud claim by heirs of an intestate decedent concerning concealment of their status in probate proceedings.
2. Whether the evidence established by clear and convincing evidence that Warner committed fraud by failing to identify the Nethkens as heirs.
3. Whether the Nethkens' claim against Peerless on the administrator's bond was barred by the five-year statute of limitations.

HOLDINGS

1. The discovery rule applies when heirs of an intestate decedent bring a fraud claim after the estate has been closed and the ordinary limitations period has expired.
2. Warner's failure to identify the Nethkens as heirs was not proven to constitute fraud by clear and convincing evidence.
3. Because fraud was not established by clear and convincing evidence, the Nethkens' claim against Peerless was barred by D.C. Code § 12-301(6), which imposes a five-year limitations period on actions against an executor's or administrator's bond.

KEY QUOTATIONS

> *"If heirs of an intestate decedent bring a claim of fraud after the estate has been closed and the applicable statute of limitations has expired, the discovery rule applies."* (606)

> *"Because fraud was not established by clear and convincing evidence, the Neth-kens' claim against Peerless is barred by D.C.Code § 12-301(6)."* (607)

FACTUAL BACKGROUND

Mary Nethken died intestate in 1979 without a spouse or children. Her half-brother, Warner, was appointed administrator and initially identified himself as Mary's sole heir, but the petition was later amended to include four children of another half-brother; the estate was ultimately valued at approximately $878,968.04. The Nethkens, descendants of Mary's other half-siblings, were not identified as heirs, and the final account was approved in 1983. They discovered their potential relationship to Mary and her unclaimed property in 2004 and sued Warner's estate and Peerless for fraud relating to the administration and distribution of the estate.

PROCEDURAL HISTORY

The Superior Court of the District of Columbia found that Warner, the administrator of Mary Nethken's intestate estate, committed fraud by failing to identify additional heirs and held Peerless jointly and severally liable on the administrator's bond. The court ordered correction of the estate's heir affidavit and account and entered judgment against Warner's estate and Peerless up to $292,000. The District of Columbia Court of Appeals reversed, concluding that fraud was not proven by clear and convincing evidence and that the claim was barred by the five-year limitations period.

DISPOSITION

reversed

CASES CITED

- Bingham v. Goldberg, Marchesauo, Kohlman, Inc., 637 A.2d 81, 89 (D.C. 1994)
- Davis v. United States, 564 A.2d 31, 35 (D.C. 1989)
- In re Estate of Green, 816 A.2d 14, 15 (D.C. 2003)
- In re Estate of Delaney, 819 A.2d 968, 981 (D.C. 2003)
- Stone v. Gulf American Fire & Casualty Co., 554 So. 2d 346, 352-360 (Ala. 1989)
- Payette v. Clark, 559 So. 2d 630, 633-634 (Fla. Dist. Ct. App. 1990)
- Park v. Sandwich Chef, Inc., 651 A.2d 798, 801, 802 n. 3 (D.C. 1995)
- Ingersoll v. Ingersoll (In re Ingersoll Trust), 950 A.2d 672, 693 (D.C. 2008)