

MEMORANDUM

TO: [REDACTED], Esq.

FROM: Virtual Litigation Support, LLC

RE: Likelihood of Success on Appeal of Denial of Estate Claim as Untimely

DATE: [REDACTED]

ISSUE: Under The Indiana Probate Code, what is claimant's likelihood of success on an appeal of the denial of his claim as untimely?

SHORT ANSWER: It is highly unlikely that an appeal would be successful. The limitation periods specified under I.C. §§ 29-1-14-1(d) and 29-1-7-7(e) are "nonclaim" statutes, not statutes of limitation; the time limits are absolute and there are no provisions for equitable tolling. This is true even though notice may not have been properly provided to the claimant.

FACTS: [REDACTED] ("decedent") died on November [REDACTED]. On August [REDACTED], a Complaint contesting an alleged will of the decedent was filed. [REDACTED] ("claimant") was named as a defendant in the will contest, and it was upon being served in this action that he learned of the death of the decedent. The representatives of decedent's estate failed to notify claimant of the death of decedent or the administration of her estate. On September [REDACTED], shortly after being served in the contest action, claimant filed a claim for \$22,857.72 against the estate of the decedent. On November [REDACTED], the Personal Representative of decedent filed a Motion to Dismiss this claim; the Court dismissed the claim (without conducting a hearing or awaiting a response from the claimant) on November [REDACTED].

ANALYSIS: In his Motion to Dismiss, the Personal Representative for decedent states that, "Pursuant to I.C. § 29-1-14-1(d) all claims are barred if not filed within nine (9) months after the death of decedent," and "That the (9) nine month time period ran on August [REDACTED]." Motion ¶¶ 3 & 4. This was the only argument raised in the Motion, and the Order dismissing the claim as untimely was signed by the Court based on this assertion. Any appeal, therefore, would necessarily involve determining if application of the nine month time limit was appropriate.

For purposes of claimant's issues herein, the relevant Indiana Code Provisions are I.C. § 29-1-14-1(d) and I.C. 29-1-7-7(e). Pursuant to I.C. § 29-1-14-1:

(a) Except as provided in IC 29-1-7-7, all claims against a decedent's estate . . . shall be forever barred against the estate, the personal representative, the heirs, devisees, and legatees of the decedent, unless filed with the court in which such estate is being administered within:

(d) All claims barrable under subsection (a) shall be barred if not filed within *nine (9) months* after the death of the decedent.

I.C. § 29-1-4-1 (emphasis added).¹

I.C. § 29-1-7-7 is the Indiana Code provision that governs notice of administration of an estate. The section provides various times at which and manners by which notice must be given to potential claimants. For claimant's purposes, subsection (e) of § 29-1-7-7 states: "However, a claim filed under IC 29-1-14-1(a) more than *nine (9) months* after the death of the decedent is *barred*." Id. (emphasis added).

As both relevant code provisions provide for a maximum of nine months from the death of the decedent to file a claim, there is no question that the claim herein was filed late. The decedent died on November [REDACTED] and the claim was filed on September [REDACTED] (approximately 10 ½ months later). The issue, therefore, becomes whether there are grounds either to extend the time for filing or toll the running of the time limit because of the lack of notice afforded the claimant. As will be discussed below in detail, a lack of notice is irrelevant and the claim is absolutely barred.²

In Decker v. Farm Services Bureau of Mid-America, 684 N.E. 2d 1137 (Ind. 1997) ("Decker III"), the Indiana Supreme Court addressed whether the time limit for filing a claim under sections 29-1-14-1 and 29-1-7-7 could be tolled for equitable considerations (as with the claim here, the issue was a lack of proper notice to the claimant). The Supreme Court held that the nine month time limits are "nonclaim" statutes, not statutes of limitation, and thus they are not subject to equitable tolling. Decker III at 1138; see Burnett v. Villanueva, 685 N.E. 2d 1103, 1110 (Ind. App. 1997) (neither the provision in I.C. 29-1-7-7(e) nor the provision in I.C. 29-1-14-1(d) is subject to equitable tolling).

The Decker III Court also held that the time limits in §§ 29-1-14-1(d) and 29-1-7-7(e) apply, "whether the creditor has received *proper notice, improper notice, or no notice at all*. . . ." Id. (emphasis added)³; see also Estate of Verdak v. Butler University, 856 N.E.2d 126, 135 (Ind. App. 2006) ("The nonclaim statute deadline is uncompromising Once the nonclaim statute time limit has expired, the trial court does not have jurisdiction to rule on the case.").

In differentiating between nonclaim statutes and statutes of limitation, the Decker III Court relied on Donnella v. Crady, 35 Ind. App. 60, 62-63, 185 N.E. 2d 623, 624 (Ind. App. 1962) for the following:

¹ A "claim" under § 29-1-14-1 is defined as, "a debt or demand of a pecuniary nature which could have been enforced against the decedent in his lifetime and could have been reduced to a simple money judgment." Konger v. Schillace, 875 N.E.2d 343, 350 (Ct. App. 2007) (citation omitted). For purposes of this memorandum, it is assumed that the \$22,857.72 debt owed to the claimant satisfies this standard.

² If the propriety of notice (or lack thereof) were an issue, than the provisions of I.C. § 29-1-7-7.5 (requiring that a personal representative use reasonable diligence to discover creditors of the decedent) also would be implicated. As the claim is barred regardless of notice, this provision is not relevant here.

³ Prior to the July 1, 2001 amendments to the Indiana Probate Code, the operative time period in both section 29-1-14-1(d) and 29-1-7-7(e) was one year, not nine months. Except insofar as demonstrating a legislative intent to restrict the ability to file claims even further, this three-month time difference does not impact the analysis herein as the underlying theories are the same whether the limit is one-year or nine months.

A nonclaim statute . . . grants to every person having a claim of any kind or character against a decedent's estate, the right to file the same in the court having jurisdiction thereof and have the same adjudicated, provided such claim is filed within the time specified in the statute. Unless such claim is filed within the time so allowed by the statute, it is forever barred. The time element is a built-in condition of the said statute and is of the essence of the right of action. Unless the claim is filed within the prescribed time set out in the statute, no enforceable right of action is created.

Id. at 1138-39, quoting Donnella, supra. In addition, the Decker II Court stated that, “While equitable principles may extend the time for commencing an action under statutes of limitation, nonclaim statutes impose a condition precedent to the enforcement of a right of action and are not subject to equitable exceptions.” Id. at 1139.

It is interesting to note that prior to the Supreme Court decision, the Court of Appeals had also reviewed this case and reached the opposite conclusion. Farm Services Bureau of Mid-America v. Decker, 624 N.E. 2d 491 (Ind. App. 1993) (“Decker I”), overruled Decker III, supra. In Decker I, the Court of Appeals determined that § 29-1-7-7(e) is a statute of limitation, and therefore subject to equitable tolling. The case was then remanded for a determination of whether equity required an extension of the deadline to file and the trial court determined that it did. This decision was also appealed and upheld, Estate of Decker v. Farm Credit Servs., 653 N.E.2d 534 (Ind. App. 1995) (“Decker II”), and it was this decision that the Supreme Court ultimately reviewed.

After the Supreme Court decision in Decker III, the Court of Appeals again had the occasion to review the two statutes in detail. Burnett v. Villaneuve, 685 N.E. 2d 1103 (Ind. App. 1997). The Burnett case provides a detailed review of the history of the interpretation of the statutes and, unfortunately, further strengthens the conclusion that an appeal in this case is barred.

In addition to reiterating the holding of Decker III, the Burnett Court also clarified some apparent inconsistencies in the Decker decisions. For example, the Burnett Court observed that many provisions in sections 29-1-14-1 and 29-1-7-7 serve to *shorten* the limitations period for bringing a claim upon certain notice conditions being satisfied, and it is to these provisions that equitable tolling might apply. See id. at 1106-07. In other words, the notice provisions are implicated *only* when time limits are shortened under the statute. Id. at 1108.

The Burnett Court also acknowledged the argument that the current interpretation of the statutes as absolute essentially nullifies the value of the notice provisions. In analyzing this issue, the Burnett Court stated:

While we recognize the appeal of the argument, we are not at liberty to rewrite the statute to provide the claimants with more of an opportunity to file their respective claims. The statute allows for creditors to file claims within one year; however, that one year time limit is abbreviated by the opening of the estate and

notice. The notice provisions do not extend the time during which one may file a claim.

Id.

In reviewing the rationale behind making these limits “nonclaim” statutes, the Court of Appeals stated:

Unlike a general claim against an individual, a claim against an estate is against a finite, ascertainable sum of assets. Oftentimes, claims against an estate will exceed the assets of the estate, and the competing parties will receive less than the full amount to which they are entitled. This division of assets is not possible until such time as the personal representative is made aware of all the claims against an estate. Therefore, a time limit for claims is appropriate and in order to achieve its purpose is made absolute. When the time limit has expired, the personal representative should be able to divide the estate's assets to satisfy the property interests of all of the creditors. If creditors were to be allowed to file a claim after the cutoff date, for any reason, a final resolution of the matters of the estate would be impossible.

Id. at 1108.

Given the various interpretations of the statutes and somewhat confusing nature of their interplay, the Burnett Court went so far as to include a summation that encapsulates the current state of the law:

I.C. 29-1-14-1(d) is a one-year nonclaim statute. The last sentence of I.C. 29-1-7-7(e) is a reiteration of that same provision; it points out that in no circumstance will a claim be allowed more than one year after the decedent's death. However, as noted, 29-1-7-7(e) contains within it a shorter statute of limitation which may be extended due to a failure to provide notice . . . However, the one-year period is still the outward boundary for commencing claims against an estate. No matter who the creditor, no matter the reason for delay, the one-year nonclaim statute must be complied with in order to bring a claim against the estate.

Id. at 1110.

Finally, it bears noting that the 2001 Amendments shortening the nonclaim statute from one-year to nine months were enacted after Decker III and Burnett. The Legislature presumably was aware of the decisions and could have amended the Code to provide a remedy for claimants aggrieved by lack of notice beyond those already included in the statutes. The legislature chose not to do so. A review of the changes proposed and ultimately made to the statutes in 2001 indicates that there was no intention to make substantive changes aside from shortening the time to file a claim. See P.L. 252-2001

CONCLUSION: The nine month time limits in both Sections 29-1-14-1 and 29-1-7-7 are “nonclaim” statutes that cannot be avoided; the propriety (or lack thereof) of notice is irrelevant. As [REDACTED] claim was filed more than nine months after the death of the decedent, an appeal would be unlikely to succeed.