

2002

Kenneth Carl Larson v. Southern Nevada Memorial Hospital : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

IN THE MATTER OF THE ESTATE OF)

KENNETH CARL LARSON,)

Deceased,)

Respondent,)

-vs-)

Supreme Court No. 20518

SOUTHERN NEVADA MEMORIAL
HOSPITAL,)

Appellant.)

BRIEF OF APPELLANT

AN APPEAL FROM AN ORDER OF DISMISSAL
OF THE FIFTH DISTRICT COURT OF WASHINGTON COUNTY,
THE HONORABLE J. HARLAN BURNS, DISTRICT COURT JUDGE

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STATEMENT OF ISSUES PRESENTED

- I. Is the hospital's Notice of Claim, properly filed in the Nevada action, valid against the Utah personal representative pursuant to Utah Code Annotated §75-3-815?
- II. Is the hospital's claim, filed in Nevada, valid against the Utah personal representative under Utah Code Annotated §75-4-401?
- III. Was the filing of the hospital's claim in the Utah proceeding timely and proper in light of the particular and peculiar facts of this case?
- IV.
 - A. Was decedent's false statement regarding his residence and the personal representative's concealment the type of fraud contemplated in Utah Code Annotated §75-1-106, thus giving the hospital a three year time period to file its creditors claim?
 - B. Does Utah Code Annotated §78-12-38 have application to the exclusion of §75-3-803 in the particular and limited situations to which it relates?

Ultimate Issue: Did the lower court error in dismissing the hospital's petition for allowance of claim?

REPRINTED STATUTES

§75-1-102. PURPOSES -- RULE OF CONSTRUCTION.

- (1) This code shall be liberally construed and applied to promote its underlying purposes and policies.
- (2) The underlying purposes and policies of this code are:
 - (a) To simplify and clarify the law concerning the affairs of decedents, missing persons, protected persons, minors, and incapacitated persons;
 - (b) To discover and make effective the intent of a decedent in a distribution of his property;
 - (c) To promote a speedy and efficient system for administering the estate of the decedent and making distribution to his successors;

- (d) To facilitate use and enforcement of certain trusts; and
- (e) To make uniform the law among the various jurisdictions.

§75-1-106. EFFECT OF FRAUD AND EVASION.

Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this code or if fraud is used to avoid or circumvent the provisions or purposes of this code, any person injured thereby may obtain appropriate relief against the perpetrator of the fraud or restitution from any person (other than a bona fide purchaser) benefitting from the fraud, whether innocent or not. Any proceeding must be commenced within three years after the discovery of the fraud, but no proceeding may be brought against one not a perpetrator of the fraud later than five years after the time of commission of the fraud. This section has no bearing on remedies relating to fraud practiced on a decedent during his lifetime which affects the succession of his estate.

§75-3-803. LIMITATIONS ON PRESENTATION OF CLAIMS.

(1) All claims against a decedent's estate which arose before the death of the decedent, including claims of the state and any subdivision of it, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

(a) Within three months after the date of the first publication of notice to creditors if notice is given in compliance with §75-3-801; provided, claims barred by the nonclaim statute at the decedent's domicile before the first publication for claims in this state are also barred in this state.

(b) Within three years after the decedent's death, if notice to creditors has not been published.

(2) All claims against a decedent's estate which arise at or after the death of the decedent, including claims of the state and any subdivision of it, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

(a) A claim based on a contract with the personal representative, within three months after performance by the personal representative is due;

(b) Any other claim, within three months after it arises.

(3) Nothing in this section affects or prevents:

(a) Any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate; or

(b) To the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which he is protected by liability insurance.

§75-3-815. ADMINISTRATION IN MORE THAN ONE STATE -- DUTY OF PERSONAL REPRESENTATIVE.

(1) All assets of estates being administered in this state are subject to all claims, allowances, and charges existing or established against the personal representative wherever appointed.

(2) If the estate either in this state or as a whole is insufficient to cover all family exemptions and allowances determined by the law of the decedent's domicile, prior charges and claims, after satisfaction of the exemptions, allowances and charges, each claimant whose claim has been allowed either in this state or elsewhere in administrations of which the personal representative is aware, is entitled to receive payment of an equal proportion of his claim. If a preference or security in regard to a claim is allowed in another jurisdiction but not in this state, the creditor so benefited is to receive dividends from local assets only upon the balance of his claim after deducting the amount of the benefit.

(3) In case the family exemptions and allowances, prior charges and claims of the entire estate exceed the total value of the portions of the estate being administered separately and this state is not the state of the decedent's last domicile, the claims allowed in this state shall be paid their proportion if local assets are adequate for the purpose, and the balance of local assets shall be transferred to the domiciliary personal representative. If local assets are not sufficient to pay all claims allowed in this state the amount to which they are entitled, local assets shall be marshalled so that each claim allowed in this state is paid its proportion as far as possible, after taking into account all dividends on claims allowed in this state from assets in other jurisdictions.

§75-4-401. EFFECT OF ADJUDICATION FOR OR AGAINST PERSONAL REPRESENTATIVE.

An adjudication rendered in any jurisdiction in favor of or against any personal representative of the estate is as binding on the local personal representative as if he were a party to the adjudication.

§78-12-38. OUTSIDE THIS STATE.

If a person against whom a cause of action exists dies without the state, the time which elapses between his death and the expiration of one year after the issuing, within this state, of letters testamentary or letters of administration is not a part of the time limited for the commencement of an action therefor against his executor or administrator.

STATEMENT OF THE CASE

In this probate proceeding the appellant, Southern Nevada Memorial Hospital, hereafter hospital, filed a creditors claim against the estate. The hospital's claim is for medical and hospital expenses associated with the decedent's last illness. The hospital initially filed its claim in Nevada, in the probate commenced there immediately after the decedent's death. Record pp. 91-94. Subsequently, the hospital filed its claim in Utah. Record pp. 14-16. The claim was rejected by the Utah personal representative. The hospital filed its petition seeking allowance of the claim. Record pp. 17-18. The lower court denied the hospital's requested relief and this appeal was taken. Record pp. 110-113.

STATEMENT OF FACTS

The facts are basically undisputed and are found in the lower court's Findings of Fact. A copy of the lower courts findings are in the addendum to this brief. The original is located in the record at pp. 110-112.

The decedent died at the hospital in Las Vegas, Nevada, on December 21, 1982. Upon the decedent's admission to the hospital on December 6, 1982, he listed his address as 4001 East Sahara Avenue, Las Vegas, Nevada, which is the address of Maycliff Mini Storage and RV Park. On January 4, 1983, Mr. Jared Shafer was appointed special administrator of the decedent's estate in Nevada by order of the Eighth Judicial Court, Clark County, Nevada. Vicky Larson Carroll, the decedent's daughter, then nominated Mr. Shafer to be the general administrator of her father's estate in Nevada. That nomination was signed by Vicky Carroll on January 5, 1983. These facts are evidenced in the certified copies of the Nevada proceeding, which is part of the record, pp. 44-97, particularly pp. 47-49 and

an estate wherever filed. It is the hospital's position that its claim, as filed in Nevada, is thus binding on the Utah personal representative. The argument also outlines the hospital's position that a creditor's claim is valid and binding even if filed with the court prior to any publication of notice to creditors.

Point III argues the applicability of §75-4-401 of the Utah Code to the facts of this case. This section provides that an adjudication in any jurisdiction is binding on the local personal representative. The hospital claims that the Nevada Court order, signed May 11, 1984, is such an adjudication. The Nevada Court found that the hospital's claim had been filed, but remained unpaid for lack of funds. The hospital thus argues that the Utah assets are subject to the claims recognized in Nevada.

Point IV is an equitable claim, seeking to avoid the bar provision of §75-3-803 under the peculiar facts of this case. The hospital claims (a) because the decedent misled them by listing his residence in Las Vegas, (b) because Vicky Carroll nominated the Nevada administrator and was subsequently appointed the Utah Personal Representative and (c) because Vicky Carroll did not give any notice to the hospital in Nevada of the Utah proceeding, she cannot use the nonclaim statute in Utah to avoid the hospital's claim. The hospital argues that the nonclaim statute, as a statute of limitations, is for the purpose of promoting justice by preventing prosecution of stale claims. This purpose would not be met by barring the hospital's claim in light of the facts present in this case.

Point V contains two separate arguments centered upon the interpretation of Utah Code Annotated §75-1-106 and §78-12-38.

The first statute allows claims by parties injured by fraud in connection with a probate proceeding if filed within three years of discovery

67-70. The hospital filed a creditors claim in the amount of \$24,832.54 with the Nevada Court on January 6, 1983. Record pp. 91-94.

The Utah probate was commenced on January 26, 1983, when Vicky Larson Carroll petitioned and was appointed personal representative of the estate. Record pp. 1-7. The publication of Notice to Creditors in Utah occurred in January and February, 1983, in Washington County in the Color Country Spectrum, the local newspaper. Record p. 9.

The hospital was unaware of the Utah proceeding until November, 1983. It then filed a creditors claim in Utah on November 14, 1983. Record pp. 14-16. Vicky Larson Carroll denied the claim and the hospital filed its petition for allowance of claim on June 8, 1984. Record pp. 17-18. The lower court dismissed the hospital's petition on motion of the personal representative.

The value of the Nevada estate was originally estimated as being \$60,000. Record p. 44. The Administrator in Nevada did not receive any assets. Record pp. 80-81. The Nevada Court discharged the Administrator after finding that he had received no assets. The court found the sole claim against the estate (filed by the hospital) was left unpaid for lack of funds. Record pp. 87-88.

SUMMARY OF ARGUMENT

Point I outlines the scope of review to be applied by the Supreme Court in deciding this appeal. Since the facts are undisputed, the Supreme Court is called upon to review the conclusions of law of the lower court. The appellate court is, of course, not bound by the lower court's conclusions.

Point II argues the applicability of §75-3-815 of the Utah Code to the facts of this case. The statute provides for the recognition of claims against

of the fraud. The hospital claims that the decedent's false listing of a Las Vegas address as his residence is such a fraud. Therefore the hospital's claim is timely under the three year limitation provided.

The second cited statute provides an extension of all statutes of limitation from the date of a decedent's death to a date one year beyond the issuance of letters testamentary, when the decedent against whom the claim existed died outside of this state. This statute is very specific and has application in only a limited number of situations. As a result, the statute has application in those situations to the exclusion of §75-3-803, which is a general statute of limitations in the probate area.

ARGUMENT

Point I SCOPE OF REVIEW.

The Supreme Court's scope of review in this appeal can be set out in two well established rules.

First, this Court has held that in determining the correctness of a judgment of dismissal, the Court must view the facts in the light most favorable to the appellant. Meyers v. McDonald, 635 P.2d 84 (Utah, 1981); Davis v. Payne and Day, Inc., 10 Utah 2d 53, 348 P.2d 337 (1960); Williams v. ZCMI, 6 Utah 2d 283, 312 P.2d 564 (1957). It is believed that most, if not all, of the facts in the instant matter are before the court as stipulated facts. Therefore, it is not necessary to review the validity of those facts. The review required will entail a determination of the conclusions of law drawn from those facts. Should the Court find any facts in dispute then those facts must be viewed in the light most favorable to the hospital.

It is well established law that where the issues to be determined solely involve questions of law, the Supreme Court is just as capable of

determining the question as was the trial court and thus the Supreme Court is not bound by the lower Court's conclusions. See Automotive Manufacturers Warehouse, Inc. v. Service Auto Parts, Inc., 596 P.2d 1033 (Utah 1979); Provo City Corporation v. Nielson Scott Co., 603 P.2d 803 (Utah 1979); Betenson v. Call Auto and Equipment Sales, Inc., 645 P.2d 648 (Utah 1982); Olwell v. Clark, 658 P.2d 585 (Utah 1982).

In this appeal, the Court is urged to review the lower courts conclusions of law in light of the established facts. The law will convince this Court that the lower court's ruling was in error and should be reversed.

**Point II UTAH CODE ANNOTATED §75-3-815 SUBJECTS
THE ESTATE IN UTAH TO THE CLAIM PROPERLY
FILED IN NEVADA.**

The purpose of the Uniform Probate Code was to simplify and clarify the law and to promote the speedy and efficient settlement of decedent's estates. The code was not intended to deny any just claims against a decedent. It provides the forum to simply and quickly handle and settle those matters. Utah Code Annotated §75-1-102 (1953, as amended); Am. Jur. 2d New Topic Service, Uniform Probate Code §3 (1974).

**A. THE NEVADA CLAIM IS VALID AGAINST THE UTAH
PERSONAL REPRESENTATIVE**

§75-3-815 of Utah's probate code provides a multistate scope to the administration of estates:

Administration in more than one state--Duty of personal representative.--

(1) All assets of estates being administered in this state are subject to all claims, allowances, and charges existing or established against the personal representative wherever appointed.

(2) If the estate either in this state or as a whole is insufficient to cover all family exemptions and allowances determined by the law of the decedent's domicile, prior charges and claims, after satisfaction of the exemptions, allowances and charges, each claimant whose claim has been allowed either in this state or elsewhere in administrations of which the personal representative is aware, is entitled to receive payment of an equal proportion of his claim. If a preference or security in regard to a claim is allowed in another jurisdiction but not in this state, the creditor so benefited is to receive dividends from local assets only upon the balance of his claim after deducting the amount of the benefit.

(3) In case the family exemptions and allowances, prior charges and claims of the entire estate exceed the total value of the portions of the estate being administered separately and this state is not the state of the decedent's last domicile, the claims allowed in this state shall be paid their proportion if local assets are adequate for the purpose, and the balance of local assets shall be transferred to the domiciliary personal representative. If local assets are not sufficient to pay all claims allowed in this state the amount to which they are entitled, local assets shall be marshalled so that each claim allowed in this state is paid its proportion as far as possible, after taking into account all dividends on claims allowed in this state from assets in other jurisdictions.

The statute clearly contemplates applying all of a decedents assets to all the claims against him, wherever located.

It is an undisputed fact that Southern Nevada Memorial Hospital filed its creditors claim in the Eighth Judicial Court, State of Nevada, on the 6th day of January, 1983. See Findings of Fact #5, signed by Judge Burns, Record p. 111 and also Record pp. 91-94. The Nevada probate action was the first to be commenced. Approximately three weeks later the Utah proceedings were initiated. The Utah Personal Representative, Vicky Carroll, nominated Jared E. Shafer, to act in her place and stead as the Administrator of her fathers estate in Nevada. A certified copy of this nomination is found in the Record at p. 47. A copy has been included in the addendum to this brief. Mr. Shafer was initially appointed as the "Special Administrator" and, pursuant to Vicky Carroll's nomination, was subsequently appointed as the general administrator in the Nevada

proceedings. The order appointing Mr. Shafer as the general administrator was signed by the Nevada Court on February 18, 1983 and amended on February 22, 1983. A certified copy of each order appears in the Record at pp. 67-70.

The Editorial Board Comment to §75-3-815 summarizes the purpose and requirements of the statute:

... This section has the effect of subjecting all assets of the decedent, wherever they may be located and administered, to claims properly presented in any local administration. It is necessary, however, that the personal representative of any portion of the estate be aware of other administrations in order for him to become responsible for claims and charges established against other administrations.

As indicated in the statute and comment, the local personal representative must be aware of other state administrations in order for him to become responsible for the claims filed in those administrations. Vicky Carroll was well aware of the Nevada action, even before she commenced the Utah action, as shown by her appearance in the Nevada action and her nominating the administrator of the Nevada probate.

B. THE NEVADA CLAIM WAS TIMELY FILED

The claim of Southern Nevada Memorial Hospital was filed timely and should have been allowed against the Utah assets.

The probate code nonclaim provisions (Utah Code Annotated §75-3-803 (1953, as amended)) become applicable only if the statutory time limitation has run locally prior to the creditors claim being filed in the foreign jurisdiction. See Am. Jur. New Topic Service Uniform Probate Code §108 (1974). The time limitation had not run in Utah prior to the claim being filed in Nevada. In fact, the Nevada claim was filed with the court before the Utah action was even commenced and before the Utah Notice to Creditors was first published.

At the trial court Vicky Carroll argued that creditor's claims must be filed after the notice to creditors is first published. Vicky Carroll also argued that if there was no publication in Nevada, there could not be any proper creditor claims there. See the Record at pp. 102-104, which is a portion of the estates Responsive Memorandum in Support of Motion to Dismiss. Such an argument is not supported in the law, nor should it be allowed to stand as a conclusion of law. See the lower Court's Conclusion of Law #3. Record pp. 110-111.

The hospital's claim was filed with the Nevada court in a timely fashion. In the event the special administrator did not have authority to act upon the claim, the claim was still filed timely and should not be barred by Utah's nonclaim statute. A general administrator was appointed in the Nevada action and would apparently have had authority to reject creditors claims. No rejection of the hospital's claim was ever filed by the general administrator in Nevada. A failure to reject a claim within 60 days has the effect of allowance. See Utah Code Annotated §75-3-806(1). The hospital's claim was acknowledged in the Order Settling Final Account of Special Administrator. A certified copy of this order is located at pp. 87-88 of the Record. A copy of the order is also reproduced in the addendum to this brief. The court's order indicates that the hospitals claim was filed, but remained unpaid because of lack of assets to pay the bill. The language of the order seems to indicate a valid obligation of the estate and nonpayment of the claim was for lack of funds, not because the claim was improperly filed or rejected.

There is substantial reason and authority in holding that a creditor's claim may be filed prior to publication of notice to creditors. See generally 70 ALR 3d Validity of Claims Against Estate Filed Prior to Publication of

Notice to Creditors p. 784, et. seq (1976). The very purpose of the nonclaim statute is to give notice, thus allowing creditors to receive payment for their just claims. No prejudice can be found if a creditor properly files a claim with the probate court prior to the published notice reaching him. The fact that a creditor obtains notice of a debtor's death from a source different than the notice published in the newspaper should not negate his claim, as long as it is filed with the court before the nonclaim limitation period has expired. Re Estate of Tanner, 288 So. 2d 587, 70 ALR 3d 778 (Fla. App. 1974) held that it was permissible to file a creditors claim prior to the publication of a valid notice to creditors. In so holding, the Florida Court found authority for its holding in Arizona and Montana. See Davis v. Davis' Estate 56 Mont. 500, 185 P. 559 (1919); Lowry v. Crandall 52 Ariz. 501, 83 P.2d 1003 (1938). The Florida Court quoted the following statement from 11 Cal. Jur., Section 425:

" . . . 'Presentation Before Notice to Creditors.--While a creditor is not bound to present his claim until after publication of the notice required by statute, the statute does not require a presentation to be postponed until after the publication. The holder may anticipate such publication, and present his claim prior thereto. It is not the publication of notice which is the prerequisite to the maintenance of an action on a claim, but it is the proper presentation of the claim and its rejection . . . ' . . . " Re Estate of Tanner, supra. 70 ALR 3d at 782-783.

The proper presentation of a claim merely consists of giving a written statement of the claim, indicating its basis, the name and address of the claimant and the amount claimed, to the personal representative or filing such statement with the court. See Utah Code Annotated §75-3-804(1)(a). The hospital's claim, filed in the Nevada probate, met these criteria. §804 also provides " . . . The claim is deemed presented on the first to occur of receipt of the written statement of claim by the personal representative, or the filing of the claim with the court."

In its survey of cases meeting the issue of the validity of a claim filed before notice is published, the annotation at 70 ALR 3d 784, §2 states:

"... the cases which have been found to discuss this point are all in agreement that a claim against an estate is not required to be presented subsequently to the publication of notice in order for the claim to be valid." (emphasis added)

The purpose of the nonclaim statutes is to provide a time after which creditor's claims would not be allowed. Recognizing the validity of such claims filed prior to the notice being published would not conflict with the purpose which the notice provision was designed to serve. Id. §4.

The Utah Uniform Probate Code is to be "liberally construed and applied to promote its underlying purposes and policies". Utah Code Annotated §75-1-102(1). The claim of Southern Nevada Memorial Hospital should be allowed under the provisions of Utah Code Annotated §75-3-815 and the District Court's order dismissing the hospital's claim should therefore be reversed.

Point III UNDER UTAH CODE ANNOTATED §75-4-401 THE HOSPITAL'S CLAIM SHOULD BE ALLOWED.

Utah Code Annotated §75-4-401 provides for full faith and credit in multistate probate proceedings:

An adjudication rendered in any jurisdiction in favor of or against any personal representative of the estate is as binding on the local personal representative as if he were a party to the adjudication.

The notes of Am. Jur. 2d New Topic Service, Uniform Probate Code §154 (1974) concur that any states decision on an estate matter is to be conclusive on the local personal representative. It was further stated that this provision of the probate code was a part of the general attempt to unify estate administration. The rational is obvious; if there is a vehicle whereby

a decedent's assets can be accounted for, wherever located, and where the decedent's debts can be promptly verified and paid from the total of those assets, then the stated purpose of the probate code has been met; namely the speedy and efficient liquidation and distribution of the estate.

The Order Settling Final Account of Special Administrator signed by the Nevada Court on May 11, 1984, is an adjudication within the meaning of our statute. A copy of the order is reprinted in the addendum. A specific finding of the Nevada Court states:

4. That one creditor's claim was filed against the Estate by Southern Nevada Memorial Hospital in the amount of \$24,832.54. Said creditor's claim remains unpaid at the date of the filing of said accounting since there are no assets in the estate to pay said hospital bill.

This fact, as found by the Nevada Court, should be binding on the Utah Personal Representative. As there were no assets in Nevada to pay the claim, the claim should be paid out of the available assets in Utah in the priority of a medical and hospital expense of the last illness of decedent. See Utah Code Annotated §75-3-805(1)(d). This conclusion is wholly consistent with the general purpose of the Probate Code.

The lower court's Conclusion of Law #2 is in error in holding there was no adjudication in Nevada which would bind the personal representative in Utah. The lower court's Conclusion of Law #4 is also in error in holding that §75-3-803(a) operates to bar the hospitals claim in light of the argument set forth in this and the preceeding point. The lower courts judgment of dismissal should therefore be reversed.

**Point IV THE BAR PROVISIONS OF UTAH CODE
ANNOTATED §75-3-803 SHOULD NOT APPLY TO
THE HOSPITAL BECAUSE OF THE PECULIAR
FACTS OF THIS CASE.**

The hospital did not file a claim in the Utah probate proceeding within three months after the date of first publication of notice to creditors in the Utah proceeding as a result of the false statements made by decedent, upon his admission to the hospital, prior to his death. The decedent affirmatively and falsely gave the hospital information indicating that he was a resident of the state of Nevada and domiciled therein. See the lower court's Finding of Fact #2. The hospital relied upon that information and therefore took no action to file its proof of claim in any jurisdiction other than Nevada. In fact, the hospital knew of no other probate proceedings in any other jurisdiction until several months after the decedent's death.

The hospital also took the appropriate steps in Nevada to file its claim. It was apparent to the hospital that the Nevada estate presumably had sufficient assets to pay its claim; the Petition for Appointment of Administrator, based upon the nomination by Vicky Carroll, listed the estimated value of the estate as being in excess of \$60,000. A certified copy of said petition is found in the Record at pp. 44-46. Several months later it was discovered that there were no assets in Nevada which were subject to the probate proceeding.

Vicky Carroll, the decedent's daughter, was appointed personal representative in Utah. She was, however, aware of the Nevada action, having nominated the Nevada Administrator prior to initiating the Utah proceeding. Yet, she did not notify the creditors who filed claims in the

Nevada action of the Utah proceedings. Her concealment makes her use of the non-claim statute in Utah to bar the hospital's claim a fraud.

The nonclaim provisions of Utah's probate code are found in a part of Utah Code Annotated §75-3-803:

(1) All claims against a decedent's estate which arose before the death of the decedent, including claims of the state and any subdivision of it, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

(a) Within three months after the date of the first publication of notice to creditors if notice is given in compliance with §75-3-801; provided, claims barred by the nonclaim statute at the decedent's domicile before the first publication for claims in this state are also barred in this state.

This shortened statute of limitations only has application on the death of an individual. Statutes of limitation should not be lightly set aside or ignored; however, they should not always be applied with strict rigidity in all situations. The present case presents a situation where a strict interpretation of the statute would not be justified and would indeed create a true injustice.

The Utah Supreme Court in Meyers v. McDonald 635 P.2d 84 (Utah, 1981), partially quoting from the U.S. Supreme Court in the case of Order of Railroad Telegraphers v. Railway Express Agency, Inc., 321 U.S. 342, 248-49, 64 S. Ct. 582, 586, 88 L. Ed. 788 (1944) stated:

The governing policy in this area, as declared by the United States Supreme Court, is that statutes of limitations 'are designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared'.

This case involved the 2 year limitation statute in a wrongful death action. The Utah Supreme Court held in that case, " . . . the policy against stale claims is also outweighed by the unique circumstances of plaintiffs'

hardship, . . . " Meyers v. McDonald, supra at 87. The nonclaim statute is designed to allow efficient estate administration and encourage creditors to timely notify the estate representative of their claims. A late filing does not, in the probate context, before closing or distribution of the estate, work any hardship. The unique set of circumstances surrounding the hospital's claim in this present matter would indicate that a similar holding is in order.

In Klamm Shell v. Berg, 441 P.2d 10 (Colo., 1968) the Colorado Court stated: " . . . a statute of limitations is enacted for the purpose of promoting justice, discouraging unnecessary delay and forestalling the prosecution of stale claims. * * * (R)ather than promoting justice, the statute of limitations would then become an effective instrument for injustice. When this situation occurs, trial courts properly may turn to estoppel or fashion an equitable exception to the statutory limitation period." Id. at 13. See also: Brooks v. Southern Pacific Company 105 Ariz. 442, 446 P.2d 736 (1970); Safeco Insurance Co. of America v. Honeywell 639 P.2d 996 (Alaska, 1981).

This Court is urged, because of the peculiar facts of this case, to reverse the lower court's order of dismissal which was based on the grounds that the nonclaim statute of Utah forever barred the hospital's claim for reimbursement for expenses for medical and hospital care of decedent's last illness.

**Point V THE BAR PROVISIONS OF UTAH CODE
ANNOTATED §75-3-803 DO NOT APPLY BECAUSE
OF UTAH CODE ANNOTATED §§75-1-106 AND 78-
12-38.**

Two statutes prohibit the application of the probate code nonclaim provision.

**A. DECEDENT'S FALSE STATEMENTS AND HIS PERSONAL
REPRESENTATIVES CONCEALMENT FALL WITHIN UTAH CODE
ANNOTATED §75-1-106.**

Upon decedent's admission to the hospital he affirmatively listed a Las Vegas address as his residence, thus causing the hospital to reasonably believe he was a resident of Nevada. Subsequently it was established that the decedent was not a Nevada resident and his domicile was in Utah. The Utah personal representative has denied the hospital's claim on grounds that it was not timely filed in Utah. Utah Code Annotated §76-1-106 provides that in the event fraud has been practiced, a person damaged thereby has until three years pass from discovery of the fraud to raise the claim.

Effect of fraud and evasion.--Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this code or if fraud is used to avoid or circumvent the provisions or purposes of this code, any person injured thereby may obtain appropriate relief against the perpetrator of the fraud or restitution from any person (other than a bona fide purchaser) benefitting from the fraud, whether innocent or not. Any proceeding must be commenced within three years after the discovery of the fraud, but no proceeding may be brought against one not a perpetrator of the fraud later than five years after the time of commission of the fraud. This section has no bearing on remedies relating to fraud practiced on a decedent during his lifetime which affects the succession of his estate.

The editorial board comment emphasizes the broad power this provision may have:

This is an overriding provision that provides an exception to the procedures and limitations provided in the Code. The remedy of a party wronged by fraud is intended to be supplementary to other protections provided in the Code and can be maintained outside the process of settlement of the estate.

The decedent's false statements to the hospital upon being admitted to the hospital constitute the fraud contemplated in §75-1-106. The personal representative claims that the fraud of §75-1-106 applies only to "forged wills" or "presentation of fraudulent closing statements" and other fraudulent events that transpire after the death of the decedent. It is agreed that the fraud contemplated in this statute does apply to such situations.

However, the statute is broader than this interpretation. The language of the statute does refer directly to fraud connected, "with any proceeding or in any statement filed under this code". However, the statute also applies, " . . . if fraud is used to avoid or circumvent the provisions or purposes of this code". This latter claim does not require that the fraud had to occur after the decedent's death. A reasonable interpretation indicates that a claim exists for any fraud which tends to "avoid or circumvent" the purposes of the probate code. If the provisions of §75-3-803 are allowed to bar the hospital's claim, then the decedent's own false statements to the hospital will have been allowed to circumvent the purpose of the probate code and a great injustice will be imposed upon the hospital.

When the hospital learned the truth concerning decedent's domicile, it immediately filed its proof of claim in the Utah Court. Record pp. 14-16.

The hospital's proof of claim as filed in Utah should be allowed and declared to be timely filed within the expanded limitation period provided in Utah Code Annotated §75-1-106.

**B. THE TOLLING PROVISION OF §78-12-38 APPLIES TO THE
HOSPITAL'S CLAIM, TO THE EXCLUSION OF §75-3-803.**

The nonclaim statute, §75-3-803, is the general statute of limitations for probate matters. The statute of limitations provided for in Utah Code Annotated §78-12-38, however, has a very narrow and limited application and should therefore control in those situations where it applies. Utah Code Annotated §78-12-38 states:

Outside this state.--If a person against whom a cause of action dies without the state, the time which elapses between his death and the expiration of one year after the issuing, within this state, of letters testamentary or letters of administration is not a part of the time limited for the commencement of an action therefor against his executor or administrator.

This statute applies only where the decedent died outside of the state of Utah.

The hospital in this matter is thus entitled to bring its claim within one year after letters testamentary or letters of administration were issued in this state. The hospital did file its claim timely under said provisions.

This statute can be harmonized with the general provisions of §75-3-803 on the grounds that §75-3-803 is a general statute which applies to general probate cases. Since §78-12-38 is a very specific statute it is entitled to be enforced in those limited instances where it applies. It should not be deemed to have been repealed by the adoption of the probate code.

That such an interpretation is justified is well founded in the legal commentaries. 73 Am. Jur. 2d Statutes §257 (1974) states that a particular provision in a statute controls over the general provision and that the general provision must be interpreted as affecting only those cases as fall within its general language and that do not fall within the provisions of the

specific statute. Sections 253, 396 and 397 also have pertinent application in regards to this argument; these sections state:

§253. Related statutes.

It may be presumed to have been the intention of the legislature that all its enactments which are not repealed should be given effect. Accordingly, all statutes should be so construed, if possible, by a fair and reasonable interpretation, as to give full force and effect to each and all of them. In conformity with this principle, it is not to be assumed that one or the other of related statutes is meaningless; rather, such statutes will be so construed as to give each a field of operation.

§396. Judicial policy.

Repeals by implication are not favored. Thus, an intent to repeal by implication, to be effective, must appear clearly, manifestly, and with cogent force. The implication of a repeal, in order to be operative, must be necessary, or necessarily follow from the language used, because the last or dominant statute admits of no other reasonable construction. Moreover, if two constructions are possible, that one will be adopted which operates to support the earlier act, rather than to repeal it by implication.

§397. Presumptions applicable.

The courts will not presume that the legislature intended a repeal by implication. Indeed, the presumption is always against the intention to repeal where express terms are not used, and where effect can reasonably be given to both statutes. The presumption rests on the improbability of a change of intention, or, if such change occurred, on the probability that the legislature would have expressed it with an express repeal of the first.

The Utah case of Utah County v. Orem City, 5 UAR 15 (Utah, 1985) dealt directly with how our Utah statutes should be construed. The Court stated:

Statutes are considered to be in *pari materia* and thus must be construed together when they relate to the same person or thing, to the same class of persons or things, or have the same purpose or object. If it is natural or reasonable to think that the understanding of the legislature or of persons affected by the statute would be influenced by another statute, then those statutes should be construed to be in *pari materia*, construed with reference to one another and harmonized if possible. *Id.* at 17.

The provisions of §78-12-38 and §75-3-803 can be harmonized with each other, without violating the expressed intent of the legislature when these statutes were enacted. When ruled upon as properly construed and interpreted, the limitation provision of §78-12-38 controls the filing of the hospital's claim, to the exclusion of §75-3-803.

The lower courts dismissal of the hospitals claim on the grounds it was barred by §75-3-803 should be reversed, as the proper limitation statute in this matter is Utah Code Annotated §78-12-38.

CONCLUSION

The claim of the appellant, Southern Nevada Memorial Hospital, is a just and proper claim against the assets of the Estate of Kenneth Carl Larson. The lower courts conclusions of law drawn from the facts of this case are in error. The order dismissing the hospitals claim should be reversed, with directions to allow said claim.

Respectively submitted this 3rd day of May, 1985.

SNOW & NUFFER
A PROFESSIONAL CORPORATION

LaMar J. Winward
LaMAR J. WINWARD
Attorney for Appellant

MAILING CERTIFICATE

I hereby certify that on the 3rd day of May,
1985, I served four copies of the foregoing on the following by depositing a
copy in the U.S. Mail, postage pre-paid, addressed to:

RONALD W. THOMPSON AND
DALE R. CHAMBERLAIN
THOMPSON, HUGHES & REBER
148 East Tabernacle
St. George, Utah 84770

Windy Sampson

ADDENDUM

Findings of Fact and Conclusions of Law Re Southern Nevada Memorial
Hospital's Petition for Allowance of Claim

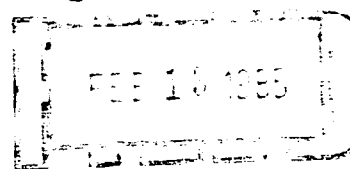
Order Dismissing Claim of Southern Nevada Memorial Hospital

Nomination of Administrator

Order Settling Final Account of Special Administrator

Handwritten: 10-17-72 - (initials)

THOMPSON, HUGHES & REBER
Ronald W. Thompson
Dale R. Chamberlain
148 East Tabernacle
St. George, UT 84770
Telephone: (801)673-4892



D. W. CLERK
DEPUTY

IN THE FIFTH JUDICIAL COURT OF WASHINGTON COUNTY
STATE OF UTAH

| | |
|---------------------------------|----------------------------|
| IN THE MATTER OF THE ESTATE OF) | FINDINGS OF FACT AND |
|) | CONCLUSIONS OF LAW RE |
| KENNETH CARL LARSON |) SOUTHERN NEVADA MEMORIAL |
|) | HOSPITAL'S PETITION FOR |
| Deceased. |) FOR ALLOWANCE OF CLAIM |
|) |) |
|) | Probate No. 2554 |

This matter having come before the Court on the 21st day of November, 1984, on the motion of Vicky Larson Carrol, personal representative of the estate, to dismiss the petition of Southern Nevada Memorial Hospital for allowance of its claim. The Court having reviewed the pleadings, file, and memoranda of law previously submitted by both counsel and having heard counsel, the Court hereby files its findings of fact and conclusions of law.

FINDINGS OF FACT

From the memoranda submitted by counsel, and the representations of counsel that the following facts are not disputed, the Court makes the following findings of fact:

1. Kenneth Carl Larson died in Las Vegas, Clark County, Nevada on the 21st day of December, 1982.
2. Decedent listed his address with Southern Nevada Memorial Hospital as 4001 East Sahara Avenue which is the address of Maycliff Mini Storage and RV Park. The location of property stored by Kenneth Carl Larsen.
3. On the 4th day of January, 1983, Mr. Jared Shafer was appointed special administrator of the estate of Kenneth Carl Larson by order of the Eighth Judicial Court,

Clark County, Nevada. On the 5th day Mr. Shafer was nominated by Vicky Carrol as administrator of the Estate.

4. Vicky Larson Carrol was not appointed personal representative in Nevada.

5. Southern Nevada Memorial Hospital filed its claim in the Eighth Judicial Court, State of Nevada, on the 6th day of January, 1983.

6. No notice to creditors was published in the State of Nevada.

7. An administration of the estate of Kenneth Carl Larson was opened in the State of Montana on the 18th day of January, 1983, by the filing of a petition of intestacy, determination of heirs and appointment of personal representative.

8. Vicky Larson Carrol was appointed personal representative of the estate in Washington County, Utah on the 26th day of January, 1983.

9. Vicky Larson Carrol, personal representative of the estate in the Utah administration, published notice to creditors in Washington County, Utah in the Color Country Spectrum on the 6th and 13th days of February, 1983.

10. Southern Nevada Memorial Hospital filed its claim with the Washington County Clerk on the 14th day of November, 1983.

11. Vicky Larson Carrol, personal representative of the estate, disallowed the claim as being untimely.

12. Southern Nevada Memorial Hospital filed a petition for allowance of claim on June 8, 1984.

CONCLUSIONS OF LAW

The Court having reviewed the findings of fact and memoranda of law submitted by counsel enters the following conclusions of law:

1. Provisions of U.C.A. 75-3-803 are controlling to the exclusion of the operation of U.C.A. 78-12-38 under the facts of this case.

2. There was no "adjudication" in the administration of the estate in the state of Nevada which would effect or bind the personal representative of the estate in Utah or trigger the application 75-4-401. U.C.A. 75-4-401 does not apply in this case.

3. There was no publication of notice to creditors in the State of Nevada and the petitioner has made no showing of facts which would make the petitioner's claim in the Nevada administration binding upon the personal representative of the Utah estate pursuant to U.C.A. 75-3-815. U.C.A. 75-3-815 has no application in this case.

4. Publication to creditors on the 6th and 13th days of February, 1983 was proper. Since the petitioner's notice of claim was filed on November 13, 1983, more than three months after the last publication of notice to creditors, said notice of claim was not timely filed and is barred by the operation of U.C.A. 75-3-803(a).

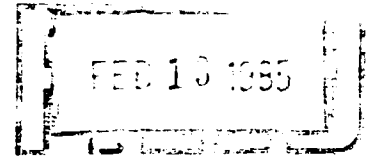
5. Petition of Southern Nevada Memorial Hospital to all its claim is denied and dismissed.

DATED this 7 day of February, 1984.

BY THE COURT:


J. HARLAN BURNS
District Court Judge

THOMPSON, HUGHES & REBER
Dale R. Chamberlain
Attorney for Plaintiff
148 East Tabernacle
St. George, Utah 84770
Telephone (801) 673-4892



D. La CLERK
DEPUTY

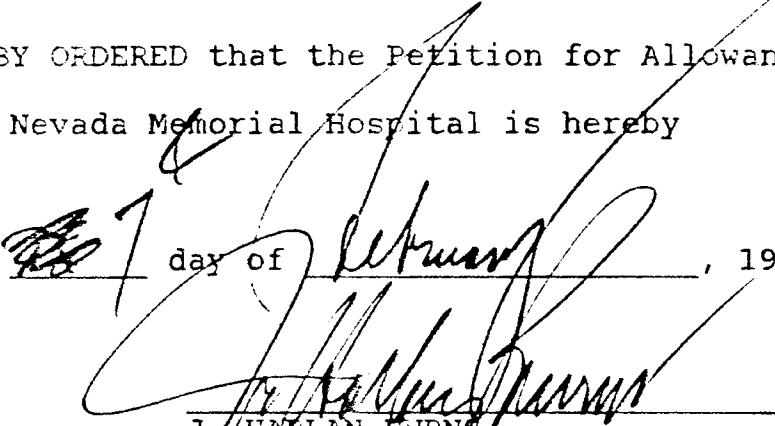
IN THE FIFTH JUDICIAL DISTRICT COURT FOR
WASHINGTON COUNTY, STATE OF UTAH

| | |
|---------------------------------|------------------------|
| IN THE MATTER OF THE ESTATE OF) | ORDER DISMISSING CLAIM |
| KENNETH CARL LARSON | OF SOUTHERN NEVADA |
|) | MEMORIAL HOSPITAL |
| Deceased. |) Probate 2554 |

The above-entitled Court having entered its Findings of Fact and Conclusions of Law, and consistent therewith hereby enters its order as follows.

IT IS HEREBY ORDERED that the Petition for Allowance of Claim of Southern Nevada Memorial Hospital is hereby dismissed.

DATED this 13 day of February, 1985.


J. HARLAN BURNS
District Court Judge

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IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

* * *

In the Matter of the Estate)
of)
KENNETH LARSON,)
Deceased.)

NOMINATION OF ADMINISTRATOR

The undersigned, VICKY CARROLL, respectfully states
that she is the daughter of KENNETH LARSON, deceased, and as such,
being the closest living relative of KENNETH LARSON, is entitled
under N.R.S. 139.040(2)(b) to nominate a resident of the State of
Nevada as Administrator. The undersigned hereby nominates JARED
E. SHAFER, Clark County Public Administrator, to act in her place
and stead as Administrator having priority under N.R.S. 139.040
(1)(b).

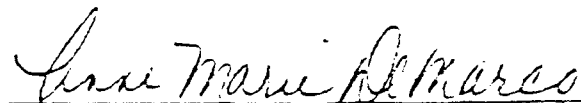

VICKY CARROLL

STATE OF NEVADA)

ss:

COUNTY OF CLARK)

On this 5 day of January, 1983, before me, the
undersigned, a Notary Public in and for the County of Clark, State
of Nevada, duly commissioned and sworn, personally appeared VICKY
CARROLL, known to me to be the person whose name is subscribed to
the foregoing Instrument, and who acknowledged to me that she ex-
ecuted the same freely and voluntarily and for the uses and pur-
poses therein mentioned.


NOTARY PUBLIC in and for said County
and State.

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

* * *

In the Matter of the Estate)
of KENNETH LARSON,) ORDER SETTLING FINAL ACCOUNT
Deceased.) OF SPECIAL ADMINISTRATOR
_____)

JARED E. SHAFER, Clark County Public Administrator, as
Special Administrator of the Estate of KENNETH LARSON, deceased
having rendered and filed herein on the 29th day of March, 1964,
a full and final account and report of his administration of
said Estate, and having with said account filed a petition
for final distribution of said estate to the Regular Administra-
tor, and said account and petition, this day, having come on
regularly to be heard, JEROME L. BLUT, ESQ. of JEROME L. BLUT,
CHARTERED, appearing as Attorney for Petitioner, the Court,
after examining the said account and petition, and hearing the
evidence, FINDS:

1. That due and proper notice of this hearing has been
given in the manner prescribed by law;

2. That said account is in all respects true and
correct, and that there are no assets held by the Special
Administrator for the estate of KENNETH LARSON.

3. That due and legal notice to the creditors of said
estate has been given in the manner and for the time required

1 4. That one creditor's claim was filed against the
2 Estate by Southern Nevada Memorial Hospital in the amount of
3 \$24,832.54. Said creditor's claim remains unpaid at the date
4 of the filing of said accounting since there are no assets
5 in the estate to pay said hospital bill.

6 5. That the names, ages and residence of the
7 next of kin of the decedent, so far as known to your Petitioner,
8 are as follows:

9 VICKY CARROLL, adult daughter of decedent
10 1616 Primera Street
11 Lemon Grove, CA 92045

12 IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

13 1. That the first and final account and report of
14 JARED E. SHAFER, Clark County Public Administrator, Administra-
15 tor of the said Estate, filed herein on March 29, 1984, be and
16 the same hereby is approved, allowed and settled.

17 2. That said Special Administrator be discharged and
18 this special administration of the estate of KENNETH LARSON
19 shall be closed.

20 DATED this 11 day of May, 1984.

21
22 *[Signature]*
23 DISTRICT JUDGE

24 JEROME L. BLUT, CHARTERED

25 BY *Jerome L. Blut*
26 JEROME L. BLUT
27 300 South Fourth Street
 Suite 600
 Las Vegas, Nevada 89101

CERTIFIED COPY

 We, the undersigned, do hereby certify that this certificate is a
 true and correct copy of the original on file and of record in my office.

DATE 6-18-84
LORETTA B. HOWARD, County Clerk and Clerk
of the District Court, in and
for the County of Clark, State of Nevada.
By *Loretta B. Howard*