

1988

Kip Quinn v. Estate of Fenton Glade Quinn and Fenton Quinn, Jr. : Brief of Appellant

Utah Supreme Court

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Robert Felton, George H. Speciale; attorneys for respondents.

B. Kent Ludlow, Chris L. Schmutz, Nielsen & Senior; attorneys for appellants.

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DOCKET NO.

THE SUPREME COURT OF THE STATE OF UTAH

88-0504-CA

KIP QUINN, Personal
Representative of the Estate
of Dawna W. Quinn, and the
ESTATE OF DAWNA W. QUINN,

Plaintiffs and
Respondents,

v.

ESTATE OF FENTON GLADE QUINN
and FENTON QUINN, JR., the
Personal Representative of the
Estate of Fenton Glade Quinn,

Defendants and
Appellants.

88-0504-CA

Case No. 870113

Priority Classification 14b

APPELLANTS' BRIEF

Appeal from a Judgment of the
Third Judicial District Court of Salt Lake County
Judge John A. Rokich

B. Kent Ludlow
Chris L. Schmutz
Nielsen & Senior
Attorneys for Appellants
1100 Beneficial Life Tower
36 South State Street
Salt Lake City, Utah 84111

Robert Felton
George H. Speciale
Attorneys for Respondents
5 Triad Center, Suite 585
Salt Lake City, Utah 84180

FILED
SEP 21 1987

Clerk, Supreme Court, Utah

THE SUPREME COURT OF THE STATE OF UTAH

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|--------------------------------|---|-----------------------------|
| KIP QUINN, Personal |) | |
| Representative of the Estate |) | |
| of Dawna W. Quinn, and the |) | |
| ESTATE OF DAWNA W. QUINN, |) | |
| |) | |
| Plaintiffs and |) | |
| Respondents, |) | |
| |) | |
| v. |) | Case No. 870113 |
| |) | |
| ESTATE OF FENTON GLADE QUINN |) | Priority Classification 14b |
| and FENTON QUINN, JR., the |) | |
| Personal Representative of the |) | |
| Estate of Fenton Glade Quinn, |) | |
| |) | |
| Defendants and |) | |
| Appellants. |) | |

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Chris L. Schmutz
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Attorneys for Appellants
1100 Beneficial Life Tower
36 South State Street
Salt Lake City, Utah 84111

Robert Felton
George H. Speciale
Attorneys for Respondents
5 Triad Center, Suite 585
Salt Lake City, Utah 84180

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STATEMENT OF THE ISSUES

1. Must a claim against a decedent's estate sufficiently identify its basis and claimant in order to be considered a valid claim?
2. Does failure to file a valid claim bar the claim?
3. Was Kip Quinn's claim a valid claim for wrongful death on behalf of the heirs of Dawna W. Quinn?
4. If not, were the Respondents precluded from filing suit for wrongful death and obtaining a wrongful death judgment against the Estate of Fenton Glade Quinn?

TEXT OF AUTHORITIES

Utah Code Ann. §75-3-804(1)(a)(1975) (Text contained in addendum)

Utah Code Ann. §78-11-7 (1953) (Text contained in addendum)

Utah Code Ann. §78-11-12 (1977) (Text contained in addendum)

STATEMENT OF THE CASE

This case involves purported errors by the lower court in allowing a wrongful death judgment against Defendants even though no claim for wrongful death was presented to the Estate of Fenton Glade Quinn.

The Estate of Dawna W. Quinn filed a claim against the Estate of Fenton Glade Quinn for personal injury on or about August 30, 1984. (R. 21-22.) The claim was disallowed, and on or about January 8, 1985, Plaintiffs filed an action seeking damages for both personal injury to Mrs. Quinn's estate and wrongful death on behalf of the heirs. (R. 2-4.)

On or about March 12, 1985, Defendants filed a Motion to Dismiss on the grounds that no claim on behalf of Mrs. Quinn's heirs was ever made. (R. 8-10.) This motion was denied by Order dated June 24, 1985. (R. 53-54.)

Plaintiffs subsequently obtained a judgment which included a substantial damage award for the losses suffered by the heirs of Mrs. Quinn. (R. 365-66.)

Defendants timely filed their Notice of Appeal on March 11, 1987.

STATEMENT OF THE FACTS

Dawna W. Quinn died on or about May 24, 1984. Her son, Kip Quinn, was named as the Personal Representative of her estate. He filed a claim (hereinafter sometimes "Claim") for personal injury on behalf of the Estate of Dawna W. Quinn against the Estate of Fenton Glade Quinn, her deceased husband. (R. 21-22.) The Claim was made by Kip Quinn as Personal Representative of Dawna Quinn's estate, not as one of her heirs and not as the representative of her heirs.

The Claim was disallowed. On or about January 8, 1985, Kip Quinn filed a Complaint in the Third Judicial District Court, Salt Lake County, State of Utah, Civil No. C85-165. (R. 2-4.) The Complaint sought damages for personal injury on behalf of Mrs. Quinn's estate (for which damages the Claim had been properly filed) and also damages for wrongful death (for which no claim had been filed).

On or about March 12, 1985, counsel for the Defendants filed a motion to dismiss the Complaint, on the grounds that no claim for wrongful death had ever been presented or filed. (R. 8-10.) By Order dated June 24, 1985, Defendant's Motion to Dismiss was denied. (R. 53-54.)

Subsequently, Plaintiffs recovered a Judgment against the Estate of Fenton Glade Quinn which included substantial damages for economic loss and for the value of loss of society, love, companionship, affection and protection; all wrongful death damages for losses of the heirs. (R. 365-66.)

Appellants filed their Notice of Appeal on March 11, 1987. (R. 372-73.) On or about June 9, 1987, Appellants received Notice from this Court that Appellants' Brief would be due July 20, 1987. By Stipulation between the parties, entered into July 10, 1987, the time for filing Appellants' Brief was extended to August 19, 1987. By Order entered by this Court on August 19, 1987, the time for filing Appellants' Brief was further extended to September 2, 1987.

SUMMARY OF ARGUMENTS

1. Utah's Probate Code contains two sections prescribing the time and manner for presentment of claims against a decedent's estate. Those sections, Utah Code Ann. (1975) §§75-3-803 and 75-3-804, should be construed as requiring each claim to sufficiently identify both its basis and its claimant. The language of the sections themselves, as well as applicable case law, other legal authorities, and the purposes of the statute in

question, all support this construction of Sections 803 and 804. A claim "sufficiently" identifies its basis when it is clear and unequivocal, fully informs the personal representative as to what exactly is claimed, and gives enough information to bar a subsequent claim or suit on the same claim.

2. If a claim is invalid because of its insufficient identification of basis and claimant, it should be deemed the same as no filing. Failure to file a valid claim bars the claim and destroys the underlying cause of action. This consequence is not averted by actual notice of the claim to the personal representative.

3. Kip Quinn's claim failed to preserve a cause of action for wrongful death. Wrongful death and survival claims differ markedly from each other. Kip Quinn's claim was clearly a survival claim, not a wrongful death claim.

4. The Judgment entered below included substantial damages for wrongful death, even though the claim filed was not for wrongful death. Where, as here, there is a material variance between the claim and the cause of action sued upon, the cause of action must be dismissed.

ARGUMENT

I. IN ORDER TO BE CONSIDERED VALID, A CLAIM AGAINST A DECEDENT'S ESTATE MUST SUFFICIENTLY IDENTIFY ITS BASIS AND CLAIMANT.

A. Utah's applicable statutes require every valid claim to identify its basis and claimant.

Presentation of claims to a decedent's estate is governed by statute in Utah. The two governing statutes are Utah Code

Annotated (hereinafter "U.C.A.") §§75-3-803 and 75-3-804 (1975). Section 803 provides that all claims are barred unless timely presented. Section 804 prescribes the manner of presentment of claims.

Under Section 804, a claim may be presented to the personal representative of the decedent's estate, or it may be filed with the clerk of the court. In either case, however, the contents of each claim should include the following six elements:

1. Basis of the claim;
2. Name and address of the claimant;
3. Amount claimed;
4. If the claim is not yet, the date when it will become due;
5. If the claim is contingent or unliquidated, the nature of the uncertainty;
6. If the claim is secured, a description of the security.

The last three elements are conditional. They are required only in certain circumstances. The statute clarifies their non-essential nature:

Failure to describe correctly the security, the nature of any uncertainty, and the due date of a claim not yet due does not invalidate the presentation made.

U.C.A. §75-3-804(1)(a) (emphasis added).

This important sentence clearly divides the six elements listed above into two groups. The last three are specifically declared not essential to a valid claim, while the first three elements of Section 804 are impliedly identified, by their omission from the sentence, as essential to a valid claim.

A well established rule of statutory construction provides that the expression of one or more items of a class indicates an intent to exclude all items of the same class which are not expressed.

Pima County v. Heinfeld, 654 P.2d 281, 282 (Ariz. 1982).

The "class" of items in Section 804 consists of the six elements of a claim listed above. The statute's specific expression of three items in the class as non-essential to a valid claim implies that the three omitted items are essential to a valid claim.

This construction of Section 804, requiring as a condition of validity that a claim identify its basis, claimant and amount, finds support in the first sentence of the section:

The claimant may deliver or mail to the personal representative a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed, or may file a written statement of the claim, in the form prescribed by rule, with the clerk of the court.

U.C.A. §75-3-804(1)(a)(emphasis added).

The underlined portion of the sentence just quoted prescribes the minimum content required in every claim filed or presented in Utah. If the legislature had not intended these elements to be mandatory, it could either have left them out entirely or included them among the non-essential items identified in the last sentence of the same paragraph. Instead, the terms were used to modify the word "claim" immediately preceding them.

In construing Section 804, this Court must assume that the underlined words were used and placed advisedly, Board of Education of Granite School District v. Salt Lake County, 659 P.2d

1030, 1035 (Utah 1983), and must give effect to all the words used. Durfey v. Board of Education of Wayne County School District, 604 P.2d 480, 484 (Utah '979).

The only reasonable construction of Section 804 which gives effect to all the words used in the section, is to require every claim, as a condition of validity, to indicate its basis, the name and address of the claimant, and the amount claimed. As shown below, case law and other authorities support this construction and provide a standard for determining whether a claim is valid or not.

B. Case law and other authorities' support requiring a valid claim to sufficiently identify its basis.

In Tangren v. Snyder, 368 P.2d 711 (Utah 1962), the Utah Supreme Court held that the statutory requirements of the contents of a claim were intended:

. . . to make a claimant set forth his claim with such particularity that the executor or administrator in passing upon it would be fully advised as to just what was claimed.

368 P.2d at 712 (emphasis added).

In order to be "fully advised as to just what [is] claimed", the personal representative must, at a minimum, be able to distinguish the claim filed from other, similar claims which might potentially be filed. This concept was expressed as follows by a leading authority on probate law:

The essentials are only that the claim advise the executor or administrator of the nature of the demand and the amount claimed, so as to enable him to act intelligently in the matter, and that it reveal enough and in such manner as to bar another action or claim upon the same demand.

Bancroft's Probate Practice (2nd Ed. 1950), Vol. 3 (hereinafter "Banc. Prob. Prac."), Section 805 (emphasis added).

In Ellis v. Cauhaupé, 260 P.2d 309 (Wyo. 1953), the rule is stated as follows:

[A] statement presented to the executor shall be so clear and unambiguous as to distinguish the claim with reasonable certainty from all other similar claims.

Ellis, 260 P.2d at 310, quoting with approval from 34 C.J.S., Executors and Administrators, §417 (emphasis added).

The cases and authorities cited above support the rule requiring a claim to identify its basis. Furthermore, they insist that a claim, to be valid, must be "clear and unambiguous", must "fully advise" the personal representative, and must "reveal enough to bar another action or claim upon the same demand".

As will be shown below, the purposes of statutes requiring claims justify these minimum requirements.

C. The purposes of Utah's applicable statutes would be advanced by requiring valid claims to sufficiently identify basis and claimant.

A statute is to be construed in light of its intended purpose. Stahl v. Utah Transit Authority, 618 P.2d 480, 482 (Utah 1980). Section 804, in common with other statutes prescribing the content of claims, has the following general purposes:

1. To protect the decedent's estate. See Schwarzschild v. Binsse, 365 A.2d 1195, 1198 (Conn. 1976); Nathanson v. Superior Court of Los Angeles County, 525 P.2d 687, 693-694 (Cal. 1974);

2. To facilitate the speedy, safe and definitive settlement of estates. See Motley v. Battle, 368 So.2d 20, 22 (Ala. 1979);

3. To allow the personal representative to make an early appraisal of respective rights of interested persons and a prompt settlement of demands against the estate. See In Re Estate of Feuerhelm, 341 N.W.2d 342, 344 (Neb. 1983); and

4. To bar claimants who are indifferent, careless or dilatory in their attitude. See In Re Clark's Estate, 432 P.2d 495 (Nev. 1967).

Requiring each claim to identify its basis with sufficient particularity promotes the purposes stated above. Such a requirement allows the personal representative to intelligently evaluate claims and thus protect the estate both from improper claims and from the expense of defending against proper claims. The requirement also facilitates the personal representative's efficiency and allows him to intelligently evaluate each claim and to determine whether to pay or reject it.

The significance of such a requirement can be readily seen from the purposes outlined above. Without a minimum content requirement, the claims processed would be fraught with uncertainty and risk, leading inevitably to increased delay, expense and litigation.

For the reasons set forth herein, Section 804 should be construed as requiring each claim, in order to be considered valid, to set forth its basis with sufficient particularity to satisfy the standard described in Subsection B above. For the same reasons, Section 804 should be construed as requiring each claim to set forth the name of the claimant.

II. FAILURE TO TIMELY FILE A VALID CLAIM BARS THE CLAIM AND DESTROYS THE UNDERLYING CAUSE OF ACTION.

A. Filing an invalid claim is the same as not filing a claim.

Utah's Probate Code requires the personal representative to accept or reject every valid claim timely filed. U.C.A. §75-3-806. In order to pass upon claims, the personal representative must be able to deal intelligently with them, understand their basis, and be able to distinguish them from other potential claims. If the personal representative is unable to carry out his functions because the basis of the claim is insufficiently stated, he should not be required to pass upon the claim. In other words, filing a claim which is invalid because it is insufficiently described should have no more force or effect than not filing a claim at all. Banc. Prob. Prac., §769.

B. Failure to file a valid claim bars the claim and destroys the underlying cause of action.

It is well established that failure to file a claim within the statutory period bars the claim forever. U.C.A. §75-3-803. In fact, failure to timely file a valid claim not only bars the claim, it also destroys the underlying right. Ray v. Rambaud, 438 P.2d 752 (Ariz. 1968). Neither the probate court nor an appellate court has any further jurisdiction to reinstate a claim not properly and timely filed. In Re Plank's Estate, 509 P.2d 812 (Colo. App. 1973).

The consequences of failure to file are not mitigated by notice to the personal representative. In the case of Estate of Jones, 588 P.2d 960 (Kan. App. 1979), the claimant filed a

creditor's petition for administration of the decedent's estate. Therein, the claimant described its claim. 588 P.2d at 961. However, the claimant never filed a claim in the form provided by statute. Id. The court held that the claimant's failure to file a valid claim barred its claim. Id. The court concluded its opinion with the following observation:

Nor is it significant that the administrator had knowledge of the medical center's claim. The administrator's knowledge does not dispense with the necessity of filing a demand.

Estate of Jones, 588 P.2d at 963.

Similarly, in Nathanson v. Superior Court of Los Angeles County, 525 P.2d 687 (Cal. 1974), the decedent's former wife timely filed a petition for family allowance and a request for special notice as a creditor of the estate. She then contended that since the personal representative received actual and timely notice of her claims and of her intention to prosecute them, she had a right to file alternative claims after the four-month period for filing claims had expired. 525 P.2d at 692. The Court, in rejecting this contention, stated:

We find no merit in petitioner's contention. . . . An examination of the purpose of the pertinent statutes . . . compels the rejection of the thesis that mere "notice" on the part of the executor or administrator of the claim or debt may constitute a sufficient basis for the presentation or filing of an "amended" creditor's claim after the expiration of the statutory period.

525 P.2d at 693.

A claim must be filed in order to preserve the claimant's cause of action. If the claim is invalid because it fails to sufficiently state its basis it may be rejected. An invalid claim

which is rejected does not preserve a cause of action.

Furthermore, the claimant may not rely on notice to or knowledge of the personal representative to supply defects in an invalid claim.

III. THE CLAIM FILED BY KIP QUINN WAS NOT A VALID CLAIM FOR WRONGFUL DEATH.

A. The claim filed by Kip Quinn was the only claim relied upon by Respondents.

Kip Quinn, as Personal Representative of the Estate of Dawna W. Quinn, timely filed a Claim for personal injury for and on behalf of the Estate of Dawna W. Quinn. A copy of the Claim is attached hereto in the Addendum.

No other claims were filed by Kip Quinn. Furthermore, no claims were filed by or on behalf of the heirs of Dawna W. Quinn. Plaintiffs relied solely and exclusively upon the Claim in pursuing their action for personal injury and wrongful death damages against the Estate of Fenton Glade Quinn in District Court (R. at 8-10, 23-28).

As will be shown below, Plaintiffs' reliance on the Claim was misplaced. The Claim was not a valid claim for wrongful death.

B. A claim for wrongful death differs substantially from a survival claim.

Utah law provides by statute for both a wrongful death claim (U.C.A. §78-11-7 (1953)) and a separate and distinct claim for survival of the decedent's personal injury cause of action (U.C.A. §78-11-12 (1977)). The two claims differ markedly from each other.

A survival claim perpetuates the decedent's claim for personal injuries suffered at the hands of the tortfeasor. Kynaston v. United States, 717 F.2d 506, 509-511 (10th Cir. 1983) (construing U.C.A. §78-11-12); Accord, DeHerrera v. Herrera, 565 P.2d 479, 482 (Wyo. 1977); Greene v. Texeira, 505 P.2d. 1169, 1172 (Haw. 1973). A wrongful death claim, however, does not seek compensation for the personal injuries suffered by the decedent; rather, it seeks damages for the losses suffered by the heirs of the decedent. Kynaston, 717 F.2d at 509; Herrera, 565 P.2d at 482.

A survival claim is an asset of the estate, which must be pursued by the decedent's personal representative on behalf of the estate, not on behalf of the heirs. Herrera, 565 P.2d at 482; Kynaston, 717 F.2d at 510. In contrast, the cause of action for wrongful death belongs to the heirs, not to the estate. Kynaston, 717 F.2d at 509; Herrera, 565 P.2d at 482. It must be brought by the heirs, or by the decedent's personal representative "for the benefit of his heirs". U.C.A. §78-11-7.

C. Kip Quinn filed a survival claim.

In light of the foregoing basic differences between survival and wrongful death claims, the first sentence of Kip Quinn's Claim takes on great significance:

Claim is hereby made against the Estate of Fenton G. Quinn by Kip Quinn, personal representative of Dawna W. Quinn, for and on behalf of the Estate of said Dawna W. Quinn for personal injury.

Appendix A (emphasis added)

The sentence just quoted states a claim for survival of the decedent's personal injury claims, not for wrongful death.

Kynaston, 717 F.2d at 509-511; Herrera, 565 P.2d at 482.

The second sentence of the Claim reads as follows:

The basis of this Claim is that on or about May 24, 1984, Fenton G. Quinn caused the death of Dawna W. Quinn and that said action was done in a willful and malicious manner with the premeditated attempt to cause the death of Dawna W. Quinn.

This second sentence is consistent with the first. Willful and malicious acts which cause personal injury resulting in death are the basis of survival actions under U.C.A. §78-11-12. Id.

The third sentence places a value of \$650,000 on the Claim. This might be considered too high for a survival claim. However, it must be kept in mind that survival claims for malicious torts (like tort actions generally), are unliquidated claims of uncertain value. The value of a tort claim depends on many factors, including subjective experience, the possibility of punitive damages, and others. The Claim filed by Kip Quinn tacitly acknowledged this uncertainty by tentatively assigning a value of "\$650,000.00 or such other amount as may be determined."

The Claim, as any other written document, must be construed in accordance with the ordinary and usual meaning of the words used. Pugh v. Stockdale and Co., 570 P.2d 1027 (Utah 1977). The Court is not at liberty to rewrite the Claim in order to preserve a cause of action for Respondents against the Estate.

Hal Taylor Associates v. Unionamerica, Inc., 657 P.2d 743 (Utah 1982).

Finally, in construing Kip Quinn's Claim, it must be remembered that Plaintiffs were at liberty to draft the Claim in any way they saw fit. They had three months in which to file a claim or claims. During that time, they had ample opportunity to become familiar with the essential elements of a claim for wrongful death and a survival claim. Those elements are well-established in statute and case law. If the Claim stated a claim different from what Plaintiffs intended, they have only themselves to blame. To the extent the Claim is uncertain or ambiguous, it must be construed against the drafter. Wells Fargo Bank v. Midwest Realty & Finance, Inc., 544 P.2d 882 (Utah 1975).

IV. SINCE NO VALID CLAIM FOR WRONGFUL DEATH WAS FILED, THE JUDGMENT ENTERED BELOW MUST BE MODIFIED OR REVERSED.

A. The Judgment entered below included substantial damages for wrongful death.

As discussed above, Kip Quinn's Claim was a survival claim. However, Plaintiffs' Complaint in District Court was for survival and wrongful death. The Judgment entered below included substantial wrongful death damages. (R. at 365-66; see copy of Judgment in Addendum).

Damages available in a survival claim are limited to those the injured party might have recovered had he or she lived. Kynaston, 717 F.2d at 511. Such damages would include loss of wages and medical expenses suffered from the time of injury to the time of death as well as funeral expenses. Daniels, "A Primer on Damages Under the Utah Wrongful Death and Survival Statutes", 1974 Utah Law Review, 519, 527 (hereinafter "Primer on Damages").

In contrast, the decedent's heirs in a wrongful death action can recover not only their economic losses, such as loss of support and loss of inheritance, but also their non-economic loss, such as the loss of comfort, society, love, companionship, advice, and protection. "Primer on Damages" at 526; Jones v. Carvell, 641 P.2d 105, 108 (Utah 1982).

The judgment entered below included substantial recoveries for elements of damages available only in a wrongful death claim (R. at 365-66; see also Jury Instructions, R. at 267, 268, 272). Since Plaintiffs never filed a valid claim for wrongful death, those recoveries must be vacated.

B. No Recovery Can be Allowed on a Cause of Action Substantially Different from that Alleged in the Claim.

A plaintiff cannot file one claim and then recover upon another. Banc. Prob. Prac., Section 901. In Ziegler v. Kramer, 573 P.2d 644 (Mont. 1978), plaintiff made a claim against decedent's estate for indebtedness for services rendered to the decedent. 573 P.2d at 644. The claim was denied. After initiating a law suit and conducting discovery, plaintiffs sought to amend their complaint to add a theory of recovery under gift causa mortis. Id. at 645. The Supreme Court of Montana affirmed the District Court's denial of plaintiff's motion, explaining as follows:

The four months' statute of limitation in Section 91-A-3-803 was enacted to expedite the closing of decedents' estates. The claims sued upon the District court must be within the scope of the claim presented to the executor.

Id. at 646 (emphasis added).

In Brown v. Midland National Bank, 435 P.2d 878 (Mont. 1978), the claim was for debt, but the suit filed on the claim alleged an oral contract to bequeath property. The court dismissed the lawsuit, holding as follows:

From the above authorities it is apparent that the test of whether a variance between a creditor's claim and a subsequent suit is material and fatal is whether or not the claim sued upon is within the scope of the claim presented to the executor. Looking at the facts of the instant case we find that the variance consists of a creditor's claim grounded in debt, and a suit based upon breach of an oral contract to bequeath the amount set forth in the creditor's claim. In our view, an action for breach of contract to bequeath is a material departure from a creditor's claim to recover a debt. . . . Only in the broad sense that both seek recovery of the same amount of money can the instant suit be said to be within the scope of the creditor's claim. We deem this insufficient as the basic theory of recovery in the creditor's claim is entirely different from that in the suit.

435 P.2d at 882 (emphasis added); Accord, Brion v. Brown, 340 P.2d 539 (Mont. 1959); and Neel v. Barnard, 150 P.2d 177 (Cal. 1944); Banc. Prob. Prac. §901.

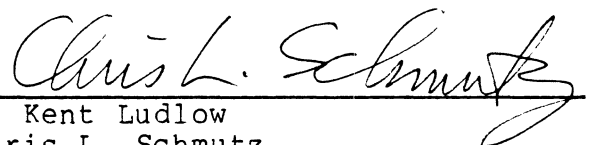
The reasoning of Brown, quoted above, applies directly in the case now on appeal. Kip Quinn's Claim on behalf of the Estate for personal injuries leading to the death of Dawna Quinn is entirely different from a cause of action for wrongful death on behalf of the heirs, to recover their losses resulting from Dawna Quinn's death. For this reason, there is a fatal variance between the Claim and the cause of action, and therefore the cause of action should have been dismissed and the Judgment entered below must be reversed.

CONCLUSION

For all the reasons stated hereinabove, Appellants respectfully request the Court to modify the Judgment entered below by vacating the awards for wrongful death damages; or, in the alternative, to vacate the Judgment and remand with instructions to the District Court to dismiss with prejudice Respondents' Claim for wrongful death and retry the case on Respondents' survival claim.

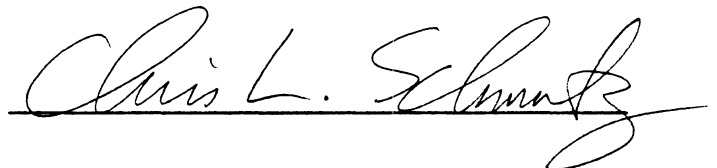
DATED this 2nd day of September, 1987.

NIELSEN & SENIOR


B. Kent Ludlow
Chris L. Schmutz
Attorneys for Appellants

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing Appellants' Brief by hand delivering four (4) copies thereof to Robert Felton and George H. Speciale, attorneys for Respondents, 5 Triad Center Suite 585, Salt Lake City, Utah 84180, this 2nd day of September, 1987.



ADDENDUM

Robert Felton, 1056
5 Triad Center
Suite 585
Salt Lake City, Utah 84180
Phone: (801) 359-9216
Attorney for Plaintiff

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

KIP QUINN, Personal
Representative of the Estate
of Dawna W. Quinn and THE
ESTATE OF DAWNA W. QUINN,

Plaintiffs,

vs.

THE ESTATE OF FENTON GLADE
QUINN and FENTON QUINN, JR.,
Personal Representative of
the Estate of Fenton Glade
Quinn,

Defendants.

JUDGMENT

Civil No. C85-165A
Judge John Rokich

This matter came on for jury trial on the 16th day of
December, 1986, the Honorable John Rokich presiding.

Robert Felton appeared for and on behalf of the Plaintiffs
and the Defendants were represented by Richard Hincks and Chris
Schmutz.

Upon conclusion of the evidence the Court required the jury
to return a special verdict pursuant to Rule 49 of the Utah Rules
of Civil Procedure. The jury did thereafter return its special
verdict and in accordance therewith judgment is hereby entered in
favor of the Plaintiffs and against the Defendants as follows:

- | | |
|----------------------------------|--------------|
| 1. Judgment for economic loss | \$101,293.00 |
| 2. Judgment for funeral expenses | \$3,200.00 |

3. Judgment for value of loss of society, \$346,983.00
love, companionship, affection and protection

TOTAL \$451,476.00

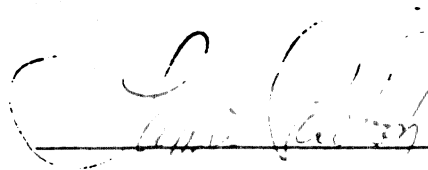
Signed under the direction of the Court and in accordance
with the verdict of the jury this ____ day of January, 1987.

By _____

Clerk

MAILING CERTIFICATE

I, the undersigned do hereby certify that a true and correct copy of the foregoing instrument was mailed, postage prepaid, to Fenton Quinn, Jr. 2601 West Rustic Rd., South Jordan, Utah 84065 and to Kent Ludlow, 1100 Beneficial Life Tower, 34 South State Street, Salt Lake City, Utah 84111 on the 11 day of August, 1984.



action accruing at or after death of person in whose favor it would have accrued, 28 A. L. R. 3d 1141.

Direction in will for payment of debts of testator, or for payment of specified debt, as affecting debts or debt barred by limitation, 109 A. L. R. 1440.

Effect of statement of claim against decedent's estate regarding debt apparently barred by the statute of limitations, 119 A. L. R. 426.

Estoppel by silence or other conduct (other than failure to file) to assert

against estate claim antedating decedent's death, 146 A. L. R. 1179.

Nonclaim statute as governing claim barred, subsequent to death of obligor, by general statute of limitations, 112 A. L. R. 289.

Relation back of appointment of administrator, running of statute of limitations as affected by doctrine of, 3 A. L. R. 3d 1234.

Waiver or tolling of statute of limitations by executor or administrator, 8 A. L. R. 2d 660.

DECISIONS UNDER FORMER LAW

Claims barred by statute of limitations.

Under former section, an executor or administrator could not waive or abandon statute of limitations; nor could court, in passing upon claim of a decedent, approve one against which statute had run; therefore, where evidence showed that claim was barred, it could not be allowed although administrator did not plead statute of limitation; defense of

statute of limitations was available although not pleaded. *Fullerton v. Bailey*, 17 U. 85, 53 P. 1020; *Clayton v. Dinwoodey*, 33 U. 251, 93 P. 723, 14 Ann. Cas. 926; *Hawkley v. Heaton*, 54 U. 314, 180 P. 440; *Gulbranson v. Thompson*, 63 U. 115, 222 P. 590; *Holloway v. Wetzel*, 86 U. 387, 45 P. 2d 565; *Gray Realty Co. v. Robinson*, 111 U. 521, 184 P. 2d 237.

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 section 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.

History: C. 1953, 75-3-803, enacted by L. 1975, ch. 150, § 4.

Editorial Board Comment.

There was some disagreement among the reporters over whether a short period of limitations, or of nonclaim, should be provided for claims arising at or after death. Subsection (2) was finally inserted because most felt it was desirable to accelerate the time when unadjudicated distributions would be final. The time limits stated would not, of course, affect any personal liability in contract, tort, or by statute, of the personal representative. Under section 75-3-808 a personal representative is not liable on transactions entered into on behalf of the estate unless he agrees to be personally liable or unless he breaches a duty by making the contract. Creditors of the estate and not of the personal representative thus face a special limitation that runs four months after performance is due from the personal representative. Tort claims normally will involve casualty insurance of the decedent or of the personal representative, and so will fall within the exception of subsection (3). If a personal representative is personally at fault in respect to a tort claim arising after the decedent's death, his personal liability would not be affected by the running of the special short period provided here.

The limitation stated in subdivision (1)(b) dovetails with the three-year limitation provided in section 75-3-108 to eliminate most questions of succession that are controlled by state law after three years from death have elapsed. Questions of interpretation of any will probated within such period, or of the identity of heirs in intestacy are not barred, however.

Cross-References.

Where party dies after verdict or decision and before judgment, Rules of Civil Procedure, Rule 58A (d).

Collateral References.

Executors and Administrators—225.
34 C.J.S. Executors and Administrators §§ 405-408.
31 Am. Jur. 2d 148, Executors and Administrators § 291.

Action on contingent claim, presen-

tation of claim as condition precedent, 34 A. L. R. 372.

Amendment of claim against decedent's estate after expiration of time for filing claims, 56 A. L. R. 2d 627.

Applicability of nonclaim statute to claims arising under contract executory at time of death, 47 A. L. R. 896.

Bar of statute of nonclaim of decedent's domicile as affecting assertion of claim elsewhere, 72 A. L. R. 1030.

Claims for taxes as within contemplation of statute requiring presentation of claims against decedents' estates, 109 A. L. R. 1370.

Condition precedent to suit for specific performance of contract to make will in favor of another or to will latter a specified sum or property, presentation of claim against decedent's estate as, 113 A. L. R. 1070.

Counterclaim or setoff, presentation of claim to executor or administrator as prerequisite of its availability as, 36 A. L. R. 3d 693.

Delay in appointing administrator or other representative, effect on cause of action accruing at or after death of person in whose favor it would have accrued, 28 A. L. R. 3d 1141.

Effect of recovery of judgment on unfiled or abandoned claim after expiration of time allowed for filing claim against estate, 60 A. L. R. 736.

Filing claim against estate of decedent as affecting or precluding other remedies against estate, 120 A. L. R. 1225.

Funeral expenses, presentation of claim for to executor or administrator, 34 A. L. R. 375, 120 A. L. R. 275.

Government: claim of government or subdivision thereof as within provision of nonclaim statute, 34 A. L. R. 2d 1003.

Guaranty, suretyship, or endorsement, claim on decedent's contract of, as contingent, 94 A. L. R. 1155.

Judgment lien, presentation of claim against deceased debtor's estate as condition of action to enforce, 114 A. L. R. 1167.

Land contract, application of nonclaim statute to claim for unmatured payments under, 99 A. L. R. 2d 275.

Limitations, effect of statement of claim against decedent's estate setting out debt apparently barred by statute of, 119 A. L. R. 426.

Where claims were barred for failure to file on time, administratrix was without power to pay them, and any money paid thereon would be considered to come from her personal funds, and could not be considered as deduction from inheritance tax. *Jones v. State Tax Comm.*, 99 U. 373, 104 P. 2d 210.

Claims had to be filed, after proper notice, within time limit of statute, or be forever barred. *Jones v. State Tax Comm.*, 99 U. 373, 104 P. 2d 210.

Purpose of statute requiring presentation of claims within time stated in notice was to require publication of notice to creditors so as to shorten limitation period, and not to lengthen it because of neglect on part of personal representative or delay on part of creditor. *Gray Realty Co. v. Robinson*, 111 U. 521, 184 P. 2d 237.

Notice to creditors by administratrix, indicating that claims against estate could be filed before certain date, did not constitute waiver or abandonment of de-

fense of general statute of limitations available to administratrix in action by creditor. *Gray Realty Co. v. Robinson*, 111 U. 521, 184 P. 2d 237.

Statute requiring presentation of claims within time stated in notice was not a bar to action to impress judgment lien on property, where complaint alleged that property had been transferred to defraud creditors, and that property was held in trust for defendant. *Moulton v. Morgan*, 115 U. 119, 202 P. 2d 723.

Time limitations.

Demand against decedent's estate asserting that property was sold to claimant by deceased and asking the court to order the administrator to make a suitable conveyance was a petition for specific performance of a contract to convey property and was not subject to the one-year time limitation for presenting claims against an estate. *In re Estate of Sharp*, 537 P. 2d 1034.

75-3-804. Manner of presentation of claims.—(1) Claims against a decedent's estate may be presented as follows:

(a) The claimant may deliver or mail to the personal representative a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed, or may file a written statement of the claim, in the form prescribed by rule, with the clerk of the court. 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. If a claim is not yet due, the date when it will become due shall be stated. If the claim is contingent or unliquidated, the nature of the uncertainty shall be stated. If the claim is secured, the security shall be described. Failure to describe correctly the security, the nature of any uncertainty, and the due date of a claim not yet due does not invalidate the presentation made.

(b) The claimant may commence a proceeding against the personal representative in any court where the personal representative may be subjected to jurisdiction to obtain payment of his claim against the estate, but the commencement of the proceeding must occur within the time limited for presenting the claim. No presentation of claim is required in regard to matters claimed in proceedings against the decedent which were pending at the time of his death.

(2) If a claim is presented under subsection (1) (a) above, no proceeding thereon may be commenced more than 60 days after the personal representative has mailed a notice of disallowance; but, in the case of a claim which is not presently due or which is contingent or unliquidated, the personal representative may consent to an extension of the 60-day period, or to avoid injustice the court, on petition, may order an extension of the 60-day period, but in no event shall the extension run beyond the applicable statute of limitations.

Right of tortfeasor to contribution from joint tortfeasor who is spouse or otherwise in close familial relationship to injured party, 25 A.L.R.4th 1120.

Excessiveness or inadequacy of punitive damages awarded in personal injury or death cases, generally, 35 A.L.R.4th 441.

Child's death, damages for grief or mental anguish, 45 A.L.R.4th 234.

Products liability: construction materials or insulation containing formaldehyde, 45 A.L.R.4th 751.

Products liability: liability of manufacturer or seller as affected by failure of subsequent party in distribution chain to remedy or warn against defect of which he knew, 45 A.L.R.4th 777.

Recoverability from tortfeasor of cost of diagnostic examinations absent proof of actual bodily injury, 46 A.L.R.4th 1151.

Personal injury or property damage caused

by lightning as basis of tort liability, 46 A.L.R.4th 1170.

Strict liability of landlord for injury or death of tenant or third person caused by defect in premises leased for residential use, 48 A.L.R.4th 638.

Excessiveness and adequacy of damages for personal injuries resulting in death of minor, 49 A.L.R.4th 1076.

What constitutes impairment of proposed intervenor's interest to support intervention as matter of right under Rule 24(a)(2) of Federal Rules of Civil Procedure in personal injury and death actions, 76 A.L.R. Fed. 174.

Propriety of ordering separate trials as to liability and damages, under Rule 42(b) of Federal Rules of Civil Procedure, in actions involving personal injury, death, or property damage, 78 A.L.R. Fed. 890.

Admiralty jurisdiction: maritime nature of tort — modern cases, 80 A.L.R. Fed. 105.

Key Numbers. — Parent and Child ⇌ 7(6).

78-11-7. Death of adult — Suit by heir or personal representative.

Except as provided in Chapter 1, of Title 35, when the death of a person not a minor is caused by the wrongful act or neglect of another, his heirs, or his personal representatives for the benefit of his heirs, may maintain an action for damages against the person causing the death, or, if such person is employed by another person who is responsible for his conduct, then also against such other person. If such adult person has a guardian at the time of his death, only one action can be maintained for the injury to or death of such person, and such action may be brought by either the personal representatives of such adult deceased person, for the benefit of his heirs, or by such guardian for the benefit of the heirs as provided in the next preceding section [§ 78-11-6]. In every action under this and the next preceding section [§ 78-11-6] such damages may be given as under all the circumstances of the case may be just.

History: L. 1951, ch. 58, § 1; C. 1943, Supp., 104-11-7.

Cross-References. — Comparative negligence, § 78-27-38.

Evidence required for recovery, §§ 78-11-12, 78-11-13.

Payment of medical and similar expenses not admission of liability, Rule 409, U.R.E.

Right to recover damages for death generally, Utah Const., Art. XVI, Sec. 5.

Statute of limitations, wrongful death, § 78-12-28.

Survival of cause of action, §§ 78-11-12, 78-11-13.

78-11-11. Submitting controversy without action.

Parties to a question in difference, which might be the subject of a civil action, may without action agree upon a case containing the facts upon which the controversy depends, and present a submission of the same to any court which would have jurisdiction if an action had been brought. But it must appear by affidavit that the controversy is real, and that the proceeding is in good faith, to determine the rights of the parties. The court must thereupon hear and determine the case and render judgment thereon as if an action were pending.

History: L. 1951, ch. 58, § 1; C. 1943, Supp., 104-11-17.

COLLATERAL REFERENCES

| | |
|-----------------------------------------------------------------|-------------------------------------------------------------|
| Am. Jur. 2d. — 3 Am. Jur. 2d Agreed Case § 1 et seq. | Key Numbers. — Submission of Controversy ¶ 1 et seq. |
| C.J.S. — 83 C.J.S. Submission of Controversy § 1 et seq. | |

78-11-12. Survival of action for injury to person or death upon death of wrongdoer or injured person — Exception and restriction to out-of-pocket expenses.

Causes of action arising out of physical injury to the person or death, caused by the wrongful act or negligence of another, shall not abate upon the death of the wrongdoer or the injured person, and the injured person or the personal representatives or heirs of one meeting death, as above stated, shall have a cause of action against the wrongdoer or the personal representatives of the wrongdoer for special and general damages. However, if prior to judgment or settlement, the injured person dies as a result of some cause other than the injury received as a result of the wrongful act or negligence of the wrongdoer, the personal representatives or heirs of that person shall be entitled to receive no more than the out-of-pocket expenses incurred by or on behalf of that injured person as the result of his injury. In either event, neither the injured person nor the personal representatives or heirs of one meeting death shall recover judgment except upon some competent satisfactory evidence other than the testimony of that injured person.

History: L. 1953, ch. 30, § 1; 1967, ch. 217, § 1; 1977, ch. 139, § 1.

Cross-References. — Death of person entitled to sue, effect on statute of limitations, §§ 78-12-37, 78-12-38.

Statute of limitations, wrongful death, § 78-12-28.

Wrongful death actions, Utah Const., Art. XVI, Sec. 5; §§ 78-11-6, 78-11-7.