

1984

In The Matter of The Estate of: Rolando S. Garza : Brief of Appellants

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc2

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors. Utah Legal Services, Inc., by Cecilia M. Espenoza and John L. Black, J.P.; Attorneys for Appellants

Recommended Citation

Brief of Appellant, *In Re: Rolando S. Garza*, No. 10360 (1984).
https://digitalcommons.law.byu.edu/uofu_sc2/4058

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

THE SUPREME COURT OF THE STATE OF UTAH

IN THE MATTER OF THE
ESTATE OF:

ROLANDO S. GARZA

•
•
•
•
•
Case No. 19360

BRIEF OF APPELLANTS

APPEAL FROM THE FINAL JUDGMENT OF THE HONORABLE
TIMOTHY R. HANSON, DENYING APPELLANTS' MOTION
TO DISMISS AND GRANTING RESPONDENTS' CLAIM
AGAINST THE ESTATE OF ROLANDO S. GARZA.

UTAH LEGAL SERVICES, INC.
By: CELIA M. ESPENOZA
JOHN L. BLACK, JP.
637 East Fourth South
Salt Lake City, Utah 84102
Telephone: (801) 328-8891

Attorneys for Appellants

ROBERT J. POLKIN
GARMAN & LAKE, P.C.
100 West 2200 South
Salt Lake City, Utah 84119
Telephone: (801) 972-1500

Attorneys for Respondents

JUDICIAL SUPREME COURT OF THE STATE OF UTAH

IN THE MATTER OF THE
ESTATE OF:

ROLANDO S. GARZA

*
*
*
*

Case No. 19360

BRIEF OF APPELLANTS

APPEAL FROM THE FINAL JUDGMENT OF THE HONORABLE
TIMOTHY R. HANSEN, DENYING APPELLANTS' MOTION
TO DISMISS AND GRANTING RESPONDENTS' CLAIM
AGAINST THE ESTATE OF ROLANDO S. GARZA.

UTAH LEGAL SERVICES, INC.
By: CECELIA M. ESPENOZA
JOHN L. BLACK, JR.
637 East Fourth South
Salt Lake City, Utah 84102
Telephone: (801) 328-8891

Attorneys for Appellants

ROBERT J. POULSFU
CARMAN & FARR, P.C.
1111 West 2300 South
Salt Lake City, Utah 84119
Telephone: (801) 972-1900

Attorneys for Respondents

TABLE OF CONTENTS

	<u>Page</u>
<u>STATEMENT OF THE NATURE OF THE CASE</u>	1
<u>DISPOSITION IN THE LOWER COURT</u>	1
<u>RELIEF SOUGHT</u>	1
<u>FACTS</u>	1
<u>ARGUMENT</u>	
POINT I.	
<u>SECTION 75-3-803(1) (b) UTAH CODE ANNOTATED, 1953, AS AMENDED, IS NOT TOLLED BY §78-12-36(1) UTAH CODE ANNOTATED.</u>	3
POINT II.	
<u>RESPONDENTS' CLAIM AGAINST THE ESTATE OF ROLANDO S. GARZA IS BARRED BY THE THREE YEAR STATUTE OF LIMITATIONS IN §75-3-803, UTAH CODE ANNOTATED.</u>	7
POINT III.	
<u>PUBLICATION OF NOTICE TO CREDITORS DID NOT WAIVE THE THREE YEAR STATUTE OF LIMITATIONS.</u>	11
POINT IV.	
<u>THE GRANTING OF PUNITIVE DAMAGES AGAINST AN ESTATE ARE NOT SUPPORTED BY LAW OR PUBLIC POLICY.</u>	13
<u>CONCLUSION</u>	15

IN THE SUPREME COURT OF THE STATE OF UTAH

IN THE MATTER OF THE
ESTATE OF:

ROLANDO S. GARZA

*
*
*
*
*

Case No. 19360

BRIEF OF APPELLANTS

STATEMENT OF THE NATURE OF THE CASE

This is an appeal from a final order of Judge Timothy R. Hanson, entered June 20, 1983, denying Appellants' motion to dismiss and granting Respondents' claims against the estate.

DISPOSITION IN THE LOWER COURT

Appellants' motion to dismiss was denied. Respondents' claim for wrongful death was granted. The Court determined that the statute of limitations was tolled, and thus granted Respondents' claim against the estate. The Court awarded \$150,000 in general damages and \$50,000 in punitive damages.

RELIEF SOUGHT

Appellants seek reversal of the trial court's determination tolling the statute of limitations, and reversal of the grant of Respondents' claim of wrongful death and punitive damages against the estate of Rolando S. Garza.

FACTS

On June 28, 1978, Rolando S. Garza and Diana Jeannette Lopez Garza, his wife, were found in an alley located at 392 East 3900 South, Salt Lake City, Utah. Diana Garza died at the scene,

predeceasing Rolando S. Garza, who died later that same day. Rolando and Diana Garza were survived by two minor children, Juanita B. Garza and Rosemary Garza, products of their marriage (R. 91). Rolando Garza was also survived by another minor daughter, Jeannie Lisa Garza, whose mother is Ethel Joyce George (R.2). Right of survivorship of Jeannie L. Garza was respectfully reserved by the court (R.33).

Cleo Garcia, Diana's mother, was appointed personal representative of Diana's estate and has closed that estate. Roman Garza, Rolando S. Garza's father, was appointed personal representative of Rolando's estate on June 18, 1981 (R. 10, 16, 91). Roman Garza collected all assets of the estate and settled all claims then existing against the estate, leaving a balance of \$12,382.90 in the estate. On December 4, 1981, Roman, as personal representative and through Utah Legal Services, Inc., filed Notice to Creditors pursuant to §§75-3-801, 803 Utah Code Ann. (1953, as amended) (R. 18). The first publication of such notice occurred December 4, 1981 (R. 19). On March 3, 1982, Cleo Garcia filed concurrent motions with the Court to: 1) remove Roman Garza as personal representative of the estate of Rolando S. Garza; and 2) allow a \$300,000 wrongful death claim against the estate of Rolando S. Garza (R. 20, 21, 25, 91). The replacement of Roman Garza by Cleo Garcia as personal representative of Rolando S. Garza occurred on April 9, 1981 (R. 91). Neither Roman Garza nor Cleo Garcia disallowed the \$300,000 claim within the 60 days required by §75-3-806 Utah Code Ann. (1953, as amended) (R. 92).

A petition for an order waiving the final account, and distribution of the estate was filed by Cleo Garcia on January 29, 1983 (R. 42). Objections to the petition were filed by Roman Garza and Ethel Joyce George through Utah Legal Services, Inc. on February 7, 1983 (R. 52). The petition was heard on February 9, 1983, before the Honorable Timothy Hanson, who determined that proof of the wrongful death claim was a requisite to its allowance. He also noted the apparent conflict of interest of the personal representative filing a claim against the estate which would result in its liquidation (R. 55).

Appellants filed a motion to Dismiss on May 17, 1983 (R. 61, 72). The Appellants' motion and Respondent's claim against the estate went to an evidentiary hearing on May 26, 1983 (R. 83). The trial court denied Appellants' motion to dismiss and granted Respondent's claim against the estate in the amount of \$150,000 general damages and \$50,000 punitive damages (R. 83, 95) on June 20, 1983.

Appellants filed a timely appeal on July 20, 1983 (R. 123).

ARGUMENT

POINT I.

SECTION 75-3-803(1)(b) UTAH CODE ANNOTATED, 1953, AS AMENDED, IS NOT TOLLED BY §78-12-36(1) UTAH CODE ANNOTATED.

The exact issue raised by this appeal is a question of first impression in this Court. Whether the minority of heirs may be used to toll a probate statute which bars claims not raised within three years of a decedent's death. The trial court

relied on Switzer v. Reynolds, Utah 606 P.2d 244 (1980) in determining that §78-12-36(1) does toll all statutes of limitations. Appellants believe that the court should have applied the underlying policies of statutes of limitations as discussed in the dissent in Switzer.

Contrary to the findings of the trial court, the present case is not a typical wrongful death action which would cause a tolling of the statute of limitations during the minority of the Garza children. This is a case where a claim against the estate of Rolando S. Garza has been raised in lieu of a wrongful death action. The reason this claim was raised was to allow the two legitimate children of Rolando S. Garza to liquidate their father's estate at the expense of their illegitimate half-sister. The policy of Switzer should not apply to tolling of statutes of limitations in claims against an estate. A finding to this effect would not be contrary to the majority in Switzer, and would address the concerns raised by the dissent in that case. A claim against an estate is not a §78-11-7 wrongful death action. Section 75-3-803 specifically provides that all claims:

"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...within three years after decedent's death."

(emphasis added).

In the present case the three year statute is designed to act as a final bar to claims against the estate of Rolando S.

to be allowed to act on with their lives by obtaining the necessary affidavits from the estate.

The Appellate believes that "[t]he tolling effect of §78-3-803(1)(b) has application to actions of this type where there is no heir or personal representative capable of bringing the claim at the time of death." Switzer, Id. at 250. Where, as here, the personal representative fails to file an action within the time prescribed by law, and where the personal representative is not the heir of the estate of the deceased, an action otherwise lost should not be revived on the pretext of minority of heirs. This is especially true in the present case where the personal representative was at the same time a personal representative of the estate of Irma Garza and the guardian of the minor heirs in question (§§ 91).

A close analysis of the facts of this case indicate that the only purpose served by allowing the claim, under a theory of tolling, is that Rolando S. Garza's putative child is forever barred from obtaining anything from her father's estate.

This result is contrary to the principles which constitute the underpinnings of the statute of limitations found in the Codebook.

If Respondents wish to raise an independent wrongful death action, they may do so, but they may not circumvent the statute of three years found in §78-3-803(1)(b) by raising an unrelated "wrongful death claim" against the estate. No authority concerning the tolling of a wrongful death statute to the statute in §78-3-803(1)(b) has been located.

Thus, the tolling of the statute of limitations on the wrongful death action is independent of the three year statute of claims against the estate. The language indicates that a statute of limitations as an action is only relevant to shorten the three year absolute bar. As indicated in Point II., infra, the Editorial Board Comments support this conclusion by stating that the first time period to run acts as a bar to all other claims.

This means that, had the potential heirs of the estate of Diana Garza not been minors, the two year statute of limitations would supercede the three year bar of §78-3-803(1)(b). This would adequately protect the policies of both the wrongful death statute and claim provisions of §78-3-803(1)(b).

POINT II.

RESPONDENTS' CLAIM AGAINST THE ESTATE OF
POLANDO S. GARZA IS BARRED BY THE THREE YEAR
STATUTE OF LIMITATIONS IN §75-3-803, UTAH
CODE ANNOTATED.

The claim against the estate of Polando S. Garza brought by Cleo Garza, the personal representative of his estate and guardian of Juanita Garza and Rosemary Garza, on March 3, 1982, was barred by the three year statute of limitations found in §75-3-803, Utah Code Ann. (1953, as amended), therefore the trial court improperly denied Appellants' motion to dismiss, pursuant to Rule 12(b)(1) of the Utah Rules of Civil Procedure.

The statutes governing the limitations on the presentations of claims against the estate of individuals prescribe the manner and time in which a claim against the estate may be raised. Section 75-3-803, Utah Code Ann. (1953, as amended) specifically states:

- (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.

When these limitations are applied to the estate of Rolando S. Garza, it is clear that the claim presented by the Respondent on March 3, 1982, exceeded the time limitations provided for in the statute, and thus is barred.

Section 75-3-803(1)(b), Utah Code Ann. (1953, as amended), provides for an absolute cut-off date of all claims against the estate three years after the decedent's death, if notice to creditors has not been published by that time. In this case, the three year period ended on June 28, 1981, without any notice to creditors being published. As of that date no claims against the estate had been filed, and therefore any subsequent claims were barred by the statute of limitations. The Respondents raised a

"claim" against the estate in order to circumvent the requirements of the wrongful death statute. The Respondents, as noted above, may have an independent cause of action in wrongful death, but that action does not constitute a right to file a claim against the estate after the passage of the three year statute of limitations.

The personal representative of Diana Garza is also the guardian of the minor children in this action (R. 91). She completed the administration of the estate of the decedent in 1980. At no time did the Respondent, in her capacity as personal representative, raise the issue of wrongful death. This resulted in an expedient closing of the estate of Diana Garza which is consistent with the underlying policies of shortened statutes of limitations in the Probate Code. A policy which should not now be circumvented by allowing minor children to raise a claim against Rolando's estate.

In Gray Realty Co. v. Robinson, 111 Utah 521, 184 P.2d 237 (1947), the Utah Supreme Court recognized that the underlying policies of probate statutes of limitations are of such importance as to justify applying them independent of any other statute of limitations or tolling provisions.

The drafters of the 1953 version of the Utah Code, in adopting the Comments of the Editorial Board, accepted the policy of preserving estates by applying the earliest possible statute of limitations to protect the estate. The Editorial Board, in furtherance of a policy based on the earliest possible distribution of the estate, determined that the first event accomplish-

ing a bar to a claim should control to preclude all subsequent claims. The Comment is found following §75-3-802, Utah Code Ann. (1953, as amended), at 237, and states that:

It should be noted that under sections 75-3-803 and 75-3-804 it is possible for a claim to be barred by the process of claim, disallowance and failure by the creditor to commence a proceeding to enforce his claim prior to the end of the three month suspension period. Thus, the regular statute of limitations applicable during the debtor's lifetime, the nonclaim provisions of sections 75-3-803 and 75-3-804, and the three year limitation of section 75-3-803, all have potential application to a claim. The first of the three to accomplish a bar controls. (emphasis added).

In the present case, the first incident to accomplish a bar against future claims on the estate of Rolando S. Garza was the passage of the three year statute of limitations found in §75-3-803(1)(b), Utah Code Ann. (1953, as amended). This time limitation expired on June 28, 1981. Thus, an absolute bar to the claim by Respondents was established on June 28, 1981.

The bar created by §75-3-803(1)(b) was not circumvented by the subsequent publication to creditors by the personal representative, Roman Garza, on December 4, 1981. The statutes and Comments clearly establish that an estate should not forever be subject to potential claims. An estate should be closed at the earliest event creating a bar to the presentation of claims. Thus, the first event triggering a bar should preclude all other claims regardless of subsequent circumstances. See: Gray Realty Co., infra.

In Gray, the Court recognized that the inadvertent acts of a personal representative cannot obviate the protections of a valid defense to a claim against the estate.

Applying this policy to the present case, the claim of Respondents should have been barred, since it was raised after June 28, 1981, the first event causing a bar from the presentation of claims against the estate of Rolando S. Garza. Therefore, this claim was barred by the statute of limitations, and it was not properly before the court since the court had no subject matter jurisdiction of the issue. Based on these facts, the Appellants' motion to dismiss, pursuant to Rule 12(b)(1) of the Utah Rules of Civil Procedure, should have been granted.

POINT III.

PUBLICATION OF NOTICE TO CREDITORS DID NOT
WAIVE THE THREE YEAR STATUTE OF LIMITATIONS.

Once this Court determines that the claim of the Respondents was barred by the three year statute of limitations in §75-3-803(1)(b), Utah Code Ann. (1953, as amended), it is still necessary to determine whether the acts of Roman Garza as personal representative (R.16), filing a notice to creditors (R.18), acted as a waiver of the statute of limitations which allowed Respondents to file a claim against the estate of Rolando S. Garza within three months of the notice.

First, Appellants contend that the filing of notice to creditors did not act as a waiver of defenses otherwise available to the estate. As noted above, Point II., infra, once a claim is barred under §75-3-803(1)(b), Utah Code Ann. (1953, as amended),

that claim is barred despite the existence of a contrary limitation period.

Second, case law supports the proposition that the acts of the personal representative do not waive the §75-3-803(1)(b), Utah Code Ann. (1953, as amended) limitation by complying with §75-3-802, Utah Code Ann. (1953, as amended). In order for a personal representative to waive the §75-3-803(1)(b), Utah Code Ann. (1953, as amended) limitation, a defense of limitations available to the estate, there must be "consent of all successors whose interests would be affected." (Section 75-3-802, Utah Code Ann. (1953, as amended)).

The successors whose interests would be affected are the three minor heirs. In the present case, the waiver of Joe Garcia, joint-guardian of two of the heirs attempted to execute a waiver (R.31). That waiver was insufficient for purposes of waiving a defense against the estate since it was in conflict with the interests of his wife and joint-guardian who was personal representative of the estate. His wife filed a claim against the estate and he could not act to waive defenses in order to allow the claim. In any event, the objections of Roman Garza and Ethel Joyce George on behalf of Jeanie L. Garza, indicates that consent to a waiver of the defense of statute of limitations could not have been obtained. Therefore, the act of Roman Garza, in publishing notice to creditors did not waive the defense of limitations which otherwise existed to protect the estate of Rolando S. Garza.

The non-disallowance of the claim by Roman was primarily due to the fact that Respondents' simultaneously filed the claim against the estate with a motion to remove Roman Garza as personal representative on March 3, 1982 (R. 20, 21). Roman used his remaining time as personal representative to fight the subsequent appointment of Respondent. After Respondent was appointed as personal representative, the claim was still not disallowed. This failure by Respondent was motivated by a conflict of interest between duties as personal representative and guardian advancing the claim against the estate. It is clear that the personal representative could have disallowed the claim based on the statute of limitations. In the present case, this express disallowance was unnecessary since by operation of law the claim was barred. Therefore, Appellants motion to dismiss should have been granted.

POINT IV.

THE GRANTING OF PUNITIVE DAMAGES AGAINST AN ESTATE ARE NOT SUPPORTED BY LAW OR PUBLIC POLICY.

If this Court should, somehow, determine that the Appellants' motion to dismiss should not have been granted, it will become necessary to evaluate the propriety of punitive damages in a wrongful death claim against an estate. Appellants believe these damages are inappropriate on two grounds.

First, Appellants contend that the Respondents failed to request an award for punitive damages. The Respondents simply filed a claim for \$300,000 against the estate (R. 20). The unliquidated claim, which had had no proof of veracity was taken

to trial via the trial courts own determination that an evidentiary hearing was necessary (R. 44, 55, 83). The court sua sponte determined the amount of damages at \$150,000 general damages and \$50,000 punitive damages, without any testimony as to earning capacity of the deceased. Based on the foregoing, Appellants contend that the damages were inappropriate.

Secondly, Appellants contend that the recent case of Behrens v. Raleigh Hills Hospital, Utah Sup.Ct. No. 18093, filed December 22, 1983, is controlling. In that case, this Court determined that punitive damages may be obtained in a wrongful death action. That case, however, did not answer the specific issue in this case which is: Whether punitive damages in a wrongful death claim, as opposed to action, would be appropriate against an estate. Behrens, Id. provides guidelines to determine when punitive damages would be appropriate. The Court states that the general policy of punitive damages is to "punish a wrongdoer and to deter particularly culpable, dangerous conduct." Id. at 7. The granting of punitive damages in wrongful death cases was specifically limited to "appropriate cases." Id. at 8. These cases must be analyzed to insure that some greater societal purpose will be served. "Since punitive damages are not intended as additional compensation to a plaintiff, they must, if awarded, serve a societal interest of punishing and deterring outrageous and malicious conduct which is not likely to be deterred by other means. See: C. McCormick, Handbook on the Law of Damages, §§77-78 (1935); J. Stein, Damages and Recovery, Personal Injury and Death Actions, §183 (1972)." Id. at 8.

"The intended deterrent effect must be clear and in proportion to the nature of the wrong and the possibility of recurrence." (Id. at 9, emphasis added).

Applying all these factors to the present case it is apparent that the trial court erred in awarding punitive damages. An estate cannot be deterred from future misconduct. To allow punitive damages against an estate of a deceased only punishes the innocent heirs of that decedent who are already suffering from loss of support and companionship. When a tragedy such as the present case occurs, no one prevails. Each party suffers grief. But the addition of punitive damages serves no greater societal interest, and only further harms the innocent, such as the decedent's putative daughter, Jeanie Lisa Garza.

CONCLUSION

Policy considerations which favor the speedy closure of estates outweigh any policy protecting minors by tolling the statute of limitations in wrongful death actions. This is especially true in this case where the personal representative was also guardian of the minors and could have instituted an action within the period of the statute.

The three year statute of limitations was not subsequently waived as there was "no consent of all successors whose interests would be affected" as required by statute. §75-3-802 Utah Code Ann. (1953, as amended).

Punitive damages were erroneously awarded as they were not requested and are not supported by law or public policy.

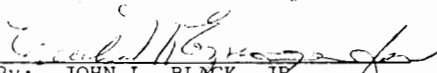
Based on the foregoing, the judgment of the trial court should be reversed.

DATED this 16th day of January, 1984.

Respectfully submitted,

UTAH LEGAL SERVICES, INC.
Attorneys for Appellants


By: CECELIA M. ESPENOZA


By: JOHN L. BLACK, JR.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that two true and correct copies of the foregoing BRIEF OF APPELLANTS was mailed first-class postage prepaid to Robert J. Poulsen, Carman & Farr, P.C., 1811 West 2300 South, Salt Lake City, Utah 84119.

DATED this 16th day of January, 1984.

