1969

Diamond Reo, Inc. v. Eula M. Crane, Executrix of the Estate of Harold F. Crane, Deceased : Appellants Brief

IN THE SUPREME COURT OF THE STATE OF UTAH

DIAMOND REO, INC.,
Plaintiff and Respondent,

vs.

EULA M. CRANE, Executrix of the estate of Harold F. Crane, deceased,
Defendant and Appellant.

Case No. 11897

APPELLANT'S BRIEF

Appeal from the Judgment of the Third District Court for Salt Lake County, Honorable Leonard W. Elton

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STATEMENT OF THE NATURE OF CASE

This case centers upon an interpretation of Section 75-9-9, Utah Code Annotated, 1953, which establishes a Statute of Limitations for the filing of claims upon an estate after rejection of said claim by the Executrix of the estate, and further upon the refusal of the trial court to hear evidence relating to facts considered in a Motion for a Summary Judgment which has been dismissed by a preceding District Court judge.

DISPOSITION IN LOWER COURT

1. Motion for Summary Judgment was denied by Judge Bryant H. Croft. (R. 35)

2. Consideration of the statutory interpretation was refused by the trial court. Judgment was granted to Plaintiff on the accounting in the sum of $3,160.97, together with interest in the sum of $1,128.88, plus costs.

RELIEF SOUGHT ON APPEAL

Appellant seeks reversal of the judgment filed herein, dismissing with prejudice the judgment of the trial court.

STATEMENT OF FACTS

The Plaintiff and Respondent filed a claim against the Defendant and Appellant as Executrix of the estate of Harold F. Crane, deceased, and said claim was promptly denied by the Executrix and by one of the judges of the District Court on the 13th day of June, 1967. The notice of rejection of said claim was filed with the clerk of said court on or about June 13, 1967. No other notice was given to the Plaintiff. Plaintiff failed to bring suit upon said claim against the Executrix within three months of filing of such notice, and the claim was due prior to the date of filing. The Plaintiff

filed his action against the Defendant on the first day of March, 1968, more than eight months after Plaintiff's claim was denied, and notice of rejection was filed with the clerk of the court (R. 18 and 19).

An affidavit in the above entitled matter in support of the Defendant's Motion for Summary Judgment was properly filed in the above entitled action, and the facts set forth therein were uncontroverted (R. 18 and 29).

Defendant's Motion for Summary Judgment was denied by a judge of the District Court, which denial is evidenced by minute entry (R. 35). No order denying said motion was ever signed or entered by said judge.

Section 75-9-9, Utah Code Annotated, 1953, provides:

> "*Action on rejected claim — Limitation of action.* When a claim is rejected, either by the executor or administrator or the judge, and notice of rejection has been filed with the clerk, the holder must bring suit in the proper court against the executor or administrator within three months after filing of such notice, if the claim is then due, or within two months after it becomes due; otherwise the claim shall be forever barred."

The above entitled matter was tried before one of the judges of the District Court on the 22nd day of May, 1969. The Court determined that, inasmuch as the Motion for Summary Judgment had been denied by

an associate District Court Judge, he had no authority to, nor would he, hear any evidence relating to the Motion for Summary Judgment; specifically, he would not hear matters relating to the statutory question which was raised by the Motion for Summary Judgment (R. 44, lines 1 through 5; R. 44, lines 25 and 26). Trial then proceeded relative only to questions concerning the accounting in question.

ARGUMENT

POINT ONE: DECREE AWARDING JUDGMENT TO PLAINTIFF FAILED TO PROPERLY INTERPRET SECTION 75-9-9, UTAH CODE ANNOTATED, 1953, WHEREBY UNTIMELY CLAIMS AGAINST AN ESTATE ARE BARRED.

Section 75-9-9, Utah Code Annotated, 1953, specifically states the requirements for rejection of a claim against an estate, together with the Statute of Limitations. The following requirements are established:

1. Rejection by an executor or administrator or judge.

2. Filing notice of rejection with the clerk.

3. Holder of a rejected claim must bring suit in the proper court against the executor or administrator within three months after the filing of such notice with

the clerk (if the claim is then due, or within two months after it becomes due).

4. Without timely filing of suit, the claim shall be forever barred.

There is no provision within the above referenced statute for notice to be filed other than with the clerk. This, in fact, was accomplished, as were all other requirements for rejection as set forth above, and are uncontroverted, as established by the affidavit of J. Grant Iverson, (R. 18 and 19). The claim submitted by Plaintiff-Respondent, Diamond Reo, Utah, Inc., was denied by the Executrix and one of the judges of the District Court on the 13th day of June, 1967, and filed with the clerk of said court on or about the 13th day of June, 1967. The Plaintiff-Respondent failed to bring suit upon the claim within three months after filing of such notice, the claim being then due. Suit was not filed until the first day of March, 1968, more than eight months after Plaintiff's claim was denied and notice of rejection filed with the clerk of the court. There is no ambiguity within the terms of the statute, and by the uncontroverted facts the claim under the terms of the statute "shall be forever barred."

Section 75-9-10, Utah Code Annotated, 1953, places additional restrictions in harmony with the previously cited statute by stating:

> "No claim must be allowed by the executor or administrator or the judge which is barred by the Statute of Limitations."

The Respondent would place an additional requirement within the terms of the statute to the effect that notice must be given to claimants as well as to the clerk of the court. Neither the Respondent nor the trial court has the ability to rewrite the statutes of the State of Utah to impose greater responsibilities than those established specifically by statute.

The case of Holloway, et ux, vs Wetzel, S. Ct. of Utah May 28, 1935, 45 P. 2d 565, 86 Utah 387, sets forth:

> "Under R. S. 1933, 1029-10, an administrator cannot waive or abandon the Statute of Limitations, nor can the court in passing upon a claim on a decedent approve one against which the statute has run. This court has so held in the case of Gulbranson vs. Thompson, 63 Utah 115, 222 P. 590. And a failure to plead the statute cannot be of any avail to the party claiming against the estate. If the evidence disclosed that a claim is barred, it must not be allowed, and no judgment can be entered thereon, whether the statute is pleaded or not. Hawkley vs Heaton, 54 Utah 314, 180 P. 440, and cases therein cited."

By all logical interpretation of the above referenced statute, it appears that no other interpretation can be made as to the requirements of notice and that in fact all of the elements required have been met by the Appellant-Defendant, and that the Plaintiff-Respondent has not met his burden of filing suit within the time allowed by the Statute of Limitations.

Under the law pronounced in the case of Robison vs Robison, 63 Utah 68, 222 P. 595, at page 596, quoting the Compiled Laws of Utah, 1917, Section 7648, a statute similar to our present statute was interpreted, which stated:

> "When a claim is rejected, either by the executor or administrator, or the judge, the holder must bring suit in the proper court against the executor or administrator within three months after the date of its rejection if it be then due, or within two months after it becomes due. Otherwise, the claim shall be forever barred."

Said statute was amended to its present form in one particular only, that notice of the rejection be filed with the clerk.

It is apparent that by amendment of the statute the very question of notice is put to rest in that notice of rejection is required only to be filed with the clerk. Should notice of any other nature be required, the statute should have so provided.

POINT TWO. TRIAL COURT REFUSED TO HEAR EVIDENCE RELATING TO THE INTERPRETATION OF THE ABOVE REFERENCED STATUTE BY DETERMINING THAT MINUTE ENTRY ORDER OF PRIOR JUDGE DISMISSING A MOTION FOR SUMMARY JUDGMENT ON THE ABOVE REFERENCED QUESTION PRECLUDED THE TRIAL COURT'S CONSIDERATION OF THE STATUTE.

The record indicates the trial judge differed with the view of the judge ruling on the Motion for Summary Judgment (R. 43) but he determined that he could not review the facts associated with the Motion for Summary Judgment (R. 43, line 14; R. 43, line 30; R. 44, lines 1 through 5). The court finally determined that it would hear only the suit on the accounting (R. 44, lines 25 and 26).

While the matter of summary judgment was determined by an earlier judge of the District Court, such a determination did not preclude the trial court from hearing evidence relative to the Motion for Summary Judgment, and the trial court erred in refusing to take evidence relating to the statutory question. Even though the trial court did refuse to take evidence relative to the statutory question, the file contained the affidavit previously referenced by J. Grant Iverson setting forth all of the facts required upon which to make a determination. That affidavit was not controverted at any time by counter-affidavit or by additional testimony. Therefore, the facts set forth therein must be accepted, and should have been considered by the trial court.

CONCLUSION

The Defendant-Appellant submits that the court erred initially in its interpretation of the statutory provisions hereinabove set forth in the denial of a motion

for summary judgment, and further that the trial court erred in refusing to consider the statutory question raised at the time of trial.

Respectfully submitted,

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