

STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of ELMA ZYLA, deceased

PETER S. GRAPP, as Personal Representative of
the Estate of ELMA ZYLA, Deceased,

Plaintiff-Appellant,

v

LAURIE PTASHNIK-HILL and CYNTHIA
BERTOLINI, as Personal Representatives of the
Estate of CLARENCE HILL, Deceased,

Defendants/Third-Party-Plaintiffs-
Appellees,

and

DOUGLAS S TOUMA and TOUMA, WATSON,
WHALING, COURY & CASTELLO, P.C., f/k/a
TOUMA, WATSON, NICHOLSON, WHALING,
FLETCHER & DEGROW,

Third-Party-Defendants.

PETER S. GRAPP, as Personal Representative of
the Estate of ELMA ZYLA, Deceased,

Plaintiff-Appellant,

v

LAURIE PTASHNIK-HILL and CYNTHIA
BERTOLINI, as Personal Representatives of the
Estate of CLARENCE HILL, Deceased,

UNPUBLISHED
May 14, 2009

No. 281355
Oakland Probate Court
LC No. 2000-272816-DA

No. 281356
Oakland Probate Court
LC No. 2006-305456-CZ

Defendants/Third-Party-Plaintiffs-
Appellees,

and

DOUGLAS S TOUMA and TOUMA, WATSON,
WHALING, COURY & CASTELLO, P.C., f/k/a
TOUMA, WATSON, NICHOLSON, WHALING,
FLETCHER & DEGROW

Third-Party-Defendants-Appellees.

Before: Murray, P.J., and Gleicher and M.J. Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(7), as well as the trial court's order denying his motion for leave to amend his complaint. For their part, defendants contend that the trial court erred in holding that the language of the will was ambiguous. Because we determine that plaintiff's claims are barred regardless of the meaning of the language of the will, there is no need to analyze the provision at issue. We affirm.

Plaintiff first contends that the trial court erred in holding that summary disposition was proper pursuant to MCR 2.116(C)(7) because plaintiff's claims were barred by MCL 700.3957 and MCL 700.3803. We disagree. This Court reviews a trial court's grant or denial of a motion for summary disposition pursuant to MCR 2.116(C)(7) de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

MCL 700.3803 provides that:

(1) A claim against a decedent's estate that arose before the decedent's death, including a claim of this state or a subdivision of this state, whether due or to become due, absolute or contingent, liquidated or unliquidated, or based on contract, tort, or another legal basis, if not barred earlier by another statute of limitations or nonclaim statute, is barred against the estate, the personal representative, the decedent's heirs and devisees, and nonprobate transferees of the decedent unless presented within 1 of the following time limits:

(a) If notice is given in compliance with section 3801 or 7504, within 4 months after the date of the publication of notice to creditors, except that a claim barred by a statute at the decedent's domicile before the publication for claims in this state is also barred in this state.

MCL 700.3801(1) and (2)(a) generally require that notice be given to "known" creditors within four months of the date publication by notice was given:

(1) Unless notice has already been given, upon appointment a personal representative shall publish, and a special personal representative may publish, a notice as provided by supreme court rule notifying estate creditors to present their claims within 4 months after the date of the notice's publication or be forever barred. A personal representative who has published notice shall also send, within the time prescribed in subsection (2), a copy of the notice or a similar notice to each estate creditor whom the personal representative knows at the time of publication or during the 4 months following publication and to the trustee of a trust described in section 7501(1) as to which the decedent is settler. *For purposes of this section, the personal representative knows a creditor of the decedent if the personal representative has actual notice of the creditor or the creditor's existence is reasonably ascertainable by the personal representative based on an investigation of the decedent's available records for the 2 years immediately preceding death and mail following death.*

(2) Notice to a known creditor of the estate shall be given within the following time limits:

(a) Within 4 months after the date of the publication of notice to creditors. [Emphasis added.]

This statute plainly requires a personal representative to give notice to creditors (1) she has “actual notice of” and (2) those that are “reasonably ascertainable” based on investigating the decedent’s available records for the last two years of his life. Here, the parties agree that plaintiff’s claim arose prior to Hill’s death and that the claim was not filed until more than four months after the notice to Hill’s creditors was published. The parties also agree that although Michigan law requires actual notice be sent to known creditors, notice through publication is sufficient for unknown creditors.

Plaintiff asserts that MCL 700.3803 was inapplicable because he was a known creditor and that application of the statute would be inequitable because it would prevent liability from being imposed on Hill’s estate for his breaches of Hill’s fiduciary duties. However, the probate court’s conclusion that defendants had no reason to know of plaintiff’s possible status as a creditor was not in error. There is no evidence that defendants knew that the Grapps were potential creditors to the Hill estate because of the administration of the Zyla estate.¹ Because it

¹ In order to avoid this difficult (at least for plaintiff) but uncontroverted fact, the dissent has defined “actual notice” to mean something more than *actual* notice. Instead, the dissent has defined actual notice to include both the situation where the personal representative *actually knows* about the creditor (which the statute plainly requires), *and* when the personal representative has “knowledge of facts that would lead a reasonable personal representative to conclude that a particular person or entity was a likely creditor of the estate” In other words, actual notice also includes a “should have known” requirement, which impermissibly adds a third notice requirement under the statute. However, the statute already contains a similar requirement through the “reasonably ascertainable” requirement, MCL 700.3801(1). The dissent’s expansive reading of the term “actual notice” is unwarranted and contrary to the plain
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is undisputed that the personal representative of the Hill Estate did not have actual notice that the Grapps were creditors of the estate, and because the Grapps did not submit a claim within four months of the notice by publication date, plaintiff's claim is barred by MCL 700.3803(1)(a).

Additionally, the evidence does not suggest that the Grapps' status as creditors was reasonably ascertainable from an investigation into the decedent's records for the last two years preceding his death. To hold that the personal representative in this case should have looked into and determined that the Grapps had a potential claim because Clarence Hill was removed as personal representative for failing to file a report is unreasonable. In essence, to require such thorough investigation and expansive notice is to hold that defendants, as personal representatives of Clarence Hill's estate, had an obligation to send personal notice to everyone named in Frank Zyla and Elma Zyla's will and codicil because those individuals could potentially allege that Hill breached a duty as personal representative of the estate. This is not what is required by the statute.

Plaintiff also argues that the trial court erred in denying his motion for leave to amend his complaint. A trial court's ruling on a motion for leave to amend a complaint is reviewed for an abuse of discretion. *Titan Ins v North Pointe Ins*, 270 Mich App 339, 346; 715 NW2d 324 (2006). The abuse of discretion standard recognizes that in certain circumstances there are multiple reasonable and principled outcomes and, so long as the trial court selects one of these outcomes, its ruling will not be disturbed. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

Pursuant to MCR 2.118(A)(2), leave to amend a complaint should be freely granted "when justice so requires." "A motion to amend ordinarily should be granted, and should be denied only for the following particularized reasons: [1] undue delay, [2] bad faith or dilatory motive on the part of the movant, [3] repeated failure to cure deficiencies by amendments previously allowed, [4] undue prejudice to the opposing party by virtue of allowance of the amendment, [and 5] futility" *Weymers v Khera*, 454 Mich 639, 658; 563 NW2d 647 (1997) (quotation marks and citation omitted).

As described above, plaintiff's claims against Hill's estate were barred by MCL 700.3803. As a result, the proposed amendment to his complaint would have been futile. Plaintiff sought to add counts of fraud, silent fraud and negligent representation. Had the trial court granted his motion to amend his complaint, the newly added counts would have simply been dismissed as a result of the grant of summary disposition pursuant to MCR 2.116(C)(7). As such, it was not an abuse of discretion to deny the motion for leave.

Affirmed.

/s/ Christopher M. Murray
/s/ Elizabeth L. Gleicher

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language of the statute.