

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 27, 2006

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2005AP1876

Cir. Ct. No. 2002IN9

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE ESTATE OF ALFRED GOLDSTEIN, DECEASED:

EUNICE COHODAS,

APPELLANT,

v.

**CATHERINE HODKIEWICZ, AS PERSONAL REPRESENTATIVE FOR THE
ESTATE OF ALFRED GOLDSTEIN,**

RESPONDENT.

APPEAL from an order of the circuit court for Oconto County:
LARRY JESKE, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Eunice Cohodas appeals an order denying her motion to vacate a probate order. Cohodas claims the estate should be reopened

because its distribution was invalid. Because the applicable statutory time limitations have passed, we reject her arguments and affirm the order.

Background

¶2 On January 17, 2002, Alfred Goldstein passed away. In his will, Goldstein appointed his neighbor Catherine Hodkiewicz as the personal representative of his estate, and named her as a major beneficiary under his will. Goldstein also acknowledged in his will that he had cousins “in the Fox River Valley” and an illegitimate son, but he specified that he chose “to leave nothing to these family members.” On February 27, Hodkiewicz filed a petition for informal administration of the Goldstein will. As part of the probate proceedings, Hodkiewicz published notice of the action.

¶3 In June 2003, Goldstein’s estate was closed. At that time, Eunice Cohodas, who claims to be a cousin and heir, had no knowledge of his death or the subsequent probate. Cohodas finally learned of Goldstein’s death in June 2004. On March 30, 2005, Cohodas moved to vacate the probate order and reopen the estate. On June 7, the circuit court issued a memorandum decision denying Cohodas’s request to reopen the estate. In pertinent part, the decision stated:

First, Eunice has not made a sufficient showing that she is an heir of the estate. The will mentions a son, so she is not an heir as defined in 852.01 Wis. Stats.

Second, even if she is an heir, she is too late. At some point a legal proceeding must be considered final. There is a statute that is peculiar to Informal Administration. It is 865.19 Wis. Stats. It bars action by the later of three years from the decedent’s death or one year after the time of distribution. Both deadlines were passed prior to the filing of the objection. This case will not be re-opened.

Discussion

¶4 Cohodas argues Goldstein’s estate must be reopened. She contends that she was not properly given notice as an interested person, and therefore the register in probate never had competency. Our analysis begins with the threshold issue whether the statute of limitations bars Cohodas’s motion. This involves an interpretation of a statute and its application to undisputed facts, which we review without deference. *Theuer v. LIRC*, 2001 WI 26, ¶5, 242 Wis. 2d 29, 624 N.W.2d 110.

¶5 “Statutes of limitation, like the equitable doctrine of laches, in their conclusive effects are designed to promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared.” *Order of R.R. Telegraphers v. Railway Express Agency*, 321 U.S. 342, 348-49 (1944). WISCONSIN STAT. 865.19¹ states:

Unless previously adjudicated in a formal testacy proceeding or otherwise barred, the claim of any claimant to recover from a distributee who is liable to pay the claim, and the right of any heir or devisee, or of a successor personal representative acting in their behalf, to recover property improperly distributed or the value thereof from any distributee is forever barred at the later of:

(a) Three years after the decedent’s death; or

(b) One year after the time of distribution thereof.

Goldstein died on January 17, 2002, and three years from that date is January 17, 2005. The distribution of the estate was filed on or about June 19, 2003, and one

¹ All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

year from that date is June 19, 2004. Cohodas's objection was dated March 30, 2005, which was after both deadlines. Therefore, Cohodas's motion was filed more than three years from Goldstein's death and more than a year after the distribution of the estate's assets. Thus, the motion exceeds the statute of limitations, and the estate may not be reopened.

¶6 Cohodas argues that the circuit court never had competency because Hodkiewicz never gave proper notice to the appropriate parties. Thus, Cohodas asserts, the time limitations are inapplicable. Assuming that the notice was improper, Cohodas's failure to timely bring her claims pursuant WIS. STAT. § 865.19 continues to act as an all-inclusive bar to Cohodas's claims. Section 865.19 states that it will not bar a claim due to fraud or a claim by a creditor due to a lack of timely notice, and it provides no other exceptions to its time requirements. Therefore, § 865.19 remains an impediment to Cohodas's claims.

¶7 Cohodas also contends the time limitations set forth in WIS. STAT. § 865.19 do not bar her motion because Hodkiewicz committed fraud in her petition for informal administration. Hodkiewicz stated in the proof of heirship form she executed that Goldstein had an illegitimate son who was later adopted, thus terminating Goldstein's parental rights. Hodkiewicz's subsequent affidavit indicated that she was unsure if Goldstein's parental rights had actually been terminated. Cohodas insists this discrepancy, combined with her assertion that Hodkiewicz failed to fully investigate whether Goldstein had any heirs, demonstrates Hodkiewicz acted fraudulently.

¶8 WISCONSIN STAT. § 865.19(2) provides: "This section does not bar an action to recover property or value received as the result of fraud" When an

individual undertakes fraudulent actions in his or her capacity as personal representative of the estate, the probate order may be reversed. *See In re Kennedy's Estate*, 74 Wis. 2d 413, 419, 247 N.W.2d 75 (1976). In the context of probate,

fraud may consist of a suppression or misrepresentation of facts, the offering for probate of the will of a known incompetent, or misrepresentations to interested persons to induce them not to contest the will, and thus to take from the court the benefit of their testimony as to the competency of the testator or the fact of undue influence.

Id.

¶9 There is no evidence Hodkiewicz perpetrated a fraud. First, her investigation prior to executing the proof of heirship form indicated that Goldstein's son had been adopted. Wisconsin law requires termination of parental rights of the child's former parent for a legal adoption. WIS. STAT. § 48.81(4)(b). Thus, although Hodkiewicz did not know for certain that Goldstein's parental rights had been terminated, it was reasonable to make such an assumption, considering Wisconsin law. Although Hodkiewicz may have misspoken, nothing indicates she was attempting to make an intentional misrepresentation. Furthermore, Cohodas provides nothing beyond speculation that Hodkiewicz failed to investigate whether Goldstein had heirs. In sum, Cohodas has not demonstrated that Hodkiewicz committed fraud.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.