COURT OF APPEALS
DECISION
DATED AND FILED

November 7, 2006

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2006AP1630-FT **Cir. Ct. No. 2005PR21**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

IN RE THE ESTATE OF ALBERT W. COWELL:

CAROLYN M. LANGREDER AND GERALD LANGREDER,

APPELLANTS,

V.

AUDREY MARTIN, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF ALBERT M. COWELL,

RESPONDENT.

APPEAL from an order of the circuit court for Dunn County: ROD W. SMELTZER, Judge. *Affirmed*.

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

¶1 PER CURIAM. Carolyn and Gerald Langreder appeal an order dismissing their claim against the estate of Albert Cowell as time barred. They

argue the court erred in concluding they were not entitled to actual notice of the probate proceeding. We disagree and affirm the order.[1]

BACKGROUND

¶2 Carolyn Langreder is Albert Cowell's niece. In April 1999, she and Gerald moved into a trailer home on Cowell's farm property. They paid $200 rent per month. The Langreders testified Gerald did a variety of farm chores during the time they lived at the farm. They also testified Carolyn took care of Cowell during the final eighteen months of his life. Cowell died February 2, 2005.

¶3 The Langreders expected Cowell to leave Carolyn the farm in his will. However, Cowell did not leave anything to either of the Langreders. Instead, Cowell split his estate between two neighbors and Audrey Martin, who was Cowell's neighbor and also his barber. The two neighbors disclaimed, leaving Martin the primary beneficiary of the will and the personal representative.[2]

¶4 On March 5, 2005, Robert Hagness, the attorney for Cowell's estate, sent the Langreders a letter demanding they vacate the farm within ten days. The letter stated the Langreders were guests on the property, Hagness represented Cowell's estate, Martin was the personal representative, and the Langreders were no longer welcome. After a phone conversation with Hagness, the Langreders were granted an extension of the ten-day period. They vacated the farm on March 22.

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[1] This is an expedited appeal under WIS. STAT. RULE 809.17. All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

[2] Martin was listed in the will as the alternate personal representative. The primary nominated personal representative declined to serve.

¶5 Probate proceedings in Cowell's estate began March 11. Starting March 27, the estate published three notices to creditors in the DUNN COUNTY NEWS. The notices stated June 20 as the deadline for creditors' claims. No actual notice of the deadline for claims was given to the Langreders.

¶6 On September 16, the Langreders filed a claim against the estate. They alleged an implied contract for the value of services provided from 1999 until Cowell's death, in the amount of $200,000. Martin objected, asserting the statutory deadline for filing claims had passed. The Langreders argued an exception to the deadline applied. They argued the exception applied because Martin knew or should have known the Langreders had a pending claim, the Langreders were not given actual notice of the deadline, and the Langreders had no actual knowledge of the existence and location of the estate proceeding. *See* WIS. STAT. § 859.02(2)(b).

¶7 The circuit court heard testimony on this issue at a March 24, 2006 hearing. At the hearing, the Langreders testified they had performed various services at the farm and Martin was aware of that fact. Martin disputed the extent of the services. She also testified that while the Langreders were concerned about who inherited under the will, they never gave any indication they would make a claim against the estate.

¶8 Hagness testified he believed the Langreders had been trying to ingratiate themselves with Cowell in hopes of inheriting from him. Hagness stated the Langreders had never mentioned any claim during their phone conversation at the time of the eviction, and at that point he thought he would not hear from them again. Hagness said he was "very surprised" when he received the Langreders' claim.

¶9 In a written decision, the court held the Langreders had failed to meet their burden of establishing Martin's knowledge and their lack of knowledge. The court apparently credited Martin's testimony that she had no knowledge of any claim and no indication the Langreders would file one.

STANDARD OF REVIEW

¶10 In this case, we review a circuit court determination that the Langreders failed to meet their burden under WIS. STAT. § 859.02(2)(b). We uphold the circuit court's findings of fact unless they are clearly erroneous. WIS. STAT. § 805.17(2). Whether those facts meet a statutory standard is a question of law we review without deference to the circuit court, but benefiting from its analysis. *See* ***Klinefelter v. Dutch***, 161 Wis. 2d 28, 33, 467 N.W.2d 192 (Ct. App. 1991).

DISCUSSION

¶11 WISCONSIN STAT. § 859.01 allows the probate registrar in an informal probate to set a final deadline for filing a claim against a decedent's estate. The final deadline must be a date between three and four months after the date the deadline is set. ***Id.***

¶12 Claims not filed by the deadline are barred unless they fall under certain enumerated exceptions. WIS. STAT. § 859.02(1). One of those exceptions exists when all of the following elements are met:

> 1. On or before the [deadline for claims], the personal representative knew, or in the exercise of reasonable diligence should have known, of the existence of the potential claim and of the identity and mailing address of the potential claimant.

> 2. At least 30 days prior to the [deadline for claims], the personal representative had not given notice to the potential claimant of the final day for filing his or her claim and the court in which the estate proceeding was pending.
>
> 3. At least 30 days prior to the [deadline for claims], the claimant did not have actual knowledge that the estate proceeding was pending and of the court in which that proceeding was pending.

WIS. STAT. § 859.02(2)(b). The burden of proving each element is on the claimant. WIS. STAT. § 859.48(4).

¶13 Here, the parties agree Martin never gave the Langreders notice of the deadline for filing a claim. They disagree over whether the circuit court correctly concluded the Langreders failed to prove the other two elements of the exception.

¶14 We conclude the circuit court properly concluded the Langreders did not prove Martin "knew, or in the exercise of reasonable diligence should have known, of the existence" of the Langreders' claim. *See* WIS. STAT. § 859.02(2)(b)1. We therefore need not address the court's holding that the Langreders had knowledge the estate was pending in Dunn County.

¶15 The language "knew, or in the exercise of reasonable diligence should have known" indicates both a subjective and an objective component of knowledge. That is, "knew" refers to the personal representative's subjective knowledge, while "should have known" refers to what the personal representative should have known, viewed from an objective standard.

I. Subjective knowledge

¶16 Martin testified she had no reason to believe the Langreders had a potential claim prior to the filing deadline. Hagness stated Martin's statements to him were consistent with this testimony.

¶17 The Langreders argue Martin's knowledge that at least some services were being rendered, combined with "the common sense presumption that where valuable services are rendered … payment will follow," casts Martin's statements into doubt. However, in this case Martin and Hagness both testified they believed the Langreders' work on the farm was performed with the expectation of inheriting from Cowell, not in expectation of any payment. The circuit court, as the arbiter of the witnesses' credibility, was entitled to accept Martin's testimony as true. *See* ***In re Estate of Dejmal***, 95 Wis. 2d 141, 151, 289 N.W.2d 813 (1980).

II. Objective knowledge

¶18 The Langreders argue Martin should have known about the existence of the claim had she exercised reasonable diligence. They cite cases from Wisconsin and other districts holding that reasonable diligence requires a factual investigation. *See, e.g.*, ***Belich v. Szymaszek***, 224 Wis. 2d 419, 430-32, 592 N.W.2d 254 (Ct. App. 1999) ("reasonable inquiry" for purposes of WIS. STAT. § 802.05(1)(a) requires "at least some affirmative investigation"); ***Haselow v. Gauthier***, 212 Wis. 2d 580, 587-88, 569 N.W.2d 97 (Ct. App. 1997) ("reasonable diligence" for purposes of personal service requires factual investigation that "exhausts information or 'leads' reasonably calculated to effectuate personal service). They argue Martin should have investigated the extent of the services

provided, and had she done so she would have discovered the existence of the Langreders' claim.

¶19 This argument ignores the reason Martin did not realize the Langreders would file a claim. The dispute is not whether Martin should have been aware the Langreders provided services to Cowell. She acknowledged she had been told about some services, although she apparently disagreed with the Langreders' characterization of the extent of those services. Hagness also testified he was aware of some services being provided. The dispute, however, is whether Martin should have known the Langreders provided the services under an implied contract to be paid, as opposed to providing the services in an attempt to convince Cowell to change his will in their favor.

¶20 The evidence supports the circuit court's holding on this point. Martin testified the Langreders voiced their concerns about Cowell's will to her but never mentioned any claim for services. Similarly, Hagness testified he was "very surprised" the Langreders filed a claim for services, and his understanding was the Langreders were one of several parties attempting to secure a place in Cowell's will. Even Gerald Langreder testified the Langreders' expectation was to inherit the farm. Under these facts, we cannot conclude Martin should have known a pending claim for services existed.

By the Court.—Order affirmed.

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