

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

PB 2015-051215

05/06/2016

COMMISSIONER ANDREW J. RUSSELL

CLERK OF THE COURT
L. Carlson
Deputy

IN THE MATTER OF THE ARIZONA ESTATE
OF:

CHARLES H EVITT

DECEASED.

JOEL K HERIFORD
LAURENCE B STEVENS
JACOB A MASKOVICH

UNDER ADVISEMENT RULING

Pending before the Court is the Ancillary Co-Personal Representatives' Motion for Summary Judgment Regarding Judith Evitt-Thorne's Petition for Allowance of Claim (the "Motion"). The Court has reviewed the Motion, Ms. Evitt-Thorne's Response thereto, the Ancillary Co-Personal Representatives' Reply in support of the Motion, the various Statements of Fact filed by the parties, and the record in this matter. The Court has also considered the arguments of counsel at the March 30, 2016 Oral Argument.

Facts

The Decedent and Ms. Evitt-Thorne divorced in 1987. The settlement agreement they entered into as part of that divorce provided that, *if* she survived the Decedent, Ms. Evitt-Thorne would receive \$150,000, either from the Decedent's estate or from a policy of insurance on his life.

Decedent died on September 25, 2013, domiciled in Wyoming. A Court in Johnson County, Wyoming, admitted Decedent's Will to probate the following month, appointing Leslie Hiatt, Sandra Evitt, and Mary Jo Evitt (not a party here) as Co-Personal Representatives. On December 5, 12, and 19, 2013, they caused notice to be published in a newspaper of general jurisdiction in Johnson County, as required by Wyoming law. Wyoming law bars a creditor's claim if that claim is filed more than 90 days after first publication of such a notice. *See* Wyo.

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Stat. Ann. 2-7-703. That said, Wyoming law also requires actual notice be provided to known creditors and to those who are “reasonably ascertainable” to the Personal Representative. The parties dispute whether Ms. Evitt-Thorne received actual notice by mail, but the parties agree that Ms. Evitt-Thorne never filed a claim in the Wyoming probate.

Ms. Evitt-Thorne was Not a Reasonably Ascertainable Creditor

The Court believes that Ms. Evitt-Thorne was not a “reasonably ascertainable” creditor. Her claim stems from a provision in a settlement agreement from 1987. While that agreement involved the Decedent, it did not involve any of the co-Personal Representatives. The Decedent died 26 years after entering into the agreement, and there is no evidence that he and Ms. Evitt-Thorne remained in contact. A reasonable person in the co-Personal Representatives’ position would not think to review a 26-year-old divorce settlement agreement to determine whether a former spouse might have a claim against the estate of a husband she divorced almost three decades earlier.

Ms. Evitt-Thorne’s Claim Against the Estate Arose Before the Decedent’s Death

In determining the deadline for creditors to present their claims against an estate, Arizona law differentiates between claims that “arose before the death of the decedent” and those that “arise at or after the death of the decedent.” *See* A.R.S. 14-3803 (A) and (C). Each of those claims must be presented within specified time periods, or the law deems the claims barred. *See id.* In addition, if the Decedent died elsewhere and the creditor’s claim arose before the Decedent’s death, the claim is barred if “barred by the nonclaim statute of the decedent’s domicile before the giving of notice to creditors in this state.” *See* A.R.S. 14-3803(B).

The Court believes that Ms. Evitt-Thorne’s claim arose before the death of the Decedent. Her claim stems from her and the Decedent’s 1987 divorce. While that claim would not become due until Decedent’s death, and would not have existed if Ms. Evitt-Thorne had predeceased the Decedent, 14-3803(A) clearly contemplates that a claim arising before death could be “due or to become due,” and could also be “contingent” on some other occurrence. *See* A.R.S. 14-3803(A). The definition of “arise” includes to “originate; to stem (from),” and to “emerge in one’s consciousness; to come to one’s attention.” *See* Black’s Law Dictionary (10th ed. 2014). The question thus focuses on the origination of the claim itself, not when Ms. Evitt-Thorne could have enforced that claim. *Compare* A.R.S. 12-542 (two-year statute of limitations for tort claims begins when “the cause of action accrues”).

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Ms. Evitt-Thorne's claim against the Estate arose/originated/stemmed from the 1987 agreement, not upon the Decedent's death. That claim was barred under Wyoming law as of February 5, 2014 (i.e., three months after the first publication required by Wyo. Stat. Ann. 2-7-703). Because she did not file her claim within the time period required by Wyoming law, that claim is not enforceable in Arizona.

IT IS THEREFORE ORDERED granting the Ancillary Co-Personal Representatives' Motion for Summary Judgment Regarding Judith Evitt-Thorne's Petition for Allowance of Claim.