

RENDERED: JANUARY 5, 2018; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2016-CA-001380-MR

JERRY MOONEY

APPELLANT

v. APPEAL FROM WEBSTER CIRCUIT COURT
HONORABLE C. RENE' WILLIAMS, JUDGE
ACTION NO. 14-CI-00230

THE ESTATE OF JAMES DUNCAN,
GLENDIA SUE BROWN, EXECUTRIX;
CLARENCE DUNCAN, SR.; CLEONA
JEAN ROBINSON, SANDY DIXON;
SONNY DUNCAN; PHILLIP DUNCAN;
RICKY MOONEY; AND
ANGELA LITTLEPAGE

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: MAZE, STUMBO,¹ AND TAYLOR, JUDGES.

¹ Judge Janet Stumbo concurred in this opinion prior to retiring from the Kentucky Court of Appeals effective December 31, 2017. Release of this opinion was delayed by administrative handling.

MAZE, JUDGE: Jerry Mooney appeals from a summary judgment by the Webster Circuit Court dismissing his complaint against the Estate and heirs of James Duncan (collectively, “the Estate”). Mooney argues that summary judgment was not appropriate because the presentation and notice requirements of KRS² Chapter 396 do not apply to his claim, or in the alternative, that he sufficiently complied with those requirements. We agree with the trial court that those requirements are applicable, and that Mooney clearly did not comply with the statutory requirements for filing a claim against the Estate. Hence, we affirm.

On February 24, 2014, the Webster District Court appointed Glenda Sue Brown, as Executrix of the Estate of James Duncan. On August 22, 2014, Mooney filed a claim against the Estate, seeking \$825,000.00 “for services rendered and monies paid.” In addition, Mooney also stated that he “is to have been returned a promissory note with the alleged value of \$105,000.00 plus, which note has been fully settled and not returned to the claimant.”

On August 29, Brown sent a notice to Mooney, requesting an affidavit and other evidence in support of the claims. Thereafter, on September 4, Brown sent a notice of disallowance of the claim. That notice also advised Mooney that any claim would be barred unless he commenced an action against the personal representative within sixty days.

² Kentucky Revised Statutes.

Mooney then filed this action on October 1, 2014. He again asserted that Duncan is indebted to him in the amount of \$825,000.00 “for services rendered and monies paid.” The complaint did not set forth the basis for the alleged debt. In subsequent pleadings, Mooney asserted that he and his sons had helped Duncan farm his property, and that they had made capital improvements to the land. Mooney stated that Duncan had orally promised to leave him the farm or its value upon his death. Duncan’s will contained no such provision.

After both parties conducted some discovery, the Estate moved for summary judgment. The Estate argued that it was under no duty to pay a claim unless it was verified by the affidavit of the claimant setting forth the specific basis for the claim. The trial court agreed, and granted summary judgment for the Estate on December 3, 2015. Thereafter, the trial court denied Mooney’s motion to alter, amend or vacate the summary judgment pursuant to CR³ 59.05. This appeal followed.

Mooney first contends that the notice and presentation requirements of KRS Chapter 396 do not apply to his claim. Mooney correctly notes that those requirements only apply to claims which arose or could have been brought during the decedent’s lifetime. *Underwood v. Underwood*, 999 S.W.2d 716, 719 (Ky. App. 1999), citing *Batson v. Clark*, 980 S.W.2d 566 (Ky. App. 1998). In this case, Mooney asserts that Duncan promised that he would receive the farm or its value

³ Kentucky Rules of Civil Procedure.

upon his death. Mooney argues that this claim could only accrue at or after Duncan's death.

We disagree. As an initial matter, any oral agreement between Duncan and Mooney regarding the disposition of Duncan's estate would be barred by the Statute of Frauds. KRS 394.540(1). Furthermore, if the decedent took no action during his lifetime which could have prompted litigation, then the claim cannot be said to have arisen during the decedent's lifetime. *Id.* In both *Underwood* and *Batson*, the claims arose from actions taken by the personal representative after the decedent's death. Here, any debt arising from that alleged oral agreement was incurred during Duncan's lifetime, and thus accrued prior to his death. Mooney is simply attempting to enforce that obligation against the Estate. Therefore, the trial court properly found that Mooney's claim is subject to the requirements of KRS Chapter 396.

The primary issue on appeal is whether Mooney complied with those requirements. KRS 396.035 provides that "[n]o action shall be brought against a personal representative on a claim against decedent's estate unless the claimant shall have first presented his claim in the manner described in KRS 396.015."

KRS 396.015 sets out those requirements as follows:

The claimant may deliver or mail to the personal representative a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed, or may file a written statement of the claim, in the form prescribed by rule, with the clerk of

the court. If presentment shall be made by filing a written statement of the claim with the clerk of the court, the claimant shall certify as provided in the rules of civil procedure that a copy of the written statement has been given or mailed to the personal representative and his attorney. The claim shall be deemed presented on the first to occur of receipt of the written statement of claim by the personal representative, or the filing of the claim with the court. If a claim is not yet due, the date when it will become due shall be stated. If the claim is contingent or unliquidated, the nature of the uncertainty shall be stated. If the claim is secured, the security shall be described. Failure to describe correctly the security, the nature of any uncertainty, and the due date of a claim not yet due does not invalidate the presentation made.

KRS 396.026 further provides:

Upon any claim being presented in the manner described in subsection (1) of KRS 396.015, the personal representative may require by written request mailed to the claimant, the affidavit of the claimant or other satisfactory evidence that such claim is justly due, that no payments have been made thereon, and that there are no offsets against same to the knowledge of the claimant; or if any payments have been made, or any offsets exist, that their nature and amount be shown by the evidence or stated in the affidavit.

Based on these statutes, the trial court found that the personal representative is under no duty to pay a claim against the Estate unless it is verified by the affidavit of the claimant. Although Mooney's initial claim was presented in a notarized affidavit, he did not set out the basis for the claim or any evidence supporting it. The Executrix sent a notice requesting that information, and the

return receipt shows that Mooney signed for it on August 30, 2014. Mooney did not respond to that request.

Mooney argues that his initial affidavit was sufficient. But given the lack of any evidence concerning the nature or basis for the alleged debt, the Executrix was authorized to request an additional affidavit providing that information. Mooney contends that the Estate waived any additional verification by denying the claim before its notice was served on his attorney. However, KRS 396.026 plainly requires that the notice be “mailed to the claimant....” Furthermore, we find no basis for Mooney’s assertion that this notice is subject to the provisions of CR 11. Thus, the signature by the personal representative is sufficient.

There is no dispute in this case that Mooney failed to provide adequate verification of his claim as required by KRS 396.015 and 396.026. Mooney suggests that the Estate rejected his claim before he could respond by filing a second affidavit. However, there is no indication that he attempted to do so prior to filing this action. Indeed, Mooney has provided no evidence which would establish the existence of an enforceable debt. In the absence of a valid claim filed against the Estate, Mooney is not entitled to bring this action. Therefore, the trial court properly granted the Estate’s motion for summary judgment.

Accordingly, we affirm the summary judgment of the Webster Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Amealia R. Zachary
Dixon, Kentucky

BRIEF FOR APPELLEE:

Joel C. Rich
Dixon, Kentucky