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IN THE SUPREME COURT OF THE STATE OF IDAHO

In the matter of The Estate of ROBERT)
ERNEST MELTON and HEDWIG)
"HEDY" MELTON, deceased.)

SUPREME COURT No. 44768
DISTRICT COURT No CV 2013-313

JADWIGA MELTON, Personal)
Representative)
Appellant)
vs.)
HEINZ ALT,)
Respondent.)

APPELLANT'S BRIEF

Appeal from the District Court of the First Judicial District for Boundary County

Honorable John R. Stegner, District Judge, Presiding

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I. STATEMENT OF THE CASE

Nature of the Case

This is an appeal brought by Jadwiga Melton (hereinafter "Jadwiga") the personal representative of the Estates of Robert Ernest Melton and Hedwig "Hedy" Melton, the Appellant, in which Jadwiga challenges the District Judge's decision reversing the Magistrate Judge's holding that Heinz Alt (hereinafter "Heinz"), the Respondent, failed to bring a claim against the estate of his mother, Hedwig "Hedy" Melton (hereinafter "Hedy"), within three years of her death, summary judgment was appropriate as Heinz's claim against Hedy's estate was barred by the statute of limitations.

Factual History

Heinz is the biological son of Hedy and the stepson of her deceased husband, Robert Ernest Melton (hereinafter "Robert"). (R. 229). Heinz alleges that he loaned money to his mother and step-father to enable them to purchase land and build a log home in Boundary County. (R. 230). Hedy and Robert first obtained title to the land on April 11, 1996. (R. 73). On July 29, 1998, Hedy and Robert each executed a Last Will and Testament. On July 10, 1999, the land was deeded to Heinz. (R. 74). Heinz alleges that the property was deeded to him as security for the money he loaned to his mother and step-father. (R. 230). Subsequently, Heinz and his wife deeded the land back to Hedy and Robert on November 4, 1999. (R. 75).

Hedy died on August 11, 2008. (R. 230). At the time of her death, Hedy had a will directing that all of her property would pass to Robert, and, in the event Robert preceded Hedy in death, then all of her property would pass to Heinz. (R. 26). Hedy's will was never probated. (R. 230).

Prior to December 2010, Robert's will mirrored Hedy's will and provided that if he preceded Hedy in death, all of Robert's property would pass to her, and, if Hedy preceded him in death, all of Robert's property would pass to Heinz. (R. 30). In 2010, Robert married Jadwiga. (R. 230). Robert executed a new will in December of 2010 after marrying Jadwiga. (R. 230). Robert died on July 4, 2013. (R. 230). At the time of his death, Robert's will directed that all of his property would pass to Jadwiga. (R. 12). The only assets of the estate are the land and home located in Bonners Ferry, Idaho. Heinz maintains that Hedy and Robert purchased the land and constructed the home with money he loaned to them. (R. 21-22).

Procedural History

On August 29, 2013, Jadwiga filed a Petition for Summary Administration of Robert's estate pursuant to I.C. § 15-3-1205. (R. 10). On August 30, 2013, a Decree Vesting Estate in Surviving Spouse was entered. (R. 19).

On September 6, 2013, Heinz filed a Motion to Convert Proceedings to Supervised Administration and to Determine Testacy based on his claim that he is entitled to repayment

of the money he loaned Hedy and Robert to purchase the land and construct the home at issue. (R 21-23). On October 21, 2013, an Order Setting Aside the Decree Vesting Estate in Surviving Spouse was entered. (R. 39).

On December 9, 2014, Jadwiga filed a Petition for Formal Probate of Will and Formal Appointment of Personal Representative. (R. 41). Because Hedy's will was never probated, Jadwiga requested that the estates of both Hedy and Robert be joined for probate in one proceeding. (R. 41-44). This was done pursuant to I.C. § 15-3-111.

On January 13, 2015, Heinz filed a claim for \$102,574.50 against the estate based on I.C. § 15-3-804. (R. 47). Heinz submitted several unauthenticated documents to support his claim. (R. 50-54). On February 2, 2015, Jadwiga was appointed the personal representative of the estates of Robert and Hedy. (R. 55). On February 9, 2015, Jadwiga filed a Notice to Creditors with the Court. (R. 5). The notice was first published in the Bonnors Ferry Herald on February 19, 2015. (R. 58). On March 13, 2015, Jadwiga mailed a Notice of Disallowance of Claim to Heinz's attorney. (R. 80). The Notice of Disallowance was filed with the Court on March 17, 2015. (R. 58). Heinz was informed that his claim was being disallowed for the following reasons: (1) the claim was untimely because Heinz failed to bring it within three years of Hedy's death, (2) Heinz failed to provide documentation that Robert owed a debt to him, and (3) Hedy's signature on the documents submitted by Heinz

had not been authenticated. (R. 148-149). On May 4, 2015, Heinz filed a Petition to Allow Claims. (R. 59).

On June 29, 2015, Jadwiga filed a Motion for Summary Judgment to Deny Creditor Claim. (R. 69-70). A hearing was held on August 24, 2015. (R. 150-55). On October 8, 2015, Magistrate Judge Justin W. Julian issued his Memorandum Opinion granting Jadwiga's Motion for Summary Judgment in part. (R. 198-205). Specifically, Judge Julian concluded that Jadwiga's disallowance of Heinz's creditor claim was timely, and that Heinz's claim against Hedy's estate is barred by I.C. § 15-3-803 because Heinz failed to bring his claim within three years of Hedy's death. (R. 201-04). The Magistrate Judge expressly stated that "Heinz may still proceed with his claim against Robert's estate." (R. 204). On December 3, 2015, the Magistrate Judge entered a Judgment on the above two issues and certified it as a final judgment pursuant to I.R.C.P. Rule 54(b). (R. 206). On February 27, 2017 a Second Amended Judgment was entered. (R. 434).

On January 13, 2016, Heinz filed a Notice of Appeal. (R. 208). An Amended Notice of Appeal was filed by Heinz on March 2, 2016. (R. 216). Oral argument was heard on October 7, 2016. (R. 315-16). The District Court affirmed the disallowance of Heinz's creditor claim was timely and reversed the Magistrate Court's determination that Heinz's claim against Hedy's estate is barred by I.C. § 15-3-803 because Heinz failed to bring his claim within three years of Hedy's death. (R. 317-334).

II. ISSUES ON APPEAL

Whether the District Court erred as a matter of law by reversing the Magistrate Court's decision that Heinz Alt's claim against the Estate of Hedwig "Hedy" Melton is barred by Idaho Code § 15-3-803?

- A. The District Court erred as a matter of law by construing the statutory language of I.C. § 15-3-111 against its plain and ordinary meaning.
- B. The District Court erred by not considering legislative intent before construing I.C. § 15-3-111 and in the event a legislative history analysis is proper, the legislative history of I.C. § 15-3-111 does not indicate a legislative intent to extend the creditor claim limitation period.
- C. The District Court improperly applied rules of statutory construction in construing I.C. § 15-3-111.
 - 1. The District Court erred by allowing words to be added to I.C. § 15-3-111.
 - 2. *Marshall v. Department of Transportation* and the statutory rule favoring specific statutes over general statutes was misapplied to the facts of this matter.
 - 3. Enforcing the statutory creditor claim period in the context of joint probate does not produce an absurd result.
 - 4. A strict three (3) year creditor claim period in the context of a joint probate does not lead to an unreasonably harsh result.

5. Enforcing the creditor claim limitation period in the context of joint probate does not produce an absurd result, because a creditor can and must timely assert their claim.

D. Jadwiga is entitled to her costs and attorney's fees pursuant to I.R.C.P. §§ 54(d)–(e)(2) and I.C. 15-8-208.

III. STANDARD OF REVIEW

“When reviewing an order for summary judgment, the Supreme Court applies the same standard of review that was used by the trial court in ruling on the motion for summary judgment.” *In re Estate of Ortega*, 153 Idaho 609, 612, 288 P.3d 826, 829 (2012) (quoting *Vreeken v. Lockwood Engineering, B.V.*, 148 Idaho 89, 101, 218 P.3d 1150, 1162 (2009)). Summary judgment is proper, “if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” I.R.C.P. 56(c).

The Supreme Court freely reviews the interpretation of a statute and its application to the facts. *State v. Yzaguirre*, 144 Idaho 471, 474, 163 P.3d 1183, 1186 (2007). The primary function of the court is to determine and give effect to the legislative intent and such intent should be derived from a reading of the whole act at issue. *George W. Watkins Family v. Messenger*, 118 Idaho 537, 539-40, 797 P.2d 1385, 1387-88 (1990). When a statute is ambiguous, the determination of the meaning of the statute and its application is also a matter of

law over which this Court exercises free review. *Kelso & Irwin, P.A. v. State Ins. Fund*, 134 Idaho 130, 134, 997 P.2d 591, 595 (2000); *J.R. Simplot Co. v. Western Heritage Ins. Co.*, 132 Idaho 582, 584, 977 P.2d 196, 198 (1999).

IV. ARGUMENT

This is a case of first impression in Idaho, the central issue being the proper rules to apply when engaging in a question of statutory interpretation and construction. Jadwiga asserts the District Court erred when it departed from Idaho's standard method of interpretation when it held I.C. § 15-3-111 extends the creditor claim limitations period of I.C. § 15-3-803 which reversed the Magistrate's holding.

Under established Idaho law, courts faced with a question of statutory interpretation must first examine the literal words of the statute. A statute that is unambiguous should be construed by its plain and ordinary meaning. Where a statute is ambiguous, courts then look to the legislative history of the statute to aid in interpretation. If the intent of the legislature is unclear, then courts have occasion to consider additional rules of statutory construction. In failing to consider the plain language and legislative history of I.C. § 15-3-111 the District Court erred in its analysis. Here, the plain language of I.C. § 15-3-111 is unambiguous and only extends the limitation period of I.C. § 15-3-108. Further, the legislative history of I.C. § 15-3-111 does not suggest a legislative intent to extend the creditor claim limitations period of I.C. § 15-3-803.

Lastly, under Idaho's additional rules of statutory construction, I.C. § 15-3-803 is unaffected by the language of I.C. § 15-3-111.

A. The District Court erred as a matter of law by construing the statutory language of I.C. § 15-3-111 against its plain and ordinary meaning.

Idaho courts have stated that a court errs when it does not give statutory language its plain, obvious, and ordinary meaning. *State v. Burnight*, 132 Idaho 654, 659 978 P.2d 214, 219 (1999); see also *Bonner County v. Cunningham*, 156 Idaho 291, 295, 323 P.3d 1252, 1256 (Ct. App. 2014). Interpretation of a statute begins with its literal words. *Bonner County*, 156 Idaho at 295. If a statute is unambiguous, a court should not construe it, merely follow the law as written. *Bonner County*, 156 Idaho at 295, 323 P.3d at 1256; see also *Verska v. St. Alphonsus Regional Medical Center*, 151 Idaho 889, 895, 265 P.3d 502, 508 (2011).

In the present case, the "joint probate" statute known as I.C. § 15-3-111 is simply stated and its literal meaning clear. I.C. § 15-3-111 reads as follows:

In cases in which a marital community has been dissolved by the death of either spouse at any time, the survivor was then entitled to all of the property of the decedent by will, law, or both, and the survivor died before any proceeding had been commenced for the probate of the estate of the spouse whose death occurred first, the estates of both decedents may be joined for probate in a single proceeding in any court having jurisdiction of the estate of the spouse whose death occurred last. The three (3) year provision of section 15-3-108 Idaho Code applies only to the death of the spouse whose death occurred last. The initial application or petition filed in any such joint proceeding shall contain a statement of the facts

upon which such joint proceeding is based, in addition to all other statements required by this code to be made therein.

I.C. § 15-3-111.

The language of the statute is precise and should be construed by its literal words – no more, no less. Those words do not include an extension of the time for creditors to file claims against the first spouse who died. There is no reference to I.C. § 15-3-803 nor creditor claims in any portion of the language. As Judge Julian stated in his Memorandum Opinion:

There is nothing in this section [I.C. § 15-3-111] that states or suggests any tolling of a creditor's deadline to present a claim, just because the estate is subsequently jointly probated. Indeed, this section specifically exempts the three (3) year limitation on probate following death of the first spouse, as found in section 108. That fact clearly demonstrates the legislature's ability and willingness to make special exceptions within this particular provision where warranted and intended. As there is no exception made to the three (3) year creditors' bar found in 15-3-803, one shall not be implied by the court. Heinz's claim against Hedy's estate was not filed or "presented" within three years of her death and is now barred by IC § 15-3-803(a)(1).

(R. 331).

The District Court, in its *Opinion on Appeal*, includes the above stated quote, but does not engage in its own analysis of the plain language of the statute or legislative history. (R. 331). Without finding the statute ambiguous, it construed the statute using additional rules of statutory construction. (R. 331-32). However, this Court has made clear that a court engages in statutory construction only where there is ambiguity. *Bonner County*, 156 Idaho at 295, 323 P.3d at 1256.

Further, a finding of ambiguity requires more than presentation of conflicting interpretations. *Id.* “A statute is ambiguous where the language is capable of more than one reasonable construction.” *Id.* “A statute is not ambiguous merely because an astute mind can devise more than one interpretation of it.” *Id.* “If that were the test then all statutes whose meanings are contested in litigation could be considered ambiguous.” *Id.*

Despite this Court’s clear guidance, the District Court did not apply well established rules of statutory construction and so erred in its interpretation of I.C. § 15-3-111. Under Idaho law examination of the plain language of a statute precedes the application of additional rules of statutory construction. This Court noted that a court cannot deviate from existing law by applying rules of statutory construction without first examining the literal words of the statute and determining whether or not it is ambiguous. *Bonner County*, 156 Idaho at 295, 323 P.3d at 1256; *see also In re Adoption of Doe*, 156 Idaho 345, 349-50, 326 P.3d 347, 351-52 (2014). In that case, this Court found that the magistrate’s application of a rule of statutory construction (*in pari materia*) was unnecessary and in error where the language in question was unambiguous. *Id.* at 351, 326 P.3d at 353. Further, this Court held that rules of statutory construction are inapplicable to unambiguous statutes, because “the clearly expressed intent of the legislative body must be given effect, and there is no occasion for a court to consider rules of statutory construction.” *Id.* (citing *Payette River Property Owner’s Assn. v. Board. of Com’rs. Of Valley County*, 132 Idaho 551, 557, 979 P.2d 477, 483 (1999)).

In the case at hand, the District Court erred by considering the effect of statutory construction rules without first analyzing the plain language of the statute for ambiguity. Under the holding of *In re Adoption of Doe*, the District Court's deviation from existing law is reversible error.

B. The District Court erred by not considering legislative intent before construing I.C. § 15-3-111 which does not indicate a legislative intent to extend the creditor claim limitation period.

If this Court finds the words of I.C. § 15-3-111 ambiguous, then it must look to the legislative intent, and in construing a statute, may examine the language used, the reasonableness of the proposed interpretations, and the policy behind the statute. *Kelso & Irwin, P.A.*, at 134, 997 P.2d at 595. "In attempting to discern and implement the intent of the legislature, the court may seek edification from the statute's legislative history and contemporaneous context at enactment." *State v. Burnight*, 132 Idaho 654, 659, 978 P.2d 214, 219 (1999). Extrinsic aids such as the statute's heading may be used to construe an ambiguous statute. *State v. Moore*, 111 Idaho 854, 727 P.2d 1282 (Idaho Ct. App. 1986); *see also Local 1494 of Intern. Ass'n of Firefighters v. City of Coeur d'Alene*, 99 Idaho 630, 641, 586 P.2d 1346, 1356-57 (1978).

Previous to adopting the Uniform Probate Code (hereinafter "UPC") in 1971, Idaho's legislature had enacted I.C. § 15-313 in 1937 which provided for a joinder of probates. I.C. § 15-313 reads as follows:

When a marital community is dissolved by the death of either member thereof, thereafter, if the survivor should die before

proceedings shall have been commenced for the probate of the estate of the person who first died, and both have died intestate the estates of both of the said decedents may, by order of the court, be joined for probate in a single proceeding in any probate court having jurisdiction of either estate; provided the same person is, under the provisions of section 15-312, entitled to letters of administration in both estates and consents so to act. The procedure to be followed shall be similar in all respects to that prescribed for the probate of the estate of the male member of a former marital community who has died intestate.

I.C. § 15-313. Upon adoption of the UPC, I.C. § 15-313 was repealed leaving no method for joint probate until the enactment of I.C. § 15-3-111.

I.C. § 15-3-111 was originally adopted in 1973 and the legislative purpose for adopting I.C. § 15-3-111 was to “fill certain gaps left out of the original probate code.” S. B. 419, 1973 Leg., 42nd Sess. (Idaho 1973) (Statement of Purpose). As before, this statute allows the estates of two deceased spouses to be joined for probate in a single proceeding in any court having jurisdiction of the estate of the spouse whose death occurred last. I.C. § 15-3-111. The original language of I.C. § 15-3-111 did not include reference to its effect upon surrounding statutes in the Idaho probate code.

In 1995, I.C. § 15-3-111 was amended by Senate Bill No. 1166 to add: “[t]he three (3) year provision of section 15-3-108, Idaho Code, applies only to the death of the spouse whose death occurred last.” The title of Senate Bill No. 1166 reads:

An act relating to probate of wills and administration; amending section 15-3-111, Idaho Code, to clarify the application of a

provision of **another** statute [I.C. § 15-3-108] to the death of the spouse whose death occurs last.

S. B. 1166, 1995 Leg., 53rd Sess. (Idaho 1995) (emphasis added).

The language of Senate Bill No. 1166 does not suggest a legislative intent to extend the time limitations in both I.C. §§ 15-3-108 and 15-3-803. First, the Senate Bill is written with reference to a singular, not plural, provision of “another” statute. Second, Idaho recognizes the rule of *expressio unius est exclusio alterius*, a Latin phrase meaning: “where a construction or statute specifies certain things, the designation of such things excludes all others.” *Local 1494 of Intern. Ass’n of Firefighters*, 99 Idaho at 639, 586 P.2d at 1355. Logically, if a statute specifies its effect upon a singular statute, the reference should be exclusive. There is no reference to creditor claims in the original statute or in its amendment.

In its Memorandum Opinion, the District Court erred in its determination that the creditor claim period of I.C. § 15-3-803 of the first spouse to die was tolled when a joint probate was opened. The 1995 amendment to I.C. § 15-3-111 cannot be interpreted to include both the three (3) year provisions of I.C. §§ 15-3-108 and 15-3-803 because there is no reference to I.C. § 15-3-803 within the statute or its history.

As an aside, I.C. § 15-3-111 cannot impliedly include both three year periods for the simple fact that it would have been impossible at the time of the amendment. In 1995, I.C. § 15-3-803 set forth a two year limitation upon the presentment of claims. I.C. § 15-3-803 (1991) (amended 2004). It was not until 2004 that a three year limitation period for creditor claims was

added to Idaho's Probate Code. Unless the legislature foresaw that the nonclaim statute would be extended to a three year limitation almost a decade later, it would be illogical to read I.C. § 15-3-111 to include the limitation period of I.C. § 15-3-803.

It is assumed this inconsistency, with regard to the two year limitation period, is one that the Idaho Legislature would have been aware of at the time of the 1995 amendment. Idaho has acknowledged the breadth of the legislature's knowledge of the law and consideration of the same:

A statute is to be construed as a whole without separating one provision from another. The Court should also construe statutes under the assumption that the legislature knew of all legal precedent and other statutes in existence at the time the statute was passed.

State v. Burnight, 132 Idaho 654, 659, 978 P.2d 214 (1999).

The legislative history of I.C. § 15-3-111, as a whole, does not support a contention that the Idaho Legislature intended to expand the limitation period for creditor claims in the context of a joint probate proceeding.

C. The District Court improperly applied rules of statutory construction in construing I.C. § 15-3-111.

In addition to the foregoing analysis, the Appellant requests this court consider how the meaning of I.C. § 15-3-111 is developed under Idaho's additional cannons of construction. As a general rule, courts cannot insert into statutes terms or provisions which are not there. A court may, however, look to a number of factors which aid in construing an ambiguous statute. For

example, a court may favor a more specific statute over one that is more general, or where there are two statutes that conflict, but do not necessarily address the same subject matter, a court may look to the one enacted later in time. Finally, a court may construe an ambiguous statute in a manner that avoids absurd or harsh results. The issues discussed in this section involve whether the District Court correctly applied these canons of construction when construing I.C. § 15-3-111.

1. The District Court erred by allowing words to be added to I.C. § 15-3-111.

The District Court erred by adopting Heinz’s assertion, that joint probate revives a creditor’s ability to enforce a claim that is otherwise foreclosed by the limitation period set forth in I.C. § 15-3-803. (R. 242, 332). As an initial matter, courts “cannot insert into statutes terms or provisions which are obviously not there.” *Matter of Adoption of Chaney*, 126 Idaho 554, 558, 887 P.2d 1061, 1065 (1995). It is well established in Idaho that courts should not second-guess the wisdom of statutes or insert words the Court believes the legislature left out, be it intentionally or inadvertently. *St. Alphonsus Regional Medical Center v. Gooding County*, 159 Idaho 84, 89, 356 P.3d 377, 382 (2015). For the legislative power is vested in the Senate and House of Representatives, rather than the courts. *Id.*

Courts are not only divested of legislative power, but the Idaho Legislature can and has exercised its power to create other extensions or special exceptions to the creditor limitation period of I.C. § 15-3-803 and have done so regarding summary administration and in recovery

of certain assistance provided by Medicaid. These extensions or special exceptions will be discussed in more detail below. In these two instances, both of which are more recent than the 1995 amendment to I.C. § 15-3-111, the Idaho Legislature added words to the statutes which creates an extension or special exception for the time for creditors to file claims. In both circumstances, the extension or special exception is clear as it is expressly stated in the language of the statute. In contrast, the legislature chose not to add any such language to I.C. § 15-3-111 and the District Court improperly read an extension or special exception into the statute.

The District Court's Opinion on Appeal, appears to adopt Heinz's position, that *opening of a probate estate* and appointment of a personal representative should trigger the time limit for submitting a claim. In its opinion, the District Court states first that "the three year limitation for creditors in I.C. § 15-3-803 (a)(1) parallels the general time limit for probating an estate." (R. 329). It goes on to state that because the three year limit for probating an estate applies to the death of the spouse whose death occurred last, so then must the period for bringing a creditor claim. (R. 332). Such assertion ignores the plain language of I.C. § 15-3-803(a) which establishes a time limit for filing claims *starting at the date of death*. I.C. § 15-3-803(a)(1). Moreover, it inserts words and intentions that appear in no part of I.C. § 15-3-111's language or history.

If the Legislature wished to create an extension or special exception in the context of joint probate, it easily could have done so. It did not. There are only two extensions or special exceptions to the time frames set forth in I.C. § 15-3-803. In the first instance, a surviving spouse may use the summary administration process as provided under I.C. § 15-3-1205. The legislature amended I.C. § 15-3-108, effective July 1, 2014, to provide that the three year statute of limitations on probate proceedings does not apply to summary administration under I.C. § 15-3-1205. In addition, I.C. § 15-3-1205 expressly states that a surviving spouse must “assume and be liable for any and all indebtedness that might be a claim against the estate of the decedent and there will be no administration of the estate of the decedent.” I.C. § 15-3-1205(c). With regard to summary administration, the Legislature specifically addressed claims against the estate. In 1995, the Legislature amended I.C. § 15-3-111, and did not create any extension or special exception to the filing of creditor claims when a joint probate was commenced. If the Legislature had wanted to toll the creditor claims for the first spouse who died, it could have easily made that amendment. It did not.

Similarly, I.C. § 56-218 was amended in 2006 to expressly provide an extension or special exception to the limitation period for Medicaid recovery claims. For many years, the statute provided that recovery could be made from the individual’s estate, and the estate of the spouse, if any, for such aid paid to either or both, but there would be no adjustment or recovery until the death of the surviving spouse. I.C. §56-218 (2005). However, the Court in *In re Estate*

of Kaminsky held the Idaho Department of Health and Welfare (hereinafter “Department”) was barred from recovery on their claim because the Department had not timely presented a claim against the estate pursuant to I.C. § 15-3-803. *In re Estate of Kaminsky*, 141 Idaho 436, 438-39, 111 P.3d 121, 123-24 (2005). In response to this holding, the Idaho legislature amended I.C. § 56-218 to provide that no claim needed to be filed on the death of the first spouse, unless actual notice was given of the probate, or unless a joint probate were opened under I.C. § 15-3-111.

The reason for the change was given as follows:

Section Two amends Idaho Code § 56-218 to clarify the presentation and collection of estate recovery claims by Health & Welfare. A number of clarifications are made by repositioning language or stating the existing concept more clearly. Under existing law, if the institutionalized spouse, who received Medicaid, dies leaving a surviving spouse, no actual collection is made, but a “claim” must be sent to the personal representative of the estate of deceased institutionalized spouse, or if no probate is done, to the surviving spouse. This can be very frightening to the surviving spouse, who often does not understand that no current reimbursement is being demanded. Therefor[e] [sic], the bill both clarifies that no recovery is made until both spouses are deceased and also removes the requirement to send a claim if no probate is filed at the first death.

S. B. 1318, 2006 Leg., 58th Sess. (Idaho 2006).

I.C. § 56-218 was amended in 2006 to include a reference to I.C. § 15-3-111 which provides for an expanded recovery for estate recovery claims for Health and Welfare with joint probates. I.C. § 15-3-803 was not amended to allow expanded recovery for creditors when a joint probate is commenced. I.C. §§ 15-3-111 and 15-3-803 do not overlap in words or by

legislative history and construing the former as inclusive of the latter runs afoul of Idaho's statutory construction rules.

2. *Marshall v. Department of Transportation* and the statutory rule favoring specific statutes over general statutes was misapplied to the facts of this matter.

The Court below relied upon *Marshall v. Department of Transportation* for the rule which states: "the more general statute should not be interpreted as encompassing an area **already covered** by one which is more specific." *Marshall v. Department of Transp.*, 137 Idaho 337, 341, 48 P.3d 666, 670 (Ct. App. 2002) (emphasis added). However, the rule requires that the two statutes address the same subject matter. *State v. Betterton*, 127 Idaho 562, 564, 903 P.2d 151, 153 (Ct. App. 1995).

The District Court misapplied this rule because the statutes at issue do not address the same subject matter. A more specific statute that does not address the same subject matter as a more general statute does not fall within the purview of the rule. *Betterton*, 127 Idaho at 564, 903 P.2d at 153. I.C. § 15-3-803 sets limitations on presentation of claims. I.C. § 15-3-111 on its face does nothing to address the time frame for presenting a claim, but refers to the process of opening a probate in a certain instance. These two statutes do not address the same subject matter so the rule stated in *Marshall* does not apply.

While the rule favoring specific statutes over general statutes may not apply under the facts of this case, a sister rule which appears hand-in-hand with it may be applicable under the

facts of this case. Regardless of whether the two statutes address the same subject matter, an inconsistency in their effect may still arise. When two statutes are irreconcilable, the rule is the one enacted later in time prevails. *In re Estate of Wiggins*, 155 Idaho 116, 123, 306 P.3d 201, 208 (2013) (citing *Mickelsen v. City of Rexburg*, 101 Idaho 305, 307, 612 P.2d 542, 544 (1980)).

It is undisputed that I.C. § 15-3-111 extends the general three year timeframe in which to file a probate action. Consequently, in cases such as this one, I.C. § 15-3-111 is the specific statute, while I.C. § 15-3-108 is a more general statute. These two statutes cover the same subject matter – the opening of a probate. Unlike, the interplay between those two statutes, I.C. §§ 15-3-111 and 15-3-803(a)(1) do not cover the same subject matter. The analysis of whether I.C. § 15-3-111 is more specific becomes unnecessary.

However, to the extent that I.C. §§ 15-3-111 and 15-3-803 conflict, I.C. § 15-3-803 is the later enacted statute. I.C. § 15-3-111 was last amended in 1997 (to provide the three year limitation to open a probate only extended to the spouse who died last), whereas I.C. § 15-3-803 was last amended seven years later in 2004 (to extend the statute of limitations from two years to three years from date of death). If the legislature had wanted the provisions of I.C. § 15-3-803 to be tolled in the event a joint probate was commenced, it could have made that amendment. It did not. This Court should reverse the holding of the District Court and reaffirm the Magistrate Court's decision that the time to present claims in Hedy's estate ended three years after her death.

3. Enforcing the statutory creditor claim period in the context of joint probate does not produce an absurd result.

As noted above, I.C. § 15-3-111 expressly provides that a joint probate can be commenced only when the marital community of a couple ended at the death of the first spouse, and the surviving spouse was entitled to all of the deceased spouse's property by will, law or both, and no probate had been commenced on the death of the deceased spouse. The reason this rule is needed is I.C. § 15-3-108 only allows three years for the probate of a will in Idaho. After three years have elapsed, a probate cannot be opened. This statute specifically states that, although the probates can be combined, the three year rule to probate the Will only applies to the spouse who died last.

In Idaho, it is common to find many instances wherein the first spouse dies and the surviving spouse does not open a probate. When all the assets are titled in joint names and the surviving spouse is not hindered in his or her ability to gain access or have control over the remaining assets, the surviving spouse may not view a probate as necessary. However, to transfer real property, a legal action must commence.

Allowing the use of I.C. § 15-3-111 saves time and judicial economy by probating both estates in one proceeding. This process is used almost exclusively to transfer real property, such as in this case. This comports with the goal of the UPC Idaho adopted in 1971. As stated by this Court "[t]his code shall be liberally construed and applied to promote its underlying purposes and policies." Subsection (b) states that, "[t]he underlying purposes and policies of this code are:

(1) to simplify and clarify the law concerning the affairs of decedents . . . ; (3) to promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to his successors. *In Re Estate of Elliott*, 141 Idaho 177, 181, 108 P.3d 324, 328 (2005).

The District Court, in its *Opinion on Appeal*, found that I.C. § 15-3-111, if applied under its plain meaning, would lead to an absurd or unreasonably harsh result. (R. 332). The Honorable Judge Stegner wrote, “If the statute of limitations for the first to die is not tolled, then in effect the only estate to probate is that of the second to die.” (R. 332).

The issue of transferring real property may only arise after the death of the surviving spouse, making joint probate an economical decision. If a joint probate were not available, the heirs or devisees who are to receive real property would be forced to commence a quiet title action or seek determination of heirs in order to transfer the property from the first spouse to die. At the same time, the heirs or devisees would have to open probate as a second and separate proceeding to transfer the real property from the second spouse to die. The operation of a joint probate furthers the goal of the UPC to simplify the law and to promote a speedy and efficient system to transfer assets. A joint probate allows the estate of the second spouse to die to be probated and to finalize transfer of real property held in the name of the first spouse to die.

4. A strict three year creditor claim period in the context of a joint probate does not lead to an unreasonably harsh result.

Courts recognize that limiting the time for a creditor claim to bring is reasonable and does not lead to harsh results. The court below stated “[c]onstrutions of a statute that would

lead to absurd or unreasonably harsh results are disfavored.” (R. 333) (citing *State v. Yager*, 139 Idaho 680, 690, 85 P.3d 656, 666 (2004)). In Idaho, words of a statute should be given their plain meaning, unless a contrary legislative purpose is expressed or the plain meaning creates an absurd result. *KGF Development, LLC v. City of Ketchum*, 149 Idaho 524, 528, 236 P.3d 1284, 1288 (2010). Yet, the Idaho Supreme Court has never “revised or voided an unambiguous statute on the ground that it is patently absurd or would produce absurd results when construed as written and [does not have] the authority to do so.” *Verska*, 151 Idaho at 896, 265 P.3d at 509.

Idaho Courts have recognized time and again the statute of limitations for creditors to file a claim runs from the date of death of the person who died. *See In re Estate of Kaminsky*, 141 Idaho at 439, (a claim filed more than two years after date of death but within a year of opening probate is disallowed as not timely filed (citing I.C. § 15-3-803 which provided a two year claim period)); *Holt v. Mickelson*, 41 Idaho 694, 696, 242 P. 977 (1925) (nonclaim statutes are short and highly penal, and should not be extended beyond the intent of the Legislature).

Additionally, the Supreme Court of the United States in *Tulsa v. Pope* emphasized the importance of nonclaim statutes and their role in regulating the timeliness of claims. *Tulsa v. Pope*, 485 U.S. 478 (1998). There the court noted that nonclaim statutes are almost universally included in state probate codes. *Id.* at 479. While the holding in *Pope* involved due process of notice to creditors in probate proceedings, that court, in dicta, also recognized a state’s interest in the need for prompt administration of claims. The Supreme Court stated that “[d]eath transforms

the decedent's legal relationships and a State could reasonably conclude that swift settlement of estate is so important that it calls for very short time deadlines for filing claims." *Id.* at 489. Also, that the purpose and effect of nonclaim statutes is to regulate the timeliness of claims and forever bar untimely claims. *Id.* at 488. Thus, under *Pope*, a state's creation of short time limitation on bringing a claim is not absurd.

After a review of other states who have adopted the UPC, Idaho is the only one that has adopted the unique language found in I.C. § 15-3-111. However, Utah has adopted Utah Code § 75-3-109 which reads as follows:

- (1) Upon petition by any person interested in two or more estates, the court may, after notice and hearing, grant letters upon these estates jointly if administration has not commenced with respect to any such estate and if:
 - (a) All or any part of the estate of one decedent has descended from another decedent; or
 - (b) Two or more decedents held any property during their lifetimes as tenants-in-common and if the persons entitled under the wills of these decedents or under the law of intestate succession to receive the estates of these decedents are the same.
- (2) If letters are granted upon two or more estates jointly under this section, these estates shall be administered the same as if they were but one estate except that claims may be enforced only against the estate to which they relate.

Utah Code § 75-3-109

This is consistent with the Estate's argument set forth above. Accordingly, Idaho's UPC applies a maximum three-year limitations period on the presentment of creditor claims which begins to run on the decedent's death and not upon the death of his or her successors, except in

the case of Medicaid recovery as noted above. This rule is also stated in the official comment to

Uniform Probate Code § 3-317 which states as follows:

In succession without administration, there being no personal representative's notice to creditors, the short non-claim period under UPC Section 3-803(a)(1) does not apply and creditors are subject to the statutes of limitations and the limitation of three years on decedent's creditors when no notice is published under UPC Section 3-803(a)(2). The general statutes of limitation are suspended for four months following the decedent's death but resume thereafter under UPC Section 3-802. The assumption of liability by the universal successors upon the issuance of the Statement of Universal Succession is deemed to be by operation of law and does not operate to extend or renew any statute of limitations that had begun to run against the decedent. **The result is that creditors are barred by the general statutes of limitation or 3 years whichever is the shorter.** (Emphasis added).

Unif. Probate Code § 3-317 (amended 2010) (Comment).

I.C. § 15-3-111 provides a means of effectively passing property of joint estates and contains no tolling provisions on the presentment of creditor claims for the first spouse who died. Thus, the Idaho Code plainly limits the presentation of creditor claims against an estate to a maximum of three years after the decedent's death regardless of whether the surviving spouse's estate exercises the right to jointly probate the estates of both spouses. The Appellant urges this Court to find that I.C. § 15-3-111 does not enlarge the statute of limitations and reverse the District Court's decision.

If this Court agrees with the ruling of the district court below, a practitioner would never use I.C. § 15-3-111 for fear of resurrecting some latent claim of the first spouse who died

several years prior. In this instance, Hedy died five years before Robert. If Hedy had died ten years or twenty years before Robert, the District Court's holding would allow Hedy's creditors to bring claims in Robert's estate by virtue of opening a joint probate under I.C. § 15-3-111. This cannot be what the legislature intended. Tolling the statute of limitations just because a joint probate is commenced leads to an absurd result and runs afoul of the underlying purposes and policies of the UPC.

5. Enforcing the creditor claim limitation period in the context of joint probate does not produce an absurd result, because a creditor can and must timely assert their claim.

Enforcing the nonclaim period against a creditor, in the context of joint probate, is not absurd because a creditor may enforce a claim within the statutory period by opening probate. Idaho law protects creditors from having their claim foreclosed by the passage of time, by giving creditors the ability to open a probate if none were opened. A creditor can, at any time 45 days after the death of decedent, open a probate as a creditor of the decedent's estate. I.C. § 15-3-203(a)(6).

It is true that administration of an estate is necessary to enforce a claim and that no proceeding to enforce a claim against the estate of a decedent may be commenced before the appointment of a personal representative. I.C. § 15-3-104. However, a creditor is empowered to seek appointment as personal representative and open probate proceedings.

Not only may a creditor open probate in order to enforce his claim, he must exercise reasonable diligence in attempting to save his claim against the estate from the bar of a statute of limitations. *Gwinn v. Melvin*, 9 Idaho 202, 210 72 P. 961, 962 (1903). A creditor “cannot without good cause or reason defer making application [for probate] until the statute of limitations has run, and then successfully contend that said statute was suspended on account of the nonappointment of an administrator.” *Id.* Under Idaho case law then, creditors are not prevented from enforcing their claim when a third party neglects to open probate and are instead required to open probate themselves in order to protect a claim. While this law predates the enactment of the joint probate statute, both Idaho courts and its legislature both required a creditor to enforce its claims long before the joint probate statute was enacted. The absurd result would be to reward a creditor who sits on his rights, only to be afforded a second chance at collection in the event joint probate is eventually opened.

D. Jadwiga is entitled to her costs and attorney’s fees pursuant to I.R.C.P. 54(d)–(e)(2) and I.C. 15-8-208.

Jadwiga requests an award of her costs and attorney’s fees on appeal based upon I.R.C.P. 54(d)-(e)(2). Under I.R.C.P 54(d), costs are allowed as a matter of right to prevailing parties unless otherwise ordered by the court. I.R.C.P. 54 (d)(1)(A). Under I.R.C.P 54(e), attorney fees may be awarded to a prevailing party when provided for by any statute or where allowed under I.C. § 12-121. I.R.C.P. 54(e)(1)-(2). Jadwiga requests a statutory award of her costs and attorney’s fees on appeal based on I.C. § 15-8-208.

The Trust and Estate Dispute Resolution Act (hereinafter “TEDRA”) governs all matters concerning the estates and assets of deceased persons. I.C. § 15-8-102(1)(a). Matters under this section include any question arising in the administration of an estate. I.C. § 15-8-103(1)(c). Jadwiga timely disallowed the claim filed by Heinz and sought a determination the claim was barred by the statute of limitations in Hedy’s estate. This is a question regarding the administration of the estate and within the general powers given the courts in the TEDRA statutes.

As part of TEDRA, I.C. § 15-8-208 grants the court discretion to award costs, including reasonable attorney fees in proceedings involving decedent’s estates. I.C. § 15-8-208 reads as follows:

- “(1) Either the district court or the court on appeal may, in its discretion, order costs, including reasonable attorney's fees, to be awarded to any party:**
- (a) From any party to the proceedings;**
 - (b) From the assets of the estate or trust involved in the proceedings; or**
 - (c) From any nonprobate asset that is the subject of the proceedings. The court may order the costs to be paid in such amount and in such manner as the court determines to be equitable.**
- (2) This section applies to all proceedings governed by this chapter including, but not limited to, proceedings involving trusts, decedent's estates and properties, and guardianship matters. Except as provided in section 12-117, Idaho Code, this section shall not be construed as being limited by any other specific statutory provision providing for the payment of costs, unless such statute specifically provides otherwise.”**

I.C. § 15-8-208 (emphasis added).

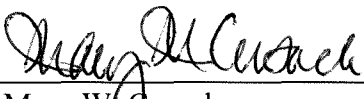
Heinz petitioned the court to allow his claim under I.C. § 15-3-806. Heinz sought an order directing the personal representative to pay his claim. Payment of allowed claims is a matter concerning the estate and is a part of the administration of the estate. The appeal to the District Court and the appeal to this Court are a result of that petition. Because Heinz sought resolution of a dispute involving an estate matter governed by TEDRA, this court may apply TEDRA's attorney fee provision. This Court may, in its discretion, award Jadwiga's costs including reasonable attorney fees from Heinz.

V. CONCLUSION

For the foregoing reasons, Jadwiga respectfully requests that this Court hold that I.C. § 15-3-111 does not create an extension or special exception to the creditor claim period set forth in I.C. § 15-3-803, reversing the District Court's ruling and affirming the ruling of the Magistrate Court. In addition, Jadwiga respectfully requests an award of costs and attorney's fees on appeal.

DATED this 18th day of April, 2017.

CUSACK LAW FIRM, PLLC.

By 
Mary W. Cusack

CERTIFICATE OF SERVICE

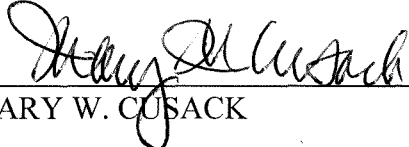
I hereby certify that on the 18th day of April, 2017, I caused a true and accurate copy of the forgoing document to be served as noted, and addressed to the following:

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