

7-13-2017

Melton v. Alt Respondent's Brief Dckt. 44768

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IN THE SUPREME COURT OF THE STATE OF IDAHO

In the Matter of the Estate of:)	DOCKET NO. 44768
)	
ROBERT ERNEST MELTON and)	Boundary County Case
HEDWIG "HEDY" MELTON,)	No. CV 2013-00313
)	
Deceased.)	
_____)	
)	
JADWIGA MELTON, Personal)	
Representative,)	
)	
Appellant,)	
)	
HEINZ ALT,)	
)	
Respondent.)	
_____)	

RESPONDENT'S BRIEF

APPEALED FROM THE DISTRICT COURT OF THE
FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO
IN AND FOR BOUNDARY COUNTY

HONORABLE JOHN R. STEGNER
District Judge

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I. STATEMENT OF THE CASE

A. NATURE OF THE CASE

This appeal arises from Summary Judgment Motion partially granted in a Memorandum Opinion issued by the Magistrate Court on October 8, 2015. R.pp.198-205. The Magistrate ruled that Heinz Alt's Creditor's Claim against the jointly probated estates of Robert Melton and Hedwig Melton was barred as against Hedwig Melton's Estate pursuant to Idaho Code § 15-3-803(a)(1). Heinz Alt also challenged the timeliness of the Estates' disallowance of his Creditor's Claim. The Magistrate Court ruled that the disallowance of the Creditor's Claim by the Estate was timely. These two (2) issues were appealed to the District Court.

On appeal to the District Court, Judge Stegner, reversed the Magistrate decision granting the Estate's Summary Judgment as to Heinz Alt's Creditor's Claim against Hedwig Melton's Estate and affirmed the Magistrate with regard to the ruling on the timely disallowance of Mr. Alt's Creditor's Claim.

B. COURSE OF THE PROCEEDINGS

This case commenced with the filing of a Petition for Summary Administration of Estate of Robert Melton ("Robert") on August 29, 2013, by Robert's wife of just three years, Jadwiga Melton ("Jadwiga"). R. pp. 10-18. Robert married Jadwiga in 2010 after his first wife, Hedwig Melton's ("Hedy") death in 2008. R. pp. 10-18.

The Will submitted for probate by Jadwiga was not properly executed or self-authenticating. R. pp. 12-17. All assets of the estate were community property of Robert and Hedy acquired during the marriage. The Trial Court entered a decree vesting the estate in Jadwiga on August 30, 2013. R. pp. 19-20.

Heinz Alt (“Heinz”) is the son of Hedy and step son of Robert, raised by Robert from a young age. Heinz filed a Motion to Convert Proceedings to Supervised Administration and to Determine Testacy on September 6, 2013. R. pp. 21-38. Following a hearing on October 15th, the Court set aside the Decree Vesting Estate in Surviving Spouse. R. pp. 39-40.

On December 9, 2014, Jadwiga, through new counsel, filed a Joint Petition for the probate of Robert Ernest Melton and Hedwig “Hedy” Melton’s Estates. R. pp. 41-44.

On January 13, 2015, Heinz filed his claim against the Estate for the sum of \$102,574.50. The verified claim sets forth a series of loans made to Robert and Hedy Melton during their lifetime by Heinz for the purpose of acquiring the land and building a home in Boundary County, Idaho, which is the primary asset identified in this Estate. R. pp. 45-54.

Following a contested hearing regarding authenticity of the 2010 Will submitted by Jadwiga, the Court entered an Order for Formal Probate of Will and Formal Appointment of Personal Representative on February 2, 2015. R. pp. 55-57.

On May 4, 2015, Heinz filed a Petition to allow his claim. R. pp. 59-68.

On June 29, 2015, the Estate filed a Motion for Summary Judgment on Heinz’s Creditor’s Claim asserting a variety of issues. R. pp. 69-91.

On October 8, 2015, the Magistrate issued its Memorandum Opinion denying the Estates’ Motion for Summary Judgment on all issues except Heinz’s Creditor’s Claim against the Estate of Hedwig “Hedy” Melton. As part of these issues, the Court also ruled on the timeliness of the Estates’ disallowance of the Creditor’s Claim that the claim was timely disallowed under the Idaho Probate Code. R. pp. 198-205.

On December 3, 2015, the Magistrate entered a Judgment in accordance with the Memorandum Opinion certifying the same under Rule 54(b). R. pp. 206-207.

Heinz filed a timely Notice of Appeal on January 13, 2016. R. pp. 208-210.

Heinz filed an Amended Notice of Appeal on March 2, 2016. R. pp. 216-218.

Following briefing and oral argument, the District Court, acting in its appellate capacity issued an Opinion on Appeal on November 30, 2016. R. pp. 317-334.

The District Court affirmed the Magistrate's Decision with regard to the Estates' timely disallowance of the Creditor's Claim, but reversed the Magistrate's ruling that Heinz's Creditor's Claim was barred under Idaho Code § 15-3-803 as against Hedy Melton's Estate. R. pp. 317-334.

On January 10, 2017, Jadwiga filed a Notice of Appeal of the District Court's decision. R. pp. 363-366.

C. STATEMENT OF FACTS

The facts here are largely undisputed and are contained within the verified Creditor's Claim filed by Heinz. Heinz is the biological son of Hedy and stepson of Robert and was raised by Robert from a young age. Heinz loaned money to Hedy and Robert for the purpose of enabling them to purchase land and build a log home on that land in Boundary County, Idaho. The land and log home are the only substantial assets of the Estates at the time of Hedy's and Robert's respective deaths. R. pp. 61-68.

The property was previously deeded to Heinz in recognition of the loan received by Robert and Hedy. These Gift Deeds were attached and submitted in supported of the Summary Judgment and other proceedings by Affidavit of Mary Cusack. R. pp. 71-75.

Subsequently, Robert and Hedy executed Wills leaving all of their estates to Heinz following which Heinz deeded the Bonners Ferry property back to Hedy and Robert. R. pp. 25-32; 369.

Hedy died August 11, 2008. No probate was filed. Less than two (2) years later, Robert married Jadwiga, a woman significantly younger than Robert. Hedy and Robert's 1998 Wills left all assets (all of which were community) to the surviving spouse and then to Heinz in the event of both deaths. R. pp. 25-32. The 1998 Wills were submitted for probate after Robert's death by Heinz in a Motion to Convert Proceedings to a Summary Administration. R. pp. 21-32.

On Robert's death, Jadwiga submitted a December 17, 2010, Will purportedly executed by Robert just a few months after marrying Jadwiga. However, all of the assets at the time of Robert's death were held as community property of Robert and Hedy. As such, the Summary Administration procedure was improper and the Court entered an Order setting aside the Decree Vesting the Estate to Surviving Spouse.

Following a contested hearing brought by Jadwiga to prove the proper execution of Robert's 2010 Will, Jadwiga was appointed as Personal Representative of the Estate in a formal appointment proceeding of the joint estates of Robert and Hedy.

Thereafter, Jadwiga filed Summary Judgment on numerous issues, most of which were denied. The Magistrate took under advisement the issue of whether Heinz's Creditor's Claim was barred by the three (3) year limitations found in Idaho Code § 15-3-803 as against Hedy's Estate. In a Memorandum Opinion, Judge Julian held that § I.C. § 15-3-803 barred the Creditor's Claim as against Hedy in the joint probate proceedings of Robert and Hedy's Estates, but that "Heinz may still proceed with his claim against

Robert's Estate". R. pp. 198-205. The Magistrate issued a Judgment on December 3, 2015. R. pp. 206-207.

This appeal followed and the District Court reversed the Magistrate Judge in an 18-page Opinion on Appeal. R. pp. 368-385.

Jadwiga filed a Notice of appeal from the District Court's decision reversing the Magistrate.

II. ISSUES ON APPEAL

- A. The District Court correctly construed the statutory language of I.C. § 15-3-111 and I.C. § 15-3-803.
- B. Contrary to Appellant's Brief, the District Court did not err in its consideration of legislative intent when construing Idaho Code § 15-3-111.
- C. The District Court properly applied rules of statutory construction when construing I.C. § 15-3-111 and I.C. § 15-3-803.
- D. Jadwiga is not entitled to her costs and attorney's fees.
- E. Respondent is entitled to his attorney's fees and costs.

III. STANDARD OF REVIEW

In cases in which the Appellate Court is reviewing the decision of the District Court sitting in its appellate capacity on a decision by the Magistrate's Court, the standard of review is as follows:

The Supreme Court reviews the trial court (magistrate) record to determine whether there is substantial and competent evidence to support the magistrate's finding of fact and whether the magistrate's conclusions of law follow from those findings. If those findings are so supported and the conclusions follow therefrom, and if the district court affirmed the magistrate's decision, we affirm the district court's decision as a matter of procedure.

Pelayo v. Pelayo, 154 Idaho 855,
859, 303 P.3d 214, 218 (2013)

However, as in this case where the District Court has reversed the Magistrate's Decision, the same standard has been applied in cases in which the District Court has reversed the Magistrate Court.

When reviewing the decision of the district court sitting in its appellate capacity, our standard of review is the same as expressed by the Idaho Supreme Court:

The Supreme Court reviews the trial court (magistrate) record to determine whether there is substantial and competent evidence to support the magistrate's findings of fact and whether the magistrate's conclusions of law follow from those findings. If those findings are so supported, and the conclusions follow therefrom, and if the district court affirmed the magistrate's decision, we affirm the district court's decision as a matter of procedure.

State v. Colvin, 157 Idaho 881,
882, 341 P.3d 598, 599 (App.2014);
quoting Pelayo v. Pelayo, supra.

“Thus, we do not review the magistrate court’s decisions. Rather, we are ‘procedurally bound to affirm or reverse the decisions of the district court’”. Bailey v. Bailey, 153 Idaho 526, 529, 284 P.3d 970, 973 (2012); quoting State v. Korn, 148 Idaho 413, 415 n.1, 224 P.3d 480, 482 n.1 (2009).

“This [C]ourt exercises free review over the lower court’s conclusions of law.... This Court also “exercises free review when interpreting the meaning of a statute”. Doe v. Doe, 162 Idaho 254, _____, 395 P.3d 1287, 1289 (2017)

The District Court properly applied the Uniform Probate Code provisions in reversing the Magistrate. This Court is asked to affirm the District Court’s decision.

IV. ARGUMENT

A. **The District Court correctly construed the statutory language of I.C. § 15-3-111 and I.C. § 15-3-803.**

Appellant's Brief argues that the District Court sitting in its appellate capacity failed to analyze and apply the plain meaning of the statutory provisions of Idaho Code § 15-3-111 and Idaho Code § 15-3-803 and that this failure was error as a matter of law requiring reversal.

Appellant's Brief further argues that the language of the statute is "precise and should be construed by its literal words". Appellant's Brief, p.13.

Appellant also argues that Idaho Code § 15-3-803 is unambiguous and clear in its language and makes no reference to Idaho Code § 15-3-111 and, therefore, the extensions of time for filing of probates found in subsection 111 should be disregarded and subsection 803 read in isolation or without reference to the remaining portions of the Probate Code.

Appellant's position is that the unambiguous language of I.C. § 15-3-803 should be read to prohibit all creditor's claims beyond the three (3) year of decedent's date of death. Appellants' position requires application of section 803 while ignoring the specific exceptions of section 111 that allow for filing a joint probate of husband and wife where the assets are community property, but more than three (3) years have elapsed from the date of death of the first spouse to die.

Appellant's legal authority for this premise is the case of Bonner County v. Cunningham, 156 Idaho 291, 323, P.3d 1252 (App., 2014). This case arises from a search warrant and seizure of cash followed by a civil forfeiture action which was

untimely filed. The sole issue arising in Bonner County v. Cunningham was Cunningham's entitled to an award of attorney's fees.

Appellant is correct that the Appellate Courts have consistently required that the interpretation of a statute "begins with its literal word" and that "[t]hose words must be given their plain, obvious and rational meaning". Bonner County v. Cunningham, 156 Idaho 291, 295, 323 P.3d 1252, 1256 (App., 2014).

The decision in Bonner County v. Cunningham cites to Verska v. St. Alphonsus Regional Medical Center, a 2011 case in which the Idaho Supreme Court notes: "The interpretation of a statute 'must begin with the literal words of the statute; those words must be given their plain, usual, and ordinary meaning; and the statute must be *construed as a whole*'". Verska v. St. Alphonsus Regional Medical Center, 151 Idaho 889, 893, 265 P.3d 502, 506 (2011) [emphasis added]; quoting In re Estate of Miller, 143 Idaho 565, 567, 149 P.3d 840, 842 (2006); also quoting State v. Schwartz, 139 Idaho 360, 362, 79 P.3d 719, 721 (2003).

Appellant asserts that the District Court's opinion did not make a finding that the statute was ambiguous when it chose to construe the statute using additional rules of statutory construction and did not engage in its own analysis of the plain language of the statute, the legislative history. Appellant's Brief, p.13

Both assertions are incorrect and misrepresent the District Court's opinion. The latter assertion also misstates the law in Idaho as stated in Verska. The District Court is not required to or should it analyze legislative history when an analysis of the plain language of the statute, as a whole, leads to clear and unambiguous application of the law.

The District Court, beginning at page 13 of its Opinion on Appeal, went through extensive analysis of the statutory provisions contained within the Idaho Probate Code, as follows:

The three year limitation for creditors in I.C. § 15-3-803(a)(1) parallels the general time limit for probating an estate. I.C. § 15-3-108 states: “No formal probate or appointment proceeding, or formal testacy or appointment proceeding, may be commenced more than three years after the decedent’s death.”

Although the general rule requires a probate action to be commenced within three years of an individual’s death, there are two exceptions to the rule. First, pursuant to I.C. § 15-3-1205, upon the death of a person leaving a surviving spouse as a sole devisee or beneficiary, the surviving spouse may file a petition for decree vesting the property in the surviving spouse with the condition that the surviving spouse (or person claiming entitlement through the surviving spouse) assume and be liable for any and all indebtedness that might be claimed against the estate of the decedent.

Second, pursuant to I.C. § 15-3-111, a joint probate may be commenced to administer the estates of two deceased spouses....”

R. pp. 329-330

The District Court, in fact, spends three (3) pages analyzing the interplay between subsection 803, 1205, 108 and 111, as well as discussing the history of the revisions or additions to the Probate Code.

Additionally, the District Court addresses and discusses the legislative purpose set forth in the 1995 amendment to subsection 111 before coming to the District Court’s final conclusion interpreting the probate code, as follows:

A basic tenet of statutory construction is that the more specific statute or section addressing an issue controls over

the statute that is more general. It is undisputed that I.C. § 15-3-111 extends the general three year time frame 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 and I.C. § 15-3-803(a)(1) are general statutes. Because the three year provision of I.C. § 15-3-108 only applies to the death of the spouse whose death occurred last, it would follow that the three year time frame set out in I.C. § 15-3-803(a)(1) would also only apply to the death of a spouse whose death occurred last in probate actions filed pursuant to I.C. § 15-3-111.

Additionally, interpreting I.C. § 15-3-803(a)(1) as barring creditors' claims against the "estate of the spouse whose death occurred first" in probate actions commenced pursuant to I.C. § 15-3-111 simply because the death occurred more than three years prior to the commencement of the probate action would produce an absurd result. This is because I.C. § 15-3-111 expressly allows "the estates of both decedents [to] be joined for probate in a single proceeding" within three years of the "death of the spouse whose death occurred last". 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. "Constructions of a statute that would lead to absurd or unreasonably harsh results are disfavored." State v. Yager, 139 Idaho 680, 690, 85 P.3d 656, 666 (2004)

R. pp. 332-333

Despite Appellants arguments, the District Court did analyze the statute (probate code) as a whole , and not just subsection 803 in isolation, as Appellant asserts should have occurred.

This is consistent with Idaho law. "The objective of statutory interpretation is to give effect to legislative intent." State v. Yzaguirre, 144 Idaho 471, 475, 163 P.3d 1183, 1187 (2007). "Such intent should be derived *from a reading of the whole act at issue.*" St. Luke's Reg'l Med. Ctr., Ltd. v. Brd. of Comm'rs of Ada Cnty., 146 Idaho 753, 755, 203 P.3d 683, 685 (2009). [emphasis added]

The District Court's opinion on appeal should be affirmed by this Court.

B. Contrary to Appellant's Brief, the District Court did not err in its consideration of legislative intent when construing Idaho Code § 15-3-111.

Appellant asserts that the District Court erred by not applying or interpreting legislative intent from Idaho Code § 15-3-111 or by failing to consider the legislative intent. Appellant's Brief, pp. 15-18.

First, Appellant's argument is incorrect and misstates the District Court's Decision. Beginning at page 15 of the Opinion on Appeal, the District Court discussed at length the legislative intent behind Idaho Code § 15-3-111. R. pp. 382-384.

Furthermore, Appellant's position is incorrect with regard to the standards for statutory interpretation as set forth by the Idaho Supreme Court.

“The objective of statutory interpretation is to give effect to legislative intent.” “Such intent should be derived from a reading of the whole act at issue.” Idaho Youth Ranch, Inc. v. Ada County Board of Equalization, 157 Idaho 180, 184, 335 P.3d 25, 29 (2014); quoting State v. Yzaguirre, 144 Idaho 471, 475, 163 P.3d 1183, 1187 (2007); also quoting St. Luke's Regional Medical Center v. Ada County, 146 Idaho 753, 755, 203 P.3d 683, 685 (2009).

As both the District Court Opinion and the Appellant's Brief acknowledge, the Court is required to interpret Idaho Code § 15-3-111 and § 15-3-803(a)(1) as part of the whole act at issue, the Idaho Uniform Probate Code adopted in 1971. I.C. § 15-1-101.

Idaho Code § 15-1-103 requires that principles of law and equity are intended to supplement the provisions of the Probate Code unless specifically “displaced” by provisions of the Probate Code. I.C. § 15-1-103.

Appellant argues that subsection 111 was adopted in 1973 to “fill certain gaps left out of the original Probate Code” and to allow estates of two (2) deceased spouses to be joined for probate in a single proceeding even when the death of the first spouse is more than three (3) years prior to the filing and would normally be prohibited under Idaho Code § 15-3-108. Appellant’s Brief, pp. 16-17.

Appellant argues that since no express reference is made to Idaho Code § 15-3-803, the legislative intent in adopting I.C. § 15-3-111 does not include an intent to expand time for creditor’s claims beyond three (3) years from the date of death, even though that subsection permits the filing of a joint probate more than three (3) years after the date of death.

In this particular case, Hedy’s death in 2008 would result in a bar to any creditor’s claim after August 11, 2011, if interpreted as Appellant argues. This absurd result would require the filing of a probate of Hedy’s Estate and a Creditor’s Claim against that estate by Heinz while Robert was still living.

Under Appellant’s interpretation of subsection 111 and 803, Robert and Hedy’s Estates (and estates like them) may be excluded from the provisions of joint probates under Idaho Code § 15-3-111, based arbitrarily on whether the second spouse survives more, or less, than three (3) years after the first spouse dies.

The District Court in its Opinion on Appeal noted the absurd result:

Additionally, interpreting I.C. § 15-3-803(a)(1) as barring creditors’ claims against the “estate of the spouse whose death occurred first” in probate actions commenced pursuant to I.C. § 15-3-111 simply because the death occurred more than three years prior to the commencement of the probate action would produce an absurd result. This is because I.C. § 15-3-111 expressly allows “the estates of

both decedents [to] be joined for probate in a single proceeding” within three years of the “death of the spouse whose death occurred last”. 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. “Constructions of a statute that would lead to absurd or unreasonably harsh results are disfavored” State v. Yager, 139 Idaho 680, 690, 85 P.3d 656, 666 (2004)

R. pp. 383-384

Contrary to Appellant’s argument, the District Court properly construed the legislative intent by analyzing and reading the whole act at issue (The Idaho Probate Code) and reconciling Idaho Code § 15-3-111 with Idaho Code § 15-3-803 and related provisions.

“Statutory interpretation begins with the ‘literal word to the statute, and this language should be given its plain, obvious and rational meaning’”. Idaho Youth Ranch, Inc. v. Ada County Board of Equalization, 157 Idaho 180, 184-5, 335 P.3d 25, 29-30 (2014); quoting Seward v. Pacific Hyde and Fur Depot, 138 Idaho 509, 511, 65 P.3 531, 533 (2003).

Additionally, the District Court’s ruling is consistent with the Probate Code’s purposes and rules of construction found at Idaho Code § 15-1-102, which states that the Code is to be “liberally construed and applied to promote its underlying purposes and policies”. Those stated policies and purposes include simplifying and clarifying the law concerning the affairs of decedents and should promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to his successors. I.C. § 15-1-102 (2017).

Appellant's argument would be counter to the purposes and rules of construction set forth above, as it would require the filing of the probate upon the death of the first spouse to die every time a creditor has a claim and the second spouse survives by three (3) years or more. This is inconsistent with the purpose set forth above.

Likewise, the District Court's Opinion on Appeal is consistent with Idaho Code § 15-1-105 which provides that the Probate Code is a general act intended as a "unified coverage of its subject matter and no part of it shall be deemed impliedly repealed by subsequent legislation if it can reasonably be avoided." I.C. § 15-1-1-5 (2017).

The District Court's Opinion on Appeal reconciles subsection 111 with subsection 803 so as not to nullify or void either provision in light of the other.

As the District Court noted, it is the obligation of the Court to interpret the statute in a manner that would not lead to an absurd or unreasonably harsh result.

For these reasons, the District Court's decision should be affirmed as reversing the Magistrate's Decision.

C. The District Court properly applied rules of statutory construction when construing I.C. § 15-3-111 and I.C. § 15-3-803.

In this section, the Appellant argues that the Court misapplied rules of construction. As asserted above, the Respondent believes that the Court did not, in fact, construe the statute, but simply applied the plain meaning of Idaho Code § 15-3-111 as an exception to the general statutory requirement that all probates be filed within three (3) years of the decedent's death. The Court then properly interpreted that Code section along with Idaho Code § 15-3-803 in such a manner as to reconcile both statutory provisions within the context of the whole Idaho Probate Code. This avoids an absurd

result. As discussed above, the District Court's analysis was proper in light of the directives on statutory interpretation set forth in prior case law and as set forth in the provisions of the Probate Code itself.

Beginning at page 19 of her Brief, the Appellant argues that the District inserted additional language into subsection 111, but at no point does the Appellant state what additional language the District Court supposedly inserted into this subsection of the probate code.

Perhaps some of the Appellant's confusion arises from her misreading of Idaho Code § 15-3-803. Appellant argues that this statutory provision imposes a "statute of limitations" on submission of creditor's claims. In fact, subsection 803 states as follows:

(a) All claims against a decedent's estate which arose before the death of the decedent, including the claims of the state and any subdivision thereof (except claims for state taxes), if not barred earlier by another statute of limitations or non-claims statute, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented within the earlier of the following dates: (1) three years after the decedent's death ...

I.C. § 15-3-803 (2017)¹

Keeping in mind the standard on summary judgments, there is a disputed fact as to whether or not Heinz's Creditor's Claim was a claim which arose before the deaths of Hedy and Robert. The verified claim indicates that Hedy and Robert were loaned money by Heinz, which initially secured by conveying title to the property to Heinz followed by execution of Wills which left the entirety of their estate to Heinz upon the second

¹ Subsection 2 of the statute is inapplicable in this case and it is not quoted here because of the language "the earlier of the following dates".

spouse's death. In other words, the record before the Court would indicate that the claim was not one which arose until after both Robert and Hedy had died, at which point the Wills executed prior to Robert's marriage to Jadwiga would have left all of their estates by bequest to Heinz as a means of repayment.

Further, when looking at the committee comments to section 803, it does not appear, as Appellant argues, that 803 was intended as a "statute of limitations" for creditors, so much as a means to expedite administration of estates.

"In 1989, the Joint Editorial Board recommended amendments to Subsection (a). The change in (1) shortens the ultimate limitations period on claims against a decedent from 3 years after death to 1 year after death. Corresponding amendments were recommended for Sections 3-1003(a)(1) and 3-1006. The new one-year from death limitation (which applies without regard to whether or when an estate is opened for administration) is designed to prevent concerns stemming from the possible applicability to this Code of Tulsa Professional Collection Services v. Pope, 108 S.Ct. 1340, 485 U.S. 478 (1988) from *unduly prolonging estate settlements and closings*. Idaho Code § 15-3-803. Uniform Law Comments (2017)

Obviously, Idaho has adhered to the three (3) year limit on presentation of claims, but the committee comments reflect a mindset that this code section is more about timely administration and closing of estates, than barring creditor claims.

Regardless of the technical aspects of the summary judgment and whether a disputed fact exists as to Heinz's claim and when it arose, the District Court properly applied the rules of statutory construction in this case.

A more logical reading of subsection of 803(a) is that the legislature intended that upon the opening of an estate and appointment of a personal representative, the time limits for “presentation” of a claim under 803 are triggered. The presumption under Idaho Code § 15-3-108 is that the estates will be opened within three (3) years of death except for those estates which qualify for a joint probate under Idaho Code § 15-3-111. Upon opening of a joint probate under I.C. § 15-3-111, as occurred in this instance, “claims against the decedent’s estates” which arose before the death of the decedent must be “presented” within three (3) years after the decedents’ death. Subsection 803 speaks in terms of presenting claims within three (3) years of the “decedent’s death”. But, which decedent’s death triggers that three (3) year time limit in a joint probate under section 111?

For these reasons, the District Court properly applied the rules of interpretation and did not “add words” to subsection 111. The District Court decision should be affirmed.

In section C.2. of the Appellant’s Brief, the Appellant argues that the District Court misapplied the rule of construction that “general statute should not be interpreted as encompassing an area already covered by one which is more specific”. Marshall v. Department of Transportation, 137 Idaho 337, 341, 48 P.3d 666, 670 (App., 2002).

The District Court properly observed that subsection 111 is a more specific statute within the probate code that provides an exception to the general rule that probate must be filed within three (3) years of the decedent’s death.

Appellant argues that subsections 803 and 111 are irreconcilable and the Court should enforce that act which was passed later in time by the legislature. Appellant

argues that since subsection 111 was last amended in 1997, whereas subsection 803 was last admitted in 2004, that 803 should be read in isolation to overrule any provisions for a later filing under the earlier passed statute in subsection 111. Appellant's Brief, p.24.

First, the two (2) statutory provisions are not irreconcilable as is demonstrated by the District Court's Opinion.

The second rule of interpretation advanced by the Appellant runs counter to long established Idaho case law. "When considering the interpretation of a particular provision... the court should look in the surrounding provisions for proper context." Idaho Department of Health and Welfare v. McCormick, 153 Idaho 468, 476, 283 P.3d 785, 793 (2012).

"Provisions should not be read in isolation but must be interpreted in the context of the entire [statute]." State v. Schulz, 151 Idaho 863, 866, 264 P.3d 970, 973 (2011); citing Farber v. Idaho State Insurance Fund, 147 Idaho 307, 310, 208 P.3d 289, 292 (2009).

The District Court's ruling reversing the Magistrate should be affirmed and was a proper application of the holding in Marshall v. Department of Transportation, that a more general statute should not overrule a more specific statute. The Appellant's arguments suggest that the Court is required to read each provision in isolation, and this is contrary to established case law.

Lastly, the Appellant in section C.3 and C.4 revisits the arguments concerning enforcement of the statutory creditor claim resulting in an absurd or unreasonably harsh outcome. Without revisiting prior argument, it is unclear what Appellant's assertions are. Beginning at pages 25 through 31 of Appellant's Brief, Appellant seems to simply restate

the purposes of Idaho Code § 15-3-111. (“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.” Appellant’s Brief, p. 26).

Appellant’s position from the beginning, seems to have been that this joint probate was unnecessary on Appellant’s theory that Robert acquired all right, title and interest to the community estate when Hedy died.

Ms. Cusack: So this idea of filing in Robert’s estate is really, it doesn’t matter because there is no claim. Anything that he would have had ended three years after Hedy’s death. I don’t see how we can – under the community property statute. It does say that spouses can bind the community property, that at her death that ended. And then three years after her death there was no opportunity, again, for Mr. Alt to say that there was any more community property. Because it just became separate property of Robert. So by – by waiting he lost his opportunity to collect if there was one.

Tr. 8-24-2015, pp. 9-10.

The Magistrate Trial Court did not accept Appellant’s legal theory, nor did the District Court on appeal.

Court: I have – I am struggling with your assertion, and I don’t really know that it’s particularly germane to the issue I have to decide, but your assertion that essentially, and correct me if I am misunderstanding it, at the instant Hedy died there was no more community property, it all became Robert’s separate property. I don’t know that I – that that makes sense that the transfer would be uh – so automatic. It seems to me that there is a community estate that would move forward in time until it’s terminated either by operation of a three year statute of limitation or by a probate decision.

Tr. 8/24/2015, p. 18, ll. 8-14

The Appellant again argues in her Brief that the Heinz's Creditor's Claim is barred against Hedy's against and, therefore, barred in its entirety, once three (3) years have lapsed following her death. She asserts that Heinz was required to file a probate of Hedy's estate in order to assert his Creditor's Claim even though that claim was a claim against both Hedy and Robert or a community obligation. The Appellant further argues that the operation of subsection 803 extinguishes the debt as against Hedy's estate and by extension of the Appellant's logic, the community property of Robert and Hedy miraculously became the separate property of Robert three (3) years following Hedy's death or after August 11, 2011.

By this theory, the Appellant argues that Heinz's Creditor's Claim against Hedy's estate is extinguished or time barred under subsection 803 and that because it was a community obligation, but the community property without benefit of any probate proceeding, became the separate property of Robert, Robert's estate is likewise free of any creditor's claim.

This theory, while creative, is not supported by any fundamental principles in either the Idaho Probate Code or community property law. Furthermore, it was a theory rejected by both the Magistrate and the District Court in oral argument and in its decision. The Magistrate's decision expressly provides that the claim may proceed against Robert's estate.

This begs the practical question that overrides this case: If the Magistrate's Decision is correct and Heinz's claim is barred three (3) years after Hedy's death, what practical effect does that have on creditors in community property estates? The assets are community assets of Robert and Hedy. If, as the Appellant argues, Hedy's interest in

the property passed to Robert three (3) years after her death and became Robert's separate property, it also passed subject to any debt owed by Hedy to Heinz.²

This absurd result as advanced by the Appellant would mean that in every case in which the marital community has a debt or obligation, the surviving spouse can extinguish that obligation by simply waiting out the creditors until the survivor dies and a joint probate is filed. For example, if husband and wife have a community credit card or mortgage debt and the wife dies first, would the husband be permitted to extinguish the balance on that debt by making minimum payments until his death then allowing his executor to claim that the debt was extinguished because more than three (3) years have lapsed since the wife's death?

This illustrates the absurdity of the Appellant's position throughout this proceeding. The District Court correctly recognized this absurd result and his decision should be upheld.

The District Court's decision should be affirmed and the matter remanded.

D. Jadwiga is not entitled to her costs and attorney's fees.

Jadwiga asserts a right to attorney's fees under Idaho Code § 15-8-208 and Idaho Rule of Civil Procedure 54.

First, the correct procedure for claiming attorney's fees and costs on appeal is I.A.R. 41, not IRCP 54. "Bank also cites Rule 54(e)(1) of the Idaho Rules of Civil Procedure. That rule does not provide any authority for awarding attorney fees." Capps v. FIA Card Services, N.A., 240 P.3d 583, 590, 149 Idaho 737, 744 (Idaho, 2010)

² For purposes of this discussion, Respondent assumes that Jadwiga will assert that Robert was not obligated on the debt.

Second, Jadwiga has not been a prevailing in this matter and should not, therefore, be entitled to any costs or attorney's fees.

Third, Jadwiga asserts, under Idaho Code § 15-8-208, that she is entitled to her attorney's fees. I.C. § 15-8-208 provides that 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 proceeding; or from any non-probate asset that is the subject of the proceedings.

In addition to Appellant not being the prevailing party, the statutory provisions cited are found in the Trust Estate Dispute Resolution Act (TEDRA). Idaho Code § 15-8-202 sets forth the procedure for commencing a judicial proceeding which might trigger the provisions of Idaho Code § 15-8-208 and the award of attorney's fees. Subsection 202 requires a commencement of a "new action" or a "action incidental to an existing judicial proceeding relating to the same trust or estate of non-probate asset".

This Court previously addressed that fees and costs may only be awarded under this statutory provision where the "TEDRA were properly invoked" by the pleading, an agreement, or a judicial action. Quemada v. Arizmendez, 288 P.3d 826, 834, 153 Idaho 609, 617 (2012)

The record contains no indication that a Trust and Estate Dispute Resolution Act judicial proceeding was ever commenced under Idaho Code § 15-8-202 nor was TEDRA invoked in the pleadings. Therefore, the attorney's fees provision found in I.C. § 15-8-208 are inapplicable. Further, Appellant is not the prevailing party and is, therefore, not entitled to attorney's fees and costs.

E. Respondent is entitled to his attorney's fees and costs.

Mr. Alt as the Respondent has been the prevailing party in this matter and is entitled to fees and costs on appeal pursuant to I.A.R. 41 and Idaho Code §12-121.

“It is well established that “[a] party claiming attorney's fees must assert the specific statute, rule, or case authority for its claim.” Eighteen Mile Ranch, LLC v. Nord Excavating & Paving, Inc., 117 P.3d 130, 134, 141 Idaho 716, 720 (2005)

“But attorney fees are not awardable as a matter of right. They should only be awarded when the court believes “that the action was pursued, defended, or brought frivolously, unreasonably, or without foundation.” Idaho Military Historical Society, Inc. v. Maslen, 329 P.3d 1072, 1080–81, 156 Idaho 624, 632–33 (2014)

Appellant's position was pursued, defended or brought frivolously, unreasonably or without foundation and Mr. Alt seeks an award of fees and costs on appeal.

V. CONCLUSION

For the reasons set forth herein, this Court is asked to affirm the District Court's decision in the Opinion on Appeal dated November 29, 2016. This Court is further asked to award the Respondent his attorney's fees and costs on appeal based upon Idaho Code § 12-121 and pursuant to the authority of Idaho Appellate Rules 40 and 41.

RESPECTFULLY SUBMITTED this 13th day of July, 2017.

FEATHERSTON LAW FIRM, ~~CHFD~~

By 

BRENT C. FEATHERSTON
Attorney for Respondent

CERTIFICATE OF MAILING

I hereby certify that on the 13th day of July, 2017, I caused a true and correct copy of the foregoing document to be served upon the following person(s) in the following manner:

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By 