



How Courts Handle Late-Filing Estate Creditors

Florida courts differ on issue of filing of late claims by reasonably ascertainable creditors

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In Florida, the personal representative of an estate must serve all known or reasonably ascertainable creditors with actual notice of the claims period.¹ But what if the personal representative doesn't do so? And, then, what if one of those reasonably ascertainable creditors files a belated claim? Is the claim barred as untimely even though the creditor was never served with actual notice?

It's a question that has been percolating throughout Florida's appellate courts in recent years. And now the Florida Supreme Court is also taking, well ... notice.

The Creditors' Claims Process

First, some background on Florida's creditors' claims process.

Florida's Probate Code requires that the personal representative of an estate publish a notice to creditors.² The Probate Code further provides that all claims are barred unless filed before the later of the expiration of three months from the first publication or, as to any creditor required to be served with a copy of the notice to creditors (that is, reasonably ascertainable creditors), 30 days after the date of such service.³ This limitations period is unusual because, as the statute expressly provides, untimely claims are barred regardless of whether the personal representative objects to the belated filing.⁴ Unless, of course, the creditor seeks an extension of time.

Since 1988, the Probate Code has allowed a creditor to seek an extension of time to file a claim after the expiration of the limitations period, but only on limited grounds – namely, fraud or estoppel.⁵ This is consistent with Florida's strong public policy in favor of closing and settling estates as soon as possible.⁶ In 1989, Florida amended Section 733.702 to add "insufficient notice of the claims period" as a basis for extending the limitations period. The amendment was a reaction to the U.S. Supreme Court decision in *Tulsa Professional Collections Servs., Inc. v. Pope*.⁷ There, the Court held that service of actual notice on reasonably ascertainable creditors is mandated by due process.

Under all circumstances, however, all unfilled claims are barred after two years from the date of the decedent's death.⁸ That's known as the non-claims period, and it means that even an otherwise well-founded motion for an extension of time to file a claim will be denied if the 2-year period has already run.

The Question

Over the last five years, Florida's First, Second, Fourth and Fifth District Courts of Appeal (incredibly, in *that* order), have each addressed the question of whether a claim is timely if it's filed by a reasonably ascertainable creditor who was never served with actual notice, even if the claim was filed *after* the expiration of three months from publication of the notice to creditors. Three of the four courts have held that such a claim isn't timely and, thus, requires that the creditor seek and obtain an extension of time, under Fla. Stat. Section 733.702(3), before filing its claim. But one appellate court, the Fourth District, has reached the opposite conclusion, holding that the limitations period for such a creditor never even begins to run when there's been no service of the notice to creditors.

All four appellate cases have the following three facts in common, which won't be repeated in the summaries below: (1) the parties agreed that the creditor had never been served with a copy of the notice to creditors; (2) the parties agreed that the creditor filed its claim after the expiration of three months from the first publication of the notice to creditors but prior to the expiration of the 2-year non-claims period;

and (3) the creditor alleged that he was a known or reasonably ascertainable creditor of the estate and, thus, was entitled to have been served with actual notice.

Morgenthau v. Estate of Andzel

In this December 2009 case, the First District affirmed an order of the probate court striking the claim at issue as untimely.⁹ The appellate court held that regardless of whether the creditor was reasonably ascertainable, the simple fact that the creditor hadn't been served with actual notice meant that the creditor's claims period "fell in the three month filing window following publication."¹⁰ Noting that "[t]he proper procedural course for untimely claims is the filing of an extension request," the court concluded that the creditor's "claim could only be considered after the probate court's grant of an extension."¹¹

Lubee v. Adams

The Second District took up the issue in *Lubee v. Adams*,¹² There, the appellate court affirmed the trial court's entry of summary judgment against a creditor who had commenced a civil lawsuit for payment for services rendered to the decedent but who had never served a timely claim.¹³ Like the First District, the Second District held that because the creditor – reasonably ascertainable or not – hadn't been served with actual notice, he either had to file his claim within three months of publication of the notice to creditors or seek an extension of time to file a later claim.¹⁴

Golden v. Jones

By December 2013, it was the Fourth District's turn for a bite at this particular apple. In *Golden v. Jones*,¹⁵ the appellate court reversed an order striking the claim at issue as untimely. The court remanded the case to the probate court for a determination as to whether the creditor was, as he alleged, a known or reasonably ascertainable creditor of the estate. The court considered this to be a threshold question because "if a known or reasonably ascertainable creditor is never served with a copy of the notice to creditors, the statute of limitations set forth in section 733.702(1), Florida Statutes, never begins to run and the creditor's claim is timely if it is filed within two years of the decedent's death."¹⁶ Accordingly, the Fourth District concluded that no motion for an extension of time is required when: (1) the creditor is reasonably ascertainable, (2) wasn't served with actual notice, and (3) filed the claim before the expiration of the 2-year non-claims period.

Souder v. Malone

The Fifth District is the most recent arrival to the party. In *Souder v. Malone*,¹⁷ the appellate court expressly sided with the First and Second Districts, affirming an order striking the claim at issue as untimely. The Fifth District characterized the Fourth District's decision as an "apparent holding that the remedy for a personal representative's failure to serve a known or reasonably ascertainable creditor" is a determination that the limitations period does not begin to run.¹⁸ The Fifth District disagreed, holding instead that the remedy of the creditor in this situation is to seek an extension of time under subsection (3) of Section 733.702, which specifically includes, as a basis for an extension, insufficient notice of the claims period.¹⁹

Florida Supreme Court Review

Recognizing that its decision in *Golden v. Jones* diverged from the prior decisions reached by its sister courts, the Fourth District certified the issue to the Florida Supreme Court. The Supreme Court accepted jurisdiction and briefing is underway, but a date for oral argument hasn't yet been scheduled.²⁰

Endnotes

1. Fla. Stat. Section 733.2121(3)(a).
2. Fla. Stat. Section 733.2121(1).
3. Fla. Stat. Sections 733.702(1), 733.2121(3).
4. *Morgenthau v. Estate of Andzel*, 256 So. 3d 628, 631-32 (Fla. 1st DCA 2009) (citing cases).
5. Fla. Stat. Section 733.702(3).
6. *Morgenthau*, *supra* note 4 at 630-31.
7. *Tulsa Professional Collections Servs., Inc. v. Pope*, 485 U.S. 478 (1988).
8. Fla. Stat. Section 733.710.

9. *Morgenthau*, *supra* note 4 at 629.
10. *Ibid.* at 632.
11. *Ibid.*
12. *Lubee v. Adams*, 77 So. 3d 882 (Fla. 2d DCA 2012).
13. *Ibid.* at 883.
14. *Ibid.* at 884.
15. *Golden v. Jones*, 126 So. 3d 390 (Fla. 4th DCA 2013).
16. *Ibid.* at 390.
17. *Souder v. Malone*, 143 So. 3d 486 (Fla. 5th DCA 2014).
18. *Ibid.* at 489.
19. *Ibid.*
20. *Jones v. Golden*, 147 So. 3d 524 (Fla. 2014).