FILED
OCT 23 1990
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-276 / 89-1495

IN THE MATTER OF THE ESTATE OF JOHN HESLINGA, JR., DECEASED.

CARTER C. CROOKHAM, DONALD GREGORY, PHYLLIS GREGORY HAYES and IOWA TRUST AND SAVINGS BANK,

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Appellants,

vs.

WARREN D. HESLINGA, Executor of the Estate of JOHN HESLINGA, JR.,

Appellee.

Appeal from the Iowa District Court for Mahaska County, Richard J. Vogel, Judge.

Claimants appeal a district court ruling denying their claim in probate based upon a real estate contract. **AFFIRMED.**

Hugh V. Faulkner of McCoy, Faulkner & Broerman, Oskaloosa, for appellants.

Gerold F. Heslinga of Heslinga, Heslinga, Dixon & Grotewold, Oskaloosa, for appellee.

Heard by Oxberger, C.J., and Donielson and Habhab, JJ.

OXBERGER, C.J.

In November of 1979, John Heslinga, Jr. entered into a contract with the claimants to purchase land. John Heslinga, Jr. died on June 15, 1988, leaving a balance due on the principal of about $76,500.

Notice to creditors of appointment of the executor was given by publication on July 5, 1988 and July 12, 1988. On July 21, 1988, the attorney for the estate wrote the claimants a letter advising them of the decedent's death, the pendency of his estate, the appointment of Warren Heslinga as executor, and that the Heslinga law firm represented the executor.

On March 17, 1989, the claimants filed their claim against the estate of the decedent with respect to the real estate contract. The executor disallowed the claim as untimely filed. At the court hearing the court file in the estate of the decedent was admitted into evidence in its entirety and no oral testimony was taken. The district court entered a ruling September 1, 1989 also disallowing the claim because it was untimely filed. The claimants appealed.

One issue presented in this case is whether there was a lack of due process in the notification of the claimants so as to avoid the Iowa Statute of Limitations.

We review this case for correction of errors at law. Iowa R. App. P. 4. The trial court's findings of fact bind

us if supported by substantial evidence. Iowa R. App. P. 14(f)(1). We are not, however, bound by the trial court's determinations of law and are free to decide whether the trial court's findings were induced by legal error. Raymon v. Northwest Bank National Association, 414 N.W.2d 661, 663 (Iowa App. 1987).

The appellants contend the trial court erroneously denied their claim because the mail notice given them as creditors was inadequate as required by the fourteenth amendment to the United States Constitution as decided in Professional Collection Services v. Pope, 485 U.S. 478, 108 S.Ct. 1340, 99 L.Ed.2d 565 (1988). The appellants also contend that the notice failed to meet the requirements of Iowa Probate Rule 7 and the Iowa Code as amended.

The claimants make a reference in their August 28, 1989 response to request for admissions that the July 1988 letter sent to them by the estate's executor does not comply with Pope or Iowa law. The claimants failed to explain to the trial court why the letter failed to comply with due process, or Iowa law and which section of the Iowa Code the letter did not comply with. The trial court relied on Chapter 633.410 of the Iowa Code in finding the claim barred for failure to file it within four months after the date of the second publication of notice to creditors.

The Supreme Court in Pope only requires that if a claimant's "identity as a creditor was known or 'reasonably ascertainable,' then the Due Process Clause requires that [claimant] be given '[n]otice by mail or other means as certain to ensure actual notice.'" Id. at 585 U.S. at 491, 108 S.Ct. at 1348 99 L.Ed.2d at 576 (quoting Mennonite Board of Missions v. Adams, 462 U.S. 791, 800, 103 S.Ct. 2706, 2712, 77 L.Ed.2d 180, 188 (1983)). Since the appellants failed to present to the trial court the contentions stressed in their brief of why the letter failed to ensure actual notice we will not consider them for the first time on review. In re Marriage of Boyd, 200 N.W.2d 845, 850 (Iowa 1972).

Chapter 633.410 of the Iowa Code in March of 1988 when the executor denied the appellant's claim against the estate provided:

> All claims against a decedent's estate, other than charges, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract or otherwise, are forever barred against the estate, the present representation, and the distributees of the estate, unless filed with the clerk within four months after the date of the second publication of the notice to creditors.

The legislature amended section 633.410, effective July 1, 1989 to provide for personal notification of creditors, but this amendment does not require retroactive application. The Appellants filed their

claim March 17, 1989, it seems illogical to allow the appellants to take advantage of a notification statute that became effective after they filed their claim. The July 1988 letter provided all the information that the amendment required except the time bar. "[C]hanges in procedural law will not be applied to pending actions where it is not feasible to do so or will work an injustice in the particular case." Brewer v. Iowa Dist. Ct., 395 N.W.2d 841, 842 (Iowa 1986).

The July 1988 letter did place appellants on notice of a need to protect their claim by contacting the clerk of court prior to March 17, 1989. Chapter 633.424 of the Iowa Code provides that "[c]ontingent claims which cannot be allowed as absolute debts shall, nevertheless, be filed in the court and proved." Consequently, it is irrelevant whether the contract between the claimants and the estate was in default during the time of the July 1988 notices.

Rule 7 of Probate Procedure which applied to all estates pending on or after September 1, 1988 and essentially required the same personal notice ultimately codified in the 1989 amendment to Iowa Code section 633.410 might have caused a different result since the estate was still pending on September 1, 1988, but the claimants failed to present the applicability of Probate Rule 7 to the trial court and

therefore we will not address their brief arguments regarding Rule 7. In re Marriage of Boyd, 200 N.W.2d at 850. This situation is analogous to those in which nonspecific objections fail to preserve error. We find that appellants failure to direct the district court to any Iowa case law or statutes relating to the requirements of notice to creditors in probate proceedings served as a waiver of the issue on appeal. Cf. Rhiner v. City of Clive, 373 N.W.2d 466, 476(Iowa 1985)(Even if a rule of evidence would have barred admissibility of evidence, the issue will not be addressed where objection at trial raised another rule of evidence.)

We find that the district court correctly found the appellants' claim against the Heslinga estate to be barred by the statute of limitations applicable to section 633.10 of the Iowa Code and in this case the July 1988 letter did provide adequate notice with respect to the law as it stood at the time the claimants received the letter of notification from the executor in July 1988. This holding does not affect any lien the appellants may hold against the real estate.

AFFIRMED.