FILED
AUG 29 1985
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

HARVEY V. NOEL,

Plaintiff-Appellant,

vs.

JEROME D. NOEL, Fiduciary of the Estate of CHARLES E. NOEL,

Defendant-Appellee.

Filed August 29, 1985

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5-233
84-1346

Appeal from the Iowa District Court for Scott County - Linda K. Neuman, Judge.

Claimant appeals contending the trial court erred in determining his claim was barred by the statute of limiations. REVERSED AND REMANDED.

Harold C. Lounsberry, Davenport, for plaintiff-appellant.

Michael J. McCarthy, of McCarthy & McCarthy, Davenport, for defendant-appellant.

Considered by Oxberger, C.J., and Schlegel, and Sackett, JJ.

Harvey Noel filed a claim in probate in the estate of his father Charles E. Noel. The claim as filed stated it was for work, materials, and rent concerning certain real estate therein described. Attached to the claim was an exhibit itemizing the claim. The claim was verified and met the requirements of Iowa Code section 633.418 (1985)[1] which provides:

> No claim shall be allowed against an estate on application of the claimant unless it shall be in writing, filed in duplicate with the clerk, stating the claimant's name and address, describing the nature and the amount thereof, if ascertainable, and accompanied by the affidavit of the claimant, or someone for the claimant, that the amount is justly due, or if not yet due, when it will or may become due, that no payments have been made thereon which are not credited, and that there are no offsets to the same, to the knowledge of the affiant, except as therein stated. If the claim is contingent, the nature of the contingency shall also be stated. The duplicate of said claim shall be mailed by the clerk to the personal representative or the personal representative's attorney of record.

The executor filed a notice of disallowance (section 633.439) of the claim, and Harvey filed a request for hearing (section 633.442) and a petition in support of the claim. The petition was in two divisions. Division I claimed improvements were made at decedent's request and were payable at decedent's death. Division II claimed decedent with the intent to deceive Harvey had agreed Harvey would receive one-fifth of the farm at decedent's death and Harvey could then buy the remainder. Harvey claims he relied on these promises and improved the farm. Harvey contends that although decedent left the farm to others, Harvey should be compensated for the improvements made.

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[1] The 1985 Code section is the same as the 1973 Code section except for two minor clarifications made since 1973.

The request for hearing and petition in support of claim were filed February 19, 1974. The executors did not answer until April 5, 1982. In 1983 Harvey filed an amendment to his request for hearing. The amendment states that there was no written contract for the services, but the decedent knew the work was being done and accepted the benefits, and the estate should be responsible for same. The parties and the trial court determined that this division sought recovery on a quantum merit theory.

The estate moved to strike the amendment. Their motion was denied. The estate then filed an answer in which they alleged an affirmative defense and claimed Harvey's claim was barred by the statute of limitations. The case was subsequently tried and the trial court determined Harvey was barred from preserving his claim on quantum merit because his claim was not filed within six months following the date of the second publication of notice to creditors.

Harvey appeals this ruling contending his claim in probate was in general terms and the petition which was more specific was not a necessary pleading but merely amplified the original claim. We agree. Iowa Code section 633.444 provides:

> Within twenty days from the filing of the request for hearing on a claim, the personal representative shall move or plead to said claim in the same manner as though the claim were a petition filed in an ordinary action, and thereafter, all provisions of law and Rules of Civil Procedure applicable to motions, pleadings and the trial of ordinary actions shall apply; provided, however, that a restatement of such claim shall not be barred by the provisions of 633.410.

Iowa Code § 633.444 (1985)[2][emphasis added].

REVERSED AND REMANDED.

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[2] The 1985 Code section is the same as the 1973 Code section except for a minor word change.