IN THE COURT OF APPEALS OF IOWA

No. 8-491 / 97-2144

KENT STEWART,

Claimant-Appellant,

vs.

DIANA L. DEMOSS, Personal Representative of the Estate of KENDRA L. PEARSON,

Respondent-Appellee.

FILED
OCT 29 1998
CLERK SUPREME COURT

Appeal from the Iowa District Court for Monroe County, Daniel P. Wilson, Judge.

The claimant appeals from a probate court ruling dismissing his claim against the estate of the deceased on the ground he was not a reasonably ascertainable claimant. **REVERSED.**

Paul D. Hietbrink and Miranda L. Hughes of Brown, Winick, Graves, Gross, Baskerville & Schoenebaum, P.L.C., Des Moines, for appellant.

Garold F. Heslinga of Heslinga, Heslinga, Dixon & Smith, Oskaloosa, for appellee.

Heard by Sackett, P.J., and Huitink and Vogel, JJ.

SACKETT, P.J.

Claimant-appellant Kent Stewart contends the district court erred in dismissing his claim against the Estate of Kendra L. Pearson because it was not timely filed. We reverse.

On March 21, 1995, Diana DeMoss was issued letters appointing her executor of the Estate of Kendra L. Pearson. DeMoss published a notice of her appointment and a notice to creditors in the Albia Union-Republican on March 30, 1995 and April 6, 1995. Claimant lived with decedent at the time of her death and they were engaged to be married. No notice was served or sent to claimant, although he received a letter dated March 25, 1995, from the attorney for the estate identifying the attorney and the personal representative.

On July 18, 1996, nearly fifteen months after the second publication to creditors, claimant filed his claim contending he and decedent owned property in joint tenancy. He contended and it was agreed he and decedent owned an Astro van. The van was financed with GMAC. Both claimant and decedent signed as co-buyers and agreed with GMAC as a co-buyer he or she was responsible for the entire debt.

The executor gave notice denying the claim and claimant requested a hearing. The matter was submitted to the district court on stipulated facts. The district court dismissed the claim as untimely, citing Iowa Code section 633.410 (1995),[1] and found

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[1] **633.410 Limitation on filing claims against decedent's estate.**

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 personal

claimant was not a reasonably ascertainable creditor.

Claimant and decedent had purchased property together, including the Astro van. When decedent died, claimant became the sole titleholder of the Astro van as the surviving joint tenant. At the time, the balance owed GMAC on the van was $17,709.46. GMAC made no claim against the estate. Claimant paid the balance due on the contract on May 27, 1995.

Claimant contends he is entitled to contribution from the estate and, while the vehicle passed to him by virtue of the joint tenancy contract, decedent remains responsible for one-half the debt. He cites *In re Estate of Tollefsrud*, 275 N.W.2d 412 (Iowa 1979), as support for this proposition.

Claimant contends the district court erred in finding he was not a reasonably ascertainable creditor. Claimant contends he was reasonably ascertainable and entitled to written notice.

A creditor whose identity is known to the executor is a claimant whose identity is reasonably ascertainable and mailed notice is necessary to commence the period of limitation for filing claims. *In re Estate of Renwanz*, 561 N.W.2d 43, 45 (Iowa 1997).

> representative, and the distributees of the estate, unless filed with the clerk within the later to occur of four months after the date of the second publication of the notice to creditors or, ***as to each claimant whose identity is reasonably ascertainable, one month after service of notice by ordinary mail to the claimant's last known address.*** However, notice is not required to be given by mail to any creditor whose claim will be paid or otherwise satisfied during administration and the personal representative may waive the limitation on filing provided under this section. This section does not bar claims for which there is insurance coverage, to the extent of the coverage, or claimants entitled to equitable relief due to peculiar circumstances.

Iowa Code § 633.410 (1995) (emphasis added).

The question is one of statutory construction. *Id.* In addressing the issue, we apply the principle of statutory construction that says courts do not favor statutes of limitations. *Id.* When two interpretations are possible, the preferred interpretation is the one allowing a litigant to seek relief for a longer period. *Id.*; *see also Harden v. State*, 434 N.W.2d 881, 884 (Iowa 1989).

The statutory language clearly says if the identity of a claimant is reasonably ascertainable, the claimant's action is not barred until one month after service of notice by ordinary mail. The identity of the claimant was known to the executor, as was the fact he and decedent had purchased personal property together.

The stipulated facts provide the executor was aware of claimant's claim under the GMAC contract no later than April 1, 1995, some five days before the publication of the second notice to creditors. Claimant's claim is not barred under section 633.410.

We must, therefore, determine if claimant has proved his claim. In *Tollefsrud*, the Iowa Supreme Court allowed a claim by the widow for payment of one-half the note secured by a mortgage on real estate that had been transferred to the widow as joint tenant. *Tollefsrud*, 275 N.W.2d at 418. In doing so, the court in a case of first impression adopted a majority position that determined contribution is a right that flows from the debt and is not affiliated with the security. Applying the rationale of *Tollefsrud*, we find claimant is entitled to contribution for one-half the debt.

The parties stipulated the correct amount of the claim is $8895.23 plus ten percent interest from February 20, 1995 until May 27, 1995, and then to accrue at the statutory rate. Claimant's claim against the estate is established in said amount.

The trial court is reversed.

REVERSED.