

STATE OF MINNESOTA
COUNTY OF CARVER

FILED
APR 11 2017
CARVER COUNTY COURTS

DISTRICT COURT
FIRST JUDICIAL DISTRICT

Court File No. 10-PR-16-46

In Re: Estate of:

Prince Rogers Nelson,

Deceased.

**ORDER GRANTING
PERSONAL REPRESENTATIVE'S
MOTION TO DISMISS**

The above-entitled matter came on for hearing before the Honorable Kevin W. Eide, Judge of District Court, on April 7, 2016, at the Carver County District Court, 604 East Fourth Street, Chaska, Minnesota 55318, pursuant to the Personal Representative's motion to dismiss claims against the Estate asserted by Cousins Law APA. Mark Greiner, Esq. and Joseph Cassioppi, Esq. appeared on behalf of the Personal Representative, Comerica. Patrick Cousins, Esq. appeared on behalf of claimant Cousins Law APA.

The Court, having been duly advised in the premises, and based upon the pleadings, arguments, and all files and records herein, makes the following:

ORDER

1. The Personal Representative's motion to dismiss the claims against the Estate asserted by Cousins Law APA is GRANTED. The claims against the Estate asserted by Cousins Law APA are DISMISSED WITH PREJUDICE.
2. The attached Memorandum is incorporated herein by reference.

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT:

Dated: April 10, 2017



The Honorable Kevin W. Eide
Judge of District Court

I do hereby certify that the foregoing Order constitutes the Judgment of this Court.

Kristin Halbersma Trebil
Court Administrator

Dated: April 11, 2017


Deputy

NOTICE: A true and correct copy of this Order/Notice has been served by EFS upon the parties. Please be advised that orders/notices sent to attorneys are sent to the lead attorney only.

MEMORANDUM

This matter is now before the Court pursuant to the Personal Representative's motion to dismiss claims against the Estate asserted by Florida attorney Patrick Cousins. Mr. Cousins submitted a claim to Bremer Trust, N.A., the former Special Administrator, on September 2, 2016, stating his firm, Cousins Law, has an outstanding account with the Decedent for legal services rendered in the amount of \$599,735.63. No itemization or detail of the alleged services provided was included with the claim, however in Mr. Cousins' September 2, 2016 letter he states the balance due includes "amongst other things, representing Prince in a contested divorce." That divorce proceeding was concluded on October 2, 2007.

On October 18, 2016, the Special Administrator sent Mr. Cousins a Notice of Disallowance of Claim, stating "Your claim will be barred unless you file a petition for allowance with the Court or commence a proceedings against the Special Administrator not later than two months after the mailing of this notice to you." Mr. Cousins was originally sent a denial that did not pertain to his firm's claim. After correspondence with the counsel for the Special Administrator, Mr. Cousins asserts he received the correct denial letter on October 27, 2016. On December 6, 2016, Mr. Cousins, on behalf of Cousins Law APA filed with the Court his Written Statement of Claim. On February 8, 2017 he then filed a petition for allowance of claim. On February 28, 2017, the Personal Representative filed the motion to dismiss Cousins Law's claims presently before the Court.

Counsel for the Personal Representative and Mr. Cousins agree the record in this matter consists of:

- (1) Claimant's Petition for Allowance of Claim Previously Disallowed and Petition for Hearing filed February 8, 2017;
- (2) Comerica Bank & Trust, N.A.'s Memorandum in Support of Motion to Dismiss Cousins Law, APA's Petition for Allowance of Previously Disallowed Claim;
- (3) Cousins Law APA's Response to Comerica's Motion to Dismiss;
- (4) Comerica Bank & Trust, N.A.'s Reply in Support of Motion to Dismiss Cousins Law,

- APA's Petition for Allowance of Previously Disallowed Claim; and
- (5) All affidavits and attachments to the foregoing, including the Written Statement of Claim filed December 6, 2017.

Legal Analysis

A complaint which fails to state a claim upon which relief can be granted must be dismissed. Minn. R. Civ. P. 12.02(e). In considering a motion to dismiss pursuant to Rule 12.02, a complaint's allegations must be accepted as true and viewed in the light most favorable to the plaintiff. *North Star Legal Found. v. Honeywell Project*, 355 N.W.2d 186, 188 (Minn. Ct. App. 1984), review denied (Minn. Jan. 2, 1985). The only question before the court is whether the complaint sets forth a legally sufficient claim for relief. *Elize v. Commissioner of Public Safety*, 298 N.W.2d 29, 32 (Minn. 1980). Whether the claimant can prove the facts alleged is immaterial. *Id.* A claim prevails against a motion to dismiss if it is possible on any evidence which might be produced, consistent with the pleader's theory, to grant the relief demanded. *Geldert v. American Nat'l Bank*, 506 N.W.2d 22, 25 (Minn. Ct. App. 1993) (citations omitted), *review denied* (Minn. Nov. 16, 1993). A pleading will be dismissed only if it appears to a certainty that no facts, which could be introduced consistent with the pleading, exist which would support granting the relief demanded. *Id.*, *citing Northern States Power Co. v. Franklin*, 122 N.W.2d 26, 29 (Minn. 1963).

In order to present a claim against an estate, a claimant may deliver or mail to the personal representative a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed, or may file a written statement of the claim, in the form prescribed by rule, with the court administrator. Minn. Stat. §524.3-804(1) (2016). The claim is deemed presented on the first to occur of receipt of the written statement of claim by the personal representative, or the filing of the claim with the court. *Id.*

If a claim is denied by the personal representative, the claimant may commence a proceeding against the personal representative. Minn. Stat. §524.3-804(2).

If a claim is presented under subsection (1), no proceeding thereon may be commenced more than two months after the personal representative has mailed a notice of disallowance, [...] or in any case, to avoid injustice the court, on petition, may order an extension of the two month period, but in no event shall the extension run beyond the applicable statute of limitations. Minn.

Stat. §524.3-804(3) (2016).

By referring to a written statement of claim in paragraph (1) of the statute and a proceeding against the personal representative in paragraph (2) of the same statute, it is obvious the legislature intended that these be separate forms and separate segments of a proceeding. One is a written statement which may be filed with the personal representative or the court. The other is the initiation of a legal proceeding.

Cousins Law first presented its claim to the Special Administrator on September 2, 2016. The Special Administrator mailed its notice of disallowance to Cousins Law on October 18, 2016. While the initially attached “Notice of Disallowance of Claim” referred to a claim submitted by a James Brandon, and not Cousins Law, the cover letter clearly notified Mr. Cousins that his claim was being denied. Mr. Cousins acknowledges that he did receive the correct “Notice of Disallowance of Claim” on October 27, 2016. That notice informed Mr. Cousins that his claim would be barred unless he filed a petition for allowance with the Court or commenced a proceeding against the Special Administrator not later than two months after the mailing of the notice. It is unclear when the correct notice was sent to Mr. Cousins, however resolving the matter in his favor by using October 27, 2016, he would have had until December 27, 2016 by which to file his petition for allowance.

After receiving the notice of disallowance of his claim, instead of filing a petition for allowance with the Court, on December 6, 2016 Mr. Cousins filed a Written Statement of Claim, making the same assertions as those presented to the Special Administrator. Mr. Cousins did not file his Petition for Allowance of Claim Previously Disallowed and Petition for Hearing until February 8, 2017.

As stated above, Minn. Stat. §524.3-804 provides that a claim is deemed presented on the first to occur of receipt of the written statement of claim by the personal representative, or the filing of the claim with the court. Mr. Cousins’ filing of his Written Statement of Claim with the Court on December 6, 2017 had no effect because he had already filed his claim with the Special Administrator, and the claim had been disallowed. His Petition for Allowance of Claim Previously Disallowed filed February 8, 2017 was filed at least 43 days after it was due.

Mr. Cousins has argued his Written Statement of Claim should be deemed a timely filed

petition for allowance of disallowed claim. As noted above, the Written Statement of Claim failed to provide notice to the Court or the Special Administrator that Cousins Law was petitioning the Court for allowance of the claim. Minn. Stat. §524.3-804 et. seq. set forth the procedures for filing a claim against an estate, the deadlines applicable to claimants and personal representatives alike, and the procedures for contesting the disallowance of a claim. Mr. Cousins is a licensed attorney in the State of Florida, with sponsoring local counsel. He and his local counsel are presumed to be aware of local statutes, or at least capable of discovering and complying with our statutory requirements. The Written Statement of Claim filed December 6, 2016 was not a petition for allowance of claim as required by statute, and the Court will not deem it as such.

The parties to this motion agreed that the Motion to Dismiss was being filed under Rule 12.03 of the Minnesota Rules of Civil Procedure. In Comerica Bank & Trust, N.A.'s Memorandum in Support of Motion to Dismiss Cousins Law, APA's Petition for Allowance of Previously Disallowed Claim, Comerica raises the defense that the Petition filed by Cousins Law, if deemed to be timely filed, should be dismissed because it fails to present a claim within the applicable statute of limitations.

Rule 12.03 states, in part, "If, on such motion, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided for in Rule 56, and all parties shall be given reasonable opportunity to present all materials made pertinent to such a motion by Rule 56." Rule 56.05 of the Minnesota Rules of Civil Procedure provides, in part, "When a motion for summary judgment is made and supported as provided in Rule 56, an adverse party may not rest upon the mere averments or denials of the adverse party's pleadings but must present specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party."

Here, after being given notice of the defense of a violation of the statute of limitations, Cousins Law did not provide any billing statements showing work done during the applicable statute of limitations. Instead, Cousins Law relies solely on the "mere averments or denials of the adverse party's pleadings."

As noted above, to avoid injustice the court, on petition, may order an extension of the two month period, but in no event shall the extension run beyond the applicable statute of limitations.

Minn. Stat. §524.3-804(3) (2016). The Court notes that Mr. Cousins has not filed a petition or motion requesting an extension of the two month period, and that even had he done so, the Court is not convinced that such an extension is warranted based upon the applicable statute of limitations.¹

Mr. Cousins did ask the Court to grant him an extension if the Court found that the Written Statement of Claims he filed with the Court on December 6, 2016 was not sufficient to preserve his claim. However, Cousins Law again did not make any affirmative showing that the extension is warranted based upon the applicable statute of limitations. There is nothing in the record to support this claim.

Because Mr. Cousins' Petition for Allowance of Claim Previously Disallowed filed February 8, 2017 was filed at least 43 days after it was due, it was not timely pursuant to §524.3-804(3). Furthermore, nothing in the record indicates that the claims of Cousins Law are not barred by the applicable statute of limitations. As a result, the Personal Representative's motion to dismiss the Cousins Law claim is hereby GRANTED.

K.W.E.

¹ Pursuant to Minn. Stat. §524.3-804(3), an extension of time to file a petition for allowance of a disallowed claim may not be filed if the extension would run beyond the applicable statute of limitations. Mr. Cousins claims his firm is owed for legal services for "amongst other things, representing Prince in a contested divorce." That divorce proceeding concluded on October 2, 2007. While Mr. Cousins' firm may have represented Decedent in connection with post-divorce or other matters, he has completely failed to make an affirmative showing that his claims are not precluded by Minnesota's six year statute of limitation. See Minn. Stat. §541.05, Subd. 1(1) (2016).