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Executors and Administrators - Allowance and Payment of Claims - Courts

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EXECUTORS AND ADMINISTRATORS – ALLOWANCE AND PAYMENT OF CLAIMS – COURTS

Plaintiff was injured in an automobile accident involving a collision between the car in which he was riding and one driven by Candido Martinez. Martinez died as a result of the accident and the defendant named in the suit was Mary Martinez, administratrix of the estate of Candido Martinez. Summons and complaint in the action was served on the administratrix in the district court and on the same day a claim arising from the accident was filed by plaintiff in the county court. This action was taken seven months after the issuance of letters. The county court found that the claim was not filed within the time prescribed by the non-claim statute,[1] and could not be considered by the court. The district court action was dismissed without prejudice due to the lack of jurisdiction over the defendant and over the subject matter. The Supreme Court of Colorado deciding the question of jurisdiction between the county and district courts held: the county and district courts have concurrent jurisdiction; the issuance of letters does not give the county court exclusive jurisdiction; the district court may entertain jurisdiction over a claim against an estate of a deceased tort-feasor. *Ohmie v. Martinez,* 349 P.2d 131 (Colo. 1960).

This case should be studied by Colorado attorneys for two reasons. First, it must be recognized that the Supreme Court specifically refused to comment on how a judgment obtained in such a manner could be enforced. Thus, the case could create a trap for the careless attorney. Second, this case changes what many attorneys previously thought was law in Colorado.

The underlying problem is that a claim against an estate must be filed in the county court within six months of the issuance of letters, and if not filed within the six month period such claims are barred forever against the listed assets of the estate.[2] This statutory requirement pertains to contingent as well as liquidated claims.[3]

There is no way to avoid filing a claim against the estate in the county court if a plaintiff wants satisfaction from the listed assets of the estate. It must also be noted that an action instituted in the district court within the six month limitation is not sufficient notice to stop the running of the non-claim statute.[4] If the plaintiff wishes to bring an action against an estate in the district court, he must institute that suit within six months of the issuance of letters and also must file a claim in the county court against the estate within six months of the issuance of letters. If the aforementioned procedure is followed, the barrier of priority of jurisdiction in the county court is removed because the action is originally instituted in the district court. The only reason a claim is filed in county court is to stop the running of the non-claim statute.

1 Colo. Rev. Stat. § 152-12-2 (1953).
2 *Ibid.*
3 *Ibid.*
4 Gordon-Tiger Mining and Reductions Co. v. Loomer, 50 Colo. 415, 115 Pac. 717 (1911).

For example, one situation which would warrant the institution of a claim against an estate in the district court would be a case of joint tort-feasors, one of whom has subsequently died. If the entire action is brought in the county court the plaintiff may satisfy his claim against the deceased tort-feasor in full without limitation, but would be limited to $2,000 as to the other living tort-feasor.[5] If an action against the deceased joint tort-feasor is brought in the county court and action against the living joint tort-feasor is brought in the district court, to avoid this limitation, there is the possibility of having two different verdicts, along with the increased expense.

Barring a situation as above outlined or a situation similar to that in the *Ohmie* case, there is virtually no reason to institute a claim against an estate in the district court. If the claim arises out of a probate matter the county court can dispose of it without limitations.[6] If an attorney fails to file a claim within the six month period and is thereby precluded from proceeding in the county court, but is allowed to proceed in the district court (*i.e.*, the situation in the *Ohmie* case), how can a judgment be satisfied if one is acquired?

The leading case on satisfaction of judgment against an estate where a claim has not been filed within the statutory period is *McKinzie v. Crook*,[7] where the court held that the judgment shall be paid only from the estate or property of the deceased not inventoried or accounted in the county court.

In the *Ohmie* case all known assets were inventoried along with an indemnity policy. It would appear that under the *McKinzie* decision a judgment creditor would be unable to satisfy his judgment against the estate. It will be recalled that the plaintiff in this case did not comply with the statutory requirement of filing a claim within six months. It is debatable whether such insurance policy may be inventoried, since there appears to be no authority on this question in Colorado. The policy stipulates that the insured shall become legally obligated, and that the insurance company shall pay in behalf of the insured. This insurance policy meets the requirements of the Colorado Safety Responsibility Law;[8] in contrast to a policy that requires an insured to sustain an actual loss before reimbursement, and to reimburse the insured, which is not in compliance with the Colorado Safety Responsibility Law.[9] In the instant case the proceeds will not be paid to the estate and the estate will never come into possession of the money, because the money is to be paid in behalf of the estate and not to it. The actual relationship of this insurance policy or its proceeds to the estate is a "chose in action." A "chose in action" is used in contradiction to a "chose in possession." It is used when the title to the money or property is in one person and the possession is in another.[10] This means that the proceeds of the policy never became part of the

5 Colo. Rev. Stat. § 37-6-1 (1953).
6 *Ibid.*
7 110 Colo. 24, 129 P.2d 906 (1924), see First Nat. Bank v. Hotchkiss, 49 Colo. 593, 114 Pac. 310 (1911) (analogous holding). It is unusual to find uninventoried or unaccounted-for assets.
8 Colo. Rev. Stat. § 13-7-23 (1953).
9 Pioneer Co. v. Cosby, 125 Colo. 468, 244 P.2d 1089 (1952). This case does not deal directly with the Colorado Responsibility Law, but does present a good discussion on the two types of indemnity policies.
10 Higbee v. State, 74 Neb. 331, 104 N.W. 748 (1905).

estate until reduced to possession, and cannot be reduced to possession because the proceeds of the policy are to be paid in behalf of the estate and not to it; therefore, such proceeds would not appear to be capable of being inventoried as part of the estate. Consequently, the plaintiff may not be precluded from satisfying a valid judgment against the estate because his claim was not filed within the statutory period.

In seeking further possibilities of satisfaction of a valid judgment under these circumstances, it should be noted that an injured third person who has a valid judgment against the insured may be subrogated to the rights of the insured, and can maintain an action directly against the insurance company.[11]

Still another possibility of satisfying a judgment under these circumstances would be garnishment of the insurance company.[12] This procedure might prove to be more efficient and economical because the institution of a new suit is not required after judgment has been obtained.

The *Ohmie* case has changed the accepted view that a suit against a decedent's estate cannot be commenced in the district court after letters of administration have been issued by the county court, and has apparently overruled the dictum in *Koon v. Barmettler*,[13] and the decisions in *Weller v. Bank of Vernal*[14] and *Meyers v. Williams*,[15] which were based on the *Koon* dictum.

It will be noted that the Colorado Constitution confers on the district court original jurisdiction of all causes both at law and in equity, and such appellate jurisdiction as may be conferred by law.[16] It further provides that the county court shall have original jurisdiction in all matters of probate, settlement of estates of deceased persons, appointment of guardians, conservators, and settlement of their accounts.[17]

Cases interpreting these sections of the constitution show that the district court may entertain a claim against an estate. In *Loveland v. Sears*,[18] the court held that the district and county courts have concurrent jurisdiction. *Bennet v. Poudre Valley Nat'l Bank*[19] held that in an action involving the estate of a deceased person, both the county and the district courts have jurisdiction over the subject matter of litigation. *People v. Barton*[20] held that the county court is not given exclusive jurisdiction, even in matters of probate as defined by the constitution.

Note, however, the dictum of the *Koon* case, decided in 1956:

> Where no action is pending in another court against a deceased party prior to the issuance of letters in a county

11 Richardson v. Subscribers at Inter-Ins. Exchange of Chicago Motor Club, 291 Ill. App. 606, 9 N.E.2d 488 (1937); Lachemeyer v. Central Mutual Ins. Co. of Chicago, 284 Ill. App. 391, 2 N.E.2d 177 (1936).
12 Fleming v. Baxter, 20 Colo. 238, 38 Pac. 57 (1894).
13 134 Colo. 221, 301 P.2d 713 (1956).
14 137 Colo. 32, 321 P.2d 216 (1958).
15 137 Colo. 325, 324 P.2d 788 (1958).
16 Colo. Const. art. VI, § 11.
17 Colo. Const. art. VI, § 23.
18 1 Colo. 194 (1870).
19 129 Colo. 107, 267 P.2d 647 (1954).
20 16 Colo. 75, 26 Pac. 149 (1891).

> court and the county court is sitting in probate it has exclusive jurisdiction in its broadest sense to hear and determine all claims presented, and a claimant has no option to file suit in another court after issuance of letters. CRS '53, 152-1-8 grants the right of appeal from the county court to the district court in probate matters, but in any event, the county court is the first and proper forum under the situation set forth in this paragraph.[21]

The conflict appears to arise when a case is cited which states that after the jurisdiction of the county court attaches in a probate matter it cannot be ousted by a district court decree,[22] or alternatively, as held in *Marshall v. Marshall*,[23] the district court has exclusive jurisdiction to hear this probate matter since the action was commenced in the district court. These holdings are based merely on the fact of priority of jurisdiction, which stipulates that when two courts have concurrent jurisdiction over the same subject matter, the one first acquiring jurisdiction in the particular case will retain it to the exclusion of the other.[24]

In accordance with the Colorado Rules of Civil Procedure,[25] it is apparent that the *Weller* and *Meyers* cases, based on the *Koon* dictum, are in error when they state that the issuance of letters of administration gave the county court jurisdiction. Under this analysis the court in deciding the *Ohmie* case arrived at the proper result.

The decision in the *Ohmie* case seems to be a most equitable one in allowing the plaintiff to have his day in court even though he has not complied with the proper statutory procedure by filing a claim against the decedent's estate within the time prescribed by the non-claim statute, and thereby rendering satisfaction of judgment negligible. However, after reviewing the decision in this case, it is evident that a claim against a decedent's estate may be instituted in either the county or district court. It is also evident that if a plaintiff is precluded from bringing his action in the county court because of failure to comply with the non-claim statute, he may bring the suit in the district court even though the problem of satisfaction of a judgment remains uncertain. The effect of this decision for a litigant in a similar situation may be that he has won a moral victory only, because he is unable to satisfy his judgment.

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21 134 Colo. 221, 301 P.2d 713 (1956).

22 Colorado Nat'l. Bank v. McCue, 80 Colo. 55, 249 Pac. 3 (1926).

23 11 Colo. App. 505, 53 Pac. 617 (1898).

24 People ex rel. Lofgren v. County of Adams County, 107 Colo. 357, 111 P.2d 1059 (1949); Parks v. Wilcox, 6 Colo. 489 (1883).

25 Colo. R. Civ. P. 3 (a) (b). Under the Colorado Rules of Civil Procedure, a civil action is commenced by the filing of a complaint with the court or by service of summons.