

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 05/26/15

DEPT. 51

HONORABLE MITCHELL L. BECKLOFF

JUDGE

M. FREGOSO

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

A. ALBA, CA

Deputy Sheriff

NONE

Reporter

8:30 am

BP117321

Counsel for
Petitioner

In Re the Matter of:
JACKSON, MICHAEL JOSEPH -DECEDE
*TRANSF TO DEPT 51 PER MO 4/15/
*AFFIDAVIT OF PREJUDICE FILED
7/13/13;**
R/T BS132820, SC114598 and
SC115988, BC508502, BC50825

NO APPEARANCES

NATURE OF PROCEEDINGS:

RULING ON SUBMITTED MATTER

(Motion for Summary Judgment - Wade Robson's Late Claim Petition)

This matter is before the court on the Estate's summary judgment motion seeking summary judgment against Wade Robson on his Petition for Order to Allow Filing of a Late Claim Against the Estate.

The Estate's Request for Judicial Notice is granted.

Evidentiary objections: All objections except objection 4 are sustained. Objection 4 is overruled. (There is explanation of the court's ruling on the evidentiary objections in the transcript of the oral proceedings.) The court finds that Deputy District Attorney Zonen's declaration sufficiently authenticates the exhibits in issue.

The Probate Code contains a series of statutes governing presentation and payment of a decedent's creditors. (See Prob. Code sec. 9000 et seq.) These creditor claims statutes promote "the public policy of protecting the decedent's estate from creditors' stale claims." (Dacey v. Taraday (2011) 196 Cal.App.4th 962, 986.) "Probate Code section 9000 et seq. [] operate to ensure that stale creditors' claims will not be presented years

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later." (Ibid.) "The focus of the statutes requiring strict compliance with the time limits for filing a creditor's claim is to promote the expeditious distribution of the assets of a decedent's estate." (Gertner v. Superior Court (1993) 20 Cal.App.4th 927, 932 n. 3.)

In this case, plaintiff concedes that his claim against the Estate is late under the relevant statutes and that he cannot satisfy the requirements of Probate Code section 9103 or Code of Civil Procedure section 366.2. Plaintiff argues, however, that his inability to satisfy these statutes is of no consequence. Plaintiff asserts equitable estoppel prevents the personal representatives of the Estate from relying on either or both statutes to bar his claim in these Probate proceedings.

Even without plaintiff's concession that he cannot satisfy the creditor's claim provisions of the Probate Code, the undisputed facts in this matter establish that plaintiff's creditor's claim was not timely filed under Probate Code section 9103: Undisputed facts 19, 6, 7, 9, 13, 22 and 23 establish that plaintiff had actual knowledge of the administration of the estate in February 2011 (or, at the latest, sometime in the last quarter of 2011). Undisputed fact 30 establishes that plaintiff knew of the facts reasonably giving rise to the existence of the claim no later than May 8, 2012. (This is the date that plaintiff disclosed

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the alleged sexual abuse to another person, his therapist. Probate Code section 9103, subd. (a)(2)'s focus is on knowledge of the facts reasonably giving rise to the existence of the claim not knowledge that the creditor has a cause of action. As acknowledged by plaintiff in these proceedings, plaintiff's claim is not one involving repressed memory.)

(To the extent facts 9, 23 and 30 are disputed or disputed in part, the dispute largely lies in how matters are characterized or paraphrased in the pleadings. The alleged "dispute" concerning the facts, however, is immaterial and does not change the court's analysis.)

Accordingly, under the scenario most favorable to plaintiff, the non-moving party, the Probate Code required plaintiff to file his creditor's claim no later than 60 days from May 8, 2012 or by July 7, 2012. (Prob. Code sec. 9103, subd. (a)(2).) July 7, 2012 is the date on which 60 days would have run from the time that plaintiff had knowledge of (1) the administration of the estate and (2) the facts reasonably giving rise to the existence of the claim. (This finding is based on the undisputed facts set forth above.)

[Arguably, the July 7, 2012 deadline might be extended by a few months. See undisputed fact 31 wherein plaintiff references sharing his "very

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personal information," "extremely sensitive legal matter," and "truth of [his] past" with over 30 individuals. This email, sent on September 7, 2012, further suggests plaintiff had knowledge of the facts "reasonably giving rise to the existence of the claim" ("extremely sensitive legal matter") by sometime prior to the email date, September 7, 2012. The result of the Probate Code section 9103 analysis herein, however, would not be any different if the court used September 7, 2012 as the date plaintiff had knowledge of the facts reasonably giving rise to the claim. Using the September date as the date by which plaintiff first had knowledge of the facts reasonably giving rise to the existence of the claim, plaintiff would have been required to file his claim in the Probate case in early November 2012 to satisfy the late creditor claims statute. Again, while knowledge that plaintiff had a cause of action is not the relevant inquiry under Probate Code section 9103, subd. (a)(2), it appears - although it is not clear - that plaintiff understood he had a cause of action against the decedent no later than September 7, 2012.]

Plaintiff did not file this petition to file a late claim until May 1, 2013. His claim is late and plaintiff is not permitted to file a late claim in this Probate case under Probate Code section 9103, the statute that addresses late claims. His claim is barred as it was filed 8 to 10 months after the relevant statutory deadline.

<p align="center">MINUTES ENTERED 05/26/15 COUNTY CLERK</p>
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[As discussed during the hearing on the motion, the court need not address Code of Civil Procedure section 366.2. Probate Code section 9103, subdivision (f) merely specifies that a fiduciary may not rely on section 9103 to authorize an allowance or approval of a claim once filed if that claim is barred by Code of Civil Procedure section 366.2. (See Prob. Code sec. 9253.) Accordingly, if the court authorized the filing of a late claim, a personal representative must still evaluate whether the claim should be approved and/or allowed. The filing of a late claim does not authorize its allowance and/or payment by the fiduciary if the claim is otherwise barred by Code of Civil Procedure section 366.2. Where a late claim is barred by the one year statute of limitations of Code of Civil Procedure section 366.2, the personal representative would likely be under a duty as a fiduciary to reject the claim. The creditor could then file suit on the rejected claim. (Prob. Code sec. 9353.) The one year statute of limitations set forth in Code of Civil Procedure section 366.2 could then be raised by the personal representative in that civil action as a bar to the claim.]

Despite his inability to satisfy Probate Code section 9103, plaintiff contends that equitable estoppel prevents the Estate's representatives from asserting the plaintiff's claim was not timely filed. Plaintiff relies on the alleged bad acts of

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the decedent (the underlying basis for his claim against the Estate) to support his equitable estoppel claim. Based on the decedent's bad acts giving rise to the claim, plaintiff contends that "the Executors should be estopped from asserting any limitations period as a bar." (Opposition p. 18 [emphasis omitted].)

In contrast to the decedent's alleged behavior underlying plaintiff's claim, plaintiff has not identified any action by the Estate's representatives to support his equitable estoppel claim against them. Thus, the issue before this court on this motion is whether the decedent's acts can be used to estop the Estate's representatives from asserting plaintiff's claim was not timely filed under Probate Code section 9103.

Equitable estoppel is codified in Evidence Code section 623. That section provides: "Whenever a party has, by his own statement or conduct, intentionally and deliberately led another to believe a particular thing true and to act upon such belief, he is not, in any litigation arising out of such statement or conduct, permitted to contradict it."

"A party claiming an estoppel must prove four elements: (1) the party to be estopped must know the facts; (2) the estopped party must intend that his conduct shall be acted upon or must act in a way

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that causes the other party to believe that was his intent; (3) the party asserting estoppel must be unaware of the true facts; and (4) he must detrimentally rely on the other party's conduct." (Estate of Bonzi (2013) 216 Cal.App.4th 1085, 1106.)

Certainly, equitable estoppel has been applied in the context of Probate Code late creditor claims proceedings. (See, e.g., Bautello v. Bautello (1998) 64 Cal.App.4th 842, 848; Katz v. A.J. Ruhlman & Co. (1945) 69 Cal.App.2d 541, 544-545.)

"Executors of estates may be estopped, by their conduct and statements, from asserting a failure to file a claim under the Probate Code as a bar to claims against estates." (Estate of Bonzi, supra, 216 Cal.App.4th at 1106.)

In Probate proceedings wherein estoppel was asserted by a creditor to excuse non-compliance with the creditor claims statutes, however, it was the actions of the estate's personal representative -- not the decedent -- that provided the foundation for the estoppel. In Battuello, for example, an estate's representative convinced a claimant not to file a claim. After the statute of limitations passed, the claimant learned that the estate's representative had made a false promise and he had been duped. The estate's representative was thereafter estopped to argue Code of Civil Procedure section 366.2's one-year statute of limitations because of her misleading conduct.

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An analysis of the estate's representative's actions - not the decedent's -- in evaluating equitable estoppel is consistent with the focus on the parties before the court in Evidence Code section 623 and applicable case law. The party to be estopped in a Probate proceeding is the estate representative. It would always be an estate representative who asserts the time limitations of Probate Code section 9103 and Code of Civil Procedure section 366.2.

Here, there are no acts alleged against the Estate's representatives that would justify an estoppel asserted against them in a proceeding to file a late creditor's claim. While plaintiff conflates the Estate representatives and the decedent in his estoppel argument, it is the Estate representatives who are the parties to this Probate proceeding. As there is no evidence that the Estate's representatives did or said anything that prevented plaintiff from filing his claim, plaintiff cannot establish the elements of equitable estoppel against them.

This proceeding to file a late claim is a Probate proceeding. It is distinct from a civil action filed on a rejected creditor's claim. "The jurisdiction of the probate court is a jurisdiction in rem, the rem being the estate of the decedent which is to be administered and distributed with regard to the rights of creditors, devisees,

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legatees and the world; by giving the notice prescribed by the statute, the entire world is called before the court, and the court acquires jurisdiction over all persons for the purpose of determining their rights to any portion of the estate, and every person who may assert any right or interest therein is required to present his claim to the court for its determination, and the decree is binding upon him if he fails to appear and present his claim, as if his claim, after presentation had been disallowed by the court." (Condee, 1 California Practice, Probate Court Practice (West 1964) p. 21. See also Estate of Bonanno (2008) 165 Cal.App.4th 7, 17 (in rem proceeding over decedent's property).)

To support his extension of treating the acts of the decedent as the acts of the Estate representatives for purposes of estoppel, plaintiff argues, "there is substantial legal precedent that supports the application of equitable estoppel and related equitable doctrines to the acts of a decedent in California and other jurisdictions." (Opposition p. 13.) Those cases, however, are distinguishable and do not address late filed claims.

In Waugh v. Lennard (1949) 69 Ariz. 214, for example, the creditors submitted timely claims based on promissory notes to the estate's representative. (Id. at 220 ("that within the time for presenting claims Evelyn H. Morehouse presented her claim upon

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the two promissory notes in question, which claim was rejected by the executrix; and that thereafter and within the time for presenting claims, Evelyn H. Morehouse and R.J. Morehouse, her husband, duly presented their amended claim for the indebtedness evidenced by the two promissory notes, which said amended claim was thereupon rejected by the executrix".) The claimants thereafter brought a civil action against the estate on the rejected claims. The estate representative sought to dismiss the civil action based in part on the statute of limitations having run on the underlying promissory notes. The claimants asserted that the decedent's acts during his lifetime operated as an equitable estoppel against any statute of limitations claim in that civil action. The Arizona Supreme Court agreed with the claimants.

The results under California law would be the same. (See, e.g., Klein v. Farmer (1948) 85 Cal.App.2d 545, 551.) After a creditor's claim is rejected, the creditor may file a civil action. In that civil litigation, the estate representative "stands in the shoes of the decedent." (Waugh v. Lennard, supra, 69 Ariz. at 228.) The creditor may assert claims and defenses against the estate representative that s/he could have asserted against the decedent.

Estate of Howarth (1981) 108 Mich.App.8 from the Michigan courts, also relied upon by plaintiff, appears to be in accord. While the facts are

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somewhat difficult to discern, it appears that a "contested claim [on a promissory note] against an estate" resulted in a civil action wherein the claimant prevailed. In the civil action, there was an issue concerning an accord and satisfaction as well as the statute of limitations on the note. The decedent's actions were examined to determine whether equitable estoppel should prevent the estate from asserting the statute of limitations as a bar. The claimant was successful in demonstrating that the decedent's actions acted as an equitable estoppel.

Fields v. Michael (1949) 91 Cal.App.2d 443, a California case, also relied upon by plaintiff, is similar. In Fields, the claimant timely filed a creditor's claim in the Probate proceeding. After the timely claim was rejected by the estate representative, the claimant brought a civil action against the estate. In that civil action, the decedent's actions were central and relevant to claimant's claim against the decedent's estate.

Neither Waugh v. Lennard, Estate of Horwarth nor Fields v. Michael support plaintiff's position here. All three cases are consistent with California law and address civil actions brought against an estate after a timely creditor's claim was rejected. In both Waugh and Fields, it is clear that the underlying creditor's claim was a timely creditor's claim.

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[In conflating the acts of the Estate representatives with those of the decedent for estoppel consideration, Plaintiff cites to a broad statement in Arizona's Waugh v. Lennard that, "[u]nquestionably the executrix (defendant) stands in the shoes of decedent for as stated in Re Brandt's Estate 67 Ariz. 42, 190 P.2d 497, 499: 'There is such a privity between a decedent and the personal representative of his estate that an estoppel arising by reason of the decedent's conduct may be asserted against his representative.'" Plaintiff argues that this language supports his position that the Estate's representatives and the decedent should be treated as one and the same for purposes of equitable estoppel and a late-filed creditor's claim.

In re Brandt's Estate concerned a family allowance for the decedent's alleged surviving spouse, a claim made against assets of the estate. (Cf. Prob. Code section 6540 and 11420, subd. (a)(5).) There was no issue in the case concerning the timeliness of the surviving spouse's family allowance claim. The decedent's acts and equitable estoppel were relevant to whether the claimant was, in fact, a surviving spouse and therefore entitled to an allowance from the estate.

In re Brandt's Estate cited American Jurisprudence as the source for its statement that, "There is such

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a privity between a decedent and the personal representative of his estate that an estoppel arising by reason of the decedent's conduct may be asserted against his representative." In re Brandt's Estate also supported the statement with a citation to Moore v. Croft (1929) 47 Idaho 572.

American Jurisprudence (Second Edition) provides the following rule on the issue: "A decedent and a personal representative of the decedent's estate are in sufficient privity that an estoppel arising from the decedent's conduct may be asserted against the representative. In other words, if the decedent would have been estopped, his or her estate is estopped." (28 Am. Jur. 2d (2015) Estoppel and Waiver, sec. 126.)

As support for its statement, America Jurisprudence relies on cases that do not involve late creditor's claims. Estate of Trigg (1967) 102 Ariz. 140 is similar to In re Brandt's Estate and concerned the marital status of the decedent and whether his actions could estop others (presumably the decedent's heirs) from claiming that the person seeking to be his personal representative was not his wife. Peterson v. Spohrer (1972) 257 So.2d 284, like Waugh v. Lennard and Estate of Horwarth, involved civil litigation against an estate and the decedent's actions as they related to the claim in that civil litigation. Penn v. Pemberton & Penn, Inc. (1949) 189 Va. 649 also dealt with civil

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litigation and the effects of the decedent's actions on the claim.

Finally, In re Brandt's Estate appears to rely on Moore v. Croft, supra, 47 Idaho at 572 merely for a general statement of the law on equitable estoppel. Moore v. Croft does not concern a decedent's estate.]

Plaintiff's position herein is further undermined when the underlying policy of the creditor's claim statutes is considered. As noted earlier, the Probate Code's claim statutes are designed to prevent stale claims and promote "expeditious distribution of the assets of a decedent's estate." (Gertner v. Superior Court, supra, 20 Cal.App.4th at 932 n. 3.) Plaintiff's position would open probate estate administration to substantial uncertainty and possible delay as well as the potential for litigation against distributees of an estate. (See Prob. Code sec. 9392.)

Nonetheless, even assuming plaintiff's position is correct and equitable estoppel could be asserted against the Estate's representatives based on the decedent's acts, both parties before the court recognize that any such estoppel exists only for a reasonable period of time after any violence, intimidation or threatening conduct by the decedent ceases. (See, e.g., John R. v. Oakland Unified School Dist., (1989) 48 Cal.3d 438, 446. See also

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Opposition, p. 14, 16.) Plaintiff argues that such a determination necessarily requires a factual finding by the court.

This court acknowledges that estoppel is ordinarily a factual issue for the trier of fact. (John R. v. Oakland Unified School Dist. (1989) 48 Cal.3d at 444.) However, where facts are undisputed "and only one reasonable conclusion can be drawn from them, whether estoppel applies is a matter of law." (Estate of Bonanno, supra, 165 Cal.App.4th at 22. See also V.C. v. Los Angeles Unified School Dist. (2006) 139 Cal.App.4th 499, 517 [estoppel claim fails as a matter of law on the facts].)

Here, the undisputed material facts establish that the decedent died on June 25, 2009. (Defendant's Fact 1.) Plaintiff was last molested by the decedent in 1997. (Defendant's Fact 5.) Plaintiff knew in June 2009 that the decedent died. (Defendant's Fact 6.) Plaintiff knew at the time of the decedent's death in June 2009 that it was a crime for an adult to engage in sexual conduct with a minor. (Defendant's Fact 26.) Plaintiff understood in June 2009 that minors are not criminally prosecuted when an adult engages in sexual conduct with them. (Defendant's Fact 27.)

Additional undisputed material facts from plaintiff establish that plaintiff filed his petition in these Probate proceedings when he was 30 years old.

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*AFFIDAVIT OF PREJUDICE FILED

7/13/13;**

R/T BS132820, SC114598 and

SC115988, BC508502, BC50825

NATURE OF PROCEEDINGS:

(Plaintiff's Fact 1.) During the molestation (between 1990 and 1997), the decedent told plaintiff that he could not tell anyone about the molestation because their "lives and careers would be over."

(Plaintiff's Fact 11.) The sexual abuse stopped when plaintiff was 14 years old. (Plaintiff's Fact 23.) The decedent told plaintiff when plaintiff was 11 years old that both he and the decedent would "go to jail for the rest" of their lives if anyone found out about the sexual conduct. (Plaintiff's Fact 30.) Plaintiff testified when he was 11 years old in a court proceeding that "no sexual acts had occurred between him" and the decedent.

(Plaintiff's Fact 33.) As plaintiff got older, he would see the decedent "once a year and talk to him on the phone two or three times a year."

(Plaintiff's Fact 36.) In 2005, in connection with criminal proceedings involving the decedent (when plaintiff was 23 years old), plaintiff denied in the trial that he had been sexually abused by the decedent.

(Plaintiff's Fact 43.)

The facts establish that as of the time of the decedent's death, in June 2009, the decedent could no longer take any action against plaintiff; any intimidation or threats ceased on that day in June 2009 when the decedent died. (The only threat alleged by plaintiff in his undisputed facts is Fact 30. That fact states that when plaintiff was 11 years old, the decedent told plaintiff they could go

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 05/26/15

DEPT. 51

HONORABLE MITCHELL L. BECKLOFF

JUDGE

M. FREGOSO

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

A. ALBA, CA

Deputy Sheriff

NONE

Reporter

8:30 am

BP117321

Counsel for
Petitioner

In Re the Matter of:

JACKSON, MICHAEL JOSEPH -DECEDE

NO APPEARANCES

*TRANSF TO DEPT 51 PER MO 4/15/

*AFFIDAVIT OF PREJUDICE FILED

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NATURE OF PROCEEDINGS:

to jail for engaging in the sexual conduct.) Plaintiff knew in June 2009 that he could not be prosecuted for the decedent's molestation of him. As plaintiff knew of the facts giving rise to the claim well before the decedent died (this is not a claim based on repressed memory) and that any threats from the decedent ceased upon his death, it would have been reasonable for plaintiff to present his claim to the Estate in a manner consistent with the time limits of the Probate Code. Stated differently, even assuming the elements of equitable estoppel could be satisfied here, based on the undisputed material facts, it was unreasonable for plaintiff not to have complied with the time limits of the Probate Code. Any threat or intimidation ended upon the decedent's death.

To the extent that plaintiff asserts that, "Probate Code section 9103 and Code of Civil Procedure section 366.2 are simply inapplicable to [plaintiff's] claims, as he was psychologically incapable of complying with those statutes at the time they began to run," the argument seems to suggest that plaintiff's claim was tolled. (See Code of Civ. Proc. sec. 352, subd. (a).) Plaintiff concedes, however, that tolling is not an issue in this case. (Code of Civ. Proc. sec. 366.2, subd. (b).) Plaintiff correctly notes that equitable estoppel is an issue only because the applicable time deadlines for his claim have already run.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

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A. ALBA, CA

Deputy Sheriff

NONE

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Petitioner

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NATURE OF PROCEEDINGS:

Based on the foregoing, the court finds that the Estate is entitled to judgment and the motion is granted.

Plaintiff's Petition for Order to Allow Filing of a Late Claim Against the Estate is denied.

The Estate shall prepare an order.

The clerk shall give notice.

CLERK'S CERTIFICATE OF MAILING

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the

MINUTE ORDER

upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in LOS ANGELES, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 05/26/15

DEPT. 51

HONORABLE MITCHELL L. BECKLOFF

JUDGE

M. FREGOSO

DEPUTY CLERK

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A. ALBA, CA

Deputy Sheriff

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NATURE OF PROCEEDINGS:

Dated: 5/26/15

Sherri R. Carter, Executive Officer/Clerk

By: _____

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