

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2013 IL App (4th) 120367-U

NO. 4-12-0367

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
January 4, 2013
Carla Bender
4th District Appellate
Court, IL

In re: the Estate of FLOYD G.)	Appeal from
ISRINGHAUSEN, Deceased,)	Circuit Court of
MARY JANE ISRINGHAUSEN,)	Jersey County
Petitioner-Appellant,)	No. 09P2
v.)	
BRUCE ISRINGHAUSEN; SUSAN ISRINGHAUSEN;)	
GARY ISRINGHAUSEN; JUDY KUEBRICH; and)	
ROGER ISRINGHAUSEN and CLAYTON)	
ISRINGHAUSEN, Coexecutors of the Estate)	Honorable
of FLOYD G. ISRINGHAUSEN,)	Eric S. Pistorius,
Respondents-Appellees.)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Appleton and Pope concurred in the judgment.

ORDER

- ¶ 1 *Held:* (1) The petitioner's failure to comply fully with Illinois Supreme Court Rule 341(h)(7) is not so egregious as to warrant dismissal of her appeal.
- (2) The trial court erroneously dismissed the petitioner's claim against decedent's estate as untimely filed, because petitioner, a creditor whose name and address were known or reasonably ascertainable, was not provided the requisite notice under section 18-3 of the Probate Act of 1975 (755 ILCS 5/18-3 (West 2008)) and her claim was filed well within the applicable deadline of section 18-12(b) (755 ILCS 5/18-12(b) (West 2008)).
- (3) Any decision on whether the trial court properly sustained the estate's objections to certain discovery requests is premature.
- ¶ 2 On July 22, 2009, petitioner, Mary Jane Isringhausen (Jane), filed two actions against the estate of her husband, Floyd Isringhausen, a "Renunciation of Will" and

"Claim Against Estate," seeking certain marital property and a life estate in the marital residence. In June 2011, this court affirmed the summary-judgment order that ended Jane's action to renounce Floyd's will. *In re Estate of Isringhausen*, 2011 IL App (4th) 100811-U, ¶ 2. Jane's "Claim Against Estate" remained.

¶ 3 After this court's June 2011 order, Jane filed various discovery requests. The estate objected to such requests and moved to dismiss Jane's "Claim Against Estate" as untimely. On March 22, 2012, the trial court sustained the estate's objections to Jane's discovery requests. Five days later, the court dismissed Jane's action as untimely. Jane appeals the orders, arguing (1) her petition was timely filed; (2) the court erroneously failed to consider the applicability of the commingling section of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/503(c) (West 2008)), and (3) the court should have compelled the estate to comply with her discovery requests. We reverse and remand.

¶ 4 I. BACKGROUND

¶ 5 Floyd and Jane were married in September 1981. At the time, Floyd was 59 years old and Jane was 51. Floyd had five adult children from his first marriage. Jane also had an adult child from a previous marriage. When the two were married, Floyd owned three farms and Jane worked as a director of libraries for the Jerseyville public schools.

¶ 6 Floyd, wanting to pass his interest in his farms to his children upon his death, asked Jane to sign an "antenuptial agreement." This agreement, dated September 4, 1981, provided the following regarding the "[o]wnership of after-acquired [p]roperty":

"All property acquired by either future husband or future

wife, or by both of them, after solemnization of the marriage, whether real or personal, shall be jointly owned property of the parties as tenants in common, including all rents, issues, profits and proceeds of the property, with each owning a one-half undivided interest therein."

During the marriage, the farm provided Floyd and Jane's income.

¶ 7 In May 2007, Floyd amended his will. This will was ultimately entered into probate. In it, Floyd referenced the antenuptial agreement:

"I give the family automobile, four[-]wheel pickup and camper, to my wife. *It is my position* that any livestock or machinery that I own at my death is not affected by the above[-] referenced Antenuptial Agreement. While those items were purchased after my marriage to Jane, they were replacements of machinery and livestock that I had before marriage and not additional property that could be considered property acquired after marriage, as intended by the language in (4)F of the Antenuptial Agreement whereby my spouse would own a one-half interest in said items. It is my desire and direction that these items, in their entirety, pass by the residuary section of my Will. *If my interpretation is not correct*, then the camping trailer and truck which I am not bound by the Antenuptial Agreement to give to [] Jane, shall be distributed according to the residuary section of this Will." (Emphasis added.)

¶ 8 Floyd died in December 2008. On January 8, 2009, Floyd's son Roger Isringhausen and Floyd's nephew Clayton Isringhausen filed a petition for probate of will and for letters testamentary. Roger and Clayton also filed Floyd's May 2007 last will and testament, which referenced the antenuptial agreement. The following day, Roger and Clayton were appointed coexecutors of the estate and letters of office were issued.

¶ 9 Beginning January 21, 2009, and ending February 4, 2009, a claim notice was published in the Jersey County Journal, a weekly newspaper. The claim notice stated, in part, "[c]laims against the estate may be filed in the office of the clerk of the Circuit Court *** or with the representative or both on or before July 15, 2009, and any claim not filed within that period is barred."

¶ 10 In February 2009, the estate filed a petition for recovery citation, seeking a lawn mowing tractor from Floyd's grandson, Brandon Egelhoff. Jane was not a party in this action, but she testified at the March 2009 hearing on the matter.

¶ 11 On July 22, 2009, Jane filed a "Renunciation of Will" and a "Claim Against the Estate." These two documents sought alternative relief. Regarding the "Renunciation of Will," Jane sought a finding the antenuptial agreement was unenforceable. In her claim against the estate, Jane seeks her share of the marital property and the life estate in the family home provided according to the antenuptial agreement.

¶ 12 In June 2010, Jane sought declaratory and summary-judgment relief, requesting the trial court find the antenuptial agreement unenforceable as a matter of law. Approximately one month later, the estate filed a cross-motion for summary judgment, seeking a finding the antenuptial agreement was enforceable. In September 2010, the trial court

entered summary judgment for the estate. In June 2011, this court affirmed.

Isringhausen, 2011 IL App (4th) 100811-U, ¶ 2.

¶ 13 On September 15, 2011, Jane served the estate with various discovery requests. These requests include a request to admit facts, seeking the admission or denial of four statements regarding 2007 and 2008 rents from the farm:

- "1. At the time of Floyd Isringhausen's death, 2007 rents were held in a Certificate of Deposit in the approximate amount of \$100,000 at Farmers State Bank.
2. No part of the rents was paid to Jane Isringhausen.
3. 2008 rents in the approximate amount of \$100,000 were paid to the Estate of Floyd Isringhausen.
4. None of the 2008 rents have been paid to Jane Isringhausen."

Jane also served a supplemental interrogatory and a supplemental request for production.

¶ 14 On September 29, 2011, the estate filed objections to Jane's discovery requests and moved to dismiss Jane's claim against the estate pursuant to section 18-12 of the Probate Act of 1975 (Act) (755 ILCS 5/18-12 (West 2010)). The estate maintained, in part, Jane's request to admit facts and other discovery requests sought the admission of disputed facts and irrelevant information. Regarding the motion to dismiss, the estate asserted it had provided a publication notice pursuant to section 18-3 of the Act, Jane had actual notice of the estate and the probate proceedings, and Jane failed to file her claim within the six-month period specified in the published notice.

¶ 15 On March 22, 2012, the trial court sustained the estate's objections to Jane's discovery requests. The court observed, in February 23, 2012, it gave Jane's counsel "seven days within which to present any Illinois case law which says that property that was non-marital that is subject to the [antenuptial agreement] and that the use of the income off of that by that party, in terms of gifts to the other party, somehow converts that[,] making it marital." The court stated Jane, instead of providing an answer to the above issue, presented "a new argument that the decedent had, by taking income from non-marital property identified in the [antenuptial agreement] and putting that income into a joint account and had commingled that income thereby making it marital." The court found this argument to be, "in essence, a claim against the estate based upon commingling non-marital assets into a joint account and whether or not the decedent had the right to remove those funds, which apparently ended up in a [certificate of deposit,] payable on death to his children." The court determined this was a new claim made outside the claim period for filing new claims.

¶ 16 Five days later, the trial court entered a written order dismissing Jane's "Claim Against Estate" as untimely. This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 A. Errors In Jane's Statement Of Facts Do Not Necessitate
The Dismissal of Her Appeal.

¶ 19 The estate first argues Jane's brief fails to comply with Illinois Supreme Court Rule 341(h)(6) (eff. July 1, 2008). The estate maintains Jane's statement of facts contains impermissible argument and, at times, fails to provide any or accurate citations to the record.

¶ 20 Illinois Supreme Court Rule 341(h)(6) (eff. July 1, 2008) provides the statement of facts in an appellant brief "shall contain the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment, and with appropriate reference to the pages of the record on appeal." Jane's brief does not fully comply with Rule 341(h)(6). However, the error is not so egregious to hinder our review on appeal. We will disregard improper or unsupported statements. See *Merrifield v. Illinois State Police Merit Board*, 294 Ill. App. 3d 520, 527, 691 N.E.2d 191, 197 (1998).

¶ 21 B. Jane's Claim Against The Estate Is Timely

¶ 22 Jane maintains the trial court improperly dismissed her claim as untimely. Jane contends, under the Act, she had two years to file her claim against the estate. Jane argues because she is a "known creditor" of decedent and his estate, the estate was required to mail or deliver her notice under section 18-3(a) of the Act (755 ILCS 5/18-3 (West 2008)). Absent such notice, Jane asserts, the estate failed to establish an earlier deadline and her claim is timely.

¶ 23 In contrast, the estate maintains the trial court properly dismissed Jane's claim under section 18-12(a) of the Act (755 ILCS 5/18-12(a) (West 2008)). The estate argues Jane had actual notice of decedent's death and the probate of the estate. The estate emphasizes it complied with the publication requirement of section 18-3, and maintains the deadline stated therein controls. The estate also questions Jane's status as a "known creditor."

¶ 24 This issue is one of statutory interpretation. The main "goal of statutory interpretation is to ascertain and give effect to the legislature's intent." *Lauer v. American Family*

Life Insurance Co., 199 Ill. 2d 384, 388, 769 N.E.2d 924, 926 (2002). In interpreting a statute, this court will give the statutory language, the best indication of legislative intent, its plain and ordinary meaning. *Lauer*, 199 Ill. 2d at 388, 769 N.E.2d at 926. When the language is clear, we will give it effect without resorting to other aids of construction. *Hadley v. Illinois Department of Corrections*, 224 Ill. 2d 365, 371, 864 N.E.2d 162, 165 (2007). Our review of a trial court's interpretation of a statute is *de novo*. *Lambert v. Coonrod*, 2012 IL App (4th) 110518, ¶ 18, 966 N.E.2d 583, 587.

¶ 25 We begin with the relevant language of the Act. Section 18-12(a), upon which the estate's motion to dismiss is based, states that claims against a decedent's estate are barred if notice is given to the claimant pursuant to section 18-3 and the claimant fails to file a claim on or before the date provided in the notice. 755 ILCS 5/18-12(a) (West 2008). Section 18-3(a), the effect of which is disputed by the parties, provides the following:

"It is the duty of the representative to publish once each week for 3 successive weeks, and to mail or deliver to each creditor of the decedent whose name and post office address are known to or are reasonably ascertainable by the representative and whose claim has not been allowed or disallowed as provided in Section 18-11, a notice stating the death of the decedent, the name and address of the representative and of his attorney of record, that claims may be filed on or before the date stated in the notice, which date shall be not less than 6 months from the date of the first publication or 3 months from the date of mailing or delivery,

whichever is later, and that any claim not filed on or before that date is barred." 755 5/18-3(a) (West 2010).

Whether or not notice is provided, section 12(b) establishes all claims that could have been barred under section 12(a) are barred two years after the decedent's death. 755 ILCS 5/18-12(b) (West 2008).

¶ 26 The first question to resolve is whether Jane is a "creditor of the decedent whose name and address are known to or reasonably ascertainable by the representative." If Jane is not such a creditor, notice by publication is sufficient. Jane contends this matter is undisputed, while the estate maintains Jane failed to cite any authority supporting her contention she is a "known creditor."

¶ 27 We find Jane is a known creditor of the estate. Black's Law Dictionary defines "[c]reditor" as, in part, "[o]ne who has a right to require the fulfillment of an obligation or contract" and "[o]ne to whom money is due, and, in ordinary acceptance, has reference to financial or business transactions." Black's Law Dictionary 368 (6th ed. 1990). Jane falls within this definition. By virtue of the antenuptial agreement, Floyd, and now his estate, owed Jane a life estate in the residence as well as her one-half interest in any of the defined after-acquired property. Jane is also "known," in that the will not only specifically references the antenuptial agreement with Jane, but also indicates a potential dispute over the interpretation of "after acquired property."

¶ 28 Having found Jane is a creditor known to the estate's representative, we turn to the question of when the deadline for Jane's claim was. The record contains no proof the estate mailed or delivered actual notice to Jane, pursuant to section 18-3. Jane contends,

without such notice, no deadline was set by the estate under section 18-3 and she thus had two years to file her claim under section 18-12(b). The estate contends, however, Jane had actual notice within the six-month period following the publication notice and such notice shortened Jane's claim period to six months. As proof of actual notice, the estate emphasizes Jane knew of Floyd's death, participated in the litigation to recover the lawn tractor, and participated in meetings regarding the estate.

¶ 29 We agree with Jane. No language in the statute authorizes allowing the deadline to be shortened to six months for known creditors simply by publishing notice. 755 ILCS 5/18-3(a) (West 2008). For those known or reasonably ascertainable creditors, the mandated deadline is "not less than 6 months from the date of the first publication *or* 3 months from the date of mailing or delivery, *whichever is later*." (Emphasis added.) 755 ILCS 5/18-3(a) (West 2008). The clear impact from this language is claims for known creditors may extend beyond the six-month period, depending upon when notice is provided, but cannot be shortened. In addition, the language shows Jane's deadline under section 18-3(a) would not be set until the notice set forth in section 18-3(a) was mailed or delivered to her. Since no such notice was mailed or delivered, no deadline was set for Jane under section 18-3(a) and her filing cannot be barred by section 18-12(a).

¶ 30 The cases relied upon by the estate to show actual notice will support an untimeliness finding when a claim is not filed within six months of the publication notice are distinguishable. Those cases involve an earlier version of section 18-12—a version that no longer applies. See *In re Estate of Winters*, 239 Ill. App. 3d 730, 733, 607 N.E.2d 370, 372 (1993); *In re Estate of Speaker*, 236 Ill. App. 3d 954, 955-56, 603 N.E.2d 1194,

1195 (1992); *In re Estate of Doyle*, 229 Ill. App. 3d 995, 998, 594 N.E.2d 774, 775-76 (1992). The earlier version of sections 18-3 and 18-12 set a firm six-month filing deadline from the publication date of the requisite estate-related information. See Ill. Rev. Stat. 1987, ch. 110 1/2, ¶¶ 3, 12. No provision was made for known or reasonably ascertainable creditors in those versions.

¶ 31 Because the estate failed to mail or deliver actual notice to Jane, the only applicable deadline is the two-year limitation period in section 18-12(b). Jane's action was filed less than seven months after decedent's death—well within the time provided by section 18-12(b). Her claim against the estate was improperly dismissed.

¶ 32 We note the failure of the estate to mail or deliver sufficient notice to Jane pursuant to section 18-12(b) is reminiscent of other failures by the estate. For example, the filing deadline in the publication notice, July 15, 2009, does not comply with section 18-3's mandate such date be no earlier than six months after the initial publication of the notice, which occurred on January 21, 2009. Another example is the fact, despite the antenuptial agreement's explicit grant of a life estate to Jane in the residence she shared with Floyd, an advertisement showed the marital home for sale with other estate assets—the fact Jane claims to be the impetus for her legal action.

¶ 33 C. The Appeal Of The Trial Court's Orders Regarding Discovery Is Premature

¶ 34 Jane also argues the trial court erred by not compelling the estate to answer her discovery requests and in not considering her argument regarding the commingling of marital and nonmarital funds. Jane maintains she is entitled to the rents from the farm by virtue of the language in the antenuptial agreement and because that property or rents was

commingled with marital property. Jane argues the discovery requests relate to these theories and the trial court should have compelled the estate to respond to them.

¶ 35 The estate, on the other hand, maintains the discovery requests were irrelevant. The estate argued before the trial court the rents are nonmarital property because they arose from the farm, Floyd's nonmarital property. The estate maintained the antenuptial agreement's discussion of rents in the after-acquired property section applies only to rents collected from after-acquired property and not rents from Floyd's farm. The estate also argues on appeal Jane cannot use discovery to create an ambiguity in the antenuptial agreement. The record shows the trial court, although it had not yet resolved Jane's claim, agrees with the estate.

¶ 36 We find these issues premature. The review of the discovery orders and the question of whether such discovery is relevant touches on issues that have not been fully developed before or ultimately decided upon by the trial court. Now that we have decided Jane's claim was timely, the trial court will be able to resolve Jane's claim. Review of these matters is more appropriate at that time.

¶ 37 III. CONCLUSION

¶ 38 For the stated reasons, we reverse the trial court's judgment dismissing Jane's "Claim Against Estate" as untimely and remand for further proceedings.

¶ 39 Reversed and remanded.