FOURTH DIVISION
August 20, 2015

1-14-2756

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re ESTATE OF SHELDON KAUFMAN,	)	Appeal from the
	)	Circuit Court of
Deceased	)	Cook County.
	)	
(Glenn L. Udell, individually, and Brown, Udell, Pomerantz & Delrahim, Ltd.,	)	
	)	
Plaintiffs-Appellants,	)	
	)	
v.	)	No. 12 P 5693
	)	
Melvin J. Mayster, as Independent Executor of the Estate of Sheldon Kaufman, Deceased, and the Estate of Sheldon Kaufman,	)	
	)	Honorable
	)	Susan M. Coleman,
Defendants-Appellees).	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Ellis concurred in the judgment.

ORDER

¶ 1 *Held:* The judgment of the circuit court of Cook County granting defendant's motion to bar plaintiffs' claim against the decedent's estate as untimely is

affirmed; claimant made judicial admission that the executor provided notice of the claim deadline in accordance with the Probate Act of 1975 and the record shows claimants failed to file their claim within the statutory filing period.

¶ 2 This appeal arises from a claim against the estate of Sheldon Kaufman, deceased, by claimants Glenn Udell, individually, and the law firm Brown, Udell, Pomerantz & Delrahim, Ltd. (hereinafter "Udell claimants" collectively). The circuit court of Cook County granted a motion to bar the claim as untimely. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 Decedent died September 25, 2012. On March 1, 2013, the independent executor of the estate, Melvin J. Mayster, through counsel, sent notice to Udell claimants pursuant to section 18-3 of the Probate Act of 1975 (Probate Act) (755 ILCS 5/18-3 (West 2012)) by certified mail, return receipt requested (March 2013 notice). Udell claimants alleged they provided legal services to decedent and the fees for their services were unpaid. The March 2013 notice informed Udell claimants that their claim must be filed within three months of the date of mailing, or June 1, 2013, or be forever barred. On September 16, 2013, the executor sent Udell claimants a second notice pursuant to section 18-3 (September 2013 notice). The September 2013 notice informed Udell claimants any claim must be filed within three months of the date of mailing, or December 16, 2013, or be forever barred. Claimants submitted their claim for legal work performed and costs on December 13, 2013.

¶ 5 The trial court set Udell claimants' claim for hearing on January 27, 2014. On January 27, 2014, the court dismissed Udell claimants' claim for failure to appear. On January 30, 2014, Udell claimants filed a motion to vacate the January 27, 2014 order. The motion to

vacate the January order admits that the executor mailed the March 2013 notice and mailed a second notice in September. Udell claimants' motion to vacate states, in part, as follows:

> "3. On March 1, 2013, the Estate sent a Notice to Possible Creditors of Sheldon Kaufman, Deceased and Letters of Office--Decedent's Estate.
>
> 4. On September 16, 2013, the Estate sent a Certificate of Service and Notice of Possible Creditors of Sheldon Kaufman, Deceased advising that all claims must be submitted within three months from the date of mailing or forever barred [*sic*]."

¶ 6 Udell claimants asked the trial court to vacate the January 27, 2014 order dismissing their claim for failure to appear. On February 28, 2014, the court granted Udell claimants' motion to vacate the January 27, 2014 order over the executor's objection. The court granted all parties until March 31, 2014 to respond or object to Udell claimants' claim.

¶ 7 On March 13, 2014, a claimant of the estate, MB Financial Bank, N.A. (hereinafter MB Bank), filed an objection to Udell claimants' claim. MB Bank's objection was that the legal services provided by the Udell claimants was done for business entities owned or controlled by the decedent but were not proper claims against the estate. The objection was not based on the timeliness of Udell claimants' claim.

¶ 8 On March 28, 2014, the executor filed a motion to bar the claim as untimely pursuant to section 18-12 of the Probate Act (755 ILCS 5/18-12(a)(1) (West 2012)). The executor's motion stated that Udell claimants' motion to vacate the January 27, 2014 order specifically stated that the executor sent notice to possible creditors of the estate on March 1, 2013. The

executor attached a copy of the letter to which Udell claimants appeared to refer. That letter states that all claims must be filed within three months of the date of the letter, or June 1, 2013. The executor argued Udell claimants failed to meet that deadline and, therefore, their claim should be barred. The executor argued that the September 2013 notice is "inconsequential," as the March 2013 notice "Claimant referred to in his motion provided actual notice to Claimant of the time frame in which a claim was to be filed." Based on the actual notice provided by the March 2013 notice, the executor argued, Udell claimants' claim was barred before the September 2013 notice was sent. The executor argued he met the requirements of section 18-3 of the Probate Act by sending the required notice on March 1, 2013, the Udell claimants acknowledged that fact in their motion to vacate, consequently their claim should be barred.

¶ 9 On March 31, 2014, another claimant of the estate, PNC BANK, National Association (hereinafter PNC Bank) filed a motion to bar Udell claimants' claim as untimely pursuant to section 18-12 of the Probate Act and to join MB Bank's objection. PNC Bank's motion to bar argued that Udell claimants' claim "is at best conjectural," so Udell claimants were not entitled to actual notice under section 18-3 of the Probate Act and the notice by publication applies to Udell claimants. PNC Bank argued that because Udell claimants failed to meet the deadline stated in the notice by publication their claim should be barred. PNC Bank argued that even if Udell claimants were entitled to actual notice under section 18-3 of the Probate Act, the executor mailed notice to the Udell claimants on March 1, 2013, and their claim was untimely under that notice. On April 15, 2014, MB Bank filed a motion to join the executor and PNC Bank's motions to bar Udell claimants' claim.

¶ 10 On April 27, 2014 Udell claimants filed a motion for leave to file an amended claim for the purpose of providing additional documentation pertinent to and in support of their claim. The trial court continued the matter to June 9, 2014. On that date the court, following arguments, granted the motion to bar Udell claimants' claim with prejudice "as it was time barred" and denied Udell claimants' motion to amend.

¶ 11 On July 8, 2014, Udell claimants' filed a motion to reconsider the court's June 9, 2014 order barring their claim or, alternatively, "to reopen proofs regarding receipt of a Certificate of Service and Notice of Possible Creditors." Specifically, Udell claimants sought to admit an affidavit by Glenn Udell (hereinafter Udell affidavit) averring that he had not received any notice of a claim deadline prior to receiving the September 2013 notice, and that during the course of litigation he was "informed through court records that the Estate had sent an earlier certificate." Udell claimants' motion to reconsider asserted that they filed their claim within three months of the mailing of the September 2013 notice and asked the court to reverse its previous order "based on the evidence now before the court and the applicable law."

¶ 12 Udell claimants' motion to reconsider argued that the motion to bar was based on a notice "purportedly" sent on March 1, 2013 but, regardless of whether the March 2013 notice was sent, "as stated in the affidavit of Glenn Udell, the March Notice was never received by Claimant." Udell claimants argued that the estate has a duty to actually deliver notice to each known creditor and not just to send the notice. Udell claimants asserted that no time bar is established "where an estate merely places a notice in the mail but does not effectuate delivery of such notice." Further, they argued, the estate bears the burden to show that statutory notice was given. They argued Udell claimants complied with the time for filing as stated in

the September 2013 notice. Udell claimants also argued that the estate had failed to introduce any evidence that the March 2013 notice was in fact delivered to Udell claimants or that they received the March 2013 notice. They argued the trial court's order holding that the March 2013 notice was effective to establish a time bar on their claim, regardless of whether they actually received it, was erroneous.

¶ 13 In support of their request to reopen proofs and admit the Udell affidavit into evidence Udell claimants asserted that they had no notice that the trial court would hold an evidentiary hearing or decide any issues of fact at the June 9, 2014 hearing. Udell claimants further argued that the executor, in his reply in support of his motion to bar claim, acknowledged his inability to satisfy his alleged burden to establish delivery of the March 2013 notice; thus, "any omission of the Udell Affidavit was simply inadvertent." They argued the admission of the affidavit would not surprise the executor because the Udell claimants never acknowledged receipt of the March 2013 notice and the executor admitted he did not receive confirmation of delivery. Udell claimants' argued the trial court's holding that, as a matter of law, receipt of the March 2013 notice is immaterial "and that the Estate merely had to show that it attempted to serve the March Notice upon Claimant, regardless of whether that attempt was successful or not" is contrary to law, and its motion to reopen proofs should be granted for purposes of clarifying the record on appeal. Specifically, the affidavit would clarify that the court's ruling "is not based on any controverted issue of fact but is strictly made as a matter of law."

¶ 14 On July 31, 2014 the trial court denied Udell claimants' motion to reconsider "for the reasons stated in court" and denied the motion to reopen proofs. The court found that the decision was final and that there was no just reason to delay enforcement or appeal. This

appeal followed. PNC Bank is not a party to this appeal. Although MB Bank filed an appearance in this court, it has not filed a brief or a motion to join a brief on file.

¶ 15 ANALYSIS

¶ 16 The issues for this court are (1) whether the trial court erred in finding that Udell claimants' claim against the estate was barred pursuant to section 18-12 of the Probate Act because they failed to timely file their claim pursuant to the March 2013 notice, and (2) whether the trial court erred in denying the motion to reopen proofs to admit evidence concerning a second notice and Udell claimants' receipt of the first notice. The former raises questions of law and is, therefore, subject to *de novo* review. *Water Tower Nursing & Home Care, Inc. v. Estate of Weil*, 2013 IL App (1st) 122681, ¶ 9 ("The determination of a filing date is purely a question of law ([citation]), and so is the interpretation of a statute ([citation]). Thus, both will be subject to *de novo* review."). "We review an order denying a motion to reopen proofs for a clear abuse of discretion." *In re Estate of Bennoon*, 2014 IL App (1st) 122224, ¶ 53.

¶ 17 A. Judicial Admission

¶ 18 Section 18-3 of the Probate Act requires an executor to mail or deliver a notice to creditors who are reasonably ascertainable, and the statute provides the content and method of notice to be given to creditors. Section 18-3 states as follows:

> "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 ILCS 5/18-3(a) (West 2012).

¶ 19 Section 18-12 of the act provides that if notice is given to a creditor and a claim is not filed on or before the date stated in the notice, the claim is barred. The statute reads, in pertinent part, as follows:

> "(a) Every claim against the estate of a decedent, except expenses of administration and surviving spouse's or child's award, is barred as to all of the decedent's estate if:
>
> (1) Notice is given to the claimant as provided in Section 18-3 and the claimant does not file a claim with the representative or the court on or before the date stated in the notice." 755 ILCS 5/18-12(a)(1) (West 2012).

¶ 20 Udell claimants admitted in two separate pleadings that the executor mailed a notice on March 1, 2013. The first admission was made in Udell claimants' motion to vacate the default order. The second admission was made in Udell claimants' response to the motion to bar their claim. Judicial admissions include admissions in pleadings and have the effect of

dispensing with proof of a fact. See generally *Cavitt v. Repel*, 2015 IL App (1st) 133382, ¶ 50. Therefore, for purposes of this appeal, we will presume that Udell claimants were reasonably ascertainable and therefore entitled to notice by mail or delivery to become subject to the time bar of section 18-3 of the Probate Act. *In the Matter of the Estate of Anderson*, 246 Ill. App. 3d 116, 129 (1993). We will also presume, however, based on the admissions, that the executor mailed the March 1, 2013 notice found in the record.

¶ 21 B. Order on Motion to Bar Claim

¶ 22 We will now consider whether the trial court properly granted the motion to bar the claim. The executor filed a motion to bar the claim of Udell claimants because Udell claimants failed to file the claim within the time set in the March 2013 notice. As stated earlier, on the basis of the judicial admissions, we presume the notice of March 1, 2013 was mailed to Udell claimants. We examined the record and we are satisfied that the March 2013 notice complied with the requirements of the statute, that the letter set the limitations period within which to file a claim, and that the limitation period within which to file a claim expired on June 1, 2013. Further, the record shows the Udell claim was not filed until December 13, 2013.

¶ 23 In their response to the motion to bar the claim Udell claimants alleged that the executor sent two notices to the claimant, one in March and one in September. Udell claimants alleged that since they filed their claim before the expiration of the limitation period set forth in the September 2013 notice, which was December 2013, the claim was timely. We disagree with Udell claimants' argument for the following reasons.

¶ 24 Under Illinois law, an executor has no authority to extend the time within which a creditor may file a claim. When the administrator mails notice to ascertainable creditors, the deadline for filing claims is established. The administrator has no authority to waive it and the doctrine of estoppel cannot be applied to prevent its operation. *In the Matter of Newcomb's Estate*, 6 Ill. App. 3d 1094, 1096-97 (1972). In *Newcomb's Estate*, the claimants filed a claim for damages against the estate beyond the period specified by statute. *Id.* at 1096. The issue decided by the court was whether the actions of the administrator of the estate could waive the requirement to file a claim within the period established by statute. In that case, the action of the administrator was to offer a compromise settlement of the claim, which was withdrawn after the expiration of the statutory claim period. *Id.* at 1096. The court held that "the filing of the claim within the period specified by statute is mandatory and cannot be waived by the administrator, *the conduct of the administrator or her attorney* in this case, or by the court." (Emphasis added.) *Id.* at 1097.

¶ 25 We reiterate that the proper mailing of notice pursuant to Section 18-3 of the Probate Act establishes the period in which claims must be filed. See *Tulsa Professional Collection Services, Inc. v. Pope*, 485 U.S. 478, 489-90 (1988) (noting the need to balance state interest in "expeditious resolution of probate proceedings" against creditors' property interest in a claim against the estate). No subsequent action by the administrator, including the mailing of a second notice, can "waive" or change that deadline. *Newcomb's Estate*, 6 Ill. App. 3d at 1097. To permit a subsequent notice letter from an estate administrator to re-set the claim deadline established by a properly mailed initial notice letter would be to exceed the administrator's

authority and, we note, would prejudice other creditors who timely filed their claims by favoring a late-filing creditor.

¶ 26 In this case, although the executor mailed a second notice in September 2013, it was ineffective to extend the limitation period set by the March 2013 notice which was admittedly sent. The record demonstrates Udell claimants submitted their claim outside the statutory period for filing a claim, therefore that claim is automatically barred. 755 ILCS 5/18-12 (West 2012); *Matter of Estate of Anderson*, 246 Ill. App. 3d at 129.

¶ 27 Accordingly, we find the court did not commit an error when it granted the motion to bar Udell claimants' claim.

¶ 28 C. Motion to Reopen Proofs

¶ 29 After the trial court granted the motion to bar Udell claimants' claim, they filed a motion to reconsider and to reopen the proofs. In their motion Udell claimants argue for the first time that they never received the March 2013 notice. Udell claimants also sought to admit the affidavit of one of the Udell claimants which stated he never received the notice (hereinafter Udell affidavit). The executor argues the evidence which the claimants sought to add to the record was available at the time of the initial hearing, therefore it would be improper to reopen to submit additional proofs. *Simmons v. Reichardt*, 406 Ill. App. 3d 317, 325 (2010). Moreover, the executor argues that under the Probate Act it is irrelevant whether the mailed notice was actually received by the creditor.

¶ 30 The trial court denied the motion to reopen proofs. The written order does not explain the reasoning of the trial court and we do not have benefit of a transcript of the

hearing before the trial court. However, for the reasons that follow, we find the trial court did not abuse its discretion when it denied the motion to reopen proofs.

¶ 31 First, we agree with the executor that the evidence Udell claimants seek to add to the record was available prior to the hearing and that it would be improper to reopen the proofs. Udell claimants cite *Stringer v. Packaging Corp. of America*, 351 Ill. App. 3d 1135, 1141-42 (2004), in support of their argument the trial court abused its discretion in denying their motion to reopen the proofs to introduce the September 2013 notice and the Udell affidavit. The *Stringer* court identified four factors "to be considered in determining whether a party should be permitted to reopen proofs." *Id.* at 1141. That court also held, however, that "if evidence offered for the first time in a posttrial motion could have been produced at an earlier time, the court may deny its introduction into evidence on that basis." *Id.* at 1142. In this case, Udell claimants never alleged they did not receive the March 2013 notice prior to the hearing despite knowing the executor's position that the March 2013 notice was the effective notice to establish the claims bar date. The executor's motion to bar the claim stated "the March 1, 2013 Notice to Creditors Claimant referred to in his motion [to vacate judgment] provided actual notice to Claimant of the time frame in which a claim was to be filed." Udell claimants did not allege that the evidence contained in the Udell affidavit could not have been produced at the hearing on the executor's motion to bar claim. Udell claimants' argument, raised for the first time in their reply brief, that until the executor admitted he had no affirmative proof of delivery they lacked sufficient certainty to aver they did not actually

receive the March 2013 notice is, despite being waived[1], not persuasive. Udell claimants could have averred that they did not receive the March 2013 notice and upon diligent search they could not locate it in their office. *Sherwood v. City of Aurora*, 388 Ill. App. 3d 754, 759 (2009) ("There are two types of affidavits, those based on personal knowledge and those based on information and belief. *E.g.*, *Carbonara v. North Palos Fire Protection District*, 192 Ill. App. 3d 275, 277 (1989) (indicating that election contest petitions and civil complaints may be verified by affidavit based upon information and belief); *cf.* 210 Ill. 2d R. 191 (stating that affidavits in support of motions for summary judgment and certain other motions must be based on personal knowledge)."). We find no reason a claim the March 2013 notice was not received and evidence supporting it could not have been presented sooner. Accordingly, the trial court did not abuse its discretion in denying the motion to reopen proofs. *Stringer*, 351 Ill. App. 3d at 1142 (citing *Chicago Transparent Products, Inc. v. American National Bank and Trust Co. of Chicago*, 337 Ill. App. 3d 931, 942 (2002)).

¶ 32 But, notwithstanding the procedural arguments raised by the executor, the evidence sought to be added to the record would not aid the claimant for the following reasons.

¶ 33 Section 18-3 requires an executor to give "actual notice" of the claim deadline. Udell claimants argue that a notice letter mailed pursuant to section 18-3 of the Probate Act, alone, does not set an enforceable claim deadline because "[n]othing in Section 18-3(a) or an executor's notice letter is self-enforcing or by itself operates to legally bar a claim." Based on

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[1] Points not argued in the appellant's brief are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing. *Hayashi v. Illinois Dep't of Financial & Professional Regulation*, 2014 IL 116023, ¶ 43 (quoting Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013)).

that premise, Udell claimants turn to the language of section 18-12 of the Probate Act as setting forth the requirements to "enforce a claims bar date against a creditor's claim." They focus on the language in section 18-12 that notice must be "given" to a claimant and argue that for a claimant to be "given" notice something more than "a failed attempt at 'mailing' " is required. We disagree with Udell claimants' argument.

¶ 34 We decline to adopt Udell claimants' construction of the Probate Act because it would require this court to read Section 18-12 in isolation. See generally *Crossroads Ford Truck Sales, Inc. v. Sterling Truck Corp.*, 2011 IL 111611 ¶ 45 ("Words and phrases must be interpreted in light of other relevant provisions of the statute and must not be construed in isolation."). Section 18-3 and 18-12 operate together to bar claims against decedents' estates under certain conditions. The dispositive question is on what date a claim becomes barred. "The date provided in the notice *** mailed in accord with section 18-3 sets the applicable period for filing claims." *Polly v. Estate of Polly*, 385 Ill. App. 3d 300, 304 (2008). This is true because "actual notice" is that notice which is reasonably calculated to inform, and mail service is a constitutionally adequate means of providing actual notice. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314-15 (1950); *Estate of Anderson*, 246 Ill. App. 3d at 122 (citing *Pope*, 485 U.S. at 490).

¶ 35 We note that this holding does not equate to a finding that section 18-3 of the Probate Act is self-enforcing. In *Pope*, 485 U.S. at 490, the United States Supreme Court held that an "Oklahoma nonclaim statute [was] not a self-executing statute of limitations." *Pope*, 485 U.S. at 488. The *Pope* Court found that a statute of limitations is "self-executing" because "[t]he State has no role to play beyond enactment of the limitations period" and thus "falls short of

constituting the type of state action required to implicate the protections of the Due Process Clause." *Pope*, 485 U.S. at 486-87. The Court contrasted nonclaim statutes like the one at issue here, in which "there is significant state action." *Id.* at 487. "The probate court is intimately involved throughout, and without that involvement the time bar is never activated. The nonclaim statute becomes operative only after probate proceedings have been commenced in state court. The court must appoint the executor or executrix before notice, which triggers the time bar, can be given. Only after this court appointment is made does the statute provide for any notice." *Id.* In Illinois, section 18-3 imposes the duty to mail the notice on the representative of the estate. 755 ILCS 5/18-3(a) (West 2012). The nonclaim statute is triggered by the issuance of letters testamentary and is not self-executing. *Farm Credit Bank of St. Louis v. Brown*, 217 Ill. App. 3d 730, 736 (1991).

¶ 36 D. Protection of Creditors and Burden of Proof

¶ 37 Our holding does not mean that claimants are without recourse to assert they did not receive their mail. Udell claimants argue that the executor "has conceded that he has no proof that the March Claims Notice was ever delivered to the [Udell claimants.]" Even accepting Udell claimants' assertion as true it is not the executor's burden to prove the mail was delivered. The court has held:

> "[C]laimants who file a claim more than six months from the issuance of letters bear the initial burden of producing evidence sufficient to establish their failure to receive written notice by mail or delivery under section 18-3 of the Act. Upon such a showing, the burden then shifts to the estate

> representative to show either that the statutory notice was given, which will automatically bar the claim, or, in the absence of notice, that the existence of the claim was not reasonably ascertainable upon reasonably diligent efforts." *Estate of Anderson*, 246 Ill. App. 3d at 129.

¶ 38 We hold that the burden on the estate representative "to show *** that the statutory notice was given" is not a burden to show that each creditor received its mail. To impose such a burden would be inefficient and unduly burdensome. Rather, the burden on the representative is to show that notice was mailed to ascertainable creditors. *Pope*, 485 U.S. at 490 ("Actual notice need not be inefficient or burdensome. We have repeatedly recognized that mail service is an inexpensive and efficient mechanism that is reasonably calculated to provide actual notice."); *Estate of Anderson*, 246 Ill. App. 3d at 129. Prior to the United States Supreme Court's decision in *Pope*, "the almost uniform practice" with regard to nonclaim statutes was to establish short deadlines within which to file a claim, "and to provide only publication notice." *Pope*, 485 U.S. at 489. That fact owed to the "legitimate interest in the expeditions resolution of probate proceedings" and the reasonable conclusion that "swift settlement of estates is so important that it calls for very short time deadlines for filing claims." *Id.* The Court sought to balance that interest against creditors' property interest in claims against an estate and settled on mail service as "an inexpensive and efficient mechanism that is reasonably calculated to provide actual notice." *Id.* at 489-90. The Court did not want to "unduly hinder the dispatch with which probate proceedings are conducted." *Id.* at 490. The Court, or the Illinois legislature if it wished to afford greater protection, could have

required service of process as in other civil proceedings, but did not. The principle established in *Pope*, which determines our judgment, is to guard against a standard that would be "so burdensome or impracticable as to warrant reliance on publication notice alone." *Id.*

¶ 39 Even absent affirmative proof by the executor that a claimant received the mail, the claim limitation period is set by a notice letter sent pursuant to section 18-3. If a claimant satisfies its initial burden to produce sufficient evidence to establish its failure to receive written notice by mail, the claim deadline will be enforced if the estate administrator can show it mailed notice to the claimant. To construe the Probate Act to require assurance of mail delivery would impose an entirely new burden on estate administrators with the potential to cause enough delay to warrant reliance on publication notice alone. Therefore, both the subsequent notice sent by the executor and the Udell affidavit are inapposite. The September 2013 notice was without legal effect because the claim deadline had already been established. Udell claimants' claim of non-receipt is irrelevant.

¶ 40 E. Constitutional Issues

¶ 41 Udell claimants' argument that the trial court's construction of Section 18-3 "as not requiring actual notice must be rejected because it would render the Probate Act unconstitutional under [*Pope*]" is unpersuasive. Initially, we note that Udell claimants have waived any constitutional claims in this court. *Cholipski v. Bovis Lend Lease, Inc.*, 2014 IL App (1st) 132842, ¶ 58 (in civil cases, constitutional arguments not raised in the trial court are considered waived on appeal). Nonetheless, we are not holding that that Section 18-3 does not require actual notice. Our holding comports with the requirements of due process for actual notice.

¶ 42 Udell claimants argue to this court that "[i]t would belie the context of Section 18-3(a) to allow the same executor to put an insufficient stamp on an envelope and declare his duty performed, *even if the mailing was returned as undelivered or undeliverable*." (Emphasis added.) But nothing of that sort occurred here. In this case, the executor only received information that a single attempt at delivery failed. The executor did not receive confirmation that delivery was successful--but that does not require finding that delivery was not successful. According to his reply in support of his motion to bar claim, "[t]he Post Office never returned the receipt for the March claims Notice to the Executor's counsel" and the postal records never reflected any subsequent attempts at delivery. The Executor stated in his reply that he "made numerous inquiries with the Post Office to ascertain the status of the delivery of the March Claims Notice and the Post Office was unable to provide any additional information." Therefore the executor did not receive information that the March Notice was not delivered. Udell claimants have not claimed that the March Notice was returned to the executor as undeliverable. Therefore, the executor was not required to take "additional reasonable steps" to notify Udell claimants of the claim deadline to comply with due process requirements. Compare *Jones v. Flowers*, 547 U.S. 220, 225-34 (2006) (Court sought to resolve conflict over whether the Due Process Clause requires additional reasonable steps to notify a property owner where notice of a tax sale is returned undelivered and held state should have taken additional reasonable steps to notify property owner of tax sale if practicable to do so).

¶ 43 F. Summary

¶ 44 The executor first published notice of decedent's death establishing a claim deadline of April 25, 2013. The executor does not have to prove the March 2013 notice was delivered

where it is admitted the letter was sent by certified mail and there is no evidence the letter was returned undeliverable. See *Jones*, 547 U.S. at 231. Further, in other contexts, the court has held that "[i]f the proper giving of the notice can now be frustrated by the mere allegation of the defendant that he did not receive it, then the giving of notice by mail cannot be relied upon even though the rules specify such a method." *Bernier v. Schaefer*, 11 Ill. 2d 525, 529 (1957). Udell claimants have pointed to no authority imposing any burden on estate administrators to prove a claimant received their mail when a claim against an estate is untimely. Udell claimants admitted the executor mailed notice on March 1, 2013. There is no evidence the post office returned the certified mail to the executor, and the executor could not waive the deadline established as to all ascertainable creditors by the March 2013 notice. The executor's notice to ascertainable creditors pursuant to section 18-3 established June 1, 2013 as the deadline for Udell claimants to file claims against the estate. Neither the September 2013 notice nor the Udell affidavit has any bearing on that determination. Udell claimants failed to file their claim within either the filing period established by the notice by publication or by the March 2013 notice. Accordingly, their claim is barred by section 18-12 of the Probate Act.

¶ 45 CONCLUSION

¶ 46 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 47 Affirmed.