

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

LOUISE CUMMINGS, individually and)
on behalf of her minor child,)

Plaintiff,)

v.)

C.A. No. 6948-VCP

THE ESTATE OF RONALD E. LEWIS,)
ROBERT L. JOHNSON, co-executor of the)
Estate of Ronald E. Lewis, LEONARD L.)
WILLIAMS, co-executor of the Estate of)
Ronald E. Lewis, MARGARET LEWIS,)
RONALD E. LEWIS, JR., BRANDON)
LEWIS, and KEVIN MOSLEY,)

Defendants.)

MEMORANDUM OPINION

Submitted: March 18, 2013

Decided: June 17, 2013

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Plaintiff Louise Cummings, individually and on behalf of her minor child.*

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Defendants The Estate of Ronald E. Lewis and Robert L. Johnson.*

PARSONS, Vice Chancellor.

The plaintiff in this case is the mother of a child conceived just before the father died and born almost nine months later. A few months after the father died, the plaintiff filed a notice of claim under Delaware’s “after-born” statute¹ to obtain the child’s intestate share of the father’s estate. Thirteen months after the father died, the mother filed a Statement of Claim against the father’s estate with the Register of Wills for future child support. The plaintiff also asserted formal claims for child support on behalf of her daughter and against the father’s estate in the Family Courts of Delaware and New Jersey. After being notified of the plaintiff’s child support claim, the estate, which is a defendant in this action, moved to amend its counterclaim to request instructions on eight separate questions, most of which related directly to the child support claim. The plaintiff opposed that motion, and I granted the motion in part and denied it in part in a Memorandum Opinion entered on March 14, 2013 (the “Motion to Amend Opinion”).² Specifically, I granted the motion as to six of the estate’s requested instructions, but denied it as to the remaining two requests. In addition, I stayed further proceedings in this action pending resolution of the child support claims in Family Court or further order of this Court as to all but the first of the estate’s requested instructions on the ground that those requests were not ripe and effectively sought advisory opinions.

¹ 12 *Del. C.* ch. 31.

² *Cummings v. Estate of Lewis*, 2013 WL 979417 (Del. Ch. Mar. 14, 2013).

The only request that I permitted to go forward immediately was Requested Instruction One. In that request, the estate seeks a declaratory judgment that the plaintiff's child support claims are barred as untimely under 12 *Del. C.* § 2102(a) of the Delaware Probate Code. Pursuant to Section 2102(a), all claims that arose before the death of a decedent must be made against the decedent's estate within eight months after his death. The estate also had moved for partial summary judgment on Requested Instruction One, and I permitted briefing to go forward on the estate's motion. The plaintiff opposed the motion. As to Requested Instruction One, the plaintiff argued primarily that her claim for child support is governed by another subsection of Section 2102, namely, 2102(b), and that the rejection of her child support claim as untimely would be contrary to public policy. Under Section 2102(b) of the Probate Code, any claim against a decedent's estate that arose after the decedent died must be asserted within six months after the time the claim arose. Because the plaintiff asserted her claim within six months after the birth of her daughter, she contends it was timely. After the parties completed briefing on the estate's motion for partial summary judgment, and after I determined in the Motion to Amend Opinion to proceed to consider the estate's motion as to Requested Instruction One only, the parties agreed to waive oral argument and submit that portion of the motion on the papers.

Having carefully considered the parties' briefing on the issues before me, I conclude that the plaintiff's child support claim is time-barred. Therefore, I instruct the estate that it may proceed with the understanding that this Court would dismiss any claim against the estate for child support on behalf of A.L. as time-barred.

I. BACKGROUND

A. The Parties

Ronald E. “Butch” Lewis died testate on July 23, 2011. Plaintiff, Louise Cummings, was involved romantically with Lewis and became pregnant shortly before Lewis died. The daughter of Lewis and Cummings, A.L., was born on April 15, 2012.

Defendant Estate of Ronald E. Lewis (the “Estate”) was created as a result of Lewis’s death. Defendants Robert L. Johnson and Leonard L. Williams³ were named co-executors of the Estate pursuant to Article III of the Last Will and Testament of Ronald E. Lewis dated April 26, 1999. Defendants Margaret Lewis, Ronald E. Lewis, Jr., Brandon Lewis, and Kevin Mosley are Lewis’s adult children, and each is a named beneficiary under his will.

B. Facts and Procedural History⁴

After Lewis’s death on July 23, 2011, at age 65, Cummings filed this action against the Estate in the Court of Chancery on October 19, 2011, seeking to establish Lewis as A.L.’s father and to recover an intestate share of the Estate under 12 *Del. C.* §§ 301 and 310 (the “After-Born Statute”). On August 20, 2012, Cummings sought partial summary judgment on the issues of Lewis’s parentage of A.L. and A.L.’s entitlement to an intestate share of the Estate. While her motion was pending, Cummings also filed, on

³ Co-executor Williams passed away shortly before the Motion to Amend Opinion issued on March 14, 2013.

⁴ The Motion to Amend Opinion provides a more detailed recital of the background of this litigation.

August 23, a “Statement of Claim” pursuant to 12 *Del. C.* § 2104 against the Estate with the Register of Wills for New Castle County seeking future child support. On August 29, 2012, Cummings filed a complaint for child support on A.L.’s behalf in New Jersey. She later filed a petition for child support against the Estate in the Delaware Family Court on October 4, 2012.

On August 28, 2012, the Estate moved to amend its earlier counterclaim in this action (the “Motion to Amend”) to seek instructions on seven questions regarding the relationship between Cummings’s claim under the After-Born Statute and her claim for child support and an eighth question regarding the enforcement of a severance agreement Cummings had entered into with the Estate related to her former employment with Lewis’s company, Butch Lewis Productions, Inc. In the Motion to Amend Opinion dated March 14, 2013, I granted the Motion to Amend in part and denied it in part. I also stayed proceedings as to all the Estate’s requested instructions except for Requested Instruction One, regarding the alleged untimeliness of Plaintiff’s child support claim under the Delaware Probate Code, 12 *Del. C.* § 2102, and the requested instruction regarding the enforceability of the severance agreement. As previously mentioned, I allowed the Estate to proceed with a motion for partial summary judgment on Requested Instruction One. This Memorandum Opinion constitutes my ruling on that motion.

C. Parties’ Contentions

The Estate requested instruction from the Court to determine whether Cummings’s child support claim against the Estate was timely filed under the Delaware Probate Code. The Estate maintains that Cummings filed her claim for child support too late because

Section 2102(a) of the Probate Code requires claims that arose before the decedent's death to be filed within eight months of the decedent's death and Cummings filed her Statement of Claim thirteen months after Lewis's death.

Cummings asserts that Section 2102(b), not Section 2102(a), governs this dispute. She contends that her claims are not time-barred by Section 2102(b), which requires claims that arose after the decedent's death to be filed within six months after the date the claim accrued. According to Plaintiff, her claim for child support arose when A.L. was born, on April 15, 2012. Cummings argues that child support is a right of the child and, therefore, the period of time within which Cummings must have filed her claim, or the "non-claim period,"⁵ could not have started until the date A.L. was born.

II. ANALYSIS

A. Summary Judgment Standard

The Court will grant summary judgment "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, show that there is no

⁵ "The term 'non-claim' is one used to refer to statutes fixing a specific time within which claims against a decedent's estate must be presented to his personal representatives, under the penalty of forfeiture of the claim if they are not." *Estate of Holton*, 1976 WL 5206, at *1 (Del. Ch. Aug. 17, 1976). A non-claim statute's limitations period functions differently than a typical statute of limitations. *See id.* at *3 ("[W]hile a nonclaim statute appears to be in the nature of a statute of limitations, it is clearly not such. A non-claim statute operates to deprive a court of jurisdiction. The personal representative of an estate can neither waive it nor toll it."); *see also Dellaversano v. Estate of DiSabatino*, 1998 WL 960702, at *1 n.1 (Del. Super. Dec. 23, 1998) (distinguishing a "typical" statute of limitation from "a nonclaim statute which bars the claim forever if not filed in a timely manner"); *infra* notes 13–16 and accompanying text.

genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.”⁶ The Court must view all the evidence in the light most favorable to the nonmoving party.⁷

Pursuant to rule 56(h), “[w]here the parties have filed cross motions for summary judgment and have not presented argument to the Court that there is an issue of fact material to the disposition of either motion, the Court shall deem the motions to be the equivalent of a stipulation for decision on the merits based on the record submitted with the motions.” Cummings filed a motion for partial summary judgment related to adjudicating Lewis as A.L.’s father, amending A.L.’s birth certificate, and determining A.L.’s rights under the After-Born Statute. The Estate styled its motion for partial summary judgment as a cross motion, but the Estate’s motion relates to the instructions it requested in its amended counterclaim. The only instruction addressed in this Memorandum Opinion is Requested Instruction One regarding whether Cummings’s child support claim was timely filed.

Cummings asserts that genuine issues of material fact exist regarding the amount and scope of child support.⁸ Neither of these issues affects whether Cummings’s child

⁶ *Twin Bridges Ltd. P’ship v. Draper*, 2007 WL 2744609, at *8 (Del. Ch. Sept. 14, 2007) (citing Ct. Ch. R. 56(c)); *Gilbert v. El Paso Co.*, 575 A.2d 1131, 1142 (Del. 1990).

⁷ *Draper*, 2007 WL 274609, at *8

⁸ See Pl.’s Answering Br. in Opp’n to Estate’s Cross Mot. for Partial Summ. J. (“Pl.’s Br.”) 10–11.

support claim was timely filed. Thus, although the motion before me technically may not be a cross motion, there are no issues of fact material to the disposition of the Estate's motion. Therefore, the Estate's motion, as presented in this case effectively is the equivalent of a stipulation for decision on the merits.⁹

B. Delaware's "Non-Claim" Statute

Section 2102(a) of the Delaware Probate Code provides that:

All claims against a decedent's estate which *arose before* the death of the decedent . . . whether *due* or *to become due*, *absolute* or *contingent*, liquidated or unliquidated, . . . if not barred earlier by other statute of limitations, are barred against the estate, . . . unless presented as provided in § 2104 of this title within 8 months of the decedent's death¹⁰

Therefore, if a cause of action arose before the decedent's death, a party must present the claim to the estate within eight months. Cummings filed a Statement of Claim for child support on August 23, 2012, thirteen months after Lewis's death and just over four months after A.L.'s birth.

⁹ Both Cummings and the Estate notified the Court that they did not consider oral argument necessary on the Estate's motion for partial summary judgment as it relates to Requested Instruction One. *See* Docket Item ("D.I.") Nos. 113, 114.

¹⁰ 12 *Del. C.* § 2102(a) (emphasis added). Section 2104 sets forth the manner of presentation of claims. It provides: "The claimant may deliver or mail to the personal representative a written statement of claim indicating its basis, . . . or may file a written statement of claim, . . . with the Register of Wills. . . . If a claim is not yet due, the date when it will become due shall be stated. If the claim is contingent or liquidated, the nature of the uncertainty shall be stated. . . . Failure to describe correctly the . . . nature of any uncertainty and the due date of a claim not yet due does not invalidate the presentation made."

Cummings maintains, however, that Section 2102(b) governs her child support claim, not subsection (a). Section 2102(b) provides that “[a]ll claims against a decedent’s estate which *arise at or after the death of the decedent*” are barred against the estate “within 6 months after [the claim] arises.”¹¹ According to Cummings, her claim for child support did not arise until A.L. was born on April 15, 2012. Thus, Cummings asserts that she had six months after that date to file her claim for child support against the Estate. In support of this argument, Cummings posits that, from a policy standpoint, child support is a right of the child and not of the parents, and that a child’s right to support from his or her parents cannot be forfeited by any failure to act on the part of the parents.¹²

This Court has long held that the purpose of the “non-claim” statute, 12 *Del. C.* § 2102, is to “compel claimants with demands against a decedent’s estate other than those of which the personal representative is required to take notice, to present their claims within the specified time, and when the claims are rejected, to seek prompt enforcement thereof, so that the decedent’s estate can be settled within a reasonable time.”¹³ The “prompt distribution of the assets of the estate is the ultimate goal.”¹⁴ The “statute terminates an estate’s capacity to be sued eight months after the death of a decedent

¹¹ 12 *Del. C.* § 2102(b) (emphasis added).

¹² Pl’s Br. 14.

¹³ *Estate of Holton*, 1976 WL 5206, at *2 (Del. Ch. Aug. 17, 1976).

¹⁴ *Id.*

unless the claim or potential claim is submitted prior thereto.”¹⁵ Therefore, the legislative purpose behind Section 2102 is distinguishable from a general statute of limitations that merely seeks to avoid stale claims.¹⁶ Thus, if a claim that arose before the decedent’s death is not presented to the Estate within eight months after the death, that claim is forever barred against the Estate.

1. Difference between claims arising before or after death

The main issue I must address here, therefore, is when Cummings’s child support claim arose. While Section 2102(a) applies to *all* claims that arose *before* the decedent’s death, subsection (b) governs claims that arose *after* the decedent’s death. *Stein on Probate* discusses when certain claims in probate arise:

Probate claims may be classified as to the time they arise: (1) claims arising before death and (2) claims arising after death. Claims arising *before death* include last illness charges, charges for illness during the year immediately preceding death, personal service charges during lifetime, recovery on warranties, liability as a surety or guarantor, claims of the state or county for support in state or mental institutions, equitable claims, and other general contract claims. Claims arising *after death* include accountants’ fees, repair and maintenance expenses of property of the estate, insurance premiums, storage costs, platting costs, and charges for all services rendered to the personal representative for the estate. Because claims arising after death usually originate from acts

¹⁵ *Witco Corp. v. Beekhuis*, 38 F.3d 682, 690 (3d Cir. 1994).

¹⁶ *See Estate of Holton*, 1976 WL 5206, at *2.

by the personal representative, they occur primarily during administration.¹⁷

Cummings's claim on behalf of A.L. did not arise from any action by a personal representative of the Estate, but instead arose from an act engaged in by the deceased, with Cummings. Although A.L.'s live birth occurred after the decedent's death, A.L. was conceived before Lewis died. Section 2102(a) contemplates circumstances such as this by stating that it pertains to *all* claims, whether "*due or to become due, absolute or contingent.*" Cummings's child support claim was not absolute because A.L. had not been born yet. Instead, the claim was contingent on A.L.'s live birth and was "to become due" upon the occurrence of her birth. The child support claim, therefore, was a contingent claim that arose before Lewis died.

If Lewis had lived, his child support obligations naturally would have ripened at A.L.'s birth. Because Lewis died before then, however, his contingent child support obligation became a claim against his estate for an obligation created by him before his death. Therefore, Cummings's child support claim is subject to the non-claim period prescribed in Section 2102(a).

¹⁷ *In re Estate of Hadaway*, 668 N.W.2d 920, 922–23 (Minn. Ct. App. 2003) (emphasis added) (citing Robert A. Stein, *Stein on Probate*, § 6.01(c) (3d ed. 1995)).

2. Alternatives available for contingent claims

This conclusion does not create a harsh result. Cummings knew that she was pregnant shortly after Lewis died.¹⁸ She filed her original Complaint with the Court on October 19, 2011, approximately three months after Lewis's death, seeking to establish Lewis as the father of A.L. and to recover a share of his Estate under the After-Born Statute. Based on the information she had at that time, Cummings easily could have notified the Estate of her contingent claim for child support within eight months of Lewis's death, and later filed a formal child support claim after A.L.'s live birth.¹⁹

Section 2104 of the Probate Code allows claims to be presented to a decedent's estate even if the claim is not yet due or if the claim is contingent or unliquidated.²⁰ In such circumstances, the statute instructs the claimant to state "the date when [the claim] will become due" or, if the claim is contingent, to state "the nature of the uncertainty."²¹ Even though Cummings's claim for child support was "not yet due," Cummings could have presented her claim to the Estate under the procedure set forth in Section 2104.

If she had proceeded in that manner, even if the Estate rejected her claim for support, Cummings would have had other alternatives available to continue to pursue her

¹⁸ See Pl.'s Br. 6 (acknowledging that Cummings knew of her pregnancy on or before October 19, 2011, when she filed a claim against the Estate seeking to preserve and later to enforce A.L.'s rights as an after-born child of Lewis).

¹⁹ See *Witco Corp.*, 38 F.3d at 688.

²⁰ See 12 *Del. C.* § 2104.

²¹ *Id.*

claim. The Probate Code, in Section 2102(c), expressly affords a claimant three months after being notified of such a rejection to commence an action or suit on her claim.²² In addition, for a claim that is not presently due or which is contingent or unliquidated, the claimant may be able to obtain an extension of the three-month period by way of consent from the estate or order of the Court of Chancery. In the circumstances of this case, such an extension would have enabled Cummings to defer filing her claim against the Estate until after the live birth of A.L.

Nevertheless, Cummings disputes the idea that the General Assembly, by enacting Section 2102, intended for her to file her claim for child support before A.L. was born. Generally, Cummings contends that she had no duty to file her claim for child support against A.L.'s father until the birth of her child. But, once Lewis died, the Probate Code governed her support claims, which became claims against the Estate.

Cummings also argues that the Estate's position ignores the possibility that a father could die before having an opportunity to acknowledge his child or have parentage

²² Section 2102(c) states that “[a]ny claim not barred under subsections (a) and (b) of this section which has been rejected by an executor or administrator shall be barred forever unless an action or suit be commenced thereon within 3 months after the executor or administrator has notified the claimant of such rejection . . . provided, however, in the case of a claim which is not presently due or which is contingent or unliquidated, the executor or administrator may consent to an extension of the 3-month period, or to avoid injustice the Court of Chancery, on petition, may order an extension of the 3-month period, but in no event shall the extension run beyond the applicable statute of limitations.” *Id.* § 2102(c).

determined pursuant to the Uniform Parentage Act.²³ The Parentage Act and the Probate Code, however, are independent statutes with different purposes.²⁴ The Uniform Parentage Act was enacted to “establish the principle that regardless of the marital status of the parents, all children and parents have equal rights with respect to each other and to provide a procedure to establish parentage in disputed cases.”²⁵ That said, the major concern of the Uniform Parentage Act is to identify natural fathers so that child support obligations may be imposed.²⁶ The Probate Code was established to determine the devolution of a decedent’s real and personal property.²⁷ Section 2102 is intended to effectuate public policy favoring prompt settlement of estates.²⁸ Allowing claims to be brought beyond the stated non-claim periods would undermine this important public policy.

Indeed, there has been no showing that the Parentage Act conflicts with the temporal limitations imposed by the Probate Code. The Probate Code limits the amount of time a potential claimant has to file a Statement of Claim for a distribution from an

²³ Pl.’s Br. 17. Delaware’s codification of its version of the Uniform Parentage Act appears at 13 *Del. C.* ch. 8.

²⁴ *See Fazilat v. Feldstein*, 848 A.2d 761, 766 (N.J. 2004).

²⁵ *Id.* at 765.

²⁶ *See* Uniform Law Commission, Parentage Act Summary, <http://www.uniformlaws.org/ActSummary.aspx?title=Parentage%20Act> (last visited June 14, 2013).

²⁷ *See Feldstein*, 848 A.2d at 766.

²⁸ *See Eaton v. Eaton*, 2005 WL 3529110, at *5 n.31 (Del. Ch. Dec. 19, 2005).

estate.²⁹ Here, Cummings has asserted a claim against the Estate, not against Lewis. If the Parentage Act controlled the time within which a claim for distribution could be made, potential heirs of a decedent could file claims against the estate even after it was closed and fully distributed.³⁰ Or, as in this case, claims that were untimely under the Probate Code could be made and cause potentially lengthy delays that would prevent the estate from being settled within a reasonable time. These are both results the non-claim statute was designed to avoid.³¹

C. Consideration of the contingent nature of Cummings’s child support claim

I also have considered that child support obligations usually accrue on the date of the child’s birth.³² Both parents have a duty to support a child until the child is at least eighteen years of age.³³ This is true regardless of whether the parents are, were, or never married.³⁴ The Delaware Supreme Court has held that a father’s duty to support his dependent child may be imposed whether or not it is enforced, and the child’s right to

²⁹ See *Feldstein*, 848 A.2d at 767.

³⁰ See *Wingate v. Estate of Ryan*, 693 A.2d 457, 463–64 (N.J. 1997).

³¹ See *id.* at 464; see also *Estate of Holton*, 1976 WL 5206, at *2 (Del. Ch. Aug. 17, 1976).

³² See 13 Del. C. § 501.

³³ *Id.*

³⁴ *Id.*

support is not dependent upon whether an adult sues on the child's behalf.³⁵ The right to receive child support is absolute and, therefore, cannot be taken away once a timely claim for support is initiated and upheld.³⁶

Other courts have held that an estate can be liable for a decedent's pre-existing support obligations.³⁷ Cummings's claim, however, is not based on a pre-existing obligation of the Estate or support order by a court, nor is it based on any clear expression of intent made by Lewis before his death to support A.L. Rather, Cummings's claim seeks future child support from the Estate. Because that claim seeks to establish an obligation of the Estate, as opposed to Lewis, I consider it appropriate to subject the claim to the requirements of the Probate Code.

D. Child support is the right of the child

Cummings further argues that child support claims are special. She emphasizes that child support is a right of the child, and not that of the parents. She also contends that A.L. would suffer real and significant prejudice if the Court were to find that her

³⁵ See *Blue v. Div. of Child Support Enforcement/Pulliam*, 1997 WL 878686, at *5 (Del. Fam. July 31, 1997) (citing *Patricia M.D. v. Alexis I.D.*, 442 A.2d 952, 954 (Del. 1982)).

³⁶ See 13 Del. C. § 501.

³⁷ See *Feldstein*, 848 A.2d at 765 (citing *Grotzky v. Grotzky*, 277 A.2d 535 (N.J. 1971) (“A court may ‘enter a support order for minor children to survive their father’s death’”)); *Kiken v. Kiken*, 694 A.2d 557, 562 (N.J. 1997) (stating that courts have the authority to enter “reasonable and equitable support orders” directly against an estate).

child support claim is time-barred.³⁸ The Probate Code, however, exists to “encourage a speedy disposition of assets by barring belated claims even if they are meritorious.”³⁹ To allow Cummings’s claim to proceed against the Estate “would eviscerate the limitations period in the Probate Code and undercut completely its important public policy rationale.”⁴⁰ Furthermore, Cummings’s timely claim on A.L.’s behalf for part of Lewis’s Estate under the After-Born Statute apparently has merit. Her additional claim for child support raises interesting and seemingly novel issues regarding the interplay of the child support and after-born laws. Even if those issues were resolved against Cummings and A.L., however, they still could continue to seek relief under the After-Born Statute and thereby ameliorate the alleged prejudice to some degree. For all of these reasons, including, most importantly, the plain and unambiguous terms of 12 *Del. C.* § 2102, I conclude that Cummings’s child support claim is time-barred.⁴¹

III. CONCLUSION

For the foregoing reasons, I hold that Cummings’s claim for child support is time-barred under the Delaware Probate Code, specifically 12 *Del. C.* § 2102(a) and I instruct

³⁸ See Pl.’s Br. 14.

³⁹ *Feldstein*, 848 A.2d at 768.

⁴⁰ *Id.*

⁴¹ See *Leatherbury v. Greenspun*, 939 A.2d 1284, 1288 (Del. 2007) (stating that when a statute’s meaning is plain and unambiguous, a court may not interpret or substitute its own meaning for words the meanings of which are otherwise clear).

the Estate that it may proceed with the understanding that this Court would dismiss any claim against the Estate for child support on behalf of A.L. as time-barred.

IT IS SO ORDERED.