



IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAMES SHERMAN, as Administrator :
of the Estate of JANE D. W. DOE, :
Plaintiff Below, : No. 190, 2015
Appellant :
v. : Court Below:
: Superior Court of the State
THE STATE OF DELAWARE, : of Delaware
and THE ESTATE OF JOSHUA : In And For New Castle County
GIDDINGS, :
Defendants Below, : C.A. No.: N10C-08-178 EMD
Appellees :
:

**APPELLEE ESTATE OF JOSHUA GIDDINGS' CORRECTED
ANSWERING BRIEF**

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Dated: June 30, 2015

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NATURE OF THE PROCEEDINGS

On August 18, 2010, Plaintiff Jane D.W. Doe filed suit in the Superior Court of Delaware In And For New Castle County against the Defendants, The State of Delaware and the Estate Of Joshua Giddings.

Joshua Giddings had been a Delaware State Police Trooper and died on May 26, 2009.

Plaintiff alleged that after her arrest by Giddings for a shoplifting charge, he coerced her into performing oral sex on him.

Plaintiff's claim against the State of Delaware was based upon the theory of *respondeat superior*.

This is the second time this case has been appealed to this Court. The first time (*Doe v. The State Of Delaware*, Del., No. 447, 2012, Berger, J. (September 12, 2013)) this Court reversed a grant of summary judgment in favor of the State and against Plaintiff. Plaintiff's claim against the Estate of Joshua Giddings was stayed pending the first appeal.

On remand, the Superior Court granted summary judgments in favor of the State and in favor of the Estate. The Court denied summary judgments sought by Plaintiff.

The Estate's Motion For Summary Judgment was based upon Plaintiff's failure to comply with 12 Del. C. §2102(a), a non-claim statute requiring claims to be presented against a decedent's estate no later than eight months after decedent's death.

The Superior Court ruled that non-compliance with 12 Del. C. §2102(a) could not be waived, and granted summary judgment in favor of the Estate.

This is the Estate of Joshua Giddings' Answering Brief.

SUMMARY OF ARGUMENT

1. Has the State waived immunity?

I. Denied. This Defendant/Appellee defers to Defendant/Appellee State of Delaware's arguments in response to this issue.

2. Should the State's Motion For Summary Judgment have been denied and the Plaintiff/Appellant's Motion granted?

II. Denied. This Defendant/Appellee defers to Defendant/Appellee State of Delaware's arguments in response to this issue.

3. Is 12 Del. C. §2102(a) a statute of limitation that can be waived?

III. Denied. 12 Del. C. §2102(a) is not a statute of limitations but is a claims made statute that bars Plaintiff's claim against the Estate.

STATEMENT OF FACTS

The Court below found Section 2102(a) of Title 12 of the Delaware Code to be a claims made statute that bars claims against an estate if made more than eight months after death, thereby terminating the Estate's capacity to be sued, and rejected Plaintiff's argument that Section 2102(a) is a statute of limitations which could be waived. (Appellant's Opening Brief Exhibit B at 3.)

The alleged events giving rise to the Plaintiff's claim against the Estate of Joshua Giddings occurred on March 19, 2009. (*Id.* at 1.)

Joshua Giddings died on May 26, 2009 and the Estate of Joshua Giddings was opened in the Register of Wills Office in and for Kent County, Delaware on July 10, 2009. (*Id.* at 1,3.)

No claim against the Estate was presented to the Estate or filed by the Plaintiff in the Register of Wills Office prior to the filing of this action in the Superior Court of Delaware in and for New Castle County on August 18, 2010, more than 14 months after the date of death. (*Id.* at 1, 2, 3.)

Defendant Estate of Joshua Giddings was served this suit on January 14, 2011, more than 19 months after the date of death. (Supreme Court Docket #6, Superior Court Docket #26.)

**ARGUMENT: THE SUPERIOR COURT’S DECISION WAS SUPPORTED
BY THE FACTS AND THE RECORD AND IS A CORRECT
APPLICATION OF 12 DEL. C. §2102(a)**

Question Presented

Is 12 Del. C. §2102(a) a claims made statute that terminates the Estate’s capacity to be sued eight months after death, or is the statute a statute of limitations which may be waived?

Standard of Review

Plenary review of a question of law. *Citadel Holding Corporation v. Roven*, 603 A.2d 818 (1992).

Merits of Argument

The text of the statute states “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 ... within 8 months of the decedent’s death ...”. 12 Del. C. §2102(a).

Plaintiff relies upon the phrase “if not barred earlier by other statute of limitations” to say the statute is a statute of limitations. However, such reading

ignores the clear meaning that the 8 month limit to present claims may be shortened if another law would result in a lesser time period.

For example, if the decedent had been involved in a personal injury motor vehicle accident 22 months before his death, he could only be sued for that accident for two years, or up to two months after his death. Accordingly, the claim would normally be barred by a statute of limitations, 10 Del. C. §8119, two months after the date of death instead of being allowed to run for the full eight months after his death. In addition, 10 Del. C. §8113 would allow up to six months from the date of decedent's death. Clearly, the statutory framework would allow a statute of limitations to terminate a cause of action "earlier" than eight months but not later.

The Superior Court correctly points out in its opinion below that the Court of Chancery has drawn a distinction between Section 2102(a) and general statutes of limitations. *Cummings v. Estate of Lewis*, 2013 WL 2987903 (Del. June 17, 2013). The Court of Chancery states the purpose of a general statute of limitations is to avoid stale claims, while §2102(a) is to settle and close estates within a reasonable amount of time. *Estate of Holton*, 1976 WL 5206 (Del. August 17, 1976).

In *Holton*, the court held “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.” *Id* at *1.

The court further stated “that while a non-claim 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.” *Id.* at *3, see also *Dellaversano v. Estate of DiSabatino*, 1998 WL 960702 (Del. December 23, 1998).

In *Dellaversano*, *Id.* at *2, the court stated the non-claim statute is to be “strictly construed”, “is akin to a statute of repose which need not be pleaded as an affirmative defense”, and “may not be waived, and may be raised at any time.” *Cheswold Volunteer Fire Co. v. Lamberton Construction Co.*, Del. Super., 489 A.2d 413, 421 (1984.)

In this case, the Superior Court held that the Chancery Court holding in *Cummings*, *supra*, is persuasive and that Section 2102(a) terminates an estate’s capacity to be sued. *Cummings*, 2013 WL 2987903, at 4. The *Cummings* court stated Section 2102(a) is a non-claim statute and not a statute of limitations or a

statute of repose. *Id.*

The purpose of Section 2102(a) 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 specific 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.” *Id.*

In this case the Plaintiff’s claim was never filed with the Register of Wills nor presented to the Estate until her suit was filed more than 14 months after the date of death and served on the Estate more than 19 months after date of death, well past the eight month statutory termination date. Plaintiff/Appellant’s claim clearly arose over two months before decedent’s date of death and the claimant is “forever barred in proceeding against the decedent’s estate” *Cummings, Id.*

CONCLUSION

The Superior Court correctly construed that 12 Del. C. §2102(a) is not a statute of limitations and may not be waived. The statute terminated the capacity of the Estate to be sued eight months after the date of death. Summary judgment was correctly granted in favor of the Estate of Joshua Giddings.

Respectfully submitted.

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Dated June 22, 2015

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of the Estate of JANE D. W. DOE,	:	
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THE STATE OF DELAWARE,	:	of Delaware
and THE ESTATE OF JOSHUA	:	In And For New Castle County
GIDDINGS,	:	
Defendants Below,	:	C.A. No.: N10C-08-178 EMD
Appellees	:	
	:	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22nd day of June, 2015, two copies of the foregoing Appellee Estate of Joshua Giddings' Answering Brief were mailed, postage prepaid, to Edmund Daniel Lyons, Esquire, 1526 Gilpin Avenue, P. O. Box 579, Wilmington, Delaware 19899, attorney for the Appellant, and Michael F. McTaggart, Deputy Attorney General, Carvel State Office Building, 820 North French Street, 6th Floor, Wilmington, Delaware 19801, attorney for Appellee State of Delaware.

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