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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

Estate of ROBERT T. HERZOG,
Deceased.

B279039

(Los Angeles County
Super. Ct. No. BP144846)

JOY HERZOG CALDWELL, as
Executor, etc.,

Petitioner and Respondent,

v.

JOHN HERZOG,

Claimant and Appellant.

APPEAL from an order of the Superior Court of
Los Angeles County, Clifford L. Klein, Judge. Affirmed.

Krieger, Troung, Spagnola & Klausner and Siobhan Marie
Bishop for Defendant and Appellant.

Patricia A. Gray for Petitioner and Respondent.

John Herzog filed a creditor's claim in the proceeding to probate the estate of his father, Robert T. Herzog. The probate court ruled Joy Herzog Caldwell, John's¹ sister and the executor of Robert's estate, had properly denied the claim in accordance with Probate Code section 9250² and John's failure to file an action within 90 days of receiving notice of that rejection, as required by section 9353, barred any creditor's action he might otherwise have against the estate. On appeal John contends the court erred in barring his claim because section 9353's 90-day limitations period is triggered by the executor's formal rejection of a creditor's claim in compliance with section 9250 and Caldwell has still not satisfied that section's requirements. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. John's Creditor's Claim

Robert died in 2012. On October 17, 2013 Caldwell was appointed executor of his estate. On October 24, 2013 John timely filed a creditor's claim in the probate proceeding pursuant to section 9150 seeking \$102,000, plus interest, as repayment of a loan he purportedly had made to Robert in 2008, which was due and payable at Robert's death.

2. Caldwell's Response to John's Claim

On December 27, 2013 Caldwell's counsel, Patricia Gray, wrote to John's counsel informing him John had not provided sufficient proof to support "the legitimacy of th[e] claim." Gray

¹ Because Robert and John Herzog share the same surname, we refer to them by their first names for clarity.

² Statutory references are to this code unless otherwise stated.

stated in her letter, “If you wish the claim to be considered please provide any and all evidence in support, including any writings, memorandums, cop[ies] of checks and invoices paid,” and requested that John include a sworn declaration attesting to the authenticity of the supporting documents. Gray also observed John had not signed the claim and informed his counsel, without John’s signature under penalty of perjury, the claim was invalid.

3. John’s Supplemental Creditor’s Claim

On July 1, 2014 John filed what he called a “supplemental creditor’s claim” attaching a significant amount of additional supporting documentation. According to John, Caldwell failed to respond to this supplemental claim. Although John contacted Caldwell through their respective counsel on several occasions between October and December 2014 inquiring about his creditor’s claim, his inquiries were ignored.

4. Evidence of Caldwell’s Rejection of Claim in December 2013

In July 2015, after the court had issued an order to show cause directed to Gray’s failure to appear at a scheduled status conference in the probate proceeding, Gray filed and served, along with her answer to the court’s order, a declaration responding to John’s allegations concerning, among other things, John’s creditor’s claim. Gray stated she had formally denied the claim in December 2013 because it was untimely, incomplete and lacked essential proof. Gray supplied as an exhibit to her declaration the letter she wrote to John’s counsel in December 2013, as well as a completed form adopted for mandatory use by the Judicial Council for the rejection of creditor’s claims (Judicial Council Form DE-174), dated December 27, 2013. Gray included a signed proof of service attesting that she had personally mailed

the completed rejection-of-claim form to John's counsel on December 27, 2013.

John's counsel responded he first received the form rejection of John's claim on July 23, 2015 and noted the rejection he received did not bear a file stamp. In fact, the rejection form was not filed with the court until July 23, 2015. John asserted the proof of service dated December 2013 was fraudulent.

In August 2016 Caldwell stated she was prepared to issue a first and final accounting of Robert's estate and requested the court make a judicial finding that she had denied John's creditor's claim in December 2013 when she served him with the rejection-of-claim form. The court told Caldwell to prepare a written motion to dismiss the creditor's claim and it would consider her motion and any responsive briefing filed by John at a hearing on September 14, 2016. In response to Caldwell's motion, John reiterated his position that he had yet to be served with the rejection. John's counsel explained, because he knew the December 27, 2013 proof of service to be fraudulent, John "did not treat [the form rejection] as a real rejection and continued to try resolve the claim informally to save the estate's money."

On September 27, 2016, after holding the hearing and taking the matter under submission, the court found John's creditor's claim time-barred under the 90-day limitations period in section 9353. Noting both counsel had accused each other of misconduct—John's counsel alleged Gray had backdated a proof of service to indicate she had served John with a formal rejection in December 2013, and Gray claimed John's counsel was dishonest—the court found Gray had served the Judicial Council rejection-of-claim form in December 2013, as she attested to in

the proof of service. The court approved Caldwell's rejection of the claim, finding John's (still unfiled) creditor's action was time-barred. John filed a timely appeal from this order.³

DISCUSSION

1. *Standard of Review*

The probate court's interpretation of a statute and its application to undisputed events are subject to de novo review. (*Sterling v. Taylor* (2007) 40 Cal.4th 757, 772; *Estate of Wilson* (2012) 211 Cal.App.4th 1284, 1290; *Harustak v. Wilkins* (2000) 84 Cal.App.4th 208, 212.) When the facts are in conflict, the probate court's factual findings are reviewed for substantial evidence. (*Estate of Joseph* (1998) 17 Cal.4th 203, 217.)

2. *The Court Did Not Err in Approving Caldwell's Rejection of John's Creditor's Claim*

a. *Governing law*

Creditor's claims are governed by a comprehensive statutory scheme designed to expedite the administration of estates while providing estate beneficiaries and administrator some protection from unknown creditor's claims. (See § 9000 et seq.; *Dobler v. Arluk Medical Center Industrial Group, Inc.* (2001) 89 Cal.App.4th 530, 535.) Under the applicable statutes an estate creditor must file a timely claim in the probate estate proceedings as a condition precedent to filing an action against a decedent's estate. (See §§ 9100 [creditor must file claim in probate proceeding within four months after personal representative is appointed or 60 days after notice of

³ The probate court's order approving Caldwell's rejection of John's creditor's claim is an appealable order. (See § 1300, subd. (c); Code Civ. Proc., § 904.1, subd. (a)(10).)

administration is mailed or personally delivered, whichever is later], 9351 [a timely filed creditor's claim is a condition precedent to pursuing an action against the decedent's estate].) The timely filing of a creditor's claim tolls the statute of limitations otherwise applicable to the claim. (§ 9352; see Code Civ. Proc., § 366.2, subd. (b)(2).)

When a creditor's claim is filed in the probate proceeding, "the personal representative shall allow or reject the claim in whole or in part." (§ 9250, subd. (a).) The approval or rejection of the claim must be served on the creditor, filed with the court and contain (1) the name of the creditor; (2) the total amount of the claim; (3) the date of issuance of letters to a personal representative; (4) the date of the decedent's death; (5) the estimated value of the decedent's estate; (6) the amount of the claim allowed or rejected by the personal representative; (7) whether the personal representative is authorized to act under the Independent Administration of Estates Act (§ 10400 et seq.); and (8) a statement the creditor has 90 days in which to act on a rejected claim. (§ 9250, subd. (c)(1)-(8); Cal. Rules of Court, rule 7.401.) If the personal representative rejects the creditor's claim in compliance with statutory requirements, the claim is barred unless the creditor files suit against the decedent's estate within 90 days after receiving notice of the rejection. (§ 9353, subd. (a).)

b. *Although Gray's letter did not satisfy the statutory requirements for rejection of a creditor's claim, her Judicial Council rejection-of-claim form did*

John correctly observes Gray's December 27, 2013 letter did not constitute a valid rejection of his claim. Among other things, the letter failed to state the date of Robert's death or the estimated value of Robert's estate and did not include an

advisement the creditor had 90 days after receiving notice to file suit, all of which are required by section 9250. However, the rejection of claim filed on form DE-174, adopted by the Judicial Council for mandatory use for rejection of claims, indisputably satisfied each of the requirements of section 9250. (See § 9250, subd. (d) [“The Judicial Council may prescribe an allowance or rejection form, which may be part of the claim form. Use of a form prescribed by the Judicial Council is deemed to satisfy the requirements of this section”]; see generally *Allen v. Stoddard* (2013) 212 Cal.App.4th 807, 811.)

c. Substantial evidence supports the probate court’s finding Gray served the rejection-of-claim form in December 2013

John does not contend the completed Judicial Council rejection-of-claim form provided by Caldwell is invalid on its face. Rather, John insists he did not receive it until Caldwell sent it to his counsel in July 2015 as part of her response to the court’s order to show cause. Although the rejection-of-claim form contains a proof of service stating Gray served the form by mail on John’s counsel on December 27, 2013, John asserts Gray fraudulently backdated the proof of service, an accusation he insists is bolstered by Caldwell’s May 23, 2016 first and final account of the estate, a pleading signed by Gray in which she admits she waited several months for further information before formally rejecting John’s October 24, 2013 claim. John also emphasizes the December 27, 2013 letter did not refer to the claim form that was purportedly sent the same date and the

rejection form was not filed with the court until July 23, 2015.⁴ According to John, Gray could not have been waiting several months for additional documentation if she had, in fact, denied the claim in December 2013.

Relying on the rejection-of-claim form's proof of service, signed by Gray under penalty of perjury, the probate court found Gray had served by mail the rejection-of-claim form on December 27, 2013. There is nothing physically impossible or inherently improbable in the evidence supporting the court's finding. (Cf. *People v. Brown* (2014) 59 Cal.4th 86, 105-106 [testimony of a single witness that is not "physically impossible or inherently improbable" is sufficient to support judgment].) Gray's statement in May 2016 that she waited several months before denying the claim is not necessarily inconsistent with having served a rejection on December 2013. A trier of fact could reasonably interpret Gray's statement as having waited from October until nearly the end of December 2013 for John to provide additional information before formally rejecting his claim.

John contends that service of the rejection-of-claim form on his attorney, rather than on him personally, was invalid because it did not satisfy the requirement of service on the creditor as mandated by section 9250. (Cf. *Merrill v. Finberg* (1992) 4 Cal.App.4th 1443, 1446-1447 [section 9250 requires service of

⁴ Gray stated in the document, "Despite requests of his attorney on the phone and in writing, no documentation in support of the [creditor's] claim was produced. . . . [¶] After months passed waiting for further documentation, the Claim was formally rejected by the Personal Representative's Rejection of Creditor's Claim, filed July 23, 2015."

rejection on creditor in accordance with requirements of section 1215; service on creditor's attorney as well as creditor was not required]; see Cal. Rule of Court, rule 7.401 [rejection of creditor claim must be served on creditor and creditor's attorney].) Even if this contention, raised for the first time by John's counsel at oral argument, were not forfeited (see *In re I.C.* (2018) 4 Cal.5th 869, 888, fn. 5 [contention raised for first time at oral argument is forfeited]; *Kinney v. Vaccari* (1980) 27 Cal.3d 348, 356, fn. 6 [same]), it is utterly without merit. In his creditor's claim John identified his attorney's law firm and the firm's address as the location to effect service on him. The proof of service on the rejection-of-claim form states it was served on John (identified as the creditor) on December 27, 2013 by mail addressed to the same law firm and street address he identified in his creditor's claim.

Finally, section 9250 requires the formal rejection be filed with the court. Accepting the probate court's finding that the rejection form was served on John in December 2013, and in light of the undisputed evidence that the form was filed with the court on July 23, 2015, John had 90 days from the date of filing to initiate his creditor's action. (§ 9353, subd. (a).) As of the court's September 27, 2016 order, 14 months after the rejection form was filed, John had still not filed such an action. The court did not err in concluding John's creditor's action was time-barred.

DISPOSITION

The court's September 27, 2016 order approving Caldwell's rejection of John's creditor's claim is affirmed. Caldwell is to recover her costs on appeal.

PERLUSS, P. J.

We concur:

ZELON, J.

WILEY, J.*

* Judge of the Los Angeles County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.