

IN THE COURT OF APPEALS OF TENNESSEE  
AT JACKSON  
JUNE 6, 2002 Session

**BARTON HAWKINS, JR. v. AUGUSTA HAWKINS & THE ESTATE OF  
BARTON HAWKINS, SR.**

**Direct Appeal from the Probate Court for Crockett County  
No. 7822; The Honorable George R. Ellis, Judge**

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**No. W2001-01637-COA-R3-CV - Filed January 16, 2003**

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This appeal involves the filing of claims against an estate and the filing of exceptions thereto. The trial court allowed the exceptions and awarded the Appellee the portion of her claim concerning two promissory notes. The parties raise multiple issues on appeal. For the following reasons, we affirm in part, reverse in part and remand.

**Tenn. R. App. P. 3; Appeal as of Right; Judgment of the Probate Court Affirmed in Part  
and Reversed in Part**

ALAN E. HIGHERS, J., delivered the opinion of the court, in which DAVID R. FARMER, J., and HOLLY KIRBY LILLARD, J., joined.

Barton Hawkins, Jr., Only, TN, *pro se*

Jeffrey S. Rosenblum, Marc E. Reisman, Memphis, TN, for Appellant Karen Johnson

Lanis L. Karnes, William H. Schackelford, Jr., Jackson, TN, for Appellees

**OPINION**

**Facts and Procedural History**

Barton L. Hawkins, Sr. ("Mr. Hawkins, Sr.") had four children, the Appellants, Barton Hawkins, Jr. ("Mr. Hawkins, Jr.") and Karen Johnson ("Ms. Johnson"), Michelle Cotton, who was not involved in this case, and Lawrence Hawkins ("Lawrence"). On March 14, 2000, Mr. Hawkins, Sr. died intestate. Mr. Hawkins, Sr.'s estate consisted of four parcels of real property with an appraised value of \$185,200.00 and personal property valued at \$7,500.00. Lawrence was appointed administrator of Mr. Hawkins, Sr.'s estate by order of the Chancery Court of Crockett County

entered April 11, 2000. Notice to creditors appeared in *The Crockett Times* for two weeks from April 6, 2000 until April 20, 2000.

On June 21, 2000, Mr. Hawkins, Sr.'s mother, the Appellee, Augusta Hawkins ("Ms. Hawkins"), filed a claim against Mr. Hawkins, Sr.'s estate to collect on a 1967 note and a 1987 note and the interest on those notes totaling \$278,348.08. Ms. Hawkins amended her claim four times. On August 15, 2000, Ms. Hawkins filed her first amended claim against the estate in the amount of \$318,857.13. Ms. Hawkins abandoned her claims on the 1967 note and the 1987 note and instead claimed on four notes each for \$35,000 dated in 1991, 1992, 1993, and 1998 and interest on those notes. On August 22, 2000, Ms. Hawkins filed a second amended claim against the estate for the sole purpose of making an adjustment on the interest she alleged to be due on the four \$35,000.00 notes. Ms. Hawkins then filed a third amended claim on August 29, 2000 in the amount of \$245,644.60 reflecting a further adjustment on the interest she alleged to be due on the four \$35,000.00 notes.

On September 5, 2000, the estate made a Motion to Close Claims and filed exceptions to creditors' claims. On September 25, 2000, the estate moved the court to dismiss its exceptions and approve the sale of the deceased's real estate to satisfy the claims of Ms. Hawkins. On September 28, 2000, Ms. Hawkins made a motion that the court approve the sale of the deceased's real estate to satisfy her debt. On September 29, 2000, the estate asked the court to consider it insolvent because of Ms. Hawkins' claims. On October 2, 2000, the date set for a hearing on these various motions, Ms. Johnson, one of the Appellants, made her first appearance. Ms. Johnson asked for a continuance in order to obtain discovery on the validity of the claims Ms. Hawkins made in her third amended claim. At the hearing held on October 2, 2000, the trial court granted Ms. Johnson's request for a continuance and set a hearing date of January 17, 2001.

On October 6, 2000, Mr. Hawkins, Jr. filed an Exception To Creditor's Claim, in which he demanded a jury trial. On January 11, 2001, a subpoena duces tecum was issued to Ms. Hawkins requiring her to appear at the pending hearing and bring a copy of her will. Ms. Hawkins refused to produce her will pursuant to the subpoena duces tecum. Ms. Johnson filed a motion requesting the probate court to require Ms. Hawkins to produce her will. The trial court denied the motion. On January 16, 2001, Ms. Hawkins filed the fourth amended claim against the estate. In the fourth amended claim, Ms. Hawkins returned to her original claim of principal and interest on the 1967 note and the 1987 note, and added a claim for rent and attorney's fees.

On April 30, 2001, a hearing was held on Ms. Hawkins' fourth amended claim against the estate. The parties stipulated at trial that Ms. Hawkins made only two loans to Mr. Hawkins, Sr., the 1967 note and the 1987 note, of which Mr. Hawkins, Sr. never made a payment. The parties also stipulated that there were seven subsequent promissory notes that did not involve the advance of additional monies by Ms. Hawkins. On July 6, 2001, the trial court entered an order finding Ms. Hawkins' claims to be valid to the extent of \$166,779.50. This figure represents the principal and interest on the 1967 note and the 1987 note, but did not allow for the rent claim nor the attorney's fees.

On July 9, 2001, Mr. Hawkins, Jr. filed a motion for a new trial and/or motion to alter judgment. Mr. Hawkins, Jr. also filed his notice of appeal on July 9, 2001. On August 27, 2001, the trial court denied the motion for new trial. Ms. Johnson filed her notice of appeal on July 12, 2001. Ms. Johnson filed a second notice of appeal on September 26, 2001.

### **Standard of Review**

The standard of review for a non-jury case is *de novo* upon the record. See Wright v. City of Knoxville, 898 S.W.2d 177, 181 (Tenn. 1995). There is a presumption of correctness as to the trial court's factual findings, unless the preponderance of the evidence is otherwise. See Tenn. R. App. P. 13(d). For issues of law, the standard of review is *de novo*, with no presumption of correctness. See Ridings v. Ralph M. Parsons Co., 914 S.W.2d 79, 80 (Tenn. 1996).

### **Issues**

The parties raise the following issues, as we perceive them, for our review:

- Ms. Johnson:
1. Whether the trial court erred in refusing to enforce a subpoena requiring Ms. Hawkins to produce her last will and testament and whether the trial court erred in ruling that Ms. Hawkins did not have to answer questions regarding her last will and testament.
  2. Whether the 1967 note was barred by the statute of limitations and whether the trial court erred in excluding certain evidence.
  3. Whether the interest was erroneously calculated on the 1967 note.
  4. Whether the interest was erroneously calculated on the 1987 note, as modified from time to time.
- Mr. Hawkins, Jr.:
1. Whether the probate court erred in failing to transfer this case to the circuit court for a jury trial.
  2. Whether the court erred in failing to issue a jury trial pursuant to Tennessee Rule of Civil Procedure 38.01.
  3. Whether the court erred in failing to appoint counsel.
  4. Whether the trial should have been held in abeyance due to appellant's incarceration.
  5. Whether a new trial should be granted.

## Law and Analysis

Although the trial court considered Mr. Hawkins, Jr.'s exception to creditor's claims, it is clear from the record that his exception was not timely filed. Likewise, it is clear from the record that Ms. Johnson did not file a timely exception.

Tennessee Code Annotated section 30-2-307 provides that claims against an estate must be filed within the period prescribed in "the notice published or posted in accordance with § 30-2-306(c)." See Tenn. Code Ann. §30-2-307(a)(1). Section 30-2-306(c) provides that claims must be filed within four (4) months from the date the notice is first published. See Tenn. Code Ann. § 30-2-306(c). Exceptions to claims may then be filed within thirty (30) days from "the expiration of four (4) months from the date of the notice to creditors given as provided in § 30-2-306(c)." See Tenn. Code Ann. § 30-2-314(a).

On April 6, 2000 and again on April 13, 2000, notice to creditors was published in *The Crockett Times*, a newspaper of local circulation. The notice stated that Letters of Administration had been issued on March 30, 2000 and that any person having a claim against the estate must file their claim within four (4) months from the date of first publication of the notice.

Ms. Hawkins filed her initial claim against the estate on June 21, 2000, well within the four (4) month period provided in the notice to creditors and prescribed in Tennessee Code Annotated section 30-2-306(c). Ms. Hawkins alleged that she was owed \$145,396.75 on one note and \$132,946.33 on an additional note. In connection with the claim, Ms. Hawkins submitted letters prepared by Bobby Vaughn, President of Gates Banking and Trust Co. These letters explained the nature of the two notes and provided for the calculation of interest on each note.

The only exception to be filed within the period prescribed by statute was an exception filed on September 5, 2000, by Lanis Karnes, the attorney for the estate. Ms. Karnes later asked the court to dismiss this exception. The record shows that no other exceptions were timely filed. Mr. Hawkins, Jr. filed his exception on October 6, 2000, well beyond the period for filing an exception and thus should not have been considered by the trial court. Likewise, Ms. Johnson did not file a timely exception. Ms. Johnson filed both a Notice of Appearance and a Motion to Continue Hearings on October 2, 2000. On January 12, 2001, Ms. Johnson filed a response to the estate's motion to dismiss exceptions, taking issue with Ms. Hawkins' claims against the estate. We find that Ms. Johnson's motions, in substance, are exceptions to Ms. Hawkins' claims and as they were not timely filed should not have been considered by the trial court.

Our Supreme Court has previously held that "a claim properly filed and not excepted to within said period of time has the effect of a judgment against the estate." Brigham v. Southern Trust Co., 300 S.W.2d 880, 882 (Tenn. 1957). Neither Mr. Hawkins, Jr. nor Ms. Johnson filed a timely exception to Ms. Hawkins' claims, thus the claims have the effect of a judgment against the estate and the trial court should not have entertained the parties' exceptions.

Our disposition on the issues relating to the filing of the exceptions renders moot any discussion of Mr. Hawkins, Jr.'s remaining issues. Also rendered moot are Ms. Johnson's remaining issues, except those relating to the trial court's action in setting the amount of interest on both the 1967 note and the 1987 note. The trial court awarded Ms. Hawkins \$19,500 of principal on the note executed on December 11, 1967 as well as "\$66,169.64 of accrued interest with a per diem of \$4.54 per day from date of judgment herein (30 April 2001) which represents interest from 11 December 1967 forward." The trial court also awarded Ms. Hawkins \$35,000 of principal on the note executed on January 12, 1987 and "\$46,109.86 of accrued interest with a per diem of \$8.15 from the date of judgment herein (30 April 2001) which represents interest from 12 January 1987 forward." The total amount of the award was \$166,779.50.

Generally, "interest on an interest-bearing instrument is payable from the date of the instrument." Tenn. Code Ann. § 47-3-112(a). However, where the instrument provides otherwise, the instrument controls. See Tenn. Code Ann. § 47-3-112(a).<sup>1</sup> In this case, the 1967 instrument states that the note will become due on December 11, 1977 and states that interest is to be calculated "from maturity." Thus, interest on the 1967 note should be calculated from the date of maturity, December 11, 1977. To the extent that the trial court calculated interest from December 11, 1976, it was in error.

Like the 1967 note, the note executed on January 12, 1987 provides for "interest from maturity." The note also states that January 12, 1988 is the maturity date. The 1987 note, however, presents a slightly more complex scenario than the 1967 note. Subsequent to the execution of the original note in 1987, Mr. Hawkins, Sr. executed seven (7) renewal notes. Each renewal note recognized the original principal amount of \$35,000 and changed the date of maturity. The first renewal note was executed on January 12, 1988 and moved the maturity date to January 12, 1989. On January 12, 1989, Mr. Hawkins, Sr. executed a second renewal note which changed the maturity date to January 12, 1990. The third renewal note was executed on January 12, 1990 and modified the maturity date to January 12, 1991. On January 12, 1991, Mr. Hawkins, Sr. executed a fourth renewal note which provided that the note would mature on January 12, 1992. Mr. Hawkins executed the fifth renewal note on January 8, 1992, providing January 8, 1993 as the new maturity date. On January 8, 1993, Mr. Hawkins, Sr. executed the sixth renewal note which changed the maturity date to January 8, 1998 and also inserted the words "On Demand." Finally, Mr. Hawkins, Sr. executed the seventh and final renewal note on January 8, 1998, which provided that the note would mature on January 8, 2003. This seventh renewal note also stated that it was "On Demand."

Where an instrument states that it is payable at a fixed date and also states that it is payable on demand, "the instrument is payable on demand until the fixed date and, if demand for payment is not made before that date, becomes payable at a definite time on the fixed date." Tenn. Code Ann. § 47-3-108(c). In this case, the seventh renewal note provides the maturity date of January 8, 2003

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<sup>1</sup> Section 47-3-122(a) of the Tennessee Code Annotated provides that "unless otherwise provided in the instrument, (i) an instrument is not payable with interest, and (ii) interest on an interest-bearing instrument is payable from the date of the instrument." Tenn. Code Ann. § 47-3-112(a).

and also states that it is payable on demand. When Ms. Hawkins filed her claim against the estate and asked to be paid, this qualified as a demand for payment. See TENN. JURIS. *Interest* § 10; see also In re Myer's Estate, 397 S.W.2d 831, 837 (Tenn. Ct. App. 1965). Thus, Ms. Hawkins is entitled to the principal amount of \$35,000.00. As to the interest on the 1987 note, Tennessee Code Annotated section 47-14-109(c) provides that “the time from which interest is to be computed shall be the day when the debt is payable, unless another day be fixed in the contract itself.” Tenn. Code Ann. § 47-14-109(c). A note payable on demand is “payable the moment it was given; and therefore should bear interest from the date.” See Collier v. Gray, 1 Tenn. 110 (Tenn. 1805). In this case, the seventh renewal note was executed on and became payable on January 8, 1998. Thus, Ms. Hawkins is entitled to interest from January 8, 1998.

### **Conclusion**

Accordingly, we reverse the trial court’s decision to hear the exceptions of Mr. Hawkins, Jr. and those of Ms. Johnson. We affirm the trial court’s award of the principal amount of \$19,500 on the note executed on December 11, 1967. We reverse the trial court’s award of interest on the 1967 note as it was calculated incorrectly and remand for calculation of interest from the date of maturity, December 11, 1977. We affirm the trial court’s award of the principal amount of \$35,000 on the note executed on January 12, 1987, reverse the trial court’s award of interest on this note, and remand for calculation of interest from January 8, 1998.

Ms. Hawkins and the estate are not entitled to attorney fees incurred on appeal. Costs on appeal are assessed equally against the Appellants, Barton Hawkins, Jr., and his surety, and Karen Johnson, and her surety, and the Appellees, Augusta Hawkins and the Estate of Barton Hawkins, Sr., for which execution may issue if necessary.

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ALAN E. HIGHERS, JUDGE