

IN THE COURT OF APPEALS OF TENNESSEE
EASTERN SECTION

FILED

May 21, 1997

Cecil Crowson, Jr.
Appellate Court Clerk

IN RE: THE ESTATE OF) SCOTT COUNTY
SHERMAN OVERTON,) 03A01-9701-PB-00025
Deceased)
)
BETTY OVERTON)
)
Petitioner - Appellee) HON. JAMES L. COTTON, JR.,
) JUDGE
v.)
)
MAE OLMSTEAD, MATTIE GOAD,)
ERVIE OVERTON, GLENNIS PAYNE,)
ARLIE OVERTON, and ARVIL)
OVERTON)
)
Respondents - Appellants) AFFIRMED AND REMANDED

JAMES FRANK WILSON OF WARTBURG FOR APPELLANTS

JOHNNY V. DUNAWAY OF LaFOLLETTE FOR APPELLEE

O P I N I O N

Goddard, P. J.

Certain of the children and next of kin of Sherman Overton appeal a judgment of the Probate Division of the General Sessions Court for Scott County which first denied their motion to dismiss the petition for probate filed by Betty Overton, one of their siblings, on the ground that such an action was barred by the statute of limitations. The Probate Judge thereafter

found that it was appropriate the estate be probated. He then granted letters of administration to Sidney R. Seals, a licensed attorney, who, according to the Trial Court, was a disinterested third party.

This appeal insists that the Court was in error in not sustaining its motion, which was predicated upon the provisions of T. C. A. 30-1-110(4) which, although repealed by Chapter 449 of the Public Acts of 1993, was in full force and effect for a full 10-year period after Mr. Overton's death, and further, if in fact the repealed statute was not effective to bar this probate proceeding, the suit was barred by the catch-all provisions of T. C. A. 28-3-110(3).

The record discloses that Sherman Overton died in the year 1980 and no petition seeking to administer his estate was filed until October 17, 1996, some two weeks after the death of his widow, Laura Overton, on October 8, 1996.

The Trial Court in its order of probate impliedly overruled the motion to dismiss.

The first statute raised as a defense, T. C. A. 30-1-110(4) provides the following:

30-1-110. Time within which administration may be granted. -- The time within which administration may be granted shall be as follows:

. . . .

(4) OTHER CASES.¹ In no other cases shall letters of administration be granted where the deceased died ten (10) years before application made for the same; and all such letters testamentary or of administration, granted after that period, shall be utterly void and of no effect.

The Appellants argue that, as above noted, the statute was in full force and effect from the date of Mr. Overton's death until repealed some 13 years later, and that it would be an unconstitutional application of the repealing statute to hold it invalid under the facts of this case. This insistence is based upon the contention that to accord retrospective application to the statute would impair the Appellants' vested right to assert the defense of the repealed statute.

In our view, as set out in the Trial Judge's memorandum opinion hereinafter quoted, a probate proceeding is a unique one and for the most part unadversarial, at least in the initial phase of obtaining probate. For that reason we decline to equate a daughter's right not to have her father's estate probated with the right of a wrongdoer not to be sued.

T. C. A. 28-3-110(3) provides the following:

28-3-110. Actions on public officers' and fiduciary bonds -- Actions not otherwise covered. --

¹ The preceding cases mentioned in the statute are:
1. Deceased entitled to remainder not reduced to possession.
2. Distributee under disability at death of ancestor.
3. Prosecuting claims against government.

The following actions shall be commenced within ten (10) years after the cause of action accrued:

.

(3) All other cases not expressly provided for.

We concur in the Trial Judge's treatment of the foregoing statute.

That the Court, to an unusual degree, has struggled in reaching a final decision in this matter, it frankly being troubling to the Court to open up an estate more than 16 years after the decedent's intestate death when there would initially appear to be no compelling reasons to do so which are based in fact and not speculation, and coupled with the law being somewhat unclear in this area; however, it appearing to the Court, that in 1993 when the General Assembly deleted Subsection (4) of Tennessee Code Annotated § 30-1-110 (which previously imposed a statute of limitations expressly voiding all letters issued more than 10 years after the decedent's death), that by clear legal implication, the legal message was being sent that such letters issued more than 10 years after the decedent's death are legally permissible, the threshold legal question then being whether or not the 10-year "catch-all" statute of limitation set forth in Tennessee Code Annotated § 28-3-110(3) prohibits the issue of letters and estate administration in this cause.

It being the final opinion of the Court that the issue of letters to administer a decedent's estate is a unique proceeding to be distinguished from the types of adversarial causes of actions contemplated by and addressed in Tennessee Code Annotated § 28-3-110, although other specific types of claims or suits, which might derive out of or spring from discovery or other legal activity occurring within the framework of estate administration, in the court's opinion, could possibly be barred by Tennessee Code Annotated § 28-3-110, estoppel or even laches, based upon an ad hoc evaluation of each such derivative cause.

Moreover, it would seem anomalous for the Legislature to intend to repeal the provisions of T. C. A. 30-1-110(4) so the exact statutory period of T. C. A. 28-3-110(3) would become effective.

For the foregoing reasons, the judgment of the Trial Court is affirmed and the cause remanded so that the estate may be fully administered. In this connection, it would appear appropriate that this probate proceeding should be consolidated with that of Mr. Overton's widow, Laura Overton. Costs of appeal are adjudged against Appellants Mae Olmstead, Mattie Goad, Ervie Overton, Glennis Payne, Arlie Overton, Arvil Overton and their surety.

Houston M Goddard, P. J.

CONCUR:

Herschel P. Franks, J.

Don T. McMirray, J.