

Summary of SC90701, *State ex rel. Gina Marie Houska, Personal Representative of the Estate of Jeffrey A. Houska, Deceased v. The Honorable Ray Dickhaner*

Writ proceeding originating in Jefferson County

Argued and submitted Sept. 7, 2010; opinion issued Oct. 5, 2010

Attorneys: The estate was represented by Thomas J. Ray Jr. of the Ray Law offices PC in Arnold, (636) 464-8353; and Panagos was represented by C. Timothy Rice, an attorney in St. Louis, (314) 241-8078.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: The estate of a deceased person seeks a writ prohibiting a trial court from reinstating the claim of a creditor who filed a claim against the estate after the statute of limitations expired. In a unanimous decision written by Chief Justice William Ray Price Jr., the Supreme Court of Missouri makes permanent its writ of prohibition. The statute of limitations at issue is triggered solely by the deceased person's death and, therefore, is self-executing. As such, it does not implicate due process. The creditor's additional challenges to the statute are waived because the creditor failed to raise them before the trial court.

Facts: In 2006, James T. Panagos LLC performed electrical contracting services and supplied electrical material for a home being built by Jeffrey Houska. Panagos sent Houska an invoice for nearly \$1,500 in October 2006. Houska died a week later without paying Panagos. In May 2007, Houska's estate published letters of administration. Nearly two years later, Panagos brought a claim against the estate. The trial court barred Panagos' claim under two statutes that place limits on the time during which creditors may bring claims against estates. Following Panagos' motion for rehearing, the trial court reinstated Panagos' claim on the basis of *Tulsa Professional Collection Services, Inc. v. Pope*, 485 U.S. 478 (1988), which held that a nonclaim statute violated creditors' due process rights because the trial court was involved intimately in the application of the time bar and the statute did not require the estate to give actual notice to creditors. The trial court here then scheduled a hearing to determine whether the standards in *Pope* had been met. The estate seeks this Court's writ prohibiting the trial court from reinstating Panagos' claim.

WRIT MADE PERMANENT.

Court en banc holds: Under *Pope*, section 473.444 is self-executing and, therefore, does not implicate due process. This section provides that claims against the estate of a deceased person shall become unenforceable and barred forever against the estate one year following the death regardless of whether a claimant has been given notice within that time frame of the decedent's death or the need to file a claim in court. Because section 473.444 operates independently of any notice, judicial action or jurisdiction of a circuit court to bar claims, the trial court is not involved "intimately" with the application of the one-year limitation on claims against the estate. Because no state action is required to trigger the time period, which is triggered automatically by the decedent's death, section 473.444 is self-executing. Given the United States Supreme Court's

discussion of self-executing statutes in *Pope*, section 473.444 does not involve sufficient state involvement to implicate due process protections. This is consistent with other jurisdictions, which unanimously have held that *Pope* does not apply to self-executing statutes of limitation on creditors' claims that begin running at the time of the decedent's death.

Panagos waived all additional claims as to the constitutional validity of section 437.444 by failing to raise them before the trial court. Panagos had a full and fair opportunity to brief and argue all defenses to section 473.444. In the motion for rehearing, Panagos argued only that barring the claim against the estate violated due process. Panagos failed to allege that section 473.444 lacked a clear title under article III of the Missouri Constitution or violated equal protection.