

Summary of SC92388, *In the Estate of Allen D. Austin, Deceased, Randy Nolan v. Cathy Snead*

Appeal from the Gentry County circuit court, Judge Glen Dietrich
Argued and submitted Sept. 12, 2012; opinion issued Jan. 29, 2013

Attorneys: The children's father was represented by Benjamin S. Creedy of Murphy, Taylor, Siemens & Elliott PC in St. Joseph, (816) 364-6677; and the estate's personal representative was represented by David B. Parman of David B. Parman LLC in Albany, (660) 726-5500.

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 personal representative of the estate of a man accused three years before his death of abuse against two minor children determined, after her own investigation of their potential claims, that she need not provide them with actual notice of the estate. The children's father appeals the trial court's dismissal of the claims he ultimately filed, on their behalf, after the time for filing such claims had expired. In a 6-0 decision written by Judge Mary R. Russell, the Supreme Court of Missouri reverses the trial court's judgment and remands (sends back) the case. Failure to provide the children with notice violated their due process rights. They were known, and their father's address was reasonably ascertainable. Further, their claims were more than merely conjectural because, although they had not been reduced to a judgment, a state investigation had concluded that the allegations on which they were based were substantiated by a preponderance of the evidence. Because the children had not been provided notice, their claims are not exterminated by the running of the six-month statute of limitations for filing such claims.

Facts: Allegations of sexual abuse were made against Allen Austin in 2006 regarding two girls, then aged 7 and 8 years old. A division of family services investigation concluded that these allegations were substantiated by a preponderance of the evidence; Austin did not appeal this determination. Austin died in 2009, and Cathy Snead – whom Austin had appointed as personal representative of his estate and who also was a beneficiary of his estate – published the first notice of the opening of his estate in August 2009, providing notice to any potential creditors. Although she was aware of the sexual abuse allegations made by the children, she did not notify them, through their father, of the opening of the estate. While the estate was pending, Snead – who was employed as a social worker – personally investigated the validity of the abuse allegations. The children's grandmother and aunt told her the allegations were untrue, but she did not talk with the children, their parents or any representative of the division. Because Snead concluded that the children did not have a viable claim against Austin's estate, she also concluded that she did not need to provide actual notice of the estate to the children's father. Eight months after the first notice was published, the children's father filed their claims against the estate. Because the six-month window for creditors to file claims against the estate, as set forth in section 473.360, RSMo, had passed, the father amended the claims to classify them as an adversary proceeding, which the court sustained. Snead moved to dismiss the claims. The court sustained her motion, and the children's father appeals.

REVERSED AND REMANDED.

Court en banc holds: The trial court erred in dismissing the children's claims. Due process requires that notice be calculated reasonably, under all circumstances, to apprise interested parties of the pendency of an action and afford them an opportunity to present their objections. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 315 (1950). Failure to provide a known or reasonably ascertainable claimant with actual notice of a proceeding that terminates the claimant's claim violates due process. *In re Bohannon*, 943 S.W.2d 651, 654 (Mo. banc 1997). A creditor's identity must be known or reasonably ascertainable to be entitled to actual notice. Here, the children's identity was known or reasonably ascertainable; Snead interviewed some of their relatives, and she had the ability to locate the children's father to give him notice.

Notice only must be provided, however, to those creditors with claims that are more than merely "conjectural." What is "conjectural" as it relates to claims entitled to actual notice is an issue of first impression in this Court. Based on the dictionary definition of "conjectural," a "conjectural" claim is one that is based on inferences from uncertain evidence or conclusions rooted in guesswork. Here, the children's claims were more than merely conjectural, even though they were for tort causes of action that had not yet been reduced to a judgment. They were not based on inferences from uncertain evidence or conclusions rooted in guesswork but rather were supported by the division's 2006 determination that the abuse allegations were substantiated by the preponderance of the evidence. As such, the children were entitled to actual notification about the probate proceedings involving Austin's estate. Snead was aware of the underlying events that led to the potential claims, had the ability to locate the children's father and had personal knowledge of the division's finding that the abuse allegations were substantiated by a preponderance of the evidence. She undertook her own investigation and reached her own conclusion that the claims were not viable, but it was not her responsibility to make a unilateral determination of whether the children's claims had legal merit.

Because due process requires that the personal representative of an estate provide actual notice of the probate proceeding to all reasonably ascertainable creditors of the estate who may have more than a merely conjectural claim against the estate, the children's claims should not have been dismissed. Because Snead failed to provide actual notice to the children, their claims were not extinguished under section 473.360. The motion to dismiss should not have been granted on any ground alleged.