



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



***In the Matter of the Estate of MARY WINN,
Deceased.***

***ESTATE OF MARY WINN v. PLAZA HEALTHCARE, INC., et al.,
No. CV-06-0076-PR***

PARTIES AND COUNSEL:

Petitioner: George Winn, personal representative of the Estate of Mary Winn, represented by David L. Abney, who practices with Charles M. Brewer, Ltd.

Respondent: Plaza Healthcare, Inc. and Plaza Healthcare Scottsdale Campus, represented by David S. Cohen and Eileen Dennis GilBride of Jones, Skelton & Hochuli.

Amici Curiae: Estates of Mildred Fazio, August Rustad, Genoveva Moreno, Ruth Wall, Neil Hicks and Lambert Pfeifer (“Amici”) represented by Melanie L. Bossie, James M. Morgan and Terry Schneier of Wilkes & McHugh, were granted permission to file a brief as amicus curiae.

FACTS:

Mary Winn died on February 6, 1999. She had been living at Plaza Healthcare’s Scottsdale Campus since January 11.

In September 2003, George filed suit against Plaza alleging that it violated the Adult Protective Services Act (“APSA”), A.R.S. § 46-455(B), and committed malpractice that negligently caused Mary’s death. At the time Mary died, the statute of limitations for bringing an APSA claim was seven years, but in 2003 the time was shortened to two years. There is no dispute that George filed the claim on time.

In May 2004, George was appointed personal representative of Mary’s estate, and in July he moved to substitute himself in the litigation as personal representative to pursue the claim. Plaza opposed the motion and moved for summary judgment.

The superior court denied George’s motion and granted Plaza’s motion after a hearing. The court found that Mary’s property included a cause of action for wrongful death/medical negligence and adult abuse and that the claim survived her death. But the court said: “In order to prosecute these claims, George Winn will be required to expend estate assets to cover the costs of litigation . . . related to litigation of these claims,” and that Mr. Winn “is not authorized to bind the estate to pay for any costs of litigation or any costs related to pursuing these claims per [A.R.S. §] 14-3108(4).”

George appealed from the entry of the signed judgment.

The appellate court reviewed *de novo* the legal issue presented – whether the superior court properly interpreted A.R.S. § 14-3108(4), which is part of Arizona’s Probate Code. Seeking to give effect to legislative intent, the court first looked to the language of the statute. It said that Mary allegedly possessed when she died a claim for violation of the APSA that survived her death, and that George as personal representative would generally be the proper plaintiff to prosecute the estate’s APSA claim. However, because George was not appointed personal representative until five years after her death, his authority is limited in that he may only possess estate assets “to confirm title . . . in the rightful successors to the estate.” The court also examined the language providing that a late-appointed personal representative “has no right to possess estate assets as provided in § 14-3709 beyond that necessary” to confirm title. The appellate court reasoned that the statute does not transfer ownership of property to a personal representative, but only allows the person to take possession or control of the property pending the administration of the estate.

To prosecute this APSA claim that became an asset of Mary’s estate and survived her death, the court said that George would need to “possess” it as set forth in § 14-3709, but the plain language of § 14-3108(4) prohibits him as a late-appointed personal representative from possessing the claim to prosecute it. The court found analogous *In re Estate of Baca*, 984 P.2d 782 (N.M. Ct. App. 1999).

The court was not persuaded by George’s argument that he did not seek to “possess” the APSA claim, but was only possessing estate assets to confirm title, because it said his actions differed from those allowed by statute. It said his pursuit of the APSA claim and cause of action to confirm title over any recovery made is mentioned in § 14-3709 (“*The personal representative may maintain an action to recover possession of property or to determine its title*”) and specifically excluded from what a late-appointed personal representative may do under § 14-3108(4). It found its conclusion supported by the purposes and policies of the Revised Arizona Probate Code, including the speedy and efficient liquidation of estates and distribution of assets to beneficiaries. The court looked to the clear purpose of § 14-3108 to encourage appointment of a personal representative within two years and determined the legislature wanted the statutory exceptions to be narrow and the powers of a timely appointed personal representative to be different from those of a late-appointed personal representative. In a footnote, the court said its conclusion did not deprive APSA claimants of the seven year statute of limitations in effect at the time Mary’s claim arose, because a timely-appointed personal representative would have been able to pursue such claims without limitation by § 14-3108(4). The court also discussed how its decision would avoid allowing late-appointed representatives to use the statutory limitation as a shield, so that if a defendant prevailed litigation costs could not be assessed against the estate.

ISSUES: The Estate, through its personal representative, George Winn, states this issue:

“Only one issue – based on three factors – is presented for review:

“(1) Mary Winn’s APSA claim survived her death and became an asset of

her estate.

“(2) George Winn, as his deceased wife’s personal representative, would generally be the proper plaintiff to prosecute the estate’s APSA claim.

“(3) At all times relevant to this case, there was a seven-year statute of limitations for the APSA claim.

“**Issue:** Did George Winn have the right to pursue an APSA claim on behalf of Mary Winn’s estate, although he was not appointed as personal representative of Mary Winn’s estate, and did not file the APSA claim, until five years after Mary Winn’s death?”

Plaza Healthcare states that the issue is:

“Did the court of appeals correctly rule that because Mr. Winn was not timely appoint personal representative within the requisite two years, and thus could not ‘possess estate assets as provided in § 14-3709 beyond that necessary to confirm title thereto in the rightful successors of the estate,’ he therefore did not have the authority to prosecute this lawsuit on the Estate’s behalf?”

Definitions:

The Adult Protective Services Act, or APSA, at A.R.S. § 46-455(B) provides in part:

An incapacitated or vulnerable adult whose life or health is being or has been endangered or injured by neglect, abuse or exploitation, may file an action in superior court against any person or enterprise that has been employed to provide care, that has assumed a legal duty to provide care or that has been appointed by a court to provide care to such incapacitated or vulnerable adult for having caused or permitted such conduct [with the exception of certain independent licensed health care consultants or specialists].

Title 14, Arizona Revised Statutes, codifies the Revised Arizona Probate Code. A.R.S. §

14-3108(4) provides:

An informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile and appointment proceedings relating to an estate in which there has been a prior appointment, shall not be commenced more than two years after the decedent's death, except:

*4. An informal probate or appointment or a formal testacy or appointment proceeding may be commenced thereafter if no court proceeding concerning the succession or administration has occurred within the two year period. **If proceedings are brought under this exception, the personal representative has no right to possess estate assets as provided in section 14-3709 beyond that necessary to confirm title thereto in the rightful successors to the estate. Claims other than expenses of administration shall not be presented against the estate.***

(Emphasis supplied).

A.R.S. § 14-3709 provides:

A. Except as otherwise provided by a decedent's will, every personal representative has a right to, and shall take possession or control of, the decedent's property, except that any real property or tangible personal property may be left with or surrendered to the person presumptively entitled to it unless or until, in the judgment of the personal representative, possession of the property by the personal representative will be necessary for purposes of administration. The request by a personal representative for delivery of any property possessed by an heir or devisee is conclusive evidence, in any action against the heir or devisee for possession of the property, that the possession of the property by the personal representative is necessary for purposes of administration. The personal representative shall pay taxes on, and take all steps reasonably necessary for the management, protection and preservation of, the estate in the personal representative's possession. The personal representative may maintain an action to recover possession of property or to determine its title.

This Summary was prepared by the Arizona Supreme Court Staff Attorney's Office solely for educational purposes. It should not be considered official commentary by the court or any member thereof or part of any brief, memorandum or other pleading filed in this case.