

NOT DESIGNATED FOR PUBLICATION

No. 125,433

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Estate of ALVIN E. BALLOU.

MEMORANDUM OPINION

Appeal from Miami District Court; STEVEN C. MONTGOMERY, judge. Opinion filed April 7, 2023. Affirmed.

Terry Ray Ballou, appellant pro se.

No appearance by appellee.

Before HURST, P.J., BRUNS and SCHROEDER, JJ.

PER CURIAM: Terry Ray (Buck) Ballou appeals from the district court's dismissal of what it treated as a demand for payment of debt against his father's estate. While Appellant presents many issues on appeal, this court need not address the majority of them because he failed to follow the statutory requirements to submit a proper claim against his father's estate. The district court lacked jurisdiction to consider Ballou's demand, and thus it was properly dismissed. Affirmed.

FACTUAL AND PROCEDURAL HISTORY

On June 11, 2021, Margaret K. Ballou filed a petition for probate of the last will and testament of Alvin E. Ballou (the Will). The probate petition named the Appellant as

one of decedent's children. In his Will, Alvin made provisions for his two other children, but explicitly declined to do so for Appellant. After the Will was challenged, the district court found it was in full force and effect at the date of Alvin's death and admitted it to probate.

On July 30, 2021, Appellant filed a packet titled "Correspondence" with the district court containing numerous documents. This packet included a copy of

- a UCC-1 filing from 2017 naming "Buck Ray Ballou" as the secured party and "Terry Ray Ballou" as the debtor;
- a UCC finance statement showing a security agreement between "Terry Ray Ballou, Sr.©" and "Buck Ray Ballou©" for a bond of \$100 billion;
- a limited power of attorney invested in Buck Ray Ballou from Terry Ray Ballou;
- a notice of revocation of the power of attorney;
- a hold harmless and indemnity agreement; and
- a copyright notice for the name Terry Ray Ballou Sr.

The district court scheduled a hearing on Appellant's filing for December 20, 2021.

Prior to the hearing, Appellant filed a copy of a letter he sent the executor titled *"RE: PRIVATE INDEPENDANT [sic] ADMINISTRATIVE PROCESS-CONDITIONAL ACCEPTANCE FOR VALUE (CAFV)-REQUEST FOR PROOF OF CLAIM(S)/DISCOVERY-CHALLENGE [sic] OF JURISDICTION AND CLAIM TO TITLES, RIGHTS, AND INTEREST AND ATTEMPT TO REACH AGREEMENT."*

Appellant then requested proof of many claims, including that Alvin did not acknowledge or want him as a son, did not see Appellant as a "flesh and blood man," and that they never owned various items of property together. Appellant's letter stated that if the executor failed to provide the proof within 10 days, "either by refusal or silence, you will have accepted, admitted, stipulated and confessed to all the facts and points" and "will

have admitted, stipulated, and confessed your acts of RICO, collusion, conspiracy, fraud, theft, et cetera [*sic*] against the undersigned."

There is no evidence in the record that the executor responded, and in any event Appellant mailed three more letters to the executor, each titled "NOTICE OF FAULT AND OPPORTUNITY TO CURE." The letters notified the executor that she had 72 hours to provide the requested proof of Appellant's claims, otherwise her silence would equate to agreement with his stipulations "in both the private and public records." Appellant signed these letters as "Buck R. Ballou©, Secured Party / Terry Ray Ballou, Sr.©, Debtor."

In December 2021, the district court held a hearing to address Appellant's July 30 filing. During the proceeding, the district court asked what indebtedness Appellant believed Alvin's estate owed him and requested an itemized amount of his claim. Appellant stated that the alleged indebtedness arose from "various businesses together, property together, livestock together" as well as other items, but admitted that he did not itemize the origins of the alleged debts. The court explained that Appellant had the burden to prove the value of the alleged debts, and Appellant implied that he was hindered because he was in prison. He additionally argued that by failing to rebut his claims or to provide the proof he demanded by letter, the estate had acquiesced to the existence of the alleged debts. The journal entry of the district court's decision states that Appellant "did not sustain his burden of proof in regard to his Claim and therefore his Claim is denied."

Appellant timely appealed the judgment and on the same date, moved for the district court to rehear his "Proof of Claim." In denying Appellant's motion for rehearing, the district court stated that it was divested of jurisdiction by Appellant's notice of appeal to this court, and it had reviewed Appellant's July 30 filings again and found they were "rambling and nonsensical." On March 1, 2022, Appellant moved to set aside the court's

journal entry, order a new trial, or alter or amend the district court's order denying his request for a rehearing. That same day, the district court again denied his motion, stating it did not have jurisdiction due to the pending notice of appeal to this court.

ANALYSIS

Although Appellant presents several arguments on appeal, this court need not address those assertions because the district court—and thus this court—lacks jurisdiction to consider Appellant's random and meandering filings. See *In re Care & Treatment of Emerson*, 306 Kan. 30, 39, 392 P.3d 82 (2017). Petitioners who seek to demand a debt against an estate must follow the appropriate statutory procedures as set out in the Kansas Probate Code. First, the petitioner must file a petition for allowance of the demand in district court. K.S.A. 59-2237(a) ("[a]ny person may exhibit a demand against the estate of a decedent by filing a petition for its allowance in the proper district court."). The petition for allowance of demand must state:

"(1) The name, residence, and address of the petitioner; (2) the interest of the petitioner and his or her right to apply to the court; (3) the jurisdictional facts; (4) the facts, in ordinary and concise language, showing that the petitioner is entitled to the relief sought; and (5) a prayer for relief." K.S.A. 59-2202.

Second, the petition must be timely filed. Under the nonclaim statute of the probate code, "[a]ll demands . . . against a decedent's estate, whether due or to become due . . . shall be forever barred from payment unless the demand is presented within . . . four months from the date of first publication of notice" to creditors or within 30 days after actual notice is given to a known creditor. K.S.A. 59-2239(1).

In this case, Appellant failed to file a petition for allowance of demand which substantially complied with the probate code because he did not file a petition at all, and

what he did file did not contain concise language showing he was entitled to relief. This court has held that while a petition for the allowance of demand against an estate should be liberally construed, it must still substantially comply with the requirements of the probate code. *In re Estate of Jones*, 3 Kan. App. 2d 63, 66, 588 P.2d 960 (1979). A petition for allowance of demand must "enable the personal representative to investigate the claim without the expenditure of substantial sums and make an intelligent judgment whether to allow or disallow the claim. [Citations omitted.]" *In re Estate of Wolf*, 32 Kan. App. 2d 1247, 1253, 96 P.3d 1110 (2004).

Neither Appellant's original nor subsequent filings clearly stated his interest and right to apply to the court, the jurisdictional facts, why he was entitled to the relief sought, or what relief he sought—and did not provide information to enable the personal representative to investigate the alleged claims. See K.S.A. 59-2202. While a petition for allowance of demand should be liberally construed, there is nothing to construe where no petition was filed, but rather a conglomerate of various documents having little connection to a claim against Alvin's estate. See *In re Estate of Jones*, 3 Kan. App. 2d at 66 (failure to file a petition was not a mere "defect in form," but was instead a lack of substantial compliance with the probate code). Appellant failed to file any petition, let alone one that substantially complied with the probate code.

Further, Appellant failed to file a petition for allowance of demand within the statutory period prescribed by the nonclaim statute and the district court thus lacked jurisdiction to consider his demand. The nonclaim statute is jurisdictional, "and a creditor's noncompliance with the nonclaim statute means that the district court should disallow any claim not filed within the time limit" unless fraud or other unconscionable conduct is proven. *In re Estate of Reynolds*, 266 Kan. 449, 456, 970 P.2d 537 (1998); *In re Estate of Timmons*, No. 102,032, 2010 WL 4977219, at *3 (Kan. App. 2010) (unpublished opinion). The record indicates publication of notice to creditors occurred between June 17 and July 12, 2021. By the December 2021 hearing, more than four

months had expired since the notice to creditors was published, and Appellant had not filed a petition for allowance of demand, which meant that the district court lacked jurisdiction to consider his alleged demand. When the district court lacked subject matter jurisdiction to enter an order, an appellate court does not acquire jurisdiction over the subject matter on appeal. *In re Care & Treatment of Emerson*, 306 Kan. at 39. Because Appellant failed to file a petition for allowance of demand with the statutory requirements, and failed to file the purported demand within the four-month period required in the nonclaim statute, the district court—and this court—lack jurisdiction over his purported demand.

The district court denied Appellant's claim for failure to itemize the alleged debt, but it lacked jurisdiction to consider his alleged demand. See *Pieren-Abbott v. Kansas Dept. of Revenue*, 279 Kan. 83, 100, 106 P.3d 492 (2005) ("A lower court's decision will be upheld on appeal even if the lower court relied on the wrong ground or assigned erroneous reasons for its decision.").

Affirmed.