

'Wobbly' Justice at the Court of Appeal

By Matthew W. McMurtrey and Leila B. Azari

In a case of first impression, the Court of Appeal in *Allen v. Stoddard*, recently held that Code of Civil Procedure Section 366.3, which requires that claims against a decedent based on a promise to make a distribution at death be brought within one year of the decedent's death, trumps Probate Code Section 9353, which requires that a creditor of a decedent's estate file suit within 90 days of the date that notice is given of rejection of a claim. While the Court's decision undoubtedly serves the interests of equity, it misapplies the law and entirely negates the purpose and intent behind the creditor's claim provisions in the Probate Code.

The Court readily admits the problematic implications of its holding, which it concedes is both ambiguous and inchoate: "[W]e recognize that by deciding only the case before us we may leave the relationship between [Probate Code] section 9351 and [Code of Civil Procedure Section] 366.3 . . . a bit wobbly wobbly in certain particulars Nor do we deal with the obvious problem of an estate that somehow tries to run out the clock on [S]ection 366.3."

The Court does not elaborate on the "particulars" which are rendered "wobbly wobbly" by its decision, but we will. First, in allowing a creditor an entire year after the decedent's death to bring a claim based on a promise to make a distribution at death (notwithstanding the 90-day deadline in Probate Code Section 9353), the Court effectively eviscerates the purpose behind the creditor's claim provisions in the Probate Code. These provisions are specifically designed to: a) enable a personal representative to close

out any creditor's claims in less than a year if possible, and b) ensure that assets are distributed to designated heirs in an efficient and timely manner. Post-*Stoddard*, there is no longer any guarantee that claims based on a promise to make a distribution at death will be presented within a year of the decedent's death. As a result, designated beneficiaries will now have to wait longer to claim their rightful inheritance.

Second, the holding in *Stoddard* creates a perverse incentive for personal representatives to "run out the clock" (in the Court's own parlance) and purposely not open a decedent's estates until after the one-year statute of limitations has expired, further delaying estates. Now individuals who have been promised bequests by decedents, but are not formally recognized in estate planning documents, will be completely foreclosed from having their day in court unless they go to the trouble and expense of opening an estate and then filing a creditor's claim. In essence, the *Stoddard* decision nominally protects a right, but substantially erodes access to a cheap remedy. This anticipated result entirely defeats the Court's initial purpose, which was to protect a claimant's right to the bequest he was promised.

The facts in *Allen v. Stoddard* are of paramount importance and illustrate how equitable considerations played a disproportionate role in (mis)shaping the Court's legal conclusions. In fact, the equities screamed for relief in this case. Why? The appeal was based on the lower court's rejection of a lawsuit which was filed only one day after the deadline

for filing suit set forth in Probate Code Section 9353.

The decedent, James Humpert, died on October 29, 2010. Before he died, he promised his long-term partner, Richard Allen, that "he would be taken care of" should "anything happen." Humpert and Allen neither registered as domestic partners nor married, and Humpert died intestate. Humpert's sole intestate heir was his sister, Edith Stoddard. Allen and Stoddard filed competing petitions with the Probate Court to be appointed administrator of Humpert's estate, and Stoddard ultimately prevailed. In April 2011 (a little more than five months after Humpert's death), Allen timely filed a creditor's claim against Humpert's estate based on Humpert's promise that Allen "would be taken care of." The next month, on May 19, 2011, the estate rejected Allen's claim. Allen filed suit 91 days after the notice of the rejection was served, but approximately 2 months before the one-year statute of limitations would expire. Stoddard successfully demurred to Allen's complaint urging that it was time barred by Probate Code Section 9353(a)(1), which requires that lawsuits be filed 90 days after notice of rejection of the creditor's claim is given. Allen appealed.

The Court properly rejected two arguments, one raised by Allen and one raised by Stoddard, each of which would have swung the Court's ultimate ruling.



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First, Allen argued that his claim, based on a promise to make a will, did not qualify as a creditor's claim and, therefore, was not subject to the 90-day filing period set forth in Probate Code Section 9353. To support this argument, Allen relied on dictum in *Stewart v. Seward*, observing that "a claim based on a contract to make a will is not a claim against the estate at all" Disposing of Allen's argument, the Court ultimately held that Humpert's promise to make a will also qualifies as a creditor's claim under Probate Code Section 9000(a)(1), which defines a claim as a "liability of the decedent, whether arising in contract, tort or otherwise." In reaching this conclusion, the Court appropriately rejected the dictum from *Stewart v. Seward* and negated the position taken by the Rutter treatise on Probate (based on *Stewart v. Seward*) that "claims covered by Section 366.3 are outside of the Probate Code claim-filing provisions altogether."

Second, Stoddard erroneously argued that Allen's claim falls not under Code of Civil Procedure Section 366.3, but under Section 366.2, which governs all claims brought against a decedent except those flowing from a promise to make a distribution at death. The Court properly rejected this argument, finding that Humpert and Allen had a classic contract to make a distribution at death, which, according to applicable case law, falls under Section 366.3.

Once the Court confirmed that Allen's cause of action was both a creditor's claim and a claim based on a contract to make a will, it had to make the difficult decision of enforcing the appropriate limitations period. Under Probate Code Section 9353, Allen missed the deadline for filing suit by only one day. Under the one-year limitations period in Code of Civil Procedure Section 366.3, Allen's suit was not yet time barred. Ultimately, the Court construed Probate Code

Section 9353 and Code of Civil Procedure Section 366.3 as conflicting statutes of limitations and concluded that "the precise conflict can be resolved . . . by the well-established rule that where statutes are in irreconcilable conflict, a specific and later enacted statute trumps a general and earlier one." Since Section 366.3 was enacted later than Section 9353 and applies to a broader group of claims, the Court determined that the one-year limitations period under this statutory scheme should control.

The Court's decision undoubtedly produced the most equitable result, but it wrongly characterized Sections 9353 and 366.3 as conflicting statutes and, in doing so, thwarted the efficient adjudication of future claims based on a promise to make a distribution at death. In contrast to the Court's interpretation, we contend that the creditor's claim provisions in the Probate Code and Code of Civil Procedure Section 366.3 were actually intended to complement each other. Under the relevant creditor's claim provisions, known creditors (those who received notice of administration of the decedent's estate) may be required to file suit as early as seven months from the personal representative's appointment. See Cal. Prob. Code §§ 9002 (b), 9100, 9353. In cases where the creditors are unknown and do not receive notice of administration, Sections 366.2 and 366.3 of the Code of Civil Procedure impose a maximum time limitation of one year in which to file suit against a decedent's estate. In this context, the two statutory schemes under the Probate Code and the Code of Civil Procedure do not compete at all. Rather, together, they maximize the efficiency of the estate administration process by enabling personal representatives to shorten an estate's liability period to seven months from the date of the personal representative's appointment, while also ensuring that this liability period does not

exceed one year. We predict that Stoddard will uproot the delicate balance between these two statutory schemes and, for the reasons enumerated above, will invite inefficiency and chaos into the estate (and trust) administration process.

To mitigate what are certain to be negative repercussions from the Stoddard decision, we propose that the California Legislature amend Code of Civil Procedure Section 366.3 to include a specific provision upholding the deadlines prescribed for creditor's claims in the Probate Code (similar to the tolling provision set forth in Section 366.2(b)(2)). Once this step is taken, the "particulars" will no longer be "wobbly wobbly," but steadied by a coherent and reasonable solution. ■