

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI
2016-CA-01661

RUSH MEDICAL GROUP;
MEDICAL FOUNDATION, INC.;
AND RUSH FOUNDATION HOSPITAL

APPELLANTS

VS.

STEPHANIE CARLISLE, ADMINSTRATRIX
OF THE ESTATE OF CHRISTOPHER HAYDEN
POWELL

APPELLEE

**APPEAL FROM THE CHANCERY COURT
OF LAUDERDALE COUNTY, MISSISSIPPI**

BRIEF OF APPELLANTS

J. Richard Barry (MSB # 2077)
James C. Griffin (MSB # 104566)
Barry, Thaggard, May & Bailey, LLP
505 Constitution Avenue
P.O. Box 2009
Meridian, MS 39302
Telephone: (601) 693-2393
Facsimile: (601) 482-7855
barry@btmblaw.com
griffin@btmblaw.com
Attorneys for Appellants

CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. Those representations are made in order that the Justices of the Supreme Court and/or Judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Honorable Lawrence Primeaux
Judge, Chancery Court, Lauderdale County, MS
500 Constitution Ave.
Meridian, MS 39301
2. Honorable John Howell
2505 7th St A
Meridian, MS 39301
*Attorney for Appellee Stephanie Carlisle, Administratrix of the
Estate of Christopher Hayden Powell*
3. Honorable J. Richard Barry
Barry, Thaggard, May & Bailey, LLP
505 Constitution Ave
Meridian, MS 39301
*Attorney for Appellants Rush Medical Group, Medical Foundation,
Inc. and Rush Foundation Hospital*
4. Honorable James C. Griffin
Barry, Thaggard, May & Bailey, LLP
505 Constitution Ave
Meridian, MS 39301
*Attorney for Appellants Rush Medical Group, Medical Foundation,
Inc. and Rush Foundation Hospital*

So certified this the 3rd day of May 2017.

/s/ James C. Griffin

James C. Griffin (MSB #104566)
BARRY, THAGGARD, MAY & BAILEY, LLP
505 Constitution Ave.
Post Office Box 2009
Meridian, Mississippi, 39301
Telephone: (601) 693-2393
Facsimile: (601) 482-7855
Email: griffin@btmblaw.com

Attorney of record for Appellants Rush Medical Group,

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PARTIES. i

TABLE OF CONTENTS. ii

TABLE OF AUTHORITIES. iii

STATEMENT OF THE ISSUES. 1

STATEMENT OF ASSIGNMENT. 2

STATEMENT OF THE CASE. 3

SUMMARY OF THE ARGUMENT. 5

ARGUMENT. 6

I. The Trial Court Erred in Its Finding That the Appellants' Probated Claims Should Be Denied
By Operation of the Statute of Limitations under Miss. Code Ann. § 15-1-25. 6

CONCLUSION. 12

CERTIFICATE OF SERVICE. 13

TABLE OF AUTHORITIES

Cases:

<u>Rogers v. Rosenstock et al.</u> , 77 So. 958 (Miss. 1918).	11
<u>Toler v. Wells</u> , 130 So. 298 (Miss. 1930).	10

Statutes:

Miss. Code Ann. § 15-1-25.	<i>passim</i>
Miss. Code Ann. § 91-7-93.	<i>passim</i>
Miss. Code Ann. § 93-7-153.	<i>passim</i>
Miss. Code Ann. § 93-7-155.	<i>passim</i>
Miss. Code Ann. §§ 91-7-261-269.	7

Secondary Sources:

Wills and Administration of Estates in Mississippi, 3d Ed. §2.31.	8
---	---

STATEMENT OF THE ISSUES ON APPEAL

- I. The Trial Court Erred in Its Finding That the Appellants' Probated Claims Should Be Denied By Operation of the Statute of Limitations under Miss. Code Ann. § 15-1-25.

STATEMENT OF ASSIGNMENT

Appellants believe firmly that the Supreme Court should retain the case. There are fundamental and urgent issues of broad public importance requiring prompt and ultimate determination by the Supreme Court. There are also substantial constitutional and legal questions as to the validity and function of Miss. Code Ann. § 15-1-25, § 91-7-93, § 91-7-153 and § 91-7-155. There are issues of fundamental fairness at play in this case, including whether entities which validly filed a probated claims against an Estate can be precluded from recovery under those claims in Chancery Court. The Supreme Court should retain this case.

STATEMENT OF THE CASE

Course of Proceedings and Disposition in the Court Below.

On May 5, 2010, Christopher Hayden Powell (“Decedent”), an adult resident citizen of Lauderdale County, Mississippi, departed this life without Last Will and Testament. (R. at 6) The Decedent left surviving him the following heirs at law and next of kin, William Hayden Powell (his father), Stephanie Carlisle (his mother), and Raley Powell Dearman (his sister). (Id.) On November 7, 2011, Stephanie Carlisle filed her Petition for Grant of Letters of Administration to Stephanie Carlise, on the Estate of Christopher Hayden Powell, Deceased. (R. at 6-7) On November Stephanie Carlisle was appointed Administratrix of the Estate of Christopher Hayden Powell (“Appellee”) by order of the Lauderdale County Chancery Court. (R. at 8-9) On November 10, 2011, Letters of Administration were issued to Stephanie Carlisle as Administratrix. (R. at 12)

Notice to Creditors was published on November 15, 22, 29, 2011, in the Meridian Star newspaper, which is circulated throughout Lauderdale County. (R. at 13) In response to the Notice to Creditors, on December 27, 2011, a claim was filed against the Estate of Christopher Hayden Powell by three Rush entities (“Appellants”). (R. at 14-19) Specifically, the exact entities identified in the probated claim and the amounts of their respective claims are: Rush Medical Group, \$810; Medical Foundation, Inc., \$450; and Rush Foundation Hospital, \$9,15.39.

In spite of the fact Appellants had timely filed their respective claims against the Estate of Christopher Hayden Powell, on August 22, 2012, Appellee filed an Affidavit stating under oath that she “diligently searched for creditors and/or persons owed by the decedent and was unable to locate any creditors and/or persons owed.” (R. at 19) On March 20, 2014, Appellee filed her

Petition for Approval and Authority to Execute Release. (R. at 21-35) From the time of opening the Estate, Appellee had pursued a wrongful death action in Federal Court on behalf the Estate, and requested that the settlement be accepted. (Id.) Also on March 20, 2014, the Trial Court filed a “Judgment Allowing Approval and Authority to Execute Release”. (R. at 36-37) At that point, the Estate of Christopher Hayden Powell was without question solvent and capable of paying the probated claims of Appellants, even though Appellee swore misrepresented to the Court that no such claim existed.

On April 30, 2014, Appellee filed her “Petition to Close Estate and Discharge Administrator”, and again, within this Petition Appellee incorrectly stated “[n]o claims have been filed” against the Estate. (R. at 43-45) However, on June 9, 2014, Appellee filed her “Petition to Withdraw Motion to Close Estate”, stating that “there has come to light some issues that need to be taken care of.” (R. at 50-51)

On February 16, 2016, The Court filed an “Order to Appear”, demanding that Appellee, in her role as fiduciary in the Estate of Christopher Hayden Powell, appear before the Chancery Court in order to show cause as to why the Estate has not been closed. (R. at 52) On March 31, 2016, Appellee filed her “Final Account and Motion to Close Estate”, and within this pleading Appellee finally acknowledged the probated claim maybe by Appellants. (. at 53-57) Within this pleading, Appellee finally sent notice to Appellants that there would be a hearing on this pleading. (Id.) In that pleading, Appellee stated “there have (sic) been one (1) claim probated against the estate. This probated claim was filed by Rush. The statue (sic_ of limitations has run out on this claim. This claim (bills) belongs to the Lauderdale County as the Deceased, Christopher Hayden Powell had died at the Lauderdale County Jail in their care.” (Id.)

Appellants filed a Response in Opposition to the Appellee's Motion to Close arguing that the statute of limitations did not prevent Appellants' recovery of their validly filed probated claim and that Lauderdale County has absolutely zero responsibility to pay for the probated claims. (R. at 58-61) On June 22, 2016, Appellee's Final Account and Motion to Close Estate was called up for hearing in the Lauderdale County Chancery Court. (R. at 61)

On June 23, 2016, the Trial Court entered its Judgment. (R. at 61-64) The Court found that the "request of Rush and its entities to compel payment of its probated claim is barred by the statute of limitations, and is therefore denied." (*Id.*) The Court's reasoning was that the Appellants' claims were barred by the statute of limitations. (*Id.*) On July 14, 2016, Appellants sought Interlocutory Review of the Trial Court's Order denying payment of the probated claims. On October 12, 2016, the Supreme Court of Mississippi denied review of Appellants' Petition for Interlocutory Review. (R. at 65)

On October 20, 2016, the Trial Court entered its "Judgment Closing Estate and Discharging Administrator". (R. at 66-67) On November 17, 2016, Appellants filed their Notice of Appeal. (R. at 68-69)

Appellants respectfully submit that the Chancery Court of Lauderdale County was in error in denying payment of Appellants' validly probated claims against the Estate of Christopher Hayden Powell.

SUMMARY OF THE ARGUMENT

The issue for review is whether the Trial Court erred in its finding that Appellants' validly and timely filed probated claims against the Estate of Christopher Hayden Powell ("the Estate") in the Chancery Court of Lauderdale County, MS, are barred by operation of the Statute

of Limitations under Miss. Code Ann. §15-1-25. The Trial Court's conclusion that Appellants' prayer to enforce payment of the validly and timely filed probated claims should be denied is in conflict with the Administratrix's duties to pay debts pursuant to Miss. Code Ann. § 97-7-155. In addition, the Trial Court's conclusion is contrary to the interest of justice, public policy, fundamental fairness and equity.

Because Appellants validly and timely filed probated claims against the Estate, no statute of limitations should have barred their recovery under those probated claims. Therefore, Appellee should not have been entitled to dismissal of those probated claims pursuant to Miss. Code Ann. § 15-1-25. The Chancery Court of Lauderdale County, Mississippi erred in denying and dismissing Appellants' validly filed probated claims in favor of Appellee.

ARGUMENT

I. The Trial Court Erred in Its Finding That the Appellants' Probated Claims Should Be Denied By Operation of the Statute of Limitations under Miss. Code Ann. § 15-1-25.

The Trial Court erred in denying Appellants' validly and timely filed probated claim in the Estate of Christopher Hayden Powell. The Trial Court found that Appellants' prayer to enforce payment on its validly filed and registered probated claim was to be denied by operation of the statute of limitations set out in Miss. Code Ann. § 15-1-25 pursuant to Appellee's Petition to Close the Estate. Miss. Code Ann. § 15-1-25 provides that "[a]n action or scire facias may not be brought against any executor or administrator upon any judgment or other cause of action against his testator or intestate, except within four years after the qualification of such executor or administrator." Miss. Code Ann. § 15-1-25.

The Trial Court held that "the burden is on the claimant to prosecute its probated claim

within four years and ninety days of the date when the Administratrix became qualified, or it is barred.” The Trial Court’s interpretation of Miss. Code Ann. § 15-1-25 as well as Miss. Code Ann. §§ 93-7-153, 91-7-155, 91-7-261-269 and 91-7-93, is not consistent with the plain language of the Code, reflects an incorrect application of Mississippi’s rules of statutory construction and produces a result that is inconsistent with and would substantially frustrate the public policy goals with regard to the laws of Mississippi pertaining to Estates and overall Chancery Court practice. Indeed, Mississippi Chancery Courts are courts of equity, and the equitable result, especially considering the apparent solvency of the Estate would have been ordering Appellee to fulfill her fiduciary duty and pay the probated claim of Appellants.

Miss. Code Ann. § 91-7-153 provides “[t]he presentation of a claim, and having it probated and registered as required by law, shall stop the running of the general statute of limitations as to such claim, whether the estate be solvent or insolvent.” Miss. Code Ann. § 91-7-153. Further, Miss. Code Ann. § 91-7-93, provides,

The executor or administrator shall, within ninety days of the grant of his letters unless further time be allowed by the court or clerk, **return an inventory**, verified by oath, of the money belonging to the deceased which has come to his hands and of the debts due the deceased which have come to his knowledge, specifying the nature of each debt, setting down such as may be deemed hopeful distinct and separate from those which may be deemed doubtful and desperate. He shall, where appraisement is dispensed with or be not made, embrace in said inventory and give its value all property which has come to his hands; and where an appraisement has been made, he shall be charged therewith unless he show cause to the contrary.

Miss. Code Ann. § 91-7-93 (emphasis added).

Miss. Code Ann. § 91-7-155 provides, “[i]t shall be the duty of an executor or administrator to speedily pay the debts due by the estate out of the assets, if the estate be

solvent; but he shall not pay any claim against the deceased unless the same has been probated, allowed, and registered.” Miss. Code Ann. § 91-7-155 (emphasis added). Pursuant to these statutes, Appellee had an affirmative and ongoing duty to find creditors and then pay the probated claims or debts due by the Estate.

In this case, as the Court can clearly see based on the Affidavit Appellee filed which stated under oath that she “diligently searched for creditors and/or persons owed by the decedent and was unable to locate any creditors and/or persons owed” (R. at 19), when in fact there was a validly filed probated claim against the Estate, that Appellee did not fulfill her duties as Administratrix, and in fact blatantly ignored the same and misrepresented facts to the Court. The same is evinced by Appellee’s “Petition to Withdraw Motion to Close Estate”, stating that “there has come to light some issues that need to be taken care of.” (R. at 50-51) However, instead of taking the probated claim against the Estate, Appellee waited two more years before doing anything whatsoever.

Appellants would state that the law does not require any prosecution of probated claims beyond validly filing and registering each individual probated claim along with the proof thereof. Appellants did not have any affirmative duty under the Code to do anything beyond validly filing and registering its probated claim. The plain language of Miss. Code Ann. § 15-1-25 prevents litigants from filing or bringing an action, lawsuit or bill/complaint for scire facias against an executor, administrator, testator or intestate, except within four years after the qualification of the executor or administrator. If a person or entity desires to bring an action to compel payment, it must do so within four years of the Administrator’s qualification. This does not mean, however, that the Petitioner must bring an action to compel payment in order to receive what it is owed.

As Professor Weems succinctly explained, “If the administrator does not pay it, [the probated claim], the creditor **may** have to take judicial action to compel payment.” Weems, Wills and Administration of Estates in Mississippi, 3d Ed., §2.31 (emphasis added). If the creditor chooses to take action by bringing to compel payment of a probated claim, it must be brought within the four year statute of limitations of Miss. Code Ann. § 15-1-25.

In this case, Appellants followed the law and filed and registered along with competent evidence a probated claim against the Estate. Appellants did not file any lawsuit, action to compel, bill/complaint for scire facias or other cause of action to compel the payment of the \$10,413.39 it is owed pursuant to its validly filed and registered probated claim. Conversely, Appellee did not follow the law and her duties to pay the probated claims against the Estate; instead, she wilfully ignored that there existed such a claim and affirmed the same under oath to the Court.

Said another way, **Miss. Code Ann. § 15-1-25 is not a mandate to act or bring an action or lawsuit to compel payment of probated claims.** As previously stated, Appellants did not bring any such action to compel. Instead, this issue was brought to Appellants attention as a result of Appellee’s Motion to Close, which was served on Appellants. Appellants’ only requisite action under the overall scheme of the Code with regard to Estate law, was to validly file and register its claim against the Estate, with competent evidence or proof of the same. Appellants did so on December 27, 2011. After such filing the burden switched to the Estate, and more specifically the Appellee in her role as Administratrix and according **to her affirmative duties under the Code**, to take an inventory of the assets of the Estate pursuant to Miss. Code Ann. § 91-7-93, and then pay the debts of the Estate which are registered with said

assets pursuant to Miss. Code Ann. §91-7-155.

Appellants had absolutely zero duty to compel payment beyond its validly filed probated claim. However, if Appellants desired to compel payment by bringing some action, suit or complaint for scire facias, it had four years and ninety (90) days from the qualification of the Appellee as Administratrix to do so under Miss. Code Ann. § 15-1-25. All Miss. Code Ann. § 15-1-25 does is act as a preventive provision. A statute of limitation acts to limit or prevent action. As stated previously, Appellants never acted to compel payment, therefore Miss. Code Ann. § 15-1-25 cannot be used against them. The only action that Appellants had an **affirmative duty to perform** was to validly file and register with competent proof its probated claim against the Estate.

Further, the cases cited by the Trial Court are not on point and distinguishable with regard to the underlying issue in this case. In Toler v. Wells, the Supreme Court stated that the statute of limitations allows four years and six months within which an executor or administrator can be sued. Toler v. Wells, 130 So. 298, 300 (Miss. 1930). This precedent is not applicable to the case before the Court because again, Appellants chose not to sue the administratrix over the debt which was owed by the Estate. Said another way, the statute of limitations cannot bar something that never occurred. Further, in Toler, the Supreme Court held that even though the administrator acknowledged and promised to pay the debt, he was still entitled to use the defense of statute of limitations under Miss. Code Ann. § 15-1-25 once an action to enforce the debt was made against the Estate. Id. This is wholly contrary to the case before the Court today. In this case, the Appellee refused to acknowledge the debt and in fact completely disregarded that a probated claim had even been filed until almost six (6) years after she made an incorrect

Affidavit that no claims existed. This is true in spite of the fact that Appellants' probated claims were made prior to Appellee's Affidavit that no claims existed.

In the Rogers v. Rosenstock case, the Estate which used the four year and six month statute of limitations on actions was insolvent. Rogers v. Rosentock, 77 So. 958 (Miss. 1918). In that case, the Supreme Court held that under the Code scheme at that time as to claims which matured before the death of a decedent are barred by failure to sue them within four years and six months. Id. This was accepted by the majority in Rogers because there was also in place at the time a prohibition on lawsuits against insolvent estates. As a result, "[i]n lieu of a proceeding at law to recover a judgment, the creditors under the insolvency proceedings were required to present afresh their several demands and have their claims adjudicated by the chancery court." Id. at 960. The Supreme Court concluded there that the pertinent statute of limitations could be "invoked in a proceeding before the chancellor when he finally adjudicated the claims of each creditor of an estate which has been duly declared **insolvent**." Id. (emphasis added)

However, that is not the case here. Of course, the statute of limitations under Miss. Code Ann. § 15-1-25 may have barred a suit against the Estate for the probated claim after four years and ninety days; however, in this case a suit by Appellants was unnecessary because the Estate was solvent, and the Administratrix had an affirmative duty to pay. Appellants argue that because of the solvency of the Estate of Christopher Hayden Powell, the Rogers case is distinguishable and inapplicable.

Under the theory the Trial Court employs, and especially given the grossly inadequate conduct of Appellee in her role as administratrix, executors and administrators have an incentive and are inclined to ignore the law, more specifically their affirmative duties under the law, and

take the “wait and see approach” with regard to probated claims. Executors and administrators should honor their **affirmative duties** under the law. Chancery Courts should demand strict compliance with the law. To let this ruling stand would be poor precedent and would contribute to the backlog of case dockets and overall delay of Chancery Court and Estate practice. Appellee’s inaction and willful disregard under this theory is inefficient/negligent at best and disingenuous at worst. This Court should not reward such inaction and disregard of executor and administrator’s duties under the law. Furthermore, the law should not operate to make businesses like Appellants go above and beyond what is mandated of them under the law. This is especially true in this case where no inventory was ever filed.

CONCLUSION

The statute of limitations found in Miss. Code Ann. § 15-1-25 should not have prevented recovery pursuant to Appellants’ validly and timely filed probated claims against the Estate of Christopher Hayden Powell. Following Christopher Hayden Powell’s death, Appellants sought their recovery of the decedent’s outstanding debts. Appellants sought such recovery by fully following the exact procedure that is set out in the Mississippi Code for such recovery. This Court should not affirm a decision which prevents Appellants’ recovery, when Appellants fully and timely sought the remedy which was available to them under the law. The Trial Court’s decision should be reversed and judgment rendered in favor of Appellants. Appellee should be made to pay the \$10,413.39, which is owed to Appellants pursuant to their validly and timely filed and registered probated claims against the Estate of Christopher Hayden Powell.

Respectfully submitted, this the 3rd day of May, 2017.

/s/ James C. "Cory" Griffin

J. Richard Barry (MSB #2077)

James C. "Cory" Griffin (MSB #104566)

BARRY, THAGGARD, MAY & BAILEY, LLP

505 Constitution Ave.

Post Office Box 2009

Meridian, Mississippi, 39301

Telephone: (601) 693-2393

Facsimile: (601) 482-7855

Email: barry@btmblaw.com

griffin@btmblaw.com

*Attorneys of record for Appellants Rush Medical
Group, Medical Foundation, Inc. and Rush
Foundation Hospital*

CERTIFICATE OF SERVICE

I certify that I have this day electronically filed Appellant's Brief with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

Honorable John Howell
2505 7th St A
Meridian, MS 39301
carol.howellawfirm@gmail.com
*Attorney for Appellee Stephanie Carlisle, Administratrix of the Estate of
Christopher Hayden Powell*

This the 3rd day of May, 2017.

I further certify that I have this day mailed via hand delivery a true and correct copy of the foregoing Appellant's Brief to the following:

Honorable Lawrence Primeaux
Judge, Chancery Court, Lauderdale County, MS
500 Constitution Ave.
Meridian, MS 39301

This, the 4th day of May, 2017.

/s/ James C. Griffin
James C. Griffin