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IN RE ESTATE OF DONALD H. LIENEMANN, DECEASED. RUTH L. LIENEMANN, PERSONAL REPRESENTATIVE OF THE ESTATE OF DONALD H. LIENEMANN, DECEASED, APPELLEE, V. JEAN HILLYER, APPELLANT.

761 N.W.2d 560

Filed February 27, 2009. No. S-07-1340.

1. **Statutes: Appeal and Error.** The interpretation of statutes presents questions of law, in connection with which an appellate court has an obligation to reach an independent conclusion irrespective of the decision made by the court below.
2. **Statutes.** A court must attempt to give effect to all parts of a statute, and if it can be avoided, no word, clause, or sentence will be rejected as superfluous or meaningless.
3. **Statutes: Appeal and Error.** An appellate court will not read anything plain, direct, or unambiguous out of a statute.

Appeal from the District Court for Sarpy County: WILLIAM B. ZASTERA, Judge. Affirmed.

Roger R. Holthaus, of Holthaus Law Offices, P.C., L.L.O., for appellant.

Robert C. McGowan, Jr., of McGowan & McGowan, for appellee.

HEAVICAN, C.J., CONNOLLY, GERRARD, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.

MILLER-LERMAN, J.

NATURE OF CASE

Jean Hillyer appeals the order of the district court for Sarpy County which dismissed her petition for allowance of a claim against the estate of Donald H. Lienemann (Estate). The court dismissed Hillyer's petition as barred for the reason that it was filed "61 days after the date of mailing the Notice of Disallowance." In making its ruling, the court relied on Neb. Rev. Stat. § 30-2488(a) (Reissue 2008), which provides that a claim which is disallowed "by the personal representative is barred . . . unless the claimant files a petition for allowance in the court or commences a proceeding against the personal representative not later than sixty days after the mailing of the notice of disallowance." On appeal, Hillyer asks this court to

extend the 60-day requirement under § 30-2488 by 3 days due to mailing, pursuant to Neb. Rev. Stat. § 25-534 (Reissue 1995) (now found at Neb. Ct. R. Pldg. § 6-1106(e)) and to conclude that her petition was timely filed. We reject Hillyer's argument and conclude that the district court's ruling was correct as a matter of law, and we, therefore, affirm.

STATEMENT OF FACTS

On March 28, 2007, Hillyer filed a claim for $77,000 in the Sarpy County Court proceedings related to the Estate. On July 27, the personal representative of the Estate mailed to Hillyer a notice of disallowance of two claims, including the claim for $77,000. The notice included, inter alia, the following language: "Failure to protest either disallowance of claim by filing a petition for allowance, or commencing a proceeding against the personal representative regarding one or the other, or both claims within sixty days after the mailing of this notice shall result in the disallowed claims being forever barred." The notice included the personal representative's certification that the notice was mailed to Hillyer on July 27.

On September 26, 2007, Hillyer filed a petition for allowance of the claim for $77,000 in the county court for Sarpy County. The petition was subsequently transferred to the district court, apparently pursuant to § 30-2488(b), which allows for transfer at the personal representative's request.

The Estate filed a motion to dismiss pursuant to what is now codified as Neb. Ct. R. Pldg. § 6-1112(b)(1) (subject matter jurisdiction) and argued that Hillyer's petition was barred because it was not filed within the time limit set forth in § 30-2488(a), which provides in part:

> Every claim which is disallowed in whole or in part by the personal representative is barred so far as not allowed unless the claimant files a petition for allowance in the court or commences a proceeding against the personal representative not later than sixty days after the mailing of the notice of disallowance or partial allowance if the notice warns the claimant of the impending bar.

The Estate argued that because the notice of disallowance was mailed on July 27, 2007, and warned of the impending bar, the

60 days within which Hillyer was required to file a petition for allowance ended on September 25 and that therefore, the petition filed September 26 was not timely.

In response, Hillyer claimed that she was entitled to 63 days to file the petition after the date the Estate mailed the notice of disallowance and that therefore, her petition for allowance was timely. In support of the argument that she had an additional 3 days within which to file the petition, Hillyer relied on § 25-534, which provided that in certain circumstances when service is made by mail, 3 days shall be added to the time within which action must be taken.

The district court agreed with the Estate's argument that the petition for allowance was required to be filed within 60 days after the mailing of the notice of disallowance, pursuant to the explicit language of § 30-2488(a). The court therefore sustained the Estate's motion to dismiss and dismissed Hillyer's petition. Hillyer appeals.

ASSIGNMENTS OF ERROR

Hillyer asserts that the district court erred in failing to add the 3 days found in § 25-534 to the time during which she had to file her claim and in concluding that her claim was not timely filed under § 30-2488(a).

STANDARDS OF REVIEW

[1] The interpretation of statutes presents questions of law, in connection with which an appellate court has an obligation to reach an independent conclusion irrespective of the decision made by the court below. *Vokal v. Nebraska Acct. & Disclosure Comm.*, 276 Neb. 988, 759 N.W.2d 75 (2009).

ANALYSIS

At issue in this appeal is whether the district court properly rejected Hillyer's argument that she was entitled to an additional 3 days and correctly dismissed her petition for allowance of a claim against the Estate as barred. We conclude, as a matter of law, that the district court's rulings were correct.

Section 30-2488(a) from the Nebraska Probate Code is critical to the resolution of this case. It provides as follows:

> As to claims presented in the manner described in section 30-2486 within the time limit prescribed in section 30-2485, the personal representative may mail a notice to any claimant stating that the claim has been disallowed. If, after allowing or disallowing a claim, the personal representative changes his or her decision concerning the claim, he or she shall notify the claimant. The personal representative may not change a disallowance of a claim after the time for the claimant to file a petition for allowance or to commence a proceeding on the claim has run and the claim has been barred. Every claim which is disallowed in whole or in part by the personal representative is barred so far as not allowed unless the claimant files a petition for allowance in the court or commences a proceeding against the personal representative not later than sixty days after the mailing of the notice of disallowance or partial allowance if the notice warns the claimant of the impending bar. Failure of the personal representative to mail notice to a claimant of action on his or her claim for sixty days after the time for original presentation of the claim has expired has the effect of a notice of allowance.

Section 30-2488 is taken from the Uniform Probate Code. The purpose of the similarly worded predecessor of this section has been described as serving to "expedite the settlement of the estates of decedents." *In Re: Estate of J. B. Jeffries*, 136 Fla. 410, 417, 181 So. 833, 837 (1938). More recently, the purpose of this section of the probate code has been described as "promoting a speedy and efficient system for the settlement of estates." *Mathieson v. Hubler*, 92 N.M. 381, 394, 588 P.2d 1056, 1069 (N.M. App. 1978).

Consistent with its language and expeditious objective, § 30-2488(a) provides that a disallowed claim is "barred" unless a petition for allowance is filed or a proceeding commenced "not later than" 60 days after the mailing of notice of disallowance. Interpreting a statute similar to § 30-2488, the New Mexico Court of Appeals noted that "'[b]arred'" as used in the statute "means a barrier, which if interposed, prevents

legal redress or recovery." *Mathieson*, 92 N.M. at 394, 588 P.2d at 1069 (citing Black's Law Dictionary (4th ed. 1951)).

[2,3] If the time after the expiration of the 60 days is extended, as urged by Hillyer, then "barred" in § 30-2488(a) would become meaningless and of no effect as a "barrier." A court must attempt to give effect to all parts of a statute, and if it can be avoided, no word, clause, or sentence will be rejected as superfluous or meaningless. *Niemoller v. City of Papillion*, 276 Neb. 40, 752 N.W.2d 132 (2008). We will not read anything plain, direct, or unambiguous out of a statute. *City of Elkhorn v. City of Omaha*, 272 Neb. 867, 725 N.W.2d 792 (2007).

Hillyer asks this court to ignore the "barred" nature of her claim and, nevertheless, extend for 3 days the time for filing a petition for allowance of a claim based on the fact that she received the notice of disallowance by mail. Hillyer relies on the 3-day extension found in § 25-534, which provided in part:

> Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him or her and the notice or paper is served upon him or her by mail, three days shall be added to the prescribed period.

One court rejecting a similar argument reasoned that, given the "barred" nature of the claim 60 days after mailing, the claim "'no longer exists, [and] that which has terminated, cannot be extended.'" *Mathieson*, 92 N.M. at 394, 588 P.2d at 1069. We agree with this reasoning.

In further support of her argument urging us to add a "three-day grace period," brief for appellant at 7, Hillyer refers us to *Schwarz v. Platte Valley Exterminating*, 258 Neb. 841, 606 N.W.2d 85 (2000), and *Roubal v. State*, 14 Neb. App. 554, 710 N.W.2d 359 (2006). In *Schwarz*, we acknowledged the propriety of adding 3 days to the time to respond to interrogatories which had been served by mail. In *Roubal*, in its discussion of the timeliness of a petition for review in an Administrative Procedure Act case, the Court of Appeals approved of the

addition of 3 days due to service by mail, based on the statutory language providing for filing a petition "'within thirty days after the service'" of the decision. 14 Neb. App. at 556, 710 N.W.2d at 361 (emphasis omitted). See Neb. Rev. Stat. § 84-917(2)(a) (Reissue 2008).

We distinguish *Schwarz* and *Roubal* by noting that in both cases, 3 days was added to the performance of the act in question, because the statutory period for acting was *after service*; whereas under the precise language of § 30-2488(a) at issue here, a claimant must act within 60 days *after mailing* of the notice. We find it unwarranted and not sensible to add 3 days due to mailing to a statute which explicitly states an action is barred "sixty days after the mailing."

Taken as a whole, the plain language of § 30-2488(a) provides for the finality of the personal representative's decision 60 days after the mailing of the notice of disallowance, whereupon the claim is barred. We believe the Legislature chose to use a date of mailing to denote the date from which to measure when an action on the claim would be barred, and we respect such choice. See *Geddes v. York County*, 273 Neb. 271, 277, 729 N.W.2d 661, 666 (2007) (acknowledging in a Political Subdivisions Tort Claims Act case that "the Legislature chose to use a date of mailing"). We are not at liberty to ignore the very specific statutory mailing provision and treat it as though it were a generalized service provision, as urged by Hillyer.

For completeness, we note that the "sixty days after the mailing" provision found in § 30-2488(a), which is based on the 60-day Uniform Probate Code provision, has received attention by state legislatures elsewhere. Thus, in Michigan, for example, the statute comparable to § 30-2488(a) provides that the disallowed claim stands barred "unless the claimant commences a proceeding against the trustee not later than 63 days after the mailing of the notice of disallowance." Mich. Comp. Laws Ann. § 700.7507(a) (West 2002). Unlike Michigan, the Nebraska Legislature has not added an additional 3 days; given the language of § 30-2488(a), we reject Hillyer's request that we do so.

CONCLUSION

The district court correctly ruled as a matter of law that under § 30-2488(a), Hillyer's petition for allowance of a claim was barred and correctly dismissed the petition. We affirm.

AFFIRMED.

WRIGHT, J., participating on briefs.

JEFFREY L. STUEVE, APPELLEE, AND ROBERT G. KRAFKA, APPELLANT, V. VALMONT INDUSTRIES, APPELLEE.

761 N.W.2d 544

Filed February 27, 2009. No. S-08-397.

1. **Workers' Compensation: Appeal and Error.** Pursuant to Neb. Rev. Stat. § 48-185 (Reissue 2008), an appellate court may modify, reverse, or set aside a Workers' Compensation Court decision only when (1) the compensation court acted without or in excess of its powers; (2) the judgment, order, or award was procured by fraud; (3) there is not sufficient competent evidence in the record to warrant the making of the order, judgment, or award; or (4) the findings of fact by the compensation court did not support the order or award.
2. ____: ____. In determining whether to affirm, modify, reverse, or set aside a judgment of the Workers' Compensation Court review panel, a higher appellate court reviews the findings of fact of the single judge who conducted the original hearing; the findings of fact of the single judge will not be disturbed on appeal unless clearly wrong.
3. ____: ____. An appellate court is obligated in workers' compensation cases to make its own determinations as to questions of law.
4. **Workers' Compensation: Jurisdiction: Statutes.** As a statutorily created court, the Workers' Compensation Court is a tribunal of limited and special jurisdiction and has only such authority as has been conferred on it by statute.
5. **Workers' Compensation: Attorney Fees.** The power of the Workers' Compensation Court to resolve attorney fee disputes is derived from Neb. Rev. Stat. § 48-108 (Reissue 2008).
6. ____: ____. The Workers' Compensation Court is an appropriate forum for determining fees payable to a claimant's current or prior attorney for services that the attorney rendered while representing the claimant before the court.
7. **Attorney Fees.** When an attorney's services are terminated prior to the completion of representation, the attorney is entitled to the reasonable value of his or her services rendered up to the time of termination.
8. **Attorney Fees: Contracts.** An attorney fee contract is not enforceable in the absence of a showing that the amount of the claimed fee is reasonable.