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IN RE ESTATE OF CAROLYN K. HOCKEMEIER, DECEASED. TRI VALLEY HEALTH SYSTEM, APPELLEE, V. MARY E. HOCKEMEIER AND MICHAEL W. HOCKEMEIER, COPERSONAL REPRESENTATIVES OF THE ESTATE OF CAROLYN K. HOCKEMEIER, DECEASED, APPELLANTS.

786 N.W.2d 680

Filed July 30, 2010. No. S-09-1054.

1. **Jurisdiction: Appeal and Error.** Before reaching the legal issues presented for review, it is the duty of an appellate court to settle jurisdictional issues presented by a case.
2. ____: ____. A jurisdictional question which does not involve a factual dispute is determined by an appellate court as a matter of law, which requires the appellate court to reach a conclusion independent of the lower court's decision.
3. **Jurisdiction: Words and Phrases.** Subject matter jurisdiction is a court's power to hear and determine a case in the general class or category to which the proceedings in question belong and to deal with the general subject involved in the action before the court and the particular question which it assumes to determine.
4. **Actions: Jurisdiction.** Lack of subject matter jurisdiction may be raised at any time by any party or by the court sua sponte.
5. **Decedents' Estates: Claims: Notice: Pleadings: Jurisdiction.** Where a properly presented claim against an estate is disallowed by a personal representative pursuant to Neb. Rev. Stat. § 30-2488(a) (Reissue 2008) and notice of a pending bar is given as provided therein, the filing of a petition for judicial allowance of the claim within the 60-day period specified in § 30-2488(a) is a jurisdictional requirement.

Appeal from the County Court for Furnas County: ANNE PAINE, Judge. Reversed and vacated, and cause remanded with directions to dismiss.

Patricia E. Dodson, of Dodson & Dodson, for appellants.

Kevin D. Urbom, of Urbom Law Offices, P.C., for appellee.

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

STEPHAN, J.

The personal representatives of the estate of Carolyn K. Hockemeier (Hockemeier) appeal from an order of the county court for Furnas County allowing the claim of Tri Valley

Health System (Tri Valley). We conclude that the probate court lacked jurisdiction to allow the claim.

BACKGROUND

Prior to her death on April 26, 2008, Hockemeier received various medical services from Tri Valley. Most of the services were provided prior to March 3, 2004. Hockemeier did not have health insurance and was therefore personally responsible for the cost of the services.

On March 3, 2004, Hockemeier entered into a "Time Payment Plan Contract" with Tri Valley. On that date, the balance due on Hockemeier's account with Tri Valley was $23,333.05. The contract provided that the balance was payable to Tri Valley in monthly installments of $100 until the balance was paid in full. The contract further provided that failure to make a monthly payment would result in termination of the contract and possible "other collection activity."

Hockemeier made timely payments pursuant to the contract until her death. On May 2, 2008, Hockemeier's surviving adult children, Michael W. Hockemeier and Mary E. Hockemeier, were appointed copersonal representatives of her estate. Mary continued making the $100 monthly payments to Tri Valley after Hockemeier's death by checks drawn on an account in the name of "Carolyn K. Hockemeier."

On May 12, 2008, Tri Valley filed a claim against the estate, asserting that it was owed $22,900 for the medical services it had provided to Hockemeier. The personal representatives mailed a written notice of disallowance to Tri Valley on May 30. The written notice denied the claim in full and specifically stated that "failure to file a Petition for Allowance or to commence a proceeding within sixty (60) days after the mailing of this notice will forever bar that part of your claim so disallowed."

On August 11, 2008, Tri Valley filed a document titled "Petition for Allowance of Fees" in which it claimed it was owed $22,700 by the estate for medical services provided to Hockemeier. After various delays, the county court conducted an evidentiary hearing and then entered an order allowing

Tri Valley's claim in the amount of $21,300. The personal representatives filed this timely appeal.

ASSIGNMENTS OF ERROR

The personal representatives assign, restated and renumbered, that the county court erred in (1) failing to recognize that the copersonal representatives personally assumed responsibility for the March 3, 2004, time payment contract, which resulted in a novation of the contract; (2) accelerating the time payment contract when the contract was not in default; (3) not dismissing Tri Valley's claim for failure to timely "prove up" the claim; and (4) not dismissing Tri Valley's claim because it petitioned for the allowance of "fees."

STANDARD OF REVIEW

[1,2] Before reaching the legal issues presented for review, it is the duty of an appellate court to settle jurisdictional issues presented by a case.[1] A jurisdictional question which does not involve a factual dispute is determined by an appellate court as a matter of law, which requires the appellate court to reach a conclusion independent of the lower court's decision.[2]

ANALYSIS

The personal representatives did not argue to the probate court or in their initial brief on appeal that Tri Valley's claim was barred because the petition for allowance was not timely filed. But the personal representatives did raise the issue at oral argument before this court. Because it posed a possible jurisdictional question for this court to consider, we ordered the parties to submit additional briefs on the issue.

[3,4] Subject matter jurisdiction is a court's power to hear and determine a case in the general class or category to which the proceedings in question belong and to deal with the general subject involved in the action before the court and the

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[1] *Miller v. Regional West Med. Ctr.*, 278 Neb. 676, 772 N.W.2d 872 (2009); *Connelly v. City of Omaha*, 278 Neb. 311, 769 N.W.2d 394 (2009).

[2] *Jacob North Printing Co. v. Mosley*, 279 Neb. 585, 779 N.W.2d 596 (2010); *Steven S. v. Mary S.*, 277 Neb. 124, 760 N.W.2d 28 (2009).

particular question which it assumes to determine.[3] Lack of subject matter jurisdiction may be raised at any time by any party or by the court sua sponte.[4]

We have previously held that the time periods established by Neb. Rev. Stat. § 30-2485 (Reissue 2008) for the initial presentation of probate claims are mandatory and cannot be waived.[5] In this case, there is no contention that Tri Valley's claim was not timely presented. Rather, the focus is on the events which transpired after the personal representatives notified Tri Valley that they had disallowed its claim.

Neb. Rev. Stat. § 30-2488 (Reissue 2008) defines the power of a probate court to allow claims which have been disallowed by a personal representative. Section 30-2488(a) provides:

> 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 . . . if the notice warns the claimant of the impending bar.

The probate court is authorized to allow those claims which were "filed with the clerk of the court in due time and not barred by [§ 30-2488(a)]."[6]

Here, the personal representatives mailed notice of the disallowance of Tri Valley's claim on May 30, 2008, and the notice contained the requisite warning of the impending bar. But Tri Valley did not file its petition for allowance until August 11, a date clearly outside the 60-day window specified in § 30-2488(a).

The question before us is whether the 60-day period set forth in § 30-2488(a) is a jurisdictional requirement, or whether it is in the nature of a statute of limitations. If it is the latter,

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[3] *McClellan v. Board of Equal. of Douglas Cty.*, 275 Neb. 581, 748 N.W.2d 66 (2008); *Rozsnyai v. Svacek*, 272 Neb. 567, 723 N.W.2d 329 (2006).

[4] *McClellan v. Board of Equal. of Douglas Cty., supra* note 3; *Betterman v. Department of Motor Vehicles*, 273 Neb. 178, 728 N.W.2d 570 (2007).

[5] *In re Estate of Masopust*, 232 Neb. 936, 443 N.W.2d 274 (1989).

[6] § 30-2488(c).

Tri Valley's failure to file its petition within the time period cannot be raised by the personal representatives for the first time to this court. This is so because a statute of limitations does not operate by its own force as a bar, but, rather, operates as a defense to be pled by the party relying upon it and is waived if not pled.[7] But if filing within 60 days is a jurisdictional requirement, this court can and must consider Tri Valley's failure to timely file.[8]

A typical statute of limitations specifies only that an action must be commenced within a specified time period.[9] The language in § 30-2488(a) is unlike a typical statute of limitations because it does not merely specify the time for filing a petition to allow a disallowed claim; it also specifies the consequences of an untimely filing. The statute clearly and expressly states that as long as the notice of disallowance informs the claimant of the 60-day time limitation, the claim is *barred* if the claimant fails to act within that period. This statutory language is self-executing; if a petition for allowance is not filed within the prescribed period, the claim is barred by operation of law.

In *In re Estate of Lienemann*,[10] we affirmed the dismissal of a petition for allowance of a probate claim that was filed outside of the 60-day period specified in § 30-2488(a) and rejected an argument that an additional 3-day period for mailing should be allowed pursuant to Neb. Rev. Stat. § 25-534 (Reissue 1995). Agreeing with the reasoning of another court which had construed the term "barred" as used in a similar probate statute to mean that the claim no longer existed after the 60-day period had expired, we held that "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

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[7] See, e.g., *In re Estate of Reading*, 261 Neb. 897, 626 N.W.2d 595 (2001).

[8] See, *Miller v. Regional West Med. Ctr., supra* note 1; *McClellan v. Board of Equal. of Douglas Cty., supra* note 3.

[9] See, e.g., Neb. Rev. Stat. §§ 8-1721.01, 20-211, and 20-342 (Reissue 2007); Neb. Rev. Stat. §§ 25-205 to 25-210, 25-212, and 25-222 to 25-224 (Reissue 2008).

[10] *In re Estate of Lienemann*, 277 Neb. 286, 761 N.W.2d 560 (2009).

barred."[11] Although our opinion did not specifically characterize the 60-day filing period in § 30-2488(a) as a jurisdictional requirement, we affirmed the order of the probate court which sustained a motion to dismiss for lack of subject matter jurisdiction.

We are not persuaded by Tri Valley's argument that Neb. Rev. Stat. § 30-2486(3) (Reissue 2008) authorized it to file the petition outside the 60-day period of § 30-2488(a). Section 30-2486(3) can permit additional time when a claim is contingent, unliquidated, or not presently due. It is clear from this record that the amount claimed by Tri Valley for medical services provided to Hockemeier was due and owing at the time of her death. The time payment contract was simply an accommodation to permit Hockemeier to pay the amount due in monthly installments without interest during her lifetime.

[5] We hold that where a properly presented claim against an estate is disallowed by a personal representative pursuant to § 30-2488(a) and notice of a pending bar is given as provided therein, the filing of a petition for judicial allowance of the claim within the 60-day period specified in § 30-2488(a) is a jurisdictional requirement. Because that requirement was not met in this case, the claim was barred and no longer existed by the time the petition for allowance was eventually filed, and the county court therefore lacked jurisdiction over the subject matter of the petition. And because the county court lacked jurisdiction, we are without jurisdiction to consider the merits of the appeal.[12]

CONCLUSION

For the reasons discussed, we reverse and vacate the order of the county court and remand the cause with directions to dismiss the petition for allowance of the claim.

REVERSED AND VACATED, AND CAUSE REMANDED WITH DIRECTIONS TO DISMISS.

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[11] *Id.* at 291, 761 N.W.2d at 564. See *Mathieson v. Hubler*, 92 N.M. 381, 588 P.2d 1056 (N.M. App. 1978).

[12] See *Wasikowski v. Nebraska Quality Jobs Bd.*, 264 Neb. 403, 648 N.W.2d 756 (2002).