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LAMAR J. WINWARD; SNOW AND NUFFER; ATTORNEY FOR APPELLANT
RONALD W. THOMPSON; MICHAEL D. HUGHES; THOMPSON, HUGHES AND REBER;
ATTORNEYS FOR RESPONDENT.

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IN THE SUPREME COURT OF THE STATE OF UTAH

IN THE MATTER OF THE ESTATE OF)	
)	
KENNETH CARL LARSON)	
Deceased,)	
)	
Respondent,)	
)	
vs.)	
)	
SOUTHERN NEVADA MEMORIAL)	Supreme Court No. 20518
HOSPITAL)	
)	
Appellant)	

BRIEF OF RESPONDENT

AN APPEAL FROM AN ORDER
OF THE FIFTH DISTRICT COURT OF WASHINGTON COUNTY,
THE HONORABLE J. HARLAN BURNS, DISTRICT COURT JUDGE

LAMAR J. WINWARD,
SNOW AND NUFFER, P.C.
50 East 100 South #302
P.O. Box 386
St. George, Utah 84770
Attorney for Appellant

RONALD W. THOMPSON AND
MICHAEL D. HUGHES
THOMPSON, HUGHES & REBER
148 East Tabernacle
St. George, Utah 84770
Attorneys for Respondent

JUN 19 1985

IN THE SUPREME COURT OF THE STATE OF UTAH

IN THE MATTER OF THE ESTATE OF)
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Deceased,)
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LAMAR J. WINWARD,
SNOW AND NUFFER, P.C.
50 East 100 South #302
P.O. Box 386
St. George, Utah 84770
Attorney for Appellant

RONALD W. THOMPSON AND
MICHAEL D. HUGHES
THOMPSON, HUGHES & REBER
148 East Tabernacle
St. George, Utah 84770
Attorneys for Respondent

PARTIES TO THE PROCEEDING

Estate of Kenneth Carl Larson, Respondent, represented by
the Personal Representative Vicky Larson Carroll

Attorneys for the Respondent: Ronald W. Thompson and
Michael D. Hughes of the law firm Thompson, Hughes
& Reber

Southern Nevada Memorial Hospital, Appellant

Attorneys for the Appellant: LaMar J. Winward of the law
firm Snow & Nuffer

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

STATEMENT OF ISSUES 1

STATUTES AND RULES 2

STATEMENT OF THE CASE 4

SUMMARY OF ARGUMENTS 6

ARGUMENT

Point I 9
THIS COURT SHOULD DEFER TO THE FINDINGS OF FACT
ENTERED BY THE TRIAL COURT WITHOUT SPECIAL
INFERENCES IN FAVOR OF THE PETITIONER

Point II 12
THE HOSPITAL'S CLAIM FILED IN NEVADA PRIOR TO THE
APPOINTMENT OF A PERSONAL REPRESENTATIVE IS INVALID
PURSUANT TO UTAH CODE ANNOTATED § 75-3-104

Point III 15
THE CLAIM OF SOUTHERN NEVADA HOSPITAL IS INVALID
HAVING BEEN PREMATURELY FILED PRIOR TO PUBLICATION
OF NOTICE TO CREDITORS

Point IV 20
THERE WAS NO ADJUDICATION IN THE NEVADA ADMINISTRATION
OF THE ESTATE WHICH WOULD INVOKE THE OPERATION OF
UTAH CODE ANNOTATED § 75-4-401

Point V 23
THE APPELLANT'S CLAIM IS BARRED BY THE NONCLAIM
PROVISIONS OF UTAH CODE ANNOTATED §75-3-803 TO WHICH
THIS COURT SHOULD RECOGNIZE NO EXCEPTIONS.

Point VI 29
UTAH CODE ANNOTATED §75-1-106 HAS NO
APPLICATION IN THE INSTANT CASE

Point VII 31
UTAH CODE ANNOTATED § 78-12-38 HAS NO
APPLICATION IN THE INSTANT CASE

CONCLUSION 36

TABLE OF AUTHORITIES CITED

<u>Anderson v. Parson Red E-Mix Paving Company</u> , 467 P.2d 45, 24 Utah 2d 128 (1970)	10
<u>Bird v. General Discount Corporation</u> , 21 S.E. 2d 651, 653, 194 Ga. 283 (1942)	21
<u>Davis v. Davis' Estate</u> , 56 Mont. 500, 185 P. 559 (1919). 18,	
<u>Estate of Tanner</u> , 288 So. 2d 587, 70 A.L.R. 3d 778 (Fla. App. 1974)	16,
<u>Fairchilds v. Ninnescah Oil & Gas Company</u> , 99 P.2d 839, 843, 151 Kan. 551 (1940)	21
<u>Grigg v. Hanna</u> , 278 N.W. 125, 283 Mich. 443 (1938) . . .	22
<u>Lowry v. Crandall</u> , 52 Ariz. 501, 83 P.2d 1003 (1938) . .	18, 19
<u>Miller v. Scobie</u> , 11 So. 2d 892, 152 Fla. 328 (1943) . .	21
<u>Myers v. McDonald</u> , 635 P.2d 84 (Utah 1981)	27
<u>Newton v. State Road Commission</u> , 462 P.2d 565, 23 Utah 2d 350 (1970)	10
<u>Nielsen v. Utah National Bank of Odgen</u> , 120 P. 211, 40 Utah 95 (1911)	21
<u>People Ex. Rel. Augus Company v. Hugo</u> , 168 N.Y.S. 25, 101 Misc. Rep. 481 (1917)	21
<u>Polk v. Koerner</u> , 111 Ariz. 493, 533 P.2d 660 (1975) . .	11
<u>Price v. Sommermeyer</u> , 577 P.2d 752 (Colo. 1978)	15
<u>Provo City Corporation v. Nielson Scott Company Inc.</u> , 603 P.2d 803 (Utah 1979)	11
<u>Reliable Furniture Company v. American Home Insurance Company</u> , 446 P.2d 368, 24 Utah 2d 93 (1970)	10
<u>Soppe v. Soppe</u> , 8 N.W. 2d 243, 232 Iowa 1293 (1943) . .	21
<u>Spalding v. Mutual Life Insurance Company</u> , 117 A. 376, 378, 96 Vt. 67 (1922)	21
<u>Tiernan's Estate</u> 4, N.W. 2d 869, 871, 232 Iowa 139 (1942)	21
<u>Wilkinson v. Stevens</u> , 403 P2d 31, 16 Utah 2d 424 (1965). 10	

RULES AND STATUTES

Utah Code Annotated §75-3-103 14

Utah Code Annotated §75-3-104 12, 13, 14,
15,

Utah Code Annotated §75-1-105 35

Utah Code Annotated §75-1-106 29

Utah Code Annotated §75-3-617 12

Utah Code Annotated §75-3-801 23

Utah Code Annotated §75-3-802 32

Utah Code Annotated §75-3-803 15, 23, 29
32, 33, 34

Utah Code Annotated §75-3-803(1)A 16

Utah Code Annotated §75-3-803(a) 23, 33

Utah Code Annotated §75-3-803(b) 33

Utah Code Annotated §75-3-804 15

Utah Code Annotated §75-3-806(2) 9

Utah Code Annotated §75-3-815 16

Utah Code Annotated §78-12-38 31, 32, 33,
34

OTHER AUTHORITIES

51 Am. Jur 2d "Limitation of Actions" § 17 26

73 Am. Jur 2d "Stipulations" § 18 11

STATEMENT OF ISSUES

- I. What is the appropriate standard of review when parties submit a case for ruling to the District Court on stipulated facts?
- II. Is the Hospital's Notice of Claim filed in Nevada prior to the appointment of a personal representative valid for any purpose?
- III. Is the Hospital's Notice of Claim filed in Nevada prior to the publication of Notice to Creditors valid for any purpose?
- IV. Was there an "Adjudication" in the State of Nevada allowing the Hospital's claim which can serve as a contemplated basis for the operation of Utah Code Annotated Section 75-4-401?
- V. Is there sufficient evidence of fraud which would justify the operation of Utah Code Annotated 75-1-106?
- VI. Should this Court judicially create an equitable exception to the nonclaim provisions of the Uniform Probate Code in the instant case?
- VII. Does Utah Code Annotated Section 78-12-38 operate to the exclusion of Section 75-3-803 in cases where a cause of action exists in this state, but the decedent dies out of Utah?

STATUTES AND RULES

§75-1-105 CONSTRUCTION AGAINST IMPLIED REPEAL.

This code is a general act intended as a unified coverage of its subject matter, and no part of it shall be deemed impliedly repealed by subsequent legislation if it can reasonably be avoided.

§75-1-106. EFFECT OF FRAUD AND EVASION.

Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this code or if fraud is used to avoid or circumvent the provisions or purposes of this code, any person injured thereby may obtain appropriate relief against the perpetrator of the fraud or restitution from any person (other than a bona fide purchaser) benefitting from the fraud, whether innocent or not. Any proceeding must be commenced within three years after the discovery of the fraud, but no proceeding may be brought against one not a perpetrator of the fraud later than five years after the time of commission of the fraud. This section has no bearing on remedies relating to fraud practiced on a decedent during his lifetime which affects the succession of his estate.

§75-3-104. CLAIMS AGAINST DECEDENT - NECESSITY OF ADMINISTRATION.

No proceeding to enforce a claim against the estate of a decedent or his successors may be revived or commenced before the appointment of a personal representative. After the appointment and until distribution, all proceedings and actions to enforce a claim against the estate are governed by the procedure prescribed by this chapter 3. After distribution a creditor whose claim has not been barred may recover from the distributees as provided in Section 75-3-1004 or from a former personal representative individually liable as provided in Section 75-3-1005. This section has no application to a proceeding by a secured creditor of the decedent to enforce his right to his security except as to any deficiency judgment which might be sought therein.

§75-3-803. LIMITATIONS OF PRESENTATIONS OF CLAIMS.

(1) All claims against a decedent's estate which arose before the death of the decedent, including claims of the state and any subdivision of it, whether due or to become due, absolute or contingent, liquidated or un-

liquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

- (a) Within three months after the date of the first publication of notice to creditors if notice is given in compliance with Section 75-3-801; provided claims barred by the nonclaim statute at the decedent's domicile before the first publication for claims in the state are also barred in this state.
 - (b) Within three years after the decedent's death, if notice to creditors has not been published.
- (2) All claims against a decedent's estate which arise at or after the death of the decedent, including claims of the state and any subdivision of it, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, are barred against the estate, the personal representative, and the heirs and devisees of the decedent unless presented as follows:
- (a) A claim based on a contract with the personal representative, within three months after performance by the personal representative is due;
 - (b) Any other claim, within three months after it arises.
- (3) Nothing in this section affects or prevents:
- (a) Any proceeding to enforce any mortgage, pledge, or other lien upon property of the estate; or
 - (b) To the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which he is protected by liability insurance.

75-4-401. EFFECT OF ADJUDICATION FOR OR AGAINST
PERSONAL REPRESENTATIVE.

An adjudication rendered in any jurisdiction in favor of or against any personal representative of the estate is binding on the local personal representative as if he were a party to the adjudication.

78-12-38. OUTSIDE THIS STATE.

If a person against whom a cause of action exists dies without the state, the time which elapses between his death and the expiration of one year after the issuing, within the state, of letters testamentary or letters of administration is not a part of the time limited for the commencement of an action therefor against his executor or administrator.

STATEMENT OF THE CASE

This is an appeal from the Fifth Judicial District Court's denial of Appellant's Petition for Allowance of Claim in a Probate proceeding. Appellant's Petition for Allowance of Claim was filed after Vickie Carroll, the personal representative of the Estate hereinafter Personal Representative, denied the claim. The District Court ruled that the claim was barred by the operation of the nonclaim provisions of § 75-3-803 of the Utah Code Annotated.

STATEMENT OF FACTS

At the hearing on the Appellant's Petition for Allowance of Claim on September 10, 1984, the parties agreed and stipulated to submit Appellant's Petition to the District Court for ruling solely on the stipulated and undisputed facts which are found in the Findings of Fact. (R 108; 110-112.)

The decedent died at the Hospital in Las Vegas Nevada on December 21, 1982. Upon the decedent's admission to the Hospital on December 6, 1982, he listed his address as 4001 East Sahara Avenue, Las Vegas, Nevada, which is the address of Maycliff Mini Storage and RV Park, the location of property stored by the decedent. (R 110.) On January 4, 1983, Mr. Jared Shafer was appointed Special Administrator of the decedent's estate in Nevada by order of the Eighth

Judicial District Court, Clark County Nevada. Appellant filed a creditor's claim in the amount of \$24,832.54 with the Nevada Court on January 6, 1983, which was prior to the appointment of any personal representative or general administrator in the Nevada administration. (R 111.) Before the filing of the Creditor's Claim, on January 5, 1983, Vickie Larson Carroll, the decedent's daughter, nominated Mr. Shafer to be the general administrator of her father's estate in Nevada. No general administrator was appointed, however, until February 18, 1983. (R 67-68.) In the meantime another administration of the estate was open in the State of Montana. (R 111.)

The Utah probate was timely commenced on January 26, 1983, when Vickie Larsen Carroll petitioned and was appointed personal representative of the estate. (R 111.) Publication of Notice to Creditors in Utah occurred in January and February of 1983. (R 111.)

Appellant filed its Creditor's Claim in Utah on November 14, 1983. (R 111.) The Personal Representative denied the claim and Appellant filed its Petition for Allowance of Claim on June 8, 1984. (R 111.) The District Court dismissed Appellant's petition on the motion of the Personal Representative after a hearing in which all counsel submitted the matter based solely upon a series of stipulated and undisputed facts. (R 110-112.)

SUMMARY OF ARGUMENT

1. The Hospital's Petition for Allowance of Claim was submitted to the District Court for ruling on the basis of stipulated facts. As such it is an agreed case, and the denial of the petition by the trial court is not properly designated as a "dismissal" implying a truncated evidentiary process which would now require reviewing the facts in a light most favorable to Appellant. Since the stipulation of the parties substitutes for trial, this Court should defer the factual findings of the trial court and confine its view of the evidence to those findings. Indeed, Appellant tactically agreed that the matter be submitted on this basis.

2. Utah Code Annotated 75-3-104 prohibits filing claims against the decedent before the appointment of a personal representative. This Court should support the expressed policies and intentions of the framers of the Uniform Probate Code and encourage orderly and uniform estate administration by requiring, consistent with §75-3-104, that creditors submit their claims to properly appointed personal representatives. This Court should hold, with other authorities, that a claim filed prior to the appointment of a personal representative is void.

3. For similar policy reasons as those expressed the above paragraph 2, this Court should hold that creditor's claims filed prior to publication of Notice to Creditors are void.

4. The Trial Court found no evidence of fraud which would trigger the operation of § 75-1-106 Utah Code Annotated. Appellant was aware of the status of decedent's residence in Nevada shortly before his death even though it may not have been aware of the actual address of his residence in the State of Utah prior to his death. Decedent made no representations regarding the state of his domicile or other states in which he may of had assets. Further, there is no evidence of concealment of assets or of the other administrations of the estate by the Personal Representative. The Hospital with due diligence could have discovered the other administrations and properly filed its claim.

5. The special administrator of the Nevada administration in his accounting and the Order Approving the Accounting both recite as a finding of fact that the Hospital's claim had been filed against the estate, but had not been paid. This finding of fact is not an "adjudication" of the creditor's claim as contemplated in Utah Code Annotated 75-4-401. Therefore, there is no adjudication of the creditor's claim in Nevada which would be binding on the Utah Personal Representative.

6. There are no particular facts or other hardships in this case which would warrant the creation of an exception to the nonclaim statute. The judicial creation of exceptions to statutory schemes should be reserved for extraordinary cases where the need for relief from severe hardship is compelling. This is not an appropriate case for the creation of a judicial exception.

7. The statutory scheme of the Uniform Probate Code contemplates the continued operation of various statutes of limitations including Utah Code Annotated 78-12-38. However, the Uniform Probate Code provides that the first limitation provision to accomplish a bar on the particular facts of each case will control. In this case §75-3-803(a) accomplished a bar prior to §78-12-38 and therefore controls.

ARGUMENT

POINT I

THIS COURT SHOULD DEFER TO THE FINDINGS
OF FACT ENTERED BY THE TRIAL COURT WITHOUT
SPECIAL INFERENCES IN FAVOR OF THE PETITIONER.

On June 14, 1984 approximately one and one-half years after the first publication of Notice to Creditors, Appellant filed its "Petition for Allowance of Claim and Order Allowing Claim". (R 17). The Personal Representative of the Estate responded by filing her "Objection to Order Allowing Claims" (R 23) and moved to dismiss the Petition. (R 29-32). The Parties each submitted memoranda which included statements of fact and argument. (R 30-32; 35-42; 98-107).

On September 10, 1984 the District Court called up the Petition for Allowance of Claim and the motion to deny the same. Each party was represented by counsel and each was heard. The parties stipulated that there were no issues of fact and further stipulated that the court should rule on the basis the stipulated facts which are found in the Trial Court's findings of fact (R 110-112) to which there has been no objection. (R 108). The Court thereafter ruled denying the Petition for Allowance of Claim. (UCA 75-3-806[2]).

On appeal, Appellant now argues that this Court "must view the facts in the light most favorable to the Appellant". (Appellant's Brief [hereinafter AB] at 7.) The Personal Representative believes that based on the parties'

stipulation below this is an inappropriate standard of review. Indeed, Respondent urges that the District Court's rulings based on facts commonly stipulated by both parties are entitled to the same deference as if they had been entered after trial.

There can be no question that where a trial court has dismissed a cause of action by entering a verdict or judgment of nonsuit or no cause of action, or where a case has been dismissed at the close of the Plaintiff's evidence or on a motion for directed verdict, this Court will review the facts in the light most favorable to the Plaintiff's contentions. Anderson v. Parson Red E-Mix Paving Company, 467 P.2d 45, 24 Utah 2d 128 (1970); Reliable Furniture Company v. American Home Insurance Company, 466 P.2d 368, 24 Utah 2d 93 (1970); Newton v. State Road Commission, 462 P.2d 565, 23 Utah 2d 350 (1970); Wilkinson v. Stevens, 403 P.2d 31, 16 Utah 2d 424 (1965). Appellant's Petition for Allowance of Claim in the instant case, however, was not denied under any of those circumstances which would warrant an appellate review of the evidence in a light most favorable to Appellant. Simply stated, the policy that evidence should be viewed in a light most favorable to Appellant is applicable only in cases where the facts are disputed and the trier of fact has not had full opportunity to hear and weigh all of the facts and evidence. Such a rule is applied only where the evidentiary or fact finding process has been abbreviated. In the instant case the parties stipulated to the facts. No additional evidence or testimony was contemplated or tactically proffered. (See AB at 7)

Indeed, the parties' stipulation regarding the facts substituted for the evidentiary portion of the hearing, and authorized the trial court to rule and draw legitimate inferences therefrom without being required to view the evidence in a light favorable to either party. (See Generally 73 Am Jur 2d "Stipulations" § 18). The Trial Court subsequently denied Appellant's Petition. The fact that the trial court's order is labeled as a "dismissal", however, cannot substantively transform the Court's action into something akin to a Rule 41 dismissal.

Pursuant to the Stipulation of the parties the trial court entered findings of fact. (R 110-112). Appellant does not challenge these findings. The Personal Representative believes that since the Petition for Allowance of Claim was submitted to the Court on the stipulation of the parties, said stipulation amounts to the equivalent of a trial thereon, and this Court should defer to the District Court's position with regard to the facts, and no inference or preference should be granted to the Appellant's contentions. Provo City Corporation v. Nielson Scott Company Inc., 603 P.2d 803 (Utah 1979); Polk v. Koerner, 111 Ariz. 493, 533 P.2d 660 (1975).

Appellant's brief now contains various new allegations of fact not found in the Trial Court's findings. These allegations relate primarily to the decedent's residence or domicile, allegations of fraud, false statements, concealment, the Appellant's lack of knowledge of the Utah proceedings and its alleged reliance on various of the decedent's representations.

(AB at 5, 15, 18, 19.) Respondent respectfully submits that as these allegations are not found in the Trial Court's Findings and did not form part of the stipulated case as submitted to the trial court by Appellant, that they should not be considered now by this Court. Indeed this Court should judicially limit its review to those facts contained in the Trial Court's Findings as submitted to that court by earlier stipulation. (R 110-112.) Because Appellant's brief contains various allegations beyond the Trial Court's Findings of Fact, however, Respondent's brief will reply to the Appellant's allegations by reference to additional citations in the record also not found in the findings.

POINT II

THE HOSPITAL'S CLAIM FILED IN NEVADA
PRIOR TO THE APPOINTMENT OF A PERSONAL
REPRESENTATIVE IS INVALID PURSUANT TO
UTAH CODE ANNOTATED § 75-3-104.

Vickie Carroll filed her nomination of Mr. Jared Shafer to act as "Special Administrator" with limited authority to collect and maintain the assets of the estate. (R 48-55.) This special administrator, similar to the law in Utah, was given no power to act on creditor's claims or to initiate publication to notice of creditors but rather was limited to the specific powers granted him by order of the Nevada Court. (See, e.g., UCA 75-3-617.) The claim of Southern Nevada Memorial Hospital was filed in Nevada on January 6, 1983. (R 111.)

The petition to appoint an administrator in Nevada was filed January 10, 1983. (R 46.) Prior to entry of an order appointing a general administrator in Nevada, an administration of the estate was opened in the state of Montana on January 18, 1983. (R 111; cf. R 67-68.) Mrs. Vonda Jean Biesen appeared in both forums challenging the appointment of administrators and claiming to be a surviving spouse. Vickie Carroll was never appointed personal representative in the State of Nevada. She was appointed personal representative in the administration of the estate in the State of Utah, however, on the 26th day of January, 1983. (R 111.) No general administrator with power to act on creditors claims was appointed in the State of Nevada until February 18, 1983, some 12 days after first publication of notice to creditors by the Utah Personal Representative. (R 67.) In short no personal representative or other person authorized to act on creditors claims had been appointed in any state at the time that Appellant filed it claim in the State of Nevada.

Utah Code Annotated 75-3-104 states:

"No proceeding to enforce a claim against the estate of a decedent or his successors may be revived or commenced before the appointment of a personal representative. After the appointment and until distribution, all proceedings and actions to enforce a claim against the estate are governed by the procedure prescribed by this Chapter 3. After distribution a Creditor whose claim has not been barred may recover from the distributees as provided in Section 25-3-1004 or from a former personal representative individually liable as provided in section 75-3-1005. This Section has no application to a proceeding by a secured creditor of the decedent to enforce his right

to his security except as to any deficiency judgment which might be sought therein." (Emphasis added).

The Editorial Board Comment to § 75-3-104 states as follows:

"This and sections of part 8 of chapter 3, are designed to force creditors of decedents to assert their claims against duly appointed personal representatives. Creditors of the decedent are interested persons who may seek the appointment of a personal representative (Section 75-3-301). If no appointment is granted to another within 45 days after the decedent's death, the creditor may be eligible to be appointed if other persons with priority decline to serve or are ineligible (Section 75-3-203). But, if a personal representative has been appointed and has closed the estate under circumstances which leave a creditor's claim unbarred, the creditor is permitted to enforce his claims against distributees as well as against the personal representative if any duty owed to creditors under Section 75-3-807 or 75-3-1003 has been breached. The methods for closing estates are outlined in Section 75-3-1001 - 75-3-1003. Termination of appointment are Sections 75-3-608 et. seq. may occur though the estate is not closed and so may be irrelevant to the question to whether creditors may pursue distributees."

It is clear that the intent and policy of the framers of the Utah Probate Code is to compel creditors to assert claims against duly appointed personal representatives. In order to protect creditors from undue delay in the appointment of a personal representative, creditors are given the option, forty-five days after the death of the decedent to seek appointment themselves if others have declined to serve. § 75-3-201 U.C.A. In the instant case Appellant did not seek to enforce its claim against the duly appointed representative but rather it sought to enforce its claim against the special administrator

who had no power to deal with the claim. The Editorial Board Comments to § 75-3-104 state that Chapter 3 of the code, including part 8 on creditors claims, is applicable only after the appointment of a personal representative. Thus a creditor may not properly present a claim pursuant to Section 75-3-804 until the personal representative has been appointed.

In Price v. Sommermeyer, 577 P.2d 752 (Colo. 1978), the Colorado Supreme Court similarly held that pursuant to §15-12-104 of the Colorado Revised Statutes a claim was not valid unless a personal representative had been previously appointed. The Colorado Code Section interpreted in Price is identical to Utah Code Annotated §75-3-104.

Since in the instant case no personal representative had been appointed when Appellant filed its claim, the claim cannot be said to have been properly presented pursuant to the provisions of Chapter 3 of the Utah Probate Code. As such it is not binding upon the personal representative of the estate.

POINT III

THE CLAIM OF SOUTHERN NEVADA HOSPITAL IS INVALID
HAVING BEEN PREMATURELY FILED PRIOR TO PUBLICATION
OF NOTICE TO CREDITORS.

No notice to creditors was published in the administration of the Estate in Nevada as contemplated by UCA §75-3-803. (R 111.) Notice to Creditors was first published in Utah on January 30, and February 6, 1983. (R 9, 111.)

An Editorial Board Comment to UCA 75-3-815 which also explains the provisions of UCA 75-3-803 states:

Under 75-3-803(1)(a), if a local (property only) administration is commenced and proceeds to advertisement for claims before nonclaim statutes have run at domicile, claimants may prove claims in the local administration at any time before the local nonclaim expires. This section has the effect of subjecting all assets of the decedent, wherever they may be located and administered, to claims properly presented in any local administration. It is necessary, however, that the personal representative of any portion of the estate be aware of other administrations in order for him to become responsible for claims and charges established against other administrations." (Emphasis added)

From the above it is clear that the personal representative of an estate in the domicile cannot be bound merely by the filing of the claim in another state. Thus, unless the claim is properly established after advertisement for claims or publication of notice in the second forum prior to expiration of the nonclaim period in the domicile, it has no validity in the domicile. And, since there had been no publication in the State of Nevada or any state when Appellant filed its claim in Nevada, said claim could not constitute an established claim.

In its brief Appellant cites three cases which appear to support the proposition that a creditor's claim may be filed prior to the publication of notice to creditors. A careful review of these cases, however, raises substantial questions about the validity of this proposition. Appellant's main theory posits its theory relying on Re Estate of Tanner, 288 So. 2d

587, 70 A.L.R. 3d 778 (Fla. App. 1974). In Tanner, a curator had published notice to creditors absent court authorization. A certain creditor responded by filing a claim. Thereafter, and within the time provided by Florida Statute, the estate filed an objection to the claim. The creditor, however, failed to timely file suit after the rejection of its claim by the estate and the trial court held that the statute of limitations barred the action. On these facts the trial court certified, inter alia, the following question on appeal.

"4. [where] a curator, appointed on February 18, 1971, and to whom letters of Curatorship were issued on February 26, 1971, published notice to creditors without order of court authorizing him to do so, the first publication of which notice was made on March 6, 1971, and claimant filed claim on August 29, 1971, and heirs at law of decedent and their Attorney filed objection to such claim on October 12, 1981, and duly served such objection on the claimant, is claimant barred, by failure to file suit, to establish claim within the time limited by FS Section 33.18, FSA?" (70 A.L.R. 3d 780.)

In attempting to formulate an analytical framework to answer this question, the Appellate Court asked the following question: "Could a claim have been filed and could a valid objection to the claim have been filed by the heirs even though no legal notice to creditors had been published?" (Id. at 783.) The question posited and its answer were clearly dicta and clearly unnecessary to resolve the dispute. Also, in Tanner, notice had been published by the curator prior to filing of the creditors claim, however, this notice had been erroneously published without an appropriate court order as required by

Florida Law. Further distinguishing the Tanner case, that Court emphasized the differences under Florida Law between the authority of a curator and a personal representative. The authority of curators and personal representative was found not to be the same, therefore, the pronouncements of the Tanner case governing Florida curators are not persuasive in this case dealing with a personal representative and are dicta.

Appellant than cites the old cases of Davis v. Davis' Estate, 56 Mont. 500, 185 P. 559 (1919), and Lowry v. Crandall, 52 Ariz. 501, 83 P.2d 1003 (1938). Both Davis and Lowry were decided prior to the adoption of the Uniform Probate Code. In Davis, the Montana Supreme Court decided a case in which the general statute of limitations had run prior to the expiration of three months from publication of Notice to Creditors. The Creditor's claim in that case was filed after publication to creditors. The appellant argued that the general statute of limitations should be extended three months from publication to creditors on the theory that he could not file a claim until after the publication of Notice to Creditors. The Davis court held that a statute of limitations having commenced to run against a claim during the lifetime of the maker is interrupted only from the date of death to the appointment of an administrator. The court rejected the appellant's theory that he could not file a claim prior to publication. However, this view is once again dicta because the Court's holding rested on another basis. Furthermore, in Davis, publication of notice to creditors was completed prior to the

filing of the creditor's claim. Thus Davis is both unique and inapposite to the instant case.

Lowry v. Crandall, supra, is more closely on point wherein an Arizona court held that it was proper to file a claim before publication of notice to creditors. Decided under pre code law, patterned after an earlier California statute, it is likely that the drafters of the Uniform Probate Code were aware of both the Lowry decision and the California statute. Thus, their inclusion of the words "and proceeds to advertisement" in their comments to Sections 803 and 815 were most likely intended to settle the issue raised by such cases as the Lowry case and to reject the rules stated therein. The Personal Representative is unaware of any authority which has squarely decided this issue since the enactment of the Uniform Probate Code in the various states.

The Personal Representative believes that this court should hold that Appellant's claim was prematurely filed and is void since no notice to creditors had been published. This holding rests upon sound policy reasons. As previously noted herein the Uniform Probate Code is designed to force creditors of decedents to assert their claims against duly appointed personal representatives. The Code is structured to allow creditors to seek the appointment of a personal representative, replace a personal representative who is dilatory in his duties and to force the estate to publish notice to creditors and otherwise administer the estate to the benefit of all creditors. The Personal

Representative believes that it is good policy to require creditors who are anxious to file their claims, to apply appropriate pressure on the estate to publish notice to creditors. This will have a salutary effect on Estate administration to the benefit of other creditors who may not be aware of the death or administration. Indeed if some creditors aware of decedent's death are allowed to file their claims prior to publication, then appropriate pressure may not be brought upon the personal representative to perform its statutory duty to publish Notice to Creditors. Thus, requiring all creditors to file their claims after publication of Notice to Creditors and at the same time giving said creditors a tool to be able to force said publication is sound public policy which protects and treats all creditors of the estate equally, not just those who may be aware of the death.

POINT IV

THERE WAS NO ADJUDICATION IN THE NEVADA ADMINISTRATION OF THE ESTATE WHICH WOULD INVOKE THE OPERATION OF UTAH CODE ANNOTATED 75-4-401.

Utah Code Annotated 75-4-401 states as follows :

An adjudication rendered in any jurisdiction in favor of or against any personal representative of the estate is as binding on the local personal representative as if he were a party to the adjudication.

The word "adjudication" is not defined in the statutory scheme. Its definition, however, is probative in determining whether there was an adjudication in the Nevada

Administration binding on the Utah Personal Representative with regard to Appellant's claim. The Utah Supreme Court in Nielsen v. Utah National Bank, 120 P. 211, 40 Utah 95 (1911), stated that the word "adjudication" means "a solemn or deliberate determination by judicial power of the rights of parties and so implies notice and a hearing". (120 P at 214.) An adjudication also implies that the claims or the parties have been fully considered and put at rest by the entry of a judgment. People Ex. Rel. Argus Company v. Hugo, 168 N.Y.S. 25, 27, 101 Misc. Rep. 481 (1917); Miller v. Scobie, 11 So. 2d. 892, 894, 152 Fla. 328 (1943).

Other Courts have held similarly that the allowance of a claim in a probate is an adjudication. In Tiernan's Estate, 4, N.W. 2d 869, 871, 232 Iowa 139 (1942); Soppe v. Soppe, 8 N.W. 2d 243, 245, 232 Iowa 1293 (1943). Ordinarily, however, mere findings in an order upon which a court bases no decision of the issues and which are not confirmed by the judgment do not constitute an adjudication. See Fairchilds v. Ninescah Oil & Gas Co., 99 P.2d 839, 843, 151 Kan. 551 (1940); Bird v. General Discount Corp., 21 S.E. 2d 651, 653, 194 Ga. 283 (1942); Spalding v. Mutual Life Insurance Co. 117 A. 376, 378, 96 Vt. 67 (1922). The order "settling the Final Account of Special Administrator" entered in the Eighth Judicial District Court for Clark County, Nevada, on May 11, 1984, recites as a finding of fact that:

one creditor's claim was filed against the estate by Southern Nevada Memorial Hospital, in the amount of \$24,832.54. Said creditors claim remains unpaid at the date of the filing

of said accounting since there are no assets in the estate to pay said hospital. (R 87.)

The Order of the Court which follows this finding of fact approves the accounting of the special administrator and discharges the administrator. (R 88.) There is no indication in the order that the court had adjudicated the allowance or disallowance of the creditor's claim. This of course would have been improper since the special administrator had not been granted any authority to allow or disallow creditor's claims. The Court in Grigg v. Hanna, 278 N.W. 125, 130, 283 Mich. 443 (1938) held that findings of fact found in an Order approving the accounting of an administrator did not constitute an adjudication of the substance of the finding. Simply stated, the issue of allowance of the claim was not before the Nevada Court. As further evidence of this fact, it should be noted that when Appellant finally filed its claim with the Personal Representative, the Personal Representative vehemently opposed allowance of the claim and filed a counterclaim against Appellant alleging damages arising from Appellant's negligent entrustment of the decedent's personal property to one Vonda Beisen. (R 19-22). Had the Personal Representative been aware that a claim of said hospital was being adjudicated in Nevada, said counterclaim would have been immediately instituted there. While the Personal Representative admits that the Order Settling Final Account of Special Administrator in Nevada is an adjudication, the only issues adjudicated therein are the acceptance of an accounting and the discharge of a special administrator. The mere recitation therein of

the undisputed fact that a claim had been filed and was unpaid is not an adjudication on the issue of the allowance or disallowance of said claim.

POINT V

THE APPELLANT'S CLAIM IS BARRED BY THE NONCLAIM PROVISIONS OF UTAH CODE ANNOTATED 75-3-803 TO WHICH THIS COURT SHOULD RECOGNIZE NO EXCEPTIONS.

Utah Code Annotated 75-3-803 states:

(1) all claims against the Decedent's Estate which arose before the death of the decedent, including claims of the state and any subdivision of it, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

(a) Within three months after the date of first publication of Notice to Creditors, if notice is given in compliance with Section 75-3-801; provided, claims barred by the nonclaim statute at the decedents domicile before the first publication of claims in this state are also barred in this State.

The parties stipulated and the trial court found, that notice to creditors was properly published on the 30th day of January, and the 6th and 13th days of February, 1983. (R 111). Thereafter, Appellant filed its claim with the Washington County Clerk on the 14th day of November, 1983. (R 111). On these facts the district court concluded that Appellant's claim was not timely filed and thus barred by operation of Utah Code Annotated 75-3-803(a). (R 112).

Appellant now asks this Court to carve out an exception to the strict application of the nonclaim provision under the particular facts of this case. (AB at 15.) Initially Respondent vehemently objects to Appellant's characterization of the facts recited in its brief allegedly justifying the proposed departure from the statutory scheme. Neither the Findings of Fact entered by the Trial Court, nor the record on appeal will support the Appellant's gratuitous allegations that the decedent and the Personal Representative are guilty of "fraud", "concealment", or "making false statements". (AB at 15-16.) For example, Appellant alleges that the decedent made "false statements" with regard to his residence and domicile. This supposed false statement was allegedly relied upon by Appellant preventing it from learning of the decedent's true residence and domicile. The Trial Court found that the decedent listed his address with Appellant as 4001 East Sahara Avenue, the address of Maycliff Mini Storage and RV Park, where property was stored by Kenneth Carl Larsen. (R 110.) The Trial Court made no finding and heard no evidence proffered by Appellant that the decedent's listing of this address was incorrect or intended to defraud or deceive Appellant or was anything other than a misunderstanding or mistake on the part of the decedent. Further the Trial Court made no findings and heard no evidence that Appellant relied on this information to its detriment or was prevented thereby from learning of the location of domicile or assets.

Furthermore, a close examination of the Record On Appeal reveals error in Appellant's assertion that this mistaken or "false statement" by the decedent prejudiced the Hospital in some way. On the 18th day of January, 1983, an administration of the estate was opened in the State of Montana by filing a Petition of Intestacy, determination of heirs and appointment of personal representative. (Finding No. 7, R 111.) The Personal Representative appeared in the Montana matter alleging decedent's domicile to be in Utah.

On January 27, 1983, Vonda Jean Biesen filed her Motion to Dismiss Petition for Appointment of Administrator with the Nevada Court. In her attached points and authorities Mrs. Biesen attached a Montana Driver's License and other documentation in support of her position that the decedent was a domiciliary of the State of Montana. (R 56-59.) Vonda Biesen, thereafter, filed an Affidavit in the Nevada District Court in which she alleged that the decedent's primary residence was Butte, Montana, but admitted that "at the time of his death we were spending some time in Las Vegas". (R 71.) If Biesen's allegations can be taken at face value the Decedent had been spending time in Nevada just prior to his death. Thus, without more it is too harsh a judgment to allege fraud or false statement based on the simple listing of an address on an admission form. The Decedent was not a lawyer and could not be expected to know that Appellant was inquiring about his legal residence or domicile if indeed this is the intent of the inquiry.

The allegation that the decedent intentionally gave a false address, even if true, could not of itself prejudice Appellant. Appellant apparently assumes that since Nevada was the place of decedent's residence Nevada was also the State of domicile and the only state in which a probate would be opened. The allegation that the decedent incorrectly identified his address in Las Vegas cannot reasonably be twisted, however, into an affirmative representation that Nevada was the State of domicile or the only proper place of the probate of the estate. Appellant has access through the filings with the Nevada Court to information regarding the name and address of the personal representative, and facts regarding the Montana probate and indirectly the Utah administration. Appellant simply incorrectly assumed that Nevada was the only place of administration and on appeal now desires to place the consequence of that assumption on the estate.

Appellant entices this Court in its brief to fashion a new equitable exception to the strict operation of the non-claim statute on the alleged facts cited in its brief. The Personal Representative believes that creating such an exception would have a disastrous effect on the integrity of the Uniform Probate Code and is unsound as a matter of public policy. The policy reasons for establishing statutes of limitations and specifically the relatively short nonclaim provisions of the Probate Code are well known and need not be documented herein. (See e.g., 51 Am Jur 2d "Limitation of Actions" §17.) The creation of an equitable exception to the

operation of the nonclaim statute sends a signal to every claimant whose claim had been barred, that it should bring an action to establish an equitable exception. This could have the effect of opening the floodgates of litigation within estate administrations and thus delay and prolong the administration and closing of estates all to the prejudice and detriment of both heirs and creditors. The Personal Representative also believes that, except in extreme cases, the creation of an exception to the operation of the nonclaim statute should be primarily as legislative prerogative.

Appellant cites Myers v. McDonald, 635 P.2d 84 (Utah 1981), in support of its proposition that the unique facts of this case justify an exception to the nonclaim statute. In Myers, appellants posited two arguments why their cause of action should not be barred by a two year statute of limitations. They argued (1) that the cause of action should not accrue until the Plaintiffs discovered the death - the so called "Discovery Rule" or (2) that the Defendant should be precluded from relying on the statute because [Defendant] erroneously reported the decedent's name which misled the Plaintiffs and prevented them from instituting their action in a timely fashion.

The facts in the instant case would not support the creation of an equitable exception on either basis stated in the Myers case. In the instant case, Appellant cannot argue the application of the "Discovery Rule". Clearly the Hospital knew that it had a claim against the decedent's

estate and in fact had filed a claim in Nevada on the sixth day of January, 1983. Appellant further cannot successfully argue that it was misled or prevented by the decedent or the Personal Representative from filing a claim or otherwise protecting its interest. As previously explained herein, the statement of the decedent identifying an address in Las Vegas as his address caused Appellant to file its claim in the state of Nevada which was not prejudicial to Appellant. By reviewing the Nevada Court file, Appellant could have discovered other administrations. Appellant's new argument that the Personal Representative concealed the administration of the estate in Utah is simply without merit. No findings by the trial court or any facts were proffered by Appellant in support of this claim. While it is true that as Personal Representative of the estate in Utah, Vickie Carroll did not notify Appellant of Publication in Utah, there is no evidence that the personal representative had actual knowledge of Appellant's claim and there is no affirmative duty on a personal representative to notify claimants in ancillary administrations. Consequently, Respondent urges that there are no unique and compelling facts found in the record of this case that would justify circumvention of the nonclaim provisions of the Uniform Probate Code by establishment of an exception.

POINT VI

UTAH CODE ANNOTATED 75-1-106 HAS NO APPLICATION
IN THE INSTANT CASE.

Utah Code Annotated 75-1-106 states:

Wherever a fraud has been perpetrated in connection with any proceeding or any statement filed under this code or if fraud is used to avoid or circumvent the provisions or purposes of this code, any person injured thereby, may obtain appropriate relief against the perpetrator of the fraud or restitution from any person (other than a bona fide purchaser) benefiting from the fraud, whether innocent or not. Any proceeding must commence within three years after the discovery of the fraud, but no proceeding may be brought against one, not a perpetrator of the fraud later than five years after the commission of the fraud. This section has no bearing on remedies relating to fraud practiced on a decedent during his lifetime which effects the succession of his estate.

Appellant urges that it should be given relief from the three month limitation of Section 75-3-803 and should be allowed three years to bring its claim pursuant to UCA 75-1-106, because of the supposed fraud of the decedent in giving misinformation regarding his residence. Initially, it should be reasserted that the allegations of fraud are naked allegations unsupported by the findings of the Trial Court or the Record on Appeal. However, even assuming arguendo the truth of the allegations raised in Appellant's brief, the Personal Representative believes that UCA 75-1-106 has no application in this case. The language of UCA 75-1-106 limits its application to frauds perpetrated "in connection with any proceeding or in any statement filed under this code,

or if used to avoid or circumvent the provisions or purposes of this code". The supposed fraud in the instant case was the decedent's failure to provide the Petitioner with the proper residential address on an admission form. Clearly this alleged pre-death failure on the part of the decedent was not perpetrated "in connection with any probate proceedings" or in connection with "filing any statement" in his own probate proceeding. Thus, Appellant must prove that Decedent intended to "avoid or circumvent the provisions or purposes of the code". Appellant has cited no finding or other evidence which would substantiate the claim that the decedent listed his address as 4001 East Sahara Avenue with the intent of circumventing the provisions or purposes of the Uniform Probate Code, nor is there any evidence that in fact the decedent's stated address had this effect. As stated previously on February 11, 1983, Vonda Biesen made a Motion to Dismiss the Petition of Mr. Shaffer for appointment as administrator in Nevada. (R 56.) In her Motion and Supporting Affidavit Mrs. Biesen alleged that the Decedent was a resident of the State of Montana. Mrs. Biesen produced as Exhibits to her motion, a Montana Driver's License, and several Montana Vehicle Registrations. Thus, Appellant was put on notice that the decedent may not be a Nevada domiciliary. Additionally, had Appellant simply inquired, a probate had been already initiated in the State of Montana. (Finding No. 7, R 111.) In that Administration Vickie Carroll the personal representative in the Utah Administration had

alleged both that the decedent had assets in and was a domiciliary of the State of Utah and not Montana or Nevada. Thus, Appellant, with due diligence could have and should have discovered the facts regarding the decedent's domicile and the location of his assets. Clearly if the Personal Representative had been attempting to conceal assets the list of assets found in the Nevada Court file and the allegations in the Montana Administration would not have been made. Simply stated there is no evidence of fraud in the probate, and the Personal Representative's actions bely any such assertions, belated or otherwise.

POINT VII

UTAH CODE ANNOTATED 78-12-38 HAS NO APPLICATION IN THE INSTANT CASE

Utah Code Annotated 78-12-38 states:

If a person against whom a cause of action exists, dies without the state, the time which elapses between his death and the expiration of one year after the issuing, within this state, of letters testamentary or letters of administration in not a part of the time limited for the commencement of an action, therefore, against his executor or administrator.

The purpose of UCA 78-12-38 is to extend the time for commencement of actions imposed by other general statutes of limitations under stated circumstances. It operates in conjunction with regular statutes of limitation to alter their effect.

Appellant argues that UCA 78-12-38 should extend the time for filing its claim in the instant case, to the exclusion of the operation of UCA 75-3-803. Appellant's argument is invalid. The Uniform Probate Code, enacted in 1975 many years after the adoption of UCA 78-12-38 in 1951, recognizes the continued existence and operation of a multiplicity of statutes of limitation. The Uniform Probate Code provides the groundrules for determining which of many potentially conflicting statutes of limitations will control. UCA 75-3-802 states:

The running of any statute of limitations measured from some other event than the death and advertisement for claims against the decedent is suspended during the three months following the decedent's death but resumes thereafter as to claims not barred pursuant to the Sections which follow. For purposes of any statute of limitations, the proper presentation of a claim under Section 75-3-804 is equivalent to commencement of a proceeding on the claim.

Thus, every regular statute of limitation is extended or suspended for three months following the decedent's death but resumes its operation and may bar a claim after the three month suspension.

An Editorial Board Comment to UCA 75-3-802 states:

It should be noted that under UCA Section 75-3-803 and Section 75-3-804, it is possible for a claim to be barred by the process of claim, disallowance, and failure by the creditor to commence a proceeding to enforce his claim prior to the end of the three month suspension period. Thus, the regular statute of limitations applicable during the debtor's lifetime, the nonclaim provisions of Section 75-3-803 and Section 75-3-804, and the three year statute of limitation of Section 75-3-803 all have potential application to the claim. The

first of the three to accomplish a bar controls. (emphasis added)

The clear intention of the framers of the Probate Code is that whichever of the applicable statutes of limitation first accomplishes a bar will control the other potentially applicable statutes of limitation to their exclusion. In this case UCA 75-3-803 accomplishes a bar before UCA 78-12-38, therefore, the three month nonclaim provision of Section 75-3-803 controls.

Appellant correctly states the rule of law that statutes should be construed together, harmonized and each given a sphere of operation if possible. (AB at 20.) Even though UCA 78-12-38 does not apply in the instant case because UCA 75-3-803(a) was first to accomplish a bar, this does not mean that UCA 78-12-38 has no sphere application or has been repealed by implication. Thus, there are some circumstances under which UCA 78-12-38 may still have a sphere of operation which may be harmonized with UCA 75-3-803. Suppose hypothetically, that a person against whom a cause of action existed died outside of the State of Utah, thus triggering the possible application of UCA 78-12-38 by its own terms. Hypothetically, the regular statute of limitations would bar action on the claim within five months after the decedent's death. Four months after the decedent's death letters of administration are issued, however, there is no publication of Notice to Creditors. In this hypothetical UCA 75-3-803(a) would have no application since no notice to creditors had been published. Additionally, Section 75-3-803(b) would not operate until

three years after the decedent's death. Section 78-12-38 would operate to extend the bar provisions of the regular statute of limitations one year after the issuance of letters of administration. Since the regular statute of limitations as extended by UCA 78-12-38 is still the first to accomplish a bar, it would control.

The adoption by this Court of the proposition posited by the Appellant to-wit, that Section 78-12-38 applies to the exclusion of §75-3-803 in cases where the decedent dies outside the state of Utah, would have the effect of repealing by implication portions of §75-3-803 which expressly apply to decedents who die out of state. UCA 75-3-803(a) states that claims in this state are barred within three months after the date of first publication of notice to creditors provided that "claims barred by the nonclaim statute at the decedent's domicile before the first publication for claims in this state are also barred in this state." The codifiers intended that claims could be barred in this state if a personal representative had been appointed in an alternative forum who had published notice to creditors and claims had been barred in the alternative forum by that state's nonclaim statute. This provision would be repealed by Appellant's proposition.

Utah Code Annotated §75-3-803(b) provides that a claim is forever barred three years after the decedent's death, even if no notice to creditors had been published. Adoption of Appellant's proposition that §75-3-803 is supplanted by §78-12-38 could extend claims for a period in

excess of three years if letters testamentary or letters of administration were issued toward the end of the three year period even though no notice to creditors had been published within three years thus impliedly repeal UCA §75-3-803(b). Additionally, if §75-3-803 is inoperable in a case where a decedent dies out-of-state the limitation period could be extended indefinitely by the operation of §78-12-38, since neither the Uniform Probate Code nor UCA §78-12-38 affirmatively requires that letters of testamentary or letters of administration be issued in the State of Utah.

Utah Code Annotated §75-1-105 provides that the Probate Code is a general act intended as a unified coverage of the subject and no part of it should be deemed impliedly repealed if this can be avoided. Since the provisions of UCA §78-12-38 can be harmonized with the provisions of UCA §75-3-803 on the basis that the operation of the first statute of limitations to accomplish a bar will operate to the exclusion of other relevant statutes of limitation, there is no justification for the creation of a category or class of cases consisting of those cases in which a decedent dies outside of the State of Utah upon which the provisions of §75-3-803 does not operate and would be impliedly repealed. Appellant's argument is untenable and cannot be adopted by this Court without undermining and destroying the unity and purposes of the Uniform Probate Code.

CONCLUSION

The District Court's ruling that Appellant's Claim is barred by the operation of the nonclaim provisions of the Uniform Probate Code should be affirmed. In the instant case, Appellant filed a claim in an ancillary probate prior to the appointment of a personal representative which claim was never adjudicated in that forum, and thereafter failed to timely file its claim with the duly appointed personal representative in the local administration. Appellant's arguments run counter to strong public policy and misinterpret the harmonizing effect of the Uniform Probate Code on the various applicable statutes of limitation.

RESPECTFULLY SUBMITTED THIS 17th DAY OF JUNE, 1985.

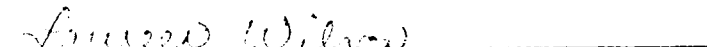

RONALD W. THOMPSON


MICHAEL D. HUGHES
Counsel for Respondent

CERTIFICATE OF HAND DELIVERY

I hereby certify that on the 17th day of June, 1985, I served two copies of the foregoing on the following by hand delivering it to:

LaMar J. Winward
SNOW & NUFFER P.C.
50 East 100 South #302
P.O. Box 386
St. George, Utah 84770

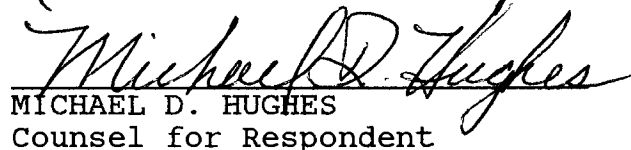


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