

**Maria MAGOFNA
vs.
ESTATE of RUFINA CASTRO**

**Appellate No. 82-9007
Civil Action No. 16-79
District Court NMI
Appellate Division**

Decided August 2, 1983

1. Probate - Fraud

Plaintiff who was unaware of probate action may file an independent action to enjoin the enforcement of the judgment in the action either because it was entered without notice and amounted to a denial of due process or because of extrinsic fraud.

2. Probate - Fraud

Evidence was sufficient to infer the fraudulent intent of defendant, who filed probate petition but failed to give plaintiff notice of the hearing or set forth her name in the probate petition, and evidence was sufficient to show that plaintiff was deprived of her day in court.

**3. Statute of Limitations -
Action to Enjoin Judgment**

Action to enjoin the enforcement of a judgment in a probate action on equitable grounds is not barred by two year statute of limitations. 6 T.T.C. §§330(4), 304 [7 C.M.C. §§2503(d), 2504].

**4. Statute of Limitations -
Action to Enjoin Judgment**

The statute of limitations on an action to enjoin the enforcement of a judgment on equitable grounds is six years. 6 T.T.C. §305. [7 C.M.C. §2505].

1 I

2 FACTS

3 Juan De Castro died on December 24, 1962. He was
4 survived by his second wife, Rufina Castro, and the daughter
5 of his first marriage, Maria Magofna (plaintiff-appellee
6 herein).

7 In March of 1966, Rufina Castro filed a petition with the
8 High Court, Mariana Islands District, seeking probate of the
9 estate of Juan De Castro and the transfer of two properties:
10 Lot 599 to herself, and certain other land to Ramon Castro,
11 Juan's nephew. At the time, Rufina Castro knew plaintiff was
12 the daughter of Juan De Castro and had known so for forty
13 years. Nevertheless, Rufina Castro stated in her petition
14 that Juan De Castro died without issue and later filed an
15 affidavit stating there were "no issue" from her marriage to
16 Juan De Castro. Although the Notice of Hearing was sent to
17 Mr. De Castro's brothers and sisters or their children, there
18 is no indication plaintiff received notice or that
19 constructive notice was made by publication.

20 The matter came on for hearing in April of 1966 and
21 judgment was entered as prayed in the petition. There is no
22 evidence that plaintiff was aware of this hearing nor did she
23 appear. Plaintiff asserts she did not learn of the hearing
24 until some ten years later.

25 Rufina Castro died in 1974.

26 In 1976 plaintiff first became aware that her father's
27 land had been distributed to others; she filed a Motion for
28 Relief in the High Court. No decision was ever issued on this

1 motion.

2 In 1978, plaintiff filed the present action charging
3 Rufina Castro with fraud in depriving plaintiff of her
4 interest in her father's land. The matter came on for trial
5 in 1982 and in April of 1982 the trial court found plaintiff
6 was entitled to Lot 599.

7 II

8 THE PRESENT ACTION IS NOT BARRED BY COLLATERAL ESTOPPEL

9 [1] Appellant argues that plaintiff has engaged in "judge
10 shopping" by filing the present action rather than appealing
11 the decision of the High Court. However, no decision on
12 plaintiff's motion for relief from judgment was ever rendered;
13 there was thus no decision from which to appeal.

14 It appears appellant has misconstrued the nature of the
15 present proceedings. By the present lawsuit, plaintiff
16 sought, not to have the civil judgment overturned, rather,
17 plaintiff contends she was damaged by the tortious conduct of
18 Rufina Castro in obtaining that judgment.

19 The present suit is therefore not a collateral attack on
20 the judgment but is dependent on the prior case for its
21 existence. 1B Moore's Federal Practice ¶ 0.407 states:

22 "It is elementary, of course, that res judicata
23 does not preclude a litigant from making a direct
24 attack upon the judgment before the court which
renders it . . ."

25 "In addition, a party, or one in privity, may insti-
26 tute an action to enjoin the enforcement of a judgment
27 on equitable grounds, such as that the judgment was
28 invalid because it was entered without notice and
hence amounted to a denial of due process; . . . or
because of fraud, at least if the fraud is extrinsic.
While such a proceeding is often denominated a direct
attack, it has been described as an indirect attack.

1 . . . It is important to note, however, that as a
2 general proposition, the independent action does not
3 seek to impeach what has been competently adjudicated,
but offers matter, normally extrinsic, to show why it
is inequitable to allow enforcement of the judgment."

4 Plaintiff's circumstance falls directly within the above
5 distinction and the present suit was properly within the
6 court's jurisdiction to hear.

7 III

8 SUFFICIENT EVIDENCE WAS PRESENTED TO ESTABLISH FRAUD

9 [2] Appellant admits that plaintiff did not receive notice of
10 the hearing in the civil action and further admits Rufina
11 Castro knew plaintiff to be a child of Juan Castro. Appellant
12 argues nothing was shown to prove the absence of plaintiff's
13 name and whereabouts was intentional. Two cases are cited as
14 factually similar to the present: Nicholson v. Leathan, 28
15 C.A. 597 (2d Dist. 1920) and Mulcahey, et al. v. Dow, et al.,
16 131 Cal 73 (1900).

17 The rule set forth in Mulcahey was criticized in Bewitt
18 v. Winstead, 49 C.A. 2d 607 (1st Dist 1942). Likewise, the
19 rule set down in Nicholson has been criticized under the more
20 recent opinions.

21 "The fraudulent failure to set forth the names and
22 addresses of the heirs in a petition for letters
of administration has been held to be extrinsic
23 fraud, and appears to be the rule in California,
notwithstanding some cases to the contrary."
24 Latta, et al., v. Western Inv. Co., et al., 173 F2d
99, 107 (9th Cir. 1949). See also Purinton v. Dyson,
25 8 Cal 2d 322 (1937) and Caldwell v. Taylor, 218 Cal 471
(1933).

26 We find the evidence at present sufficient to infer the
27 fraudulent intent of Mrs. Castro and agree that such has
28 deprived plaintiff of her day in court.

1 IV

2 THE APPROPRIATE STATUTE OF LIMITATIONS IS SIX YEARS

3 [3] Plaintiff became aware of the court's distribution of
4 property on November 25, 1976. Suit was filed in this action
5 on February 6, 1979. Appellant argues the action is thus
6 barred by the applicable statute of limitations, either
7 6 T.T.C. §303(4) or 6 T.T.C. §304.

8 In Mariaha Islands Airport Authority v. The Ralph M.
9 Parsons Co., U.S.D.C. Civ. No. 80-44 (Northern Mariana
10 Islands, August 1981) the court held that 6 T.T.C. §303(4)
11 applies only to personal injury or wrongful death actions.
12 The reasoning of that case is persuasive and well thought out.

13 6 T.T.C. §304 is likewise inapplicable. That code
14 section states:

15 "Any action by or against the execution, adminis-
16 tration, or other representative of a deceased person
17 for a cause of action in favor of, or against, the
18 deceased shall be brought only within two years after
19 the executor, administrator, or other representative
20 is appointed or first takes possession of the assets
21 of the deceased."

19 Appellant argues plaintiff should have filed within two
20 years of the civil judgment distributing the property or, at
21 the latest, within two years of discovering the judgment.
22 Such an interpretation does not fall within the meaning of the
23 statute.

24 [4] We therefore hold the trial court correctly concluded the
25 applicable statute of limitations is six years under 6 T.T.C.
26 §305.

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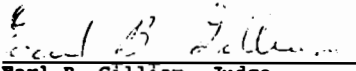
CONCLUSION

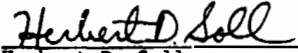
We find no basis for reversing the judgment of the trial court for the reasons above stated. Appellant's additional argument that the trial court erred in refusing to hear certain evidence is without merit. Such evidence was controlled by the pretrial order.

The judgment of the trial court is affirmed.

Dated: 6/1/83


Alfred Saureta, Judge
United States District Court


Earl B. Gilliam, Judge
United States District Court


Herbert D. Soll
Designated Judge