

**IN THE COURT OF APPEALS OF IOWA**

No. 0-804 / 10-0517  
Filed February 9, 2011

**JEFFREY W. DELLITT,**  
Plaintiff-Appellant,

**vs.**

**JONI S. LUCAS and JULI A.  
STENSON, Co-Executors of the  
Estate of Clifford D. Daniels, Deceased,**  
Defendants-Appellees.

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Appeal from the Iowa District Court for Jackson County, Mark Cleve,  
Judge.

Jeffrey Dellitt appeals from the district court order entering summary judgment in favor of the defendants on his negligence claim and denying his application to reopen Clifford Daniels's estate. **AFFIRMED.**

David A. Millage of Gallagher, Millage & Gallagher, P.L.C., Davenport, for appellant.

Douglas M. Henry and Jason D. Lehman of Fuerte, Carew, Juergens & Sudmeier, P.C., Dubuque, for appellees.

Considered by Eisenhauer, P.J., and Potterfield and Doyle, JJ.

**EISENHAUER, P.J.**

Jeffrey Dellitt appeals from the district court order entering summary judgment in favor of the defendants on his negligence claim and denying his application to reopen Clifford Daniels's estate. He contends the court erred in concluding he failed to file his claim within the statute of limitations.

On November 30, 2007, vehicles operated by Dellitt and Daniels were involved in a collision that resulted in Daniels's death. Daniels's estate was opened on December 28, 2007, and the defendants, Joni Lucas and Juli Stinson, were appointed co-executors. The estate was closed on December 26, 2008. At no time was Dellitt given notice of the estate's opening.

Dellitt filed a claim in Daniels's probate estate on February 5, 2009 despite it having been closed. On May 12, 2009, he filed a Petition against Lucas and Stenson as the estate's co-executors for damages arising from the accident. In their answer on June 6, 2009, the defendants denied personal liability and affirmatively stated the estate was closed and they had been discharged as co-executors. The defendants also answered an interrogatory on September 22, 2009, stating, "Defendants were merely executors of decedent's estate (have not been reappointed after closing of the estate), and are not personally responsible for this claim."

The defendants filed a motion for summary judgment on December 22, 2009, asserting they were not executors of the estate at the time of the commencement of Dellitt's suit. Dellitt resisted the motion, arguing he was a reasonably-ascertainable creditor and the estate failed to provide him notice of its

opening as required in Iowa Code section 633.410(1) (2009).<sup>1</sup> He alleged the statute of limitations provided in section 633.410(1) was thereby tolled. He further alleged the lack of notice meant the estate was improperly closed. On the same day he filed his resistance to the summary judgment motion, Dellitt applied to reopen the estate. In their reply, the defendants stated Dellitt's failure to file his application to reopen the estate prior to the expiration of the two-year statute of limitations on tort claims set forth in section 614.1(2)<sup>2</sup> barred his claim.

The district court granted summary judgment in favor of the defendants and denied Dellitt's application to re-open the estate. The court found Dellitt was not a known or reasonably ascertainable creditor of the estate, and therefore the four-month statute of limitations on claims against the estate was not tolled. It further found that even if Dellitt was a reasonably ascertainable creditor, his failure to file the application to reopen the estate within the two-year statute of limitations time-barred his recovery. Dellitt appeals.

We review rulings on motions for summary judgment for errors at law. *Sain v. Cedar Rapids Cmty. Sch. Dist.*, 626 N.W.2d 115, 121 (Iowa 2001). The record before the district court is reviewed to determine whether a genuine issue

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<sup>1</sup> Section 633.410(1) states:

All claims against a decedent's estate, other than charges, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract or otherwise, are forever barred against the estate, the personal representative, and the distributees of the estate, unless filed with the clerk within the later to occur of four months after the date of the second publication of the notice to creditors or, as to each claimant whose identity is reasonably ascertainable, one month after service of notice by ordinary mail to the claimant's last known address.

<sup>2</sup> Section 614.1(2) states tort actions founded on injuries to the person must be filed within two years.

of material fact existed and whether the district court correctly applied the law. *Id.* We review the facts in the light most favorable to the party resisting the motion. *McIlravy v. North River Ins. Co.*, 653 N.W.2d 323, 328 (Iowa 2002). The resisting party has the burden of showing a material issue of fact is in dispute. *Id.*

We conclude the court properly granted summary judgment in favor of the defendants. Even assuming Dellitt was a reasonably-ascertainable creditor and failure to give him notice of the estate's opening tolled the statute of limitations provided in section 633.410, that section does not alter the general two-year statute of limitations contained in section 614.1(2). See *Healy v. Carr*, 449 N.W.2d 883, 885 (Iowa Ct. App. 1989). Dellitt filed his petition on May 12, 2009, prior to the November 30, 2009 deadline under the statute of limitations provided in section 614.1(2). However, because the estate had already closed, the defendants could no longer be held legally responsible for Dellitt's damages. Dellitt failed to file his application to reopen the estate and obtain a proper defendant to sue before November 30, 2009, and therefore his claim is time-barred.

**AFFIRMED.**