IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL
(Memorandum Web Opinion)

GUERRERO V. HOHENSEE

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KELSEY GUERRERO, APPELLANT,

V.

GWENDELL G. HOHENSEE AND THE ESTATE OF GWENDELL G. HOHENSEE, APPELLEES.

Filed September 1, 2026. No. A-25-679.

Appeal from the District Court for Lancaster County: ANDREW R. JACOBSEN, Judge. Affirmed.

Heather Voegele and Andreanna C. Smith, of Voegele Anson Law, L.L.C., for appellant.

J. Michael Hannon, of Baylor Evnen Wolfe & Tannehill, L.L.P., for appellees.

RIEDMANN, Chief Judge, and PIRTLE and PICCOLO, Judges.

PICCOLO, Judge.

INTRODUCTION

Kelsey Guerrero and Gwendell G. Hohensee were involved in an automobile accident. Hohensee subsequently died. After Hohensee's death and shortly before expiration of the 4-year statute of limitations, Guerrero filed a negligence complaint against Hohensee and "the Estate of Gwendell G. Hohensee" (collectively "the defendants") in the district court for Lancaster County. Hohensee's estate was not open when Guerrero filed the complaint. The district court granted a motion to dismiss filed by the defendants, finding that Guerrero failed to commence suit against a proper party within the necessary timeframe and that any attempt to amend the complaint would be time barred by the applicable limitations period and thus futile. Finding no error, we affirm.

STATEMENT OF FACTS

Guerrero filed a complaint against the defendants in the district court on December 2, 2024. As noted above, the named defendants were Hohensee and “the Estate of Gwendell G. Hohensee.” Guerrero alleged that she was involved in an accident on December 3, 2020, when Hohensee’s vehicle collided with the rear of Guerrero’s stopped vehicle. Guerrero alleged that Hohensee’s negligence proximately caused the accident and resulted in certain injuries to Guerrero. Guerrero also alleged that Hohensee had died since the date of the accident; that in March 2024, a petition for determination of inheritance tax had been filed in the Lancaster County Court; and that probate was “now closed.” Guerrero sought recovery for injuries and damages she alleged resulted from the accident.

On February 19, 2025, the defendants’ attorney entered a special appearance and filed a motion to dismiss Guerrero’s complaint under Neb. Ct. R. Pldg. § 6-1112(b)(6) for failure to state a claim upon which relief can be granted. The defendants alleged that Guerrero failed to sue the proper party, given that Hohensee was deceased and no estate was open. They also alleged that any attempt to amend the complaint would be time barred by the applicable statute of limitations. The defendants’ brief in support of their motion indicated that Hohensee died on May 12, 2023.

On March 27, 2025, the defendants filed a motion to substitute parties, indicating that Keith Bigsby had been named as special administrator of Hohensee’s estate on March 24, and asking the district court to substitute Bigsby as special administrator as a defendant in place of Hohensee’s estate.

A hearing on the defendants’ motions was held before the district court on April 3, 2025. During the hearing, the defendants’ attorney indicated that the motion to substitute was “interlinked” with the motion to dismiss and had been made to “clean up the [case] caption” since an estate had been opened the week before the hearing. He agreed that the motion to substitute the special administrator of the estate as a defendant “may be moot” if the court sustained the motion to dismiss. Guerrero’s attorney argued that a motion to substitute was “the wrong procedural mechanism” and made an oral motion to amend the complaint to “add the special administrator” if the court denied the motion to dismiss. After hearing further arguments from the parties regarding the motion to dismiss, the court took the motions under advisement.

On August 6, 2025, the district court entered an order granting the defendants’ motion to dismiss. The court found that Guerrero’s complaint, filed on December 2, 2024, did not commence her claim against the defendants, and was a nullity under Nebraska law. The court observed that the 4-year statute of limitations expired without the commencement of a valid claim, as Hohensee was deceased prior to the filing and no estate was open when Guerrero filed her complaint. The court noted that the expiration of the limitations period was extended from December 3, 2024, to February 3, 2025, because of Hohensee’s death during the initial 4-year period; however, Guerrero “nevertheless failed to make any attempt to open an estate [prior to expiration of the extended period] as is required before any suit may be commenced.” Accordingly, the court concluded that the complaint was void in its entirety and no viable claim existed as to the named defendants. In addressing Guerrero’s assertions that an amended complaint, naming the proper defendant, would relate back to the December 2, 2024, filing date, the court reviewed Nebraska case law and concluded that because Guerrero’s original complaint was a nullity and “no other corrective pleading was made in the relevant time period, if [Guerrero] were to file an [a]mended [c]omplaint there is nothing for that complaint to relate back to." The court dismissed the complaint with prejudice. It also denied the motion to substitute parties.

Guerrero subsequently perfected her appeal to this court.

ASSIGNMENTS OF ERROR

Guerrero assigns that the district court erred in (1) granting the defendants' motion to dismiss and (2) determining that filing an amended complaint would be futile.

STANDARD OF REVIEW

A district court's grant of a motion to dismiss is reviewed de novo. *Johnson v. Antoniutti*, 318 Neb. 465, 16 N.W.3d 864 (2025). When a motion to dismiss is based on the statute of limitations, it can succeed only when the face of the complaint shows that the action is time barred. *Id.*

ANALYSIS

Motion to Dismiss.

Guerrero assigns that the district court erred in granting the motion to dismiss. We first set forth the applicable statute of limitations for Guerrero's negligence claim and the requirements for commencing suit. We then consider whether the relation back statute was applicable to prevent dismissal of Guerrero's complaint as time barred.

The statute of limitations for negligence claims is 4 years. See Neb. Rev. Stat. § 25-207(3) (Reissue 2016). In a negligence action, a statute of limitations begins to run as soon as the cause of action accrues, and an action in tort generally accrues as soon as the act or omission occurs. See *Saylor v. State*, 315 Neb. 285, 995 N.W.2d 192 (2023). Neb. Rev. Stat. § 30-2484 (Reissue 2016) provides in part that "[t]he running of any statute of limitations measured from some other event than death and advertisement for claims against a decedent is suspended during the two months following the decedent's death but resumes thereafter as to claims not barred pursuant to the sections which follow." Under certain situations as set forth in Neb. Rev. Stat. § 25-201.02 (Reissue 2016), an amended complaint may relate back to the commencement date of an earlier complaint. *Sparks v. Mach*, 314 Neb. 724, 993 N.W.2d 119 (2023). If Guerrero had effectively commenced a claim against Hohensee's estate, other statutory bars may have been applicable. See Neb. Rev. Stat. §§ 38-2485. See, also, *Sparks v. Mach, supra* (under Nebraska Probate Code, first statute of limitations to apply will accomplish bar).

The accident in this case occurred on December 3, 2020. There is no dispute that Guerrero's negligence claim against Hohensee accrued at that time, and the statute of limitations began to run. There is also no dispute that Hohensee's estate was not opened until March 24, 2025, when Bigsby was appointed as special administrator. Guerrero filed her complaint on December 2, 2024, one day prior to the expiration of the 4-year limitations period. The district court determined, however, that Guerrero's complaint did not effectively commence a claim within the 4-year period because she named a deceased person (Hohensee) and an entity that did not exist (the as-then-unopened estate) as defendants. The court also determined that no corrective pleading (naming an existing entity as defendant) was filed prior to February 3, 2025, when the limitations period as extended by § 30-2484 expired. We agree.

Guerrero filed her complaint against "Gwendell G. Hohensee" and "the Estate of Gwendell G. Hohensee" on December 2, 2024. Her complaint shows that Hohensee died prior to the filing, that a probate proceeding had been opened in the county court for inheritance tax purposes, and that probate was "closed" prior to the filing. There are no allegations in her complaint concerning any attempt to open an estate and appoint a personal representative. The record does not show that an estate was opened until Bigsby's appointment on March 24, 2025.

As a general rule, an action is commenced on the day that the complaint is filed. *Johnson v. Antoniutti*, 318 Neb. 465, 16 N.W.3d 864 (2025). See Neb. Rev. Stat. § 25-217 (Cum. Supp. 2024) (concerning commencement of actions and service upon defendant). But a complaint that names a deceased person individually as the sole defendant is a legal nullity and does not validly commence an action under Nebraska law. *Johnson v. Antoniutti, supra*. See *Babbitt v. Hronik*, 261 Neb. 513, 623 N.W.2d 700 (2001) (finding action brought against deceased motorist individually was nullity). An action to recover for the negligence of a person who died before the complaint was filed is not validly commenced unless the complaint is filed against a duly appointed personal representative or special administrator of the deceased person's estate. *Johnson v. Antoniutti, supra*. No action is validly commenced by filing a complaint that names, as the only defendant, a person who is deceased or an entity that does not exist in the eyes of the law; such a complaint is considered a legal nullity. *Id.*

Guerrero attempts to distinguish this case from *Babbitt* and *Johnson* in which the Nebraska Supreme Court concluded that complaints filed against deceased individuals as the sole defendants were legal nullities. In *Babbit*, the defendant died after the parties were involved in an automobile accident but prior to when the plaintiff filed a negligence action. Although an estate was opened for the deceased defendant, the estate was closed and the personal representative discharged prior to when the negligence complaint was filed. The plaintiff sued the decedent individually, apparently not learning of the death until after filing the complaint. The personal representative was later reappointed, but by that time the plaintiff's claim was time barred. In *Johnson*, the plaintiffs' original complaint, filed shortly before the limitations period expired, named a deceased individual as the only defendant. After learning that the defendant died prior to when the complaint was filed, the plaintiffs had a special administrator appointed and, among other things, filed an amended complaint naming the special administrator as defendant. The Supreme Court held that the original complaint failed to validly commence the action, and while the amended complaint commenced an action against the defendant's estate, the relation back statute was inapplicable to save it from being time barred because the original complaint was a nullity. Guerrero argues that the present case is distinguishable because rather than simply naming the deceased Hohensee or a discharged personal representative as the sole defendant, she also named Hohensee's estate as a defendant. Guerrero's argument ignores the fact that simply naming the estate as a defendant was not sufficient to commence an action against the estate.

As noted by the Nebraska Supreme Court in *Johnson v. Antoniutti, supra*, the procedure to commence an action against a decedent's estate is governed by Neb. Rev. Stat. §§ 30-2404 and 30-2486 (Reissue 2016). Section 30-2404 provides that "[n]o 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." And, § 30-2486 provides that a "claimant may commence a proceeding against the personal representative in any court which has subject matter jurisdiction . . . but the commencement of the proceeding must occur within the time limited for presenting the claim." An otherwise valid amended complaint, filed after a complaint filed prematurely under § 30-2404 but after the appointment or reappointment of a personal representative, is sufficient to commence a proceeding within the meaning of § 30-2486(2). *Sparks v. Mach*, 314 Neb. 724, 993 N.W.2d 119 (2023). In the present case, naming Hohensee's estate as an additional defendant was not sufficient to commence an action against the estate absent the estate being opened and a personal representative appointed. See §§ 30-2404 and 30-2486. The district court did not err in finding that Guerrero's complaint, filed against a deceased individual and an entity that did not exist (the unopened estate) was a nullity. See *Johnson v. Antoniutti*, 318 Neb. 465, 16 N.W.3d 864 (2025). Guerrero's complaint shows on its face that it was time barred. Her original complaint was a nullity, and she did not file an amended complaint prior to expiration of the extended statute of limitations period. The district court did not err in dismissing her complaint with prejudice. See *id*.

Futility of Amending Complaint.

In her second assignment of error, Guerrero challenges the district court's determination that filing an amended complaint would have been futile. Guerrero argues that because she had already named the estate as a defendant in her original complaint filed prior to expiration of the statute of limitations, any amendment to sue the estate through the subsequently named special administrator would have fallen within the requirements of § 25-201.02, which allows an amended pleading that does not change the party or the name of the party against whom a claim is asserted to relate back to the date of the original pleading. We note, as did the district court, that the estate was not opened until March 24, when Bigsby was named as special administrator. Because Guerrero sued an estate that did not then exist, the original complaint was a nullity and there was no operative pleading to amend. The district court did not err in finding that the relation back provisions of § 25-201.02 were inapplicable and that an amendment would have been futile.

CONCLUSION

Because one defendant was deceased when the complaint was filed, and the other named defendant was an entity that did not exist, the district court did not err in finding that Guerrero failed to commence suit against a proper party within the necessary timeframe. Because Guerrero's complaint was a legal nullity there was no operative pleading to which the relation back statute could have applied, the court was also correct in finding that the relation back statute was inapplicable, and it did not err in dismissing Guerrero's complaint as time barred. Accordingly, we affirm.

AFFIRMED.