

## Funeral Expenses, Time Bars, and Attorney Fees– Oh My!

*\*This post was updated on July 27, 2015 to incorporate a reference to GS 28A-19-12.*

Yesterday, the NC Court of Appeals published an impactful case in the area of estates – [In re Taylor](#), \_\_\_ NC App \_\_\_ (July 7, 2015). It provides clarity in areas where there has been a varied set of practices from county to county. What did the court say?

### The short of it is this:

- Funeral expenses constitute a claim against the estate and as such the claim must be presented within the time limits set forth in [GS 28A-19-3](#). Funeral expenses are **not** a reimbursable expense that (i) may be submitted at any time prior to the closing of the estate, or (ii) are automatically presented or exempted from presentation.
- A dispute over a claim for reimbursement of funeral expenses is not within the jurisdiction of the clerk of superior court to hear. If the claim is filed, then rejected and not referred by the personal representative, the claimant must then commence a civil action for recovery of the funeral expense claim within the time limits set forth in [GS 28A-19-16](#) or else it is barred.
- The clerk has the authority to review attorneys' fees shown on a final accounting for reasonableness where the non-attorney personal representative hires an attorney to do work on behalf of the estate. In the order approving or denying attorneys' fees, the clerk must make findings of fact and conclusions of law sufficient to allow for meaningful review on appeal.

### How did this case make its way to the NC Court of Appeals?

Mr. Frances Sorrentino Taylor died on May 5, 2012 leaving four children, Pamela, Sharon, Frances and Richard, who were also beneficiaries under his will. Upon his death, Pamela paid for her father's funeral expenses in the amount of \$15,742.30 from a joint account with a right of survivorship held by the decedent, Pamela, and Sharon. After the decedent's will was filed for probate, Richard qualified as executor of the estate.

For four successive weeks in May and June of 2012, Richard published notices to creditors, which included a claims deadline of August 19, 2012.

On August 7, 2012, Pamela timely submitted a claim to the estate seeking payment of caretaking

services she provided to her father. She did not present a claim for funeral expenses. Instead, in July of 2013 – almost one year after the claims deadline – Pamela filed a “Request for Reimbursement from the Decedent’s Estate” for funeral expenses she expended. In response, Richard filed a petition asking the clerk to disallow the request for reimbursement and allow him to move forward with closing the estate, alleging that Pamela’s claim was time-barred.

In January of 2014, Richard sought to close the estate and submitted a proposed final accounting to the clerk, which included disbursements to pay \$91,340.77 in legal fees for the attorneys hired by Richard on behalf of the estate. Pamela filed an objection on the basis that:

- the estate failed to reimburse her for funeral expenses, and
- the amount of the attorneys’ fees were excessive.

On May 13, 2014, the clerk entered an order granting reimbursement of the funeral expenses and approved only a portion of the estate’s attorneys’ fees. Richard, as executor and in his individual capacity, along with his siblings and fellow beneficiaries, Frances and Sharon, appealed.

The superior court vacated the clerk’s order, denied Pamela’s request for funeral expenses, and ordered that the full amount of legal fees be paid by the estate. Pamela appealed to the NC Court of Appeals.

### **The Funeral Expenses: Reimbursement, Claim, or Both?**

Funeral expenses are somewhat different than other claims or debts of the estate because they are not typically a debt incurred by the decedent as they arise after the decedent’s death. In addition, the expenses are usually incurred immediately after death and prior to the appointment of the personal representative. They are often not an obligation incurred by the estate directly. However, [GS 28A-19-8](#) treats funeral expenses as an obligation of the estate for which the estate is primarily liable if the expenses are financed by a funeral establishment or a third-party creditor or advanced by a health care power of attorney. A person authorized to dispose of the body under [GS 130A-420](#) may also bind the estate to pay for the expenses by contract, note, or other instrument.

If funeral expenses may be made a valid obligation of the estate, the question then becomes – what happens to that obligation? How may the creditor then seek to be paid for what they expended for the decedent?

Pamela attempted to seek reimbursement of the funeral expenses by filing a request for reimbursement almost a year after the deadline for claims of creditors had passed. She argued to the court that the deadline for presentation of claims did not apply to her request for reimbursement of funeral expenses because the estate was primarily liable for the expenses.

The court of appeals disagreed with Pamela. The court highlighted that funeral expenses are categorized as a claim under [GS 28A-19-6\(a\)](#). Further, while the estate may be primarily liable for such expenses, Article 19 of Chapter 28A does not treat funeral expenses separately from other debts of the estate for which the estate is also primarily liable. The court found no statutory or other authority that would support the position that a claim for funeral expenses is automatically presented or exempted from the time-bar. Therefore, the court concluded the rules under Chapter 28A, in particular GS 28A-19-3 and GS 28A-19-16, regarding presentation and time limits for claims apply to funeral expenses. The court ultimately affirmed the superior court's order and held:

- Pamela did not file her claim by the bar deadline,
- Pamela did not properly file a civil action to challenge the denial of the claim, and
- ***The clerk of superior court lacked jurisdiction to consider Pamela's claim for reimbursement.***

Going forward it is clear that the personal representative should make sure that the authorized person who paid the funeral expenses is noticed as a creditor.\* In addition, a person who has paid funeral expenses should timely file a claim with the estate to seek payment of their claim. If appropriate to do so, the personal representative may then reject that claim and the means of redress by the claimant is to file a civil action for recovery of the claim under [GS 28A-19-16](#).

### What About Those Attorneys' Fees?

The court also addressed whether the clerk was authorized to review the attorneys' fees shown on the final accounting for reasonableness where the non-attorney personal representative hired the attorney. [GS 28A-23-4](#) is clear that the clerk has discretion to allow attorneys' fees when the attorney is serving as the personal representative. In contrast, this case involved a non-attorney personal representative who hired an attorney to handle certain legal affairs of the estate. But, as noted by the court, there is not a perfectly analogous statute to GS 28A-23-4 when a non-attorney personal representative hires an attorney.

The court looked to the language set forth in [GS 28A-23-3\(d\)\(1\)](#) and the NC Supreme Court's decision in [Phillips v. Phillips](#), 296 NC 590 (1979), and held that the clerk has the authority to review attorneys' fees for reasonableness. The court noted that its decision is in line with the current general practice of clerks as set forth in the [NC Clerk of Superior Court Procedures Manual](#).

While this decision is generally in line with current practice by clerks, there is still an important key takeaway for clerks who may enter an order deciding the reasonableness of attorneys' fees of attorneys hired by a personal representative. **The clerk when rendering a decision on the reasonableness of the attorneys' fees must enter an order that makes sufficient findings of fact and conclusions of law on the issue of reasonableness.** This allows for a meaningful review of the issue on appeal to superior court under GS 1-301.3.

\*Keep in mind that this applies if the personal representative is not the claimant. If the personal representative is the claimant, then the personal representative must receive the written approval of the clerk prior to payment of the personal representative's claim. GS 28A-19-12. The personal representative is not subject to the requirements of GS 28A-19-1 regarding the manner of presentation of claims or GS 28A-19-3 regarding time bars. A personal representative that is also a claimant may file the claim at any time prior to the filing of the final account. GS 28A-19-12. If the clerk does not approve the claim, the personal representative may refer the claim as a disputed claim under GS 28A-19-15.