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### Summary of Costello v. Casler, 127 Nev. Adv. Op. No. 36

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*Nevada Law Journal*

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*Costello v. Casler*, 127 Nev. Adv. Op. No. 36 (July 07, 2011)<sup>1</sup>  
CIVIL PROCEDURE

**Summary**

An appeal from a district court summary judgment in a tort action where the defendant was deceased prior to the filing of the complaint and the statute of limitations had run before the decedent's estate could be added to the complaint.

**Disposition/Outcome**

The Court reversed the summary judgment of the district court and remanded to the district court for further proceedings because although the plaintiff failed to name the decedent's estate, the decedent's insurer had notice and knowledge of the action within the statute of limitations. Consequently, there was no resulting prejudice to the decedent's estate.

**Factual and Procedural History**

On September 5, 2007, Debbie Costello ("Costello") and Phillip Casler ("Casler") were involved in an automobile accident. Two months later Casler died from unrelated causes. Costello filed a claim with Casler's insurer, American Family Insurance, but was unable to reach a settlement. Unaware that Casler was deceased, Costello filed a personal injury lawsuit against Casler in June 2009. The service process company notified Casler that they were unable to serve Costello because someone at Costello's residence informed the company that Casler was deceased.

Pursuant to Nev. R. Civ. P. 25, Costello filed a suggestion of Casler's death upon the record and mailed a copy to American Family Insurance. American Family Insurance retained counsel, and four days before the statute of limitations was to expire, American Family Insurance's attorney wrote to Casler, requesting that American Family Insurance be provided with proof of service. On September 5, 2009, the statute of limitations expired.

Subsequently, Costello filed a petition in probate court seeking the appointment of a special administratrix of the estate of Casler. Additionally, Costello, pursuant to Nev. R. Civ. P. 25, submitted a motion in district court seeking to appoint a special administratrix of the estate of Casler and a motion to substitute the special administratrix for Casler. On behalf of Casler, American Family Insurance opposed the motions, and submitted a motion arguing that Casler's son was already the administrator of the estate and that any amendment adding a party was now time-barred because the statute of limitations had run. Casler replied that she should be allowed to add the estate as a defendant, and that the amendments should relate back to the date of the original complaint under Nev. R. Civ. P. 15(c). The district court denied Costello's motions, and granted American Family Insurance's motion for summary judgment. Costello appealed the summary judgment of the district court.

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<sup>1</sup> By Danielle Woodrum.

## **Discussion**

The Supreme Court of Nevada held that, under Nev. R. Civ. P. 15(c) when a plaintiff files a timely complaint that names a deceased defendant instead of the decedent's estate, the amended complaint naming the estate will relate back to the date of the original pleading if the decedent's insurer had notice and knowledge of the action within the statute of the limitations, and there is no resulting prejudice to the decedent's estate. The Court also held that a decedent's insurers notice and knowledge of the institution of an action may be imputed to the decedent's estate for the purposes of satisfying the relation back requirements of Nev. R. Civ. P. 15(c).

The Court reasoned that the Nevada Rules of Civil Procedure should be interpreted liberally to allow the courts to reach decisions on the merits, rather than "technical niceties." Further, the Court stated that when defendants share an "identity of interest" the courts are particularly amendable to imputing knowledge and notice. The Court noted that many jurisdictions recognize the insurer and insured share an "identity of interest" and that this interpretation is consistent with the liberal approach of the Nevada Rules of Civil Procedure.

The Court concluded that allowing the amendment to relate back to the date of the original complaint would not prejudice either Casler's estate or American Family Insurance because the "substance of the proposed amended complaint affected no real change as Costello's claim remained the same. " Further, the Court noted that American Family would be in the same position because they would have to defend the suit whether Casler was dead or alive. Hence, the Court said that the requirements it set forth in *Echols v. Summa Corp.*<sup>2</sup> were met because the estate had actual notice of the action, knew it was a proper party, and would suffer no prejudice from the amended pleading. Therefore, the district court erred when it denied Costello's motions to amend his complaint to substitute Casler's estate in place of Casler.

## **Conclusion**

When a plaintiff files a complaint that names a deceased defendant instead of the decedent's estate, the amended complaint naming the estate will relate back to the date of the original pleading provided that: (1) the decedent's insurer had notice and knowledge of the action within the statute of the limitations; and (2) there is no resulting prejudice to the decedent's estate. A decedent's insurers notice and knowledge of the institution of an action may be imputed to the decedent's estate for the purposes of satisfying the relation back requirements of Nev. R. Civ. P. 15(c).

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<sup>2</sup> *Echols v. Summa Corp.*, 95 Nev. 720, 722 (1979).