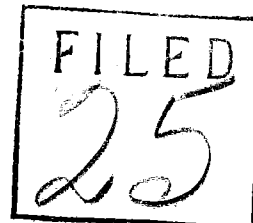


PROBATE COURTS: Right to compel claimant to give security for costs.

December 17, 1937.

Mr. Edward L. Brun,
Prosecuting Attorney,
Cape Girardeau, Missouri.

12-20



Dear Sir:

This department is in receipt of your letter of December 3rd requesting an opinion as to the following:

"I am enclosing a letter received from the Public Administrator of this county. It is my opinion that Section 804 R. S. Mo. 1929, requires or to say the least gives the Probate Judge the right to require the claimant, asking that this small fund a few hundred dollars, administered as the estate of Joe Tillman, be required to give security for costs to fore such claimant may present the claim and make a large amount of costs, in claiming that the deceased was not Joe Tillman but in fact was Minor McIntire. If it develops that the deceased was Minor McIntire and not Joe Tillman, the claimant would receive the whole of the estate and who would then pay the costs and if it be determined that the deceased was really Joe Tillman, as administered, who is to pay the costs. In this sort of proceeding a very large amount of costs are almost sure to accrue.

The estate was administered as the estate of Joe Tillman and this nonresident comes now and wants to claim all the estate as the widow of Minor McIntire, stating in her claim that the deceased was not Joe Tillman but was Minor McIntire.

It is my opinion before such claim may be permitted to make a large amount of costs, a security for the costs should be required of claimant. If the present administrator wins where is he to recover his costs, if he lose there is the money to pay costs. This small amount will go to the state if it remains as the estate of Joe Tillman.

Please give me your opinion as to the matters inquired about in the enclosed letter."

Section 804 R. S. Mo. 1899 provides:

"In all suits and other proceedings in said court, the party prevailing shall recover his costs against the other party, except in those cases in which a different provision is made by law. In all cases in which costs shall be given against executors and administrators, the estate shall pay the costs: Provided, that parties presenting demands against estates may, for the same causes and in the same manner, be ruled to give security for costs, as is now provided in practice in civil cases."

So assume, from your letter, that the claimant to the fund in question intends to file a claim therefor in the Probate Court. If so, the above statute clearly is controlling and, by its terms, makes Section 1880 R. S. Mo. 1899 applicable; which said section reads as follows:

"If, at any time after the commencement of any suit by a resident of this state, he shall become non-resident, or in any case the court shall be satisfied that any plaintiff is unable to pay the costs of suit; or that he is so unsettled as to endanger the officers of the court with respect to their legal demands, the court shall, on motion of the defendant, or any officer of the court, rule the plaintiff, on or before the day in such rule named, to give security for the payment of the costs in such suit; and if such plaintiff shall fail, on or before the day in such rule named, to file the undertaking of some responsible person, being a resident of this state, whereby he shall bind himself to pay all costs which have accrued or may accrue in such action, or deposit with the clerk of the court in which said suit is pending a sum of money sufficient to pay all costs that have accrued or will probably accrue in the case, subject to be increased at any time whenever the court may deem proper and by its order require, the court may, on motion, dismiss the suit unless such undertaking shall be filed or sum of money deposited before the motion is determined."

In view of the foregoing, it is the opinion of this department that in all proceedings instituted under Chapter 1, Article 7 of the Revised Statutes of Missouri 1899 security for costs may be required of any claimant exhibiting a demand against an estate.

Respectfully submitted,

JWH:SO

Approved:

J. E. Taylor
Acting Attorney General

John W. Haffman
Assistant Attorney General