



We are unable to tell to what extent the Trial Judge considered these factors and therefore remand the case for further consideration and hearing, if necessary.

Remanded.

All concurred.

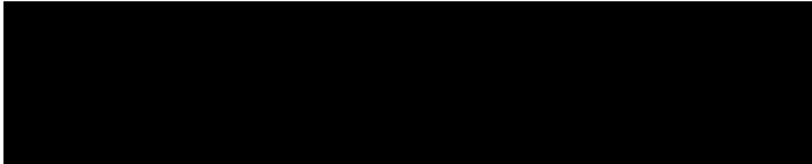


Belknap Probate Court,
No. 5530.

IN RE RALPH L. DOCKHAM ESTATE.

Argued December 6, 1966.

Decided March 29, 1967.



Nighswander, Lord & Martin (Mr. William S. Lord orally) pro se, as administrator.

George S. Pappagianis, Attorney General and *R. Peter Shapiro*, Assistant Attorney General (Mr. Shapiro orally), for the State.

DUNCAN, J. RSA 8:43 provides in part that the "state is entitled to recover the expense of care, treatment and maintenance of any patient or inmate at [the New Hampshire Hospital] . . . from the patient or inmate . . . or his estate . . ." Provisions added in 1965 relate to recovery of the expense of care of inmates at the Laconia State School. Laws 1965, c. 16; RSA 8:43 (supp).

RSA 556:3 (supp) provides that no action against an administrator shall be sustained "unless the demand was exhibited to the administrator within six months after the original grant of administration . . ." The issue presented is whether the claim of the State is barred by reason of this provision. We hold that it is.

In *Reconstruction &c. Corp. v. Faulkner*, 100 N. H. 192, 193 we referred to the "deep rooted principle . . . that time does not run against the federal or a state government," and held that the plaintiff in that case, as an agency of the federal government, was immune from the operation of RSA 556:1, 3. At the same time, we pointed out that the statute is a "nonclaim statute" the purpose of which is to secure the orderly and expeditious settlement of estates. In the annotation in 34 A.L.R. 2d 1003, 1008-9, it is said that a slight preponderance of the authority upon the subject holds that such nonclaim statutes apply to claims by a State or its subdivisions. In the view so taken, nonclaim statutes are to be distinguished from general statutes of limitation, since they operate to extinguish a claim, while general limitations serve merely to bar the remedy. *Reith v. County of Mountrail*, (N.D.) 104 N. W. 2d 667.

Here the State seeks to enforce a statutory right, and in order to do so seeks to avoid compliance with its own substantive law prescribing the prerequisites to enforcement of such a right. *Bahr v. Zahm*, 219 Ind. 297. The policy which favors the expeditious settlement of estates was fortified by recent legislation, materially shortening the periods within which claims are required to be presented and sued upon. Laws 1959, 114:1, 3, 4; RSA 556:1, 3, 5, 7 (supp). See *Sullivan v. Marshall*, 93 N. H. 456; *Frost*

v. *Frost*, 100 N. H. 326, 328. The general principle that the State is immune from the consequences of the lapse of time where general limitations are concerned is not to be extended in derogation of specific statutory requirements adopted to expedite the settlement of estates. See *Gossler v. Manchester*, 107 N. H. 310; *In re Estate of Bird*, 410 Ill. 390, 395; *State v. Moore's Estate*, (Fla.) 153 So. 2d 819. See *State v. Stafford Company*, 99 N. H. 92, 97; *State v. Company* 49 N. H. 240, 254.

The question certified by the probate court is answered in the affirmative.

Remanded.

BLANDIN, J., sat at argument but took no part in the decision; the others concurred.