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violated § 60-6,225(4). Bruggeman's police report, in evidence, referred to such fog lamps as "auxiliary driving lights" that Carnicle failed to dim, not lights in excess of 25 candlepower which struck the surface of the ground more than 50 feet ahead of his vehicle.

CONCLUSION

Therefore, in the end, we find after our de novo review that there was no probable cause for the traffic stop of Carnicle, and as a result, the evidence of his DUI must be suppressed. Accordingly, we remand the cause to the district court for Lancaster County with directions to reverse the conviction and remand the matter to the Lancaster County Court with directions to sustain Carnicle's motion to suppress.

REVERSED AND REMANDED WITH DIRECTIONS.

KELLY J. LENNERS, APPELLANT, V. ST. PAUL FIRE AND MARINE INSURANCE COMPANY, A MINNESOTA CORPORATION, ET AL., APPELLEES, AND AMERICAN FAMILY MUTUAL INSURANCE COMPANY, INTERVENOR-APPELLEE.

793 N.W.2d 357

Filed December 28, 2010. No. A-09-1042.

1. **Motions to Dismiss: Pleadings: Appeal and Error.** An appellate court reviews a district court's order granting a motion to dismiss de novo, accepting all the allegations in the complaint as true and drawing all reasonable inferences in favor of the nonmoving party.
2. **Limitations of Actions: Appeal and Error.** Which statute of limitations applies is a question of law that an appellate court must decide independently of the conclusion reached by the trial court.
3. **Decedents' Estates: Claims: Limitations of Actions.** For purposes of any statute of limitations, the proper presentation of a claim under Neb. Rev. Stat. § 30-2486 (Reissue 2008) is equivalent to commencement of a proceeding on the claim.
4. **Decedents' Estates: Claims.** The mere filing of a claim with a probate court does not constitute commencement of a proceeding to enforce a claim within the meaning of Neb. Rev. Stat. § 30-2404 (Reissue 2008).
5. **Decedents' Estates: Courts: Jurisdiction.** Neb. Rev. Stat. § 24-517(1) (Cum. Supp. 2006) confers upon the county court exclusive original jurisdiction of all matters relating to decedents' estates, including the probate of wills and the construction thereof, except as provided in Neb. Rev. Stat. §§ 30-2464(c) and 30-2486 (Reissue 2008).

6. **Decedents' Estates: Executors and Administrators: Claims.** Neb. Rev. Stat. § 30-2488(a) (Reissue 2008) treats a failure to disallow a claim as an allowance of the claim, but also authorizes a personal representative to change his or her decision regarding allowance or disallowance of a claim.
7. **Decedents' Estates: Claims: Time.** Neb. Rev. Stat. § 30-2488(a) (Reissue 2008) imposes a time limitation on a decision changing disallowance of a claim to allowance but does not impose a time limit on changing an allowance to a disallowance.

Appeal from the District Court for Gage County: PAUL W. KORSLUND, Judge. Reversed and remanded for further proceedings.

Danene J. Tushar, of Fraser Stryker, P.C., L.L.O., for appellant.

Stephen L. Ahl and Krista M. Carlson, of Wolfe, Snowden, Hurd, Luers & Ahl, L.L.P., for appellees.

Stephanie F. Stacy and Derek C. Zimmerman, of Baylor, Evnen, Curtiss, Grimit & Witt, L.L.P., for intervenor-appellee.

SIEVERS, MOORE, and CASSEL, Judges.

CASSEL, Judge.

INTRODUCTION

The district court held that the appellant's action for underinsured motorist benefits under the insurance policy covering her vehicle was barred by the statute of limitations. The instant appeal turns upon whether the appellant made a "proper" presentation of her claim in the other driver's estate. Because we conclude that the claim filed with the probate court was the equivalent, for purposes of the statute of limitations, of commencement of a proceeding on the claim, we reverse, and remand for further proceedings consistent with this opinion.

BACKGROUND

Collision and Parties.

On March 4, 2003, two motor vehicles collided. Kelly J. Lenners was the driver of one vehicle, and David Leafty, who was killed in the collision, was the other driver.

We identify the other parties in the action and their respective roles: St. Paul Fire and Marine Insurance Company (St. Paul) is the issuer of the liability insurance policy, including underinsured motorist coverage, on the vehicle Lenners was driving. Farm Credit Services of America (Farm Credit) is St. Paul's insured and was Lenners' employer and the lessee of the Lenners vehicle. In an amended complaint, Lenners joined herself, in her capacity as the personal representative of Leafty's estate, as an additional defendant. Finally, American Family Mutual Insurance Company (American Family), which intervened in the district court proceeding, is the liability insurance carrier for Leafty and his estate. For convenience, we refer to St. Paul, Farm Credit, and American Family collectively as the insurers.

Leafty's Estate.

Before we set forth the history of the case now before us, we describe the proceedings in Leafty's estate in the county court for Gage County, because the contentions of the parties focus on these proceedings. A certified transcript of the county court's filings is included in our bill of exceptions.

On February 21, 2007, Lenners, as a creditor of the estate, filed a petition seeking formal adjudication of intestacy, determination of heirs, and appointment of herself as personal representative. Lenners' petition disclosed that she was injured in the 2003 automobile accident and was seeking monetary damages for her injuries from Leafty's automobile insurance policy, i.e., from American Family. Lenners listed American Family and Leafty's wife and children as interested parties, and notice was given to American Family at all relevant stages of the estate proceedings.

On February 26, 2007—the same day on which the county court entered an order scheduling a hearing on Lenners' probate petition for April 10—Lenners filed a statement of claim in the Leafty estate for damages for personal injuries sustained by Lenners and her children in the automobile accident. The claim form recited that the due date of the claim was "[u]nknown" and that "negotiations have not yet begun on this claim as . . . Lenners is still undergoing medical treatment."

The document also stated that the amount of the claim was "[u]nknown - policy limits of [Leafty's] liability policy in effect on March 4, 2003, and any other applicable insurance policies, or an amount to be determined by a jury, if lesser."

On April 10, 2007, the county court appointed Lenners as personal representative of Leafty's estate, determined Leafty's heirs, found that he died intestate, and ordered that Lenners serve without being required to post a bond, as there were "no known assets except liability insurance." Lenners accepted appointment, letters of appointment were issued to her, and notice of her appointment was published. On April 17, Lenners filed an inventory listing American Family's insurance policy as the only asset of the estate.

The estate remained in this posture until February 28, 2008, when the county court issued an order to show cause why the estate had not been closed. We digress to note that the complaint in Lenners' district court proceeding was filed on February 29, 2008—1 day after the entry of this show cause order. In response to the county court's order, Lenners filed a motion to continue the date of hearing on the show cause order to "a date approximately six months out" and stated in the motion that Lenners had filed the claim on February 26, 2007; that on February 12, 2008, she had made demand on American Family for payment of damages for her injuries; and that "[t]he parties [were] currently negotiating the personal representative's claim." The county court continued the show cause hearing to September 23. On July 11, new counsel entered an appearance for Lenners, and on September 8, counsel sought a further continuance for "not less than 180 days" because "there [was] pending litigation against the estate." The county court extended the hearing date to March 24, 2009.

On October 3, 2008, Lenners filed a petition seeking the court's order requiring Lenners, as personal representative, to pay her claim for personal injuries. A copy of the petition was mailed to American Family's counsel. On November 17, American Family filed an objection to Lenners' petition on the grounds that (1) the petition violated Lenners' fiduciary responsibilities as personal representative; (2) Lenners' statement of

claim was untimely and "[did] not represent a viable claim" against the estate; (3) Lenners was attempting to engage in simultaneous litigation in multiple forums; (4) the probate court was an improper forum and Lenners' claim was barred by the applicable statute of limitations; (5) there had been no legal determination that Leafty was legally liable to Lenners; (6) Lenners' petition sought an order that would have "no legal effect," presented a "nonjusticiable issue," and would result in an "advisory opinion"; (7) Lenners' February 26, 2007, statement of claim was a frivolous pleading; and (8) the October 3, 2008, petition was a frivolous pleading. American Family attached a copy of Lenners' amended complaint in the district court to its objection in county court.

On December 3, 2008, Lenners filed a petition for directions to the personal representative, reciting that her claim against the estate "prevent[ed] her from simultaneously representing the interests of the estate" and that she desired to resign as personal representative, but that she had been "unable to find a replacement."

According to a county court order entered on December 23, 2008, Lenners withdrew her petition to require the personal representative to pay her claim and the court denied her petition for directions.

On March 24, 2009, the county court entered another order requiring Lenners to show cause why the estate should not be closed or a new personal representative appointed. On March 31, Lenners' counsel filed a response reciting that the district court case was pending and that the estate needed to remain open pending resolution of Lenners' personal injury lawsuit. The record does not disclose the disposition of the court's order to show cause.

Instant Case.

We now return to the proceedings in the instant case. On February 29, 2008, a few days short of 5 years after the accident, Lenners brought an action in the district court for Gage County, asserting a contractual claim on underinsured motorist coverage provided by an insurance policy covering the vehicle she was driving at the time of the collision. The initial

complaint named only St. Paul and Farm Credit as defendants and sought only to recover upon the underinsured motorist coverage in St. Paul's policy. On July 31, Lenners filed an amended complaint joining herself, in her capacity as personal representative of Leafty's estate, as an additional defendant and seeking recovery both from Leafty's estate and from the underinsured motorist coverage. American Family, as Leafty's insurer, was allowed to intervene.

St. Paul and Farm Credit filed a motion to dismiss Lenners' amended complaint, utilizing Neb. Ct. R. Pldg. § 6-1112(b)(6). American Family filed a similar motion. The district court held a hearing and, in due course, entered a written order containing extensive discussion and reasoning.

The district court sustained the insurers' motions, holding that Neb. Rev. Stat. § 44-6413(1)(e) (Reissue 1998) barred Lenners' underinsured motorist coverage claim because the 4-year statute of limitations provided by Neb. Rev. Stat. § 25-207 (Reissue 2008) for Lenners' claim against Leafty had expired. The district court rejected Lenners' assertion that her claim in Leafty's estate commenced a proceeding sufficient to prevent the 4-year statute of limitations from expiring.

Lenners timely appeals.

ASSIGNMENTS OF ERROR

Lenners asserted eight assignments of error, which we have consolidated, restated, and renumbered, claiming that the district court erred in (1) holding that the filing of Lenners' claim in Leafty's estate did not operate to timely commence an action within the period prescribed by § 25-207, (2) determining that the claim was not properly presented because it was filed before the date of appointment of the personal representative, (3) finding that Lenners' claim was not properly presented because it had never been disallowed due to Lenners' status both as claimant and as personal representative and because of Lenners' failure to seek appointment of a special administrator, (4) finding that Neb. Rev. Stat. § 30-2485 (Reissue 2008)—the nonclaim statute—does not apply, and (5) finding that Lenners' amendment to her complaint was ineffective to join Leafty's estate as a party.

STANDARD OF REVIEW

[1] An appellate court reviews a district court's order granting a motion to dismiss de novo, accepting all the allegations in the complaint as true and drawing all reasonable inferences in favor of the nonmoving party. *Doe v. Board of Regents*, 280 Neb. 492, 788 N.W.2d 264 (2010).

[2] Which statute of limitations applies is a question of law that an appellate court must decide independently of the conclusion reached by the trial court. *Corona de Camargo v. Schon*, 278 Neb. 1045, 776 N.W.2d 1 (2009).

ANALYSIS

We begin by setting forth a brief summary of the detailed analysis which follows. In the succeeding sections, we will first set forth the insurers' basic statute of limitations argument and Lenners' basic response. We next discuss in detail a Nebraska Supreme Court decision, which applies the particular statute upon which Lenners relies. We then introduce numerous provisions of the uniform act upon which the Nebraska Probate Code is based and set forth relevant comments provided by the drafters of the uniform act. Finally, in a series of sections, we address the specific arguments of the insurers and reasoning of the district court, all of which attempt to avoid the result dictated by the statute and the Nebraska Supreme Court decision applying it.

Insurers' Statute of Limitations Rationale.

The insurers argue that § 44-6413(1)(e) bars Lenners' action under the policy because Lenners did not commence an action against Leafty's estate within the 4-year statute of limitations provided by § 25-207. The district court agreed with the insurers. Although § 44-6413 was amended in 2009, the changes do not affect our analysis, and for convenience, we quote from the current version. Section 44-6413(1) (Cum. Supp. 2010) states that "[t]he . . . underinsured motorist coverag[e] provided in the Uninsured and Underinsured Motorist Insurance Coverage Act shall not apply to: . . . (e) [b]odily injury . . . of the insured with respect to which the applicable statute of limitations has expired on the insured's claim against the . . . underinsured

motorist." Thus, if Lenners allowed the applicable statute of limitations against Leafty's estate to expire, this section bars her underinsured motorist claim.

Lenners does not dispute that § 25-207 provides the "applicable statute of limitations" under § 44-6413(1), that § 25-207 allows 4 years from the accrual of the cause of action in which to commence the action, and that the cause of action accrued on the date of the accident on March 4, 2003. Thus, Lenners implicitly concedes that to preserve her underinsured motorist coverage claim, her action against Leafty's estate must have been commenced prior to March 4, 2007.

In support of Lenners' first assignment of error, she maintains that, for purposes of the statute of limitations, the claim she filed in Leafty's estate on February 26, 2007, constituted the necessary commencement of an action against the underinsured motorist. She argues that this was accomplished prior to March 4, when the limitations period would have expired. The insurers dispute that Lenners' claim had this effect and advance numerous reasons in support of their position.

Mulinix v. Roberts *Decision.*

Because Lenners relies principally upon the decision of the Nebraska Supreme Court in *Mulinix v. Roberts*, 261 Neb. 800, 626 N.W.2d 220 (2001), and the insurers' arguments attempt to distinguish the instant case from *Mulinix*, we recall the facts and rationale of the *Mulinix* decision.

On April 17, 1993, Patricia A. Mulinix was injured in a truck-car accident, in which Charles V. Weber, a driver of one of the vehicles, died. In April 1997, Paige J. Roberts was appointed personal representative of Weber's estate. On April 16, Mulinix filed a claim in Weber's estate proceedings seeking monetary damages for injuries suffered in the accident. Roberts denied the claim and mailed a notice of disallowance to Mulinix on June 9. On August 8, within 60 days of this notice, Mulinix filed a petition in district court against Roberts seeking to enforce the claim. Roberts demurred, alleging that Mulinix's petition failed to state a cause of action because the applicable statute of limitations barred the action. The district court, relying on § 25-207 and Neb. Rev. Stat.

§ 30-2486 (Reissue 2008), sustained the demurrer and dismissed Mulinix's petition, reasoning that because § 30-2486 specified two separate and distinct means of presenting a claim—(1) filing a claim in the county court probate proceeding or (2) commencing a proceeding against the personal representative in another court having subject matter jurisdiction—the filing of a claim in the county court estate proceeding did not equal the commencement of a proceeding. The district court also relied upon the language in § 30-2486(2) requiring that presentation of a claim by commencement of a proceeding in another court "must occur within the time limited for presenting the claim."

On appeal, the Nebraska Supreme Court reversed. The Supreme Court held that Mulinix's April 16, 1997, claim in Weber's estate constituted the commencement of a proceeding 1 day before the 4-year statute of limitations ran. The Supreme Court relied upon the last sentence of Neb. Rev. Stat. § 30-2484 (Reissue 2008), noting its provision that "'[f]or purposes of *any* statute of limitations, the proper presentation of a claim under section 30-2486 is equivalent to commencement of a proceeding on the claim.' (Emphasis supplied.)" 261 Neb. at 804, 626 N.W.2d at 223. Thus, the *Mulinix* court concluded that presenting a claim by filing it against the estate commences a proceeding on the claim for purposes of the running of the 4-year statute of limitations.

Lenners argues that the district court erred in failing to apply the *Mulinix* decision in the instant case. She claims that for purposes of § 25-207, the filing of her February 26, 2007, claim was equivalent to commencement of a proceeding on the claim. The insurers focus on the word "proper" in § 30-2484 and argue that Lenners' claim was not properly presented.

Probate Code Framework.

Before turning to the parties' specific arguments regarding application of the *Mulinix* decision in the instant case, we think it is helpful to recall several statutes in the Nebraska Probate Code bearing on claims and statutes of limitation and to examine certain provisions of the uniform act upon which the Nebraska statutes are based.

One important lesson drawn from the comments to the uniform act is that Unif. Probate Code § 3-802, 8 U.L.A. 211 (1998), upon which § 30-2484 was modeled, sets forth three separate ideas, the last of which is presented by the last sentence of § 30-2484, which underlies the decision in *Mulinix v. Roberts*, 261 Neb. 800, 626 N.W.2d 220 (2001). The comment to § 3-802 of the Uniform Probate Code (hereinafter UPC) states, in part:

> In 1989, in connection with other amendments recommended in sequel to [a U.S. Supreme Court case], the Joint Editorial Board recommended the splitting out, into Subsections (b) and (c), of the last two sentences of what formerly was a four-sentence section. The first two sentences now appear as Subsection (a). The rearrangement aids understanding that the section deals with three separable ideas. No other change in language is involved, and the timing of the changes to coincide with [the U.S. Supreme Court] case amendments is purely coincidental.

8 U.L.A. at 212. Thus, the last sentence of § 30-2484—the heart of the *Mulinix* decision—is a separate concept from the preceding sentences in the section. Although Nebraska has not adopted the change to depict the separate concepts by subsection markers, the language directly tracks the original model act, which the comment indicates was not changed in substance by the rearrangement.

The comment to UPC § 3-802 also points out that several statutes of limitation may have potential application in a particular case and that the first to apply controls: "[T]he regular statute of limitations applicable during the debtor's lifetime, the non-claim provisions of [UPC] Sections 3-803 and 3-804, and the three-year limitation of [UPC] Section 3-803 all have potential application to a claim. The first of the three to accomplish a bar controls." 8 U.L.A. at 211-12. Section 30-2485 corresponds to UPC § 3-803, 8 U.L.A. 56 (Supp. 2010), and § 30-2486 tracks UPC § 3-804, 8 U.L.A. 235 (1998).

In addition to the regular statute of limitations, there are five provisions of the Nebraska Probate Code which could act to impose a bar. Four of these provisions fall within the two

categories identified in the comment—the nonclaim provisions and the 3-year limitation. There is one other nonclaim provision under yet another statute. The comment instructs us that the first statute to apply will accomplish a bar. The first statutory bar, which would apply only if Lenners' claim against Leafty arose before Leafty's death, is that of § 30-2485(a)(1), which bars claims not presented within 2 months after publication of notice to creditors of the estate. The second statutory bar, which also applies only if the claim arose before death, is that of § 30-2485(a)(2), which bars claims not presented within 3 years after the decedent's death if notice to creditors has not been given. On the other hand, the third statutory bar, under § 30-2485(b), applies to claims arising at or after the decedent's death and bars claims not presented within 4 months after the claim arose. The fourth statutory bar flows from § 30-2486(3), which bars commencement of a proceeding to enforce a claim which has been presented by filing a statement of claim with the probate court, if the proceeding is commenced more than 60 days after the personal representative mailed a notice of disallowance. The last statutory bar is set forth in Neb. Rev. Stat. § 30-2488(a) (Reissue 2008), which imposes a bar where a notice of disallowance is given by the personal representative after a claim has been allowed and the claimant fails to commence a proceeding against the personal representative within 60 days after the mailing of the notice of disallowance.

Section 30-2485(c)(2) eliminates any potential application of the first three of these five statutory bars. Section 30-2485(c) states: "Nothing in this section[, i.e., § 30-2485,] affects or prevents: . . . (2) [t]o the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which he or she is protected by liability insurance." Thus, because Lenners' claim sought relief only as to liability insurance proceeds, § 30-2485(c)(2) renders inapplicable the potential bars of § 30-2485(a)(1), (a)(2), and (b).

And, as the record presently stands, the absence of a notice of disallowance of Lenners' claim renders inapplicable the other two of these five statutory bars. Section 30-2486(3)

provides a bar for failure to commence a proceeding within 60 days after the personal representative has mailed a notice of disallowance. And § 30-2488(a) provides a comparable bar for a claim disallowed after being first allowed, where the claimant fails to commence a proceeding within 60 days after mailing of the notice of disallowance. But, in the case before us, the personal representative has neither filed nor mailed a notice of disallowance. Thus, at least at this point in time, there has been no triggering of the potential bars of § 30-2486(3) or § 30-2488(a)—the only remaining possibilities under the Nebraska Probate Code. This leaves only the regular statute of limitations as a possible bar.

We observe that Nebraska rejected one of the UPC's methods for presentation of a claim—the option to "deliver or mail to the personal representative a written statement of the claim indicating its basis, the name and address of the claimant, and the amount claimed." UPC § 3-804(1), 8 U.L.A. 235 (1998). Section 30-2486(1) proclaims that "[t]he claim is deemed presented on the filing of the claim with the court." In contrast, UPC § 3-804(1) stated the claim was "deemed presented on the first to occur of receipt of the written statement of claim by the personal representative, or the filing of the claim with the [c]ourt." 8 U.L.A. at 235. Thus, from the time of adoption of Nebraska's version of the UPC, Nebraska has authorized only two methods of presenting a claim—filing a statement of claim with the probate court (§ 30-2486(1)) or commencing a proceeding against the personal representative "in any court which has subject matter jurisdiction and [where] the personal representative may be subjected to jurisdiction" (§ 30-2486(2)).

Finally, we note that the comment to UPC § 3-804 specifically states that the filing of a claim with the probate court "does not serve to initiate a proceeding concerning the claim. Rather, it serves merely to protect the claimant who may anticipate some need for evidence to show that his claim is not barred. The probate court acts simply as a depository of the statement of claim . . . ." 8 U.L.A. at 236.

[3] With this framework in mind, we now turn to the specific grounds advanced by the insurers and adopted by the

district court to distinguish the instant case from *Mulinix v. Roberts*, 261 Neb. 800, 626 N.W.2d 220 (2001), or to show that Lenners' claim was not "properly" presented. We specifically focus on the sentence in § 30-2484 stating that "[f]or purposes of any statute of limitations, the proper presentation of a claim under section 30-2486 is equivalent to commencement of a proceeding on the claim."

Filing of Claim Before Appointment of Personal Representative.

Lenners assigns error to the district court's finding that by "fil[ing] her claim before there was an open estate," she did not properly present her claim. In support of the district court's finding on this point, the insurers rely on Neb. Rev. Stat. § 30-2404 (Reissue 2008), which states, in pertinent part, as follows:

> No *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. After the appointment and until distribution, all proceedings and actions to enforce a claim against the estate are governed by the procedure prescribed by this article.

(Emphasis supplied.) The insurers argue that because the personal representative had not yet been appointed, Lenners was not permitted to file her claim with the county court. We disagree.

[4] First, we do not believe that the mere filing of the claim constitutes commencement of a "proceeding to enforce a claim" within the meaning of § 30-2404. The Nebraska Probate Code refers both to "presenting" and to "enforcing" a claim. Our reading of the code and the applicable case law persuades us that presentment and enforcement are not synonymous, although in some instances they can be accomplished by the same act. Section 30-2485 bars claims against an estate unless they are "presented" within certain time parameters. Under § 30-2488(d), "[a] final judgment in a proceeding in any court against a personal representative to *enforce* a claim against a decedent's estate is an allowance of the claim." (Emphasis supplied.)

Section 30-2486 specifies two methods of "present[ing]" claims. Section 30-2486(1) allows a claim to be presented by filing the required form with the clerk of the probate court. Section 30-2486(2) allows a claim to be both presented and enforced by a separate proceeding in a court having jurisdiction. But § 30-2486(3) makes it clear that where the claim has been presented by filing it with the probate court pursuant to § 30-2486(1) and has been disallowed, the claimant must commence a proceeding to enforce the claim within the specified time after disallowance. Thus, it is clear that presentation of a claim under § 30-2486(1) is not a proceeding to enforce the claim.

Moreover, the comment to UPC § 3-804, 8 U.L.A. 235 (1998), which we quoted above, supports this view. The comment expressly states that filing of the claim does not serve to initiate a proceeding concerning the claim and explains the probate court's function as a depository. Because § 30-2484 equates presentation of a claim to commencement of a proceeding on the claim only "[f]or purposes of any statute of limitations," it necessarily follows that for other purposes, presentation of a claim is not equivalent to commencement of a proceeding.

Second, we reject the insurers' argument that our decision in *Mach v. Schmer*, 4 Neb. App. 819, 550 N.W.2d 385 (1996), supports their position. That case concerned an attempt to *enforce* a claim by commencing a proceeding against the personal representative in district court. We rejected the claimant's attempt to commence a proceeding for enforcement of a claim against a former personal representative who had been discharged and whose appointment had been terminated. Our *Mach* opinion makes it clear that the proceeding was attempted under § 30-2486(2) and that § 30-2486(1) was not implicated.

Third, we find support in the Nebraska Supreme Court's decision in *In re Estate of Cooper*, 275 Neb. 297, 746 N.W.2d 653 (2008). The *In re Estate of Cooper* court recognized the effect of § 30-2486(3) in distinguishing the filing of a claim under § 30-2486(1) and the commencement of a subsequent proceeding to obtain payment of the claim. The court also quoted from

the UPC comment we have already recited, describing the probate court's function as a depository. The court additionally quoted a Florida appellate court decision describing the filing of a statement of claim as merely a procedural step in the administration of an estate whereby the personal representative is advised, within the statutorily limited time, who the creditors are and what their claims are. The *In re Estate of Cooper* court recognized that the key sentence of § 30-2484 draws a distinction between the filing of a claim and the commencement of a separate proceeding. The court observed that the sentence's application is limited by its terms to the context of determining whether the statute of limitations on a claim has run and cited its decision in *Mulinix v. Roberts*, 261 Neb. 800, 626 N.W.2d 220 (2001).

Thus, we reject the insurers' arguments that the Nebraska Probate Code prohibited Lenners from filing her statement of claim with the probate court before the appointment of a personal representative.

Lenners' Status as Personal Representative.

Lenners assigns as error the district court's determinations that her status as personal representative and her failure to seek appointment of a special administrator established a "fail[ure] to follow the probate code." The court stated, in part:

> [T]he method employed by [Lenners] placed her on both sides of an unliquidated personal injury claim. Consequently, [Lenners] is now in a position where she can neither allow nor disallow the claim without subverting either [Leafty's] estate or her own personal interest. [Lenners] could have avoided her current predicament had she sought the appointment of a special administrator pursuant to Neb. Rev. Stat. § 30-2457 [(Reissue 2008)] when she realized the limitations period was set to expire. However, the court cannot countenance, without concrete authority for doing so, the current state of affairs and the potential for such claims to languish in virtual perpetuity - not to mention beyond the statute of limitations - at the behest of a creditor, whose claim is unliquidated and disputed, who is also the estate's personal representative

responsible for allowing or disallowing the claim, but has failed to do so.

In our view, the district court conflated proper presentation of Lenners' claim with failure to take necessary actions to enforce the claim—the former being the proper focus of the statute of limitations analysis, while the latter falls within the exclusive original jurisdiction of the county court.

[5] Neb. Rev. Stat. § 24-517(1) (Cum. Supp. 2006) confers upon the county court "[e]xclusive original jurisdiction of all matters relating to decedents' estates, including the probate of wills and the construction thereof, except as provided in subsection (c) of section 30-2464 and section 30-2486." The exceptions relate to proceedings in other courts by or against a personal representative.

The insurers attack the procedure followed by Lenners, not in filing the statement of claim, but, rather, in enforcing or failing to enforce the claim. The Nebraska Probate Code empowers the county court to make appropriate orders regarding administration of an estate by means of proceedings initiated either by "any person who appears to have an interest in the estate," see Neb. Rev. Stat. § 30-2450(a) (Reissue 2008), or by the personal representative, who "may invoke the jurisdiction of the court, in proceedings authorized by this code, to resolve questions concerning the estate or its administration," see Neb. Rev. Stat. § 30-2465 (Reissue 2008). The record shows that the county court has entered orders requiring Lenners to show why the estate should not be closed. American Family, as Leafty's liability insurance carrier, has been provided with notice of the probate proceedings, but has not invoked the jurisdiction of the county court to seek an order requiring Lenners to perform her duty as personal representative or to seek appointment of a special administrator in accordance with § 30-2457.

The insurers concede that the Nebraska Probate Code allows a creditor to be appointed as personal representative of a decedent's estate where others fail to act within a specified time. See Neb. Rev. Stat. § 30-2412(a)(6) (Reissue 2008). Thus, there was nothing improper about Lenners' filing her statement of claim while she was seeking appointment as personal

representative. And at the time Lenners filed her statement of claim—which "presented" the claim within the meaning of §§ 30-2485 and 30-2486—she had not yet been appointed as personal representative, and thus, no fiduciary obligation had then been imposed upon her.

Lenners' actions or inactions as personal representative, and particularly her failure to pursue proceedings to enforce her claim, fall within the exclusive original jurisdiction of the county court and do not relate to whether her claim was "proper[ly] present[ed]" under § 30-2484. The concern expressed both by the district court and the insurers about the potential for a properly presented claim to languish indefinitely is properly addressed to the county court, which has jurisdiction of the administration of the estate. And the record shows that the county court was taking steps to require that the administration be accomplished.

[6,7] Lenners' action as personal representative in not giving notice of disallowance of her claim has not prejudiced the estate, because a notice of disallowance could still be given. Section 30-2488(a) treats a failure to disallow a claim as an allowance of the claim, but also authorizes a personal representative to change his or her decision regarding allowance or disallowance of a claim. While § 30-2488(a) imposes a time limitation on a decision changing disallowance to allowance, it does not impose a time limit on changing an allowance to a disallowance. Thus, Lenners' claim could still be disallowed.

Because the issues before us pertain only to the applicable statute of limitations, we express no opinion regarding the propriety or effect of Lenners' joinder of herself, in her capacity as personal representative, as an additional party defendant in the district court action.

Nonclaim Statute.

Lenners assigns error to the district court's determination that § 30-2485 does not apply in the instant case. The district court determined that § 30-2485(c) does not apply because Lenners' claims against the insurers in the district court were "not claims for the limits of [Leafty's] liability insurance protection."

Of course, in one sense, the district court was partially correct—in the district court action, Lenners was seeking to recover proceeds of the underinsured motorist coverage afforded to Lenners by the policy issued by St. Paul to Farm Credit. Thus, in this regard, Lenners' initial complaint in the district court was not seeking damages against Leafty's estate for the coverage provided by American Family's liability policy to Leafty. However, the amended complaint was apparently seeking such damages. But whether Lenners was seeking damages under only St. Paul's policy or under both policies is not the critical question presented by the insurers' motions to dismiss, both of which were specifically based on the bar of the statute of limitations. And in relation to the statute of limitations, § 30-2485(c) has an important application.

The critical question is whether the applicable statute of limitations has expired on Lenners' claim against Leafty's estate. As we set forth at the outset, § 44-6413(1)(e) excludes from required underinsured motorist coverage "[b]odily injury . . . of the insured with respect to which the applicable statute of limitations has expired on the insured's claim against the . . . underinsured motorist."

Section 30-2485(c) removes the potential bars of § 30-2485(a) or (b) from the case before us. Because Lenners' statement of claim clearly sought only proceeds of liability insurance protecting Leafty and his estate, neither subsection (a) nor (b) of § 30-2485 can operate to bar Lenners' claim. There is still the possibility that a failure to commence a proceeding to enforce Lenners' claim, after 60 days following a notice of disallowance not yet given, could operate to bar Lenners' claim, see § 30-2488(a), or that a final judgment made against Lenners in a proceeding to enforce the claim would operate to bar the claim, see § 30-2488(d). But these events have not yet occurred, and the filing of Lenners' claim operates under § 30-2484 as the equivalent to commencement of a proceeding on the claim for purposes of the only other potential statute of limitations—the regular statute of limitations of § 25-207. Thus, we conclude the district court erred in determining, for purposes of the statute of limitations imposed by § 25-207, that Lenners' February 26, 2007,

statement of claim was not equivalent to commencement of a proceeding on the claim.

Amended Complaint Joining Lenners as Defendant.

Before concluding, we turn to Lenners' assignment that the district court erred in finding that her amended complaint was ineffective to join Leafty's estate as a party defendant. Lenners argues that "under the holding in *Mulinix* [*v. Roberts*, 261 Neb. 800, 626 N.W.2d 220 (2001)], [she] timely commenced a proceeding on her claim in the [e]state [p]roceedings for purposes of the statute of limitations." Brief for appellant at 23. She then reasons that this "effectively tolled her cause of action under [§] 25-207" and that the fact that "the [e]state was not added as a defendant in the [d]istrict [c]ourt suit [was] of no legal consequence." Brief for appellant at 23. Lenners then argues that her amendment of the district court complaint to add herself as a defendant, in her capacity as personal representative, related back to the original filing of the complaint.

We think it is important to first set forth what the district court decided on this issue. The court's order stated:

> The addition of Lenners [as personal representative] to the lawsuit against [the insurers] by amended complaint does not "relate back" and save [Lenners'] case against [the insurers]. [Lenners] does not receive the benefit of the five-year limitations period for written agreements pursuant to Neb. Rev. Stat. § 25-205 [(Reissue 2008)] because she failed to properly pursue her personal injury claim against the estate prior to expiration of the four-year limitations period pursuant to . . . § 25-207. Therefore, as stated above, . . . § 44-6413(1)(e) applies and [Lenners'] action as to [the insurers] is time-barred. [Lenners'] amended complaint naming Lenners [as personal representative] is of no consequence because her original action against [the insurers] was commenced outside of the applicable four-year limitations period.

We read the district court's decision merely as rejecting Lenners' relation-back argument because of its earlier conclusion that Lenners' statement of claim was not the equivalent of commencing a proceeding on the claim for purposes of the

statute of limitations. We have already concluded that the court erred in not applying the plain language of § 30-2484 to overrule the statute of limitations argument. Thus, to the extent that the court's ruling on the relation-back argument merely relied on its earlier reasoning, the court erred. The motions before the district court were expressly based upon and limited to the statute of limitations. We decline to address other issues not raised by the motions or decided by the district court.

CONCLUSION

We conclude that the district court erred in determining that Lenners' statement of claim filed with the county court on February 26, 2007, was not equivalent, for purposes of § 25-207, to commencement of a proceeding on the claim. Because presentment of a claim is separate and distinct from a proceeding to enforce a claim, we find no merit to the insurers' argument that Lenners filed her claim too soon and particularly find no merit to the argument that she violated § 30-2404 by filing the claim before appointment of a personal representative. We also determine that neither Lenners' status as personal representative nor her failure to seek appointment of a special administrator has any effect upon the operation of § 30-2484. Finally, because the district court's discussion of Lenners' relation-back argument was premised solely upon its erroneous determination that Lenners' statement of claim was not, pursuant to § 30-2484, the equivalent of commencing a proceeding on the claim, it was also incorrect. We therefore reverse the judgment of the district court and remand for further proceedings consistent with this opinion.

REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.