

June 2005
A Monthly Publication

Tom Enneking, Editor

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Supreme Court Holds Ohio's "Saving Statute" Applies to Will-Contest Actions

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The Ohio Supreme Court recently affirmed a decision of the Tenth District Court of Appeals which held that Ohio's "saving statute" was applicable to will-contest actions. In *Allen v. McBride*, 105 Ohio St. 3d 21, 2004-Ohio-7112, a majority of the Supreme Court, in an opinion written by Justice Resnick, determined that there was nothing within the saving statute indicating it was not applicable to will-contest actions and there was nothing within the statute which permits will-contest actions that indicated the saving statute did not apply to such actions. Thus, the Court concluded, based on these facts and precedent, the saving statute must apply to will-contest actions.

Ohio's saving statute is codified at R.C. 2305.19 and provides in pertinent part: "In an action commenced, or attempted to be commenced, * * * if the plaintiff fails otherwise than upon the merits, and the time limited for the commencement of such

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The Cincinnati Law Library Association

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Advice Costs, But Opinions Can Be Free!

David Whelan

Librarians battle the misconception that "everything is online" every day. We know that much of the historic content of the law as well as current case law, legislative enactments, and executive actions are not available through electronic resources, even if you have the financial wherewithal to purchase access. Courts have done a good job in the last few years of putting "everything" online and providing free access.

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Carl: 10 hours, 11 sources, 6 bathroom breaks

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Online Opinions, cont'd from page 1

Federal Opinions

The trick is knowing where the opinions are! For example, the U.S. District Court of Ohio, Southern, has a number of opinions available on its website (<http://www.ohsd.uscourts.gov/opinions.htm>) while the Northern District only posts "notable" cases. Especially at the trial court level, the opinions are usually sparse to non-existent through free access.

The U.S. Sixth Circuit Court of Appeals has done an impressive job of providing both published and unpublished opinions on its Web site. The opinions are posted each morning and a recent revamp of their Web site has made both types easier to access. (<http://www.ca6.uscourts.gov/internet/opinions/opinions.php>) You can search published opinions since 1999 and unpublished since October 2004. Each opinion is "published" as a portable document format file (PDF). The U.S. Supreme Court provides a list of its cases, as there are fewer released than by the Courts of Appeals. (<http://www.supremecourtus.gov/opinions/opinions.html>) Need Supreme Court briefs? Many are posted by the American Bar Association Public Education Division, by case name. (<http://www.abanet.org/publiced/preview/briefs/home.html>)

State Opinions

Ohio state courts get high marks as well and have taken a leadership role in not only publishing opinions but creating a citation format that enables you to drop fee-based resources of Ohio case precedents. The Reporter's Web site recently switched from Word documents to PDF, which is the standard for most court opinions. At the Reporter's site, you can find published Ohio

Supreme Court and District Courts of Appeals opinions. (<http://www.sconet.state.oh.us/rod/newpdf/default.asp>)

The interface is clumsy but you can choose to search a particular court or all sources. As you select each court, the scope of the search will change. For example, you can search Ohio Supreme Court opinions back to 1992, but the First and Twelfth Districts back to 2001. You can search by keyword or Webcite. (If you use the Casemaker case law product for Ohio State Bar members, you may already have seen the Webcite created by the Ohio courts: 2005-Ohio-1002.) The Reporter's site has a lot of value added to the search results, with short summaries of topics and issues listed with the date of decision, case name, and Webcite.

The Ohio Courts of Appeals are a bit more challenging. All published appellate decisions are available on the Reporter's site but some courts release additional, unpublished or uncitable opinions. For example, the First District releases judgment entries on Wednesdays on their own site (http://www.hamilton-co.org/appealscourt/decisions_date.html). Their published opinions are released both on their own site and on the Reporters site, on Fridays.

Other States Opinions

Ohio has altered its published/unpublished rules but Kentucky has not. You can still find recent Kentucky Supreme Court and Courts of Appeals opinions online, but you have to be a bit circumspect in determining which you can use. (http://www.kycourts.net/Supreme/SC_Opinions.shtm) Indiana's judiciary also provides online access to recent Supreme

Online Opinions, cont'd on page 7

New Titles at the Law Library

- *The ABCs of Nonprofits*. American Bar Association, 2005.
- Cynthia H. Cwik, et al. *Scientific Evidence Review: Admissibility and Use of Expert Evidence in the Courtroom*. Chicago, IL: Section of Science and Technology, American Bar Association, 2003.
- Betty Montgomery. *Ohio Township Handbook*. Columbus, OH: Auditor of State, 2005.
- *Baldwin's Ohio Tax Laws and Rules*. Cleveland, OH: Thomson/West, 2005.
- Steven J. Eagle. *Regulatory Takings*. Newark, NJ: Lexis Nexis, 2005.
- Peter A. Glicklich, et al. *U.S. Taxation of Shipping and Air Transport Activities*. Washington DC: Tax Management, Inc., 2005.
- Alan N. Resnick and Harry J. Sommer. *The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005: With Analysis*. Newark, NJ: Lexis Nexis/Matthew Bender, 2005.
- *Residential Code of Ohio for One, Two and Three Family Dwellings*. Falls Church, VA: International Code Council, 2004.
- *An Introductory Resource Guide for Implementing the Health Insurance Portability and Accountability Act (HIPAA) Security Act*. Gaithersburg, MD: National Institute of Standards and Technology, 2005.

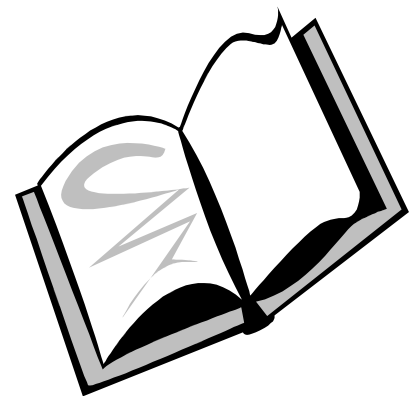
Did You Know Our Members Receive:

- ❖ Free Westlaw Access in the Library
- ❖ Free Internet Access in the Library
- ❖ Free Access to CD-ROM law libraries and forms
- ❖ Free Reference Assistance, in person, by phone, or via e-mail
- ❖ Extensive Ohio and Federal primary law collection in print and electronic formats
- ❖ Practice materials, including:
 - handbooks
 - rules
 - treatises
 - jury verdicts
- ❖ Borrowing privileges to nearly all materials in the Library's collection, including CLE materials.

Law Library Now Offers Table of Contents Service for Journals

The Law Library subscribes to hundreds of journals, newsletters, and newspapers. We monitor incoming tables of contents and select certain articles as being of specific interest to our members. This resource is updated each week with new articles, each of which the Library has available in full text. You may even request an article for document deliver by clicking the appropriate link located under the category heading.

Please visit <http://www.hamilton-co.org/cinlawlib/intra/toc.asp> and browse our journal selection.



Will-Contests, cont'd from page 1

action at the date of * * * failure has expired, the plaintiff * * * may commence a new action within one year after such date." Practically speaking, the saving statute allows a plaintiff to voluntarily dismiss his or her case and re-file it within one year of the dismissal, so long as at the time of the dismissal the statute of limitations for that type of action had already expired.

The Supreme Court pointed out several of its earlier decisions required that it find the saving statute was applicable to will-contest actions. Specifically, the Court had already held that the saving statute applied to suits against the state in the Court of Claims (*Reese v. Ohio State Univ. Hosp.* (1983), 6 Ohio St.3d 162, 6 OBR 221, 451 N.E.2d 1196); that it applied to workers' compensation complaints filed in the common pleas court (*Lewis v. Connor* (1985), 21 Ohio St.3d 1, 21 OBR 266, 487 N.E.2d 285); and that it applied to age-discrimination actions brought under Ohio statutory law (*Osborne v. AK Steel/Armco Steel Co.*, 96 Ohio St.3d 368, 2002-Ohio-4846, 775 N.E.2d 483). The Court agreed with the analysis of the Tenth District Court of Appeals, which relied on the rationale of *Osborne* "when a cause of action is a creature of statute and that statute contains a specific limitations period, the savings [sic] statute nevertheless applies."

Justices Lundberg Stratton and O'Donnell dissented, with Justice O'Donnell writing a fairly lengthy opinion in which he expressed his concern that the majority failed to appreciate the broad impact the decision would have on the administration of estates in Ohio. Justice O'Donnell pointed out that until the instant decision, it was well-settled under Ohio law that the saving statute was not applicable to will-contest actions.

Justice O'Donnell further pointed out the purpose of the short statute of limitations for filing a will-contest (currently three months from the filing of the certificate that a will has been admitted to probate) was to promote speedy estate administration. Applying the saving statute to such actions would only delay estate administration.

Moreover, he posited, while the dismissal of other types of actions leaves nothing pending, the dismissal of a will-contest action does not stay the administration of an estate; instead, such administration continues. Thus, "it is entirely conceivable that an estate could be closed and a final account filed during the one-year period of the running of the saving statute. Such a circumstance could result in litigation to recover estate assets that had been distributed by administrators or executors or probate courts or lead to long delays in the ability to transfer real estate or bank accounts due to potential liability or future claims[.]" Justice O'Donnell predicted that the legislature would eventually "act to blunt the impact of the majority opinion," but only after it became aware of the problems created by the decision.

Time will tell whether the legislature agrees with the majority or Justice O'Donnell. In the meantime, anyone on the defending end of a will-contest action should be aware that if the plaintiff dismisses the action after the statute of limitations has expired, he or she could re-file it up to one year later. It may be wise for beneficiaries not to spend any more of their devises under the will than they can afford to pay back in the event such a will-contest action is successful.

Pharming's Malicious Harvest

Tom Enneking

Computer users are familiar with the almost constant warnings about spam, viruses, spyware, and other scams that we may encounter in cyberspace. The latest threat, pharming, may potentially affect a multitude of victims.

Pharming is similar to phishing, the sending of counterfeit emails, allegedly from a bank or other online business, by criminals who hope to defraud the unwary. Pharmers, on the other hand, redirect as many users as possible from legitimate commercial websites they had intended to visit and lead them to authentic-looking, but phony ones. These fake websites, to which victims are sent without their knowledge or consent, will no doubt resemble a genuine site. When users enter their login names, passwords, and other sensitive information, criminals capture that data.

Pharmers may accomplish this by planting malicious software in a user's own computer, or they poison the servers that direct traffic on the Internet. Even if you type in the correct address of a website, the software may send you to a bogus one.

Criminals rely on the fact that the word address you use, such as <http://www.fidelity.com>, is connected to a numerical address (Fidelity.com's is 155.199.128.238). One method of pharming replaces a business's numerical address with a fraudulent one.

What can you do to protect yourself? First, we must acknowledge that the Internet was designed for the quick and easy sharing of information, not secure financial transactions. Second, when conducting financial transactions, the address in the address bar should begin **https**, not **http**. On a secured website, the lower right corner of the browser



should display a padlock signifying a secure website. Third, you could run authentication software, such as that from Netcraft, which will alert users to the true physical location of a website's host. If you local bank's website appears to be hosted in Nigeria, you may want to think twice before entering your login and password. Fourth, you should keep your antivirus and antispyware programs updated and running at all times. Finally, financial institutions can do much to protect their users. For instance, they can continually check the security of their websites. Many are experimenting with "multi-factor authentication" logins that include such things as single-use passwords and automatic telephone call-backs confirming transactions. By employing such tactics, you may significantly reduce the volume of information that these pharmers harvest.

RIA Checkpoint Training

TAX ATTORNEYS

RIA *Checkpoint* offers a variety of user tools on tax law, including expert analysis and practitioner insights, cases, rulings, journals, newsletters and treatises provided by publishers Warren, Gorham and Lamont.

The Law Library is offering a free training session on RIA *Checkpoint*, on July 22 at 2:00PM. Please call Madonna Stoneking at 946-5300 to register.

24 Hour Journal and Opinion Access!

The Library has negotiated a subscription to the HeinOnline service, from the W.S. Hein Company, that provides Association members with access to over 200 journals, US Supreme Court and Attorney General Opinions, treaties, and the Federal Register going back to inception. Not only is this resource available for free when you are visiting the Library, many of our members can access the resource **outside** the Library after hours. If you are currently paying for journal access through another source, this may be an opportunity to use your Association membership for substantial savings.

The Catch

The Library tries to arrange the best deal it can to gain as much coverage as possible, for the Library and the membership. For example, due to restrictions with Thomson-West and Westlaw, we are restricted by the publisher not only to the Library but to 4 specific computers.

The Heinonline agreement provides **free 24 hour access** to all of our members who are:

- solos or who are in a firm with 50 or

fewer attorneys and

- **all** attorneys in the firm are Association members (a firm membership)

Firms with more than 50 lawyers are not left out, though. HeinOnline is offering a discounted rate on its journal, treaties, and other databases that is only available to our members. Many of our large firms already use HeinOnline and your membership dues can help you cut your subscription costs. Have your firm librarian contact the Library for more information and a pricing schedule.

How Does It Work

Each Association member has a borrower number. If you have a recent paper mailing (newsletter, postcard, invoice) from the Library, your number is printed on your address label. Go to <http://www.hamilton-co.org/cinlawlib/intra/heinlogin.asp> and type in your last name and borrower number in the place provided. Click the submit button and you will be authenticated onto the HeinOnline databases. There is no cost for the time you spend using the service, nor for printing documents from it.

If you have questions about the service or how to use it, please call our reference desk at 946-5303. If you don't know your borrower number, call 946-5300 and anyone on the Library staff can assist you.

Online Opinions, cont'd from p. 3

Court, Appeals Court, and Tax court opinions.
(<http://www.in.gov/judiciary/opinions/search.html>)

Opinion Assistance

The Law Library sends a daily e-mail

summarizing opinions released in the Ohio Supreme Court, First District Court of Appeals, and U.S. Sixth Circuit Court of Appeals. If you would like to subscribe to this member benefit, visit our Web site and let us know you would like the case law update:
<http://www.hamilton-co.org/cinlawlib/interact/list.html>.

Law Library 2005 Annual Meeting

Come for the CLE . . .

Judge Mark Painter of the Ohio First District Court of Appeals will give a CLE on Legal Writing as part of the Cincinnati Law Library's 2005 Annual Meeting. Attendees will receive a free copy of Judge Painter's The Legal Writer, in the just-published third edition. The CLE will be held at the Law Library on **June 2, from 11am to noon**. Members are \$25 and non-members are \$50.

Reserve your place today! Call Madonna @ 946-5300 or register online at <http://www.hamilton-co.org/cinlawlib/cle/>.

Stay for the Meeting!

The Cincinnati Law Library Association is YOUR practice resource. If you have always wanted to know more about the Library, how it runs, and to meet the trustees who comprise the Board, you are cordially invited to attend the Library's annual business meeting. Hear the annual Law Librarian's report and participate in the triennial election of trustees. The meeting is open to all members, and will be held in the Law Library on **June 2, from noon to 1pm**.

**Cincinnati Law Library Association
Hamilton County Courthouse
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Cincinnati, OH 45202**

ADDRESS CORRECTION REQUESTED

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JUNE 2005 LIBRARY NEWSLETTER