

SUPREME COURT OF OHIO

Tomasik v. Tomasik

111 Ohio St. 3d 481 (2006) · Decided December 6, 2006

SUMMARY

The Ohio Supreme Court held that former R.C. 2107.76 unambiguously imposed a three-month limitations period for will contests only on persons who were required to receive notice of the will’s admission to probate under R.C. 2107.19. Because the appellees other than Cecilia Tomasik were not entitled to such notice, the statute did not bar their will contest, and the court affirmed the appellate court’s judgment.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Pfeifer, J.; Moyer, C.J.; Resnick, J.; Lundberg Stratton, J.; Harsha, J.; Lanzinger, J.; O'Donnell, J.
JURISDICTION	Ohio
DECIDED	December 6, 2006
DISPOSITION	affirmed
PROCEDURAL POSTURE	Discretionary appeal from the Ninth District Court of Appeals, which reversed the Summit County Probate Court's dismissal of a will contest as untimely.
STANDARD OF REVIEW	The court reviewed the interpretation and application of former R.C. 2107.76 de novo as a question of statutory interpretation.
PRECEDENTIAL VALUE	Published Ohio Supreme Court opinion; precedential
PARTIES	Tomasik appellants v. Gerard Tomasik, Martha Tomasik, Daniel Tomasik, Elaine Tomasik, Cecilia Tomasik

TOPICS

- will contests
- statutory interpretation
- plain meaning rule
- probate procedure
- appellate procedure

PRACTICE AREAS

- Probate
- Estate litigation
- Statutory interpretation
- Appellate procedure

QUESTIONS PRESENTED

1. Whether former R.C. 2107.76 imposed a three-month statute of limitations on will contests brought by persons who were not required to receive notice of the will's admission to probate under R.C. 2107.19.
2. Whether former R.C. 2107.76 was ambiguous because it did not state a limitations period for persons outside the R.C. 2107.19 notice class.

HOLDINGS

1. Former R.C. 2107.76 was unambiguous because it expressly established a limitations period only for persons who received or waived notice of the will's admission to probate under R.C. 2107.19.
2. Former R.C. 2107.76 did not apply to persons who were not required to receive notice under R.C. 2107.19. It therefore applied to none of the appellees except Cecilia Tomasik.

KEY QUOTATIONS

“If it is ambiguous, we must then interpret the statute to determine the General Assembly’s intent. If it is not ambiguous, then we need not interpret it; we must simply apply it.” (482)

“Former R.C. 2107.76 does not apply to persons who were not required to be given notice in accordance with R.C. 2107.19.” (482)

FACTUAL BACKGROUND

Hedwig M. Jurkoshek died in March 2002, and a certificate of service of notice of probate of her will was filed in Summit County Probate Court on May 2, 2003. Several nieces and nephews who had benefited under Jurkoshek's prior will filed a will contest, alleging that her latest will was executed after she lost testamentary capacity. Only Cecilia Tomasik was required to receive notice under R.C. 2107.19; the other appellees were not within the statutory notice class.

PROCEDURAL HISTORY

Appellees filed a will contest concerning Hedwig M. Jurkoshek's will. The Summit County Probate Court dismissed the contest under the three-month limitations period in former R.C. 2107.76. The Ninth District reversed, holding that the limitations period applied only to persons who were required to receive notice of the will's admission to probate. The Supreme Court of Ohio allowed a discretionary appeal and affirmed the appellate court.

DISPOSITION

affirmed

CASES CITED

- *Slengluff v. Weaver*, 66 Ohio St. 621, 64 N.E. 574 (1902)
- *State v. Hairston*, 101 Ohio St. 3d 308, 2004-Ohio-969, 804 N.E.2d 471

