

ORIGINAL

In the  
Supreme Court of Ohio

IN RE: ESTATE OF  
JOSEPHINE A. CENTORBI

: Case No. 2010-0597  
:  
:  
: On Appeal from the  
: Cuyahoga County  
: Court of Appeals,  
: Eighth Appellate District  
:  
:  
: Court of Appeals Case  
: No. 93501  
:

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**RESPONSE OF APPELLANT OHIO DEPARTMENT OF JOB AND FAMILY  
SERVICES TO MOTION TO STRIKE THE APPELLANT'S BRIEF**

---

ANTHONY CENTORBI (*pro se*)  
8502 Jeffries Avenue  
Cleveland, Ohio 44105

RACHEL A. KABB-EFFRON\* (0069557)  
Kenneth S. Kabb, Co., LPA  
21625 Chagrin Blvd., #240  
Beachwood, Ohio 44122  
216-991-5222  
216-991-5224 fax  
Rachel@kabblaw.com

JAMES C. BATES\* (0068238)  
Daniel P. Seink, Co., Ltd.  
8180 Compass South Center, Suite 109  
Brecksville, Ohio 44141  
440-546-0483  
440-546-4548 fax  
jrbates@ohioelderlaw.com

\*Counsel for Diane Nancy Fiorille

RICHARD CORDRAY (0038034)  
Attorney General of Ohio

BENJAMIN C. MIZER\* (0083089)  
Solicitor General

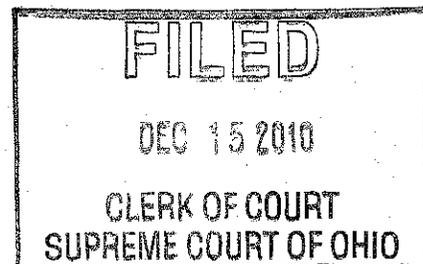
*\*Counsel of Record*

ELISABETH A. LONG (0084128)  
Deputy Solicitor

ROBERT J. BYRNE (0040299)  
Assistant Attorney General  
30 East Broad Street, 17th Floor  
Columbus, Ohio 43215

614-466-8980  
614-466-5087 fax  
benjamin.mizer@ohioattorneygeneral.gov

Counsel for Appellant  
Ohio Department of Job and Family Services



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## INTRODUCTION

The Court should deny Diane Nancy Fiorille's Motion to Strike Appellant's Brief for two reasons. First, Appellant Ohio Department of Job and Family Services ("ODJFS") properly served Anthony Centorbi, the only party with an actual interest in the resolution of this case, in compliance with Supreme Court Practice Rule 14.2. Like ODJFS here, the lower courts have served only Anthony Centorbi—and not Fiorille—with notice of their judgments since ODJFS first became involved in the case in December 2008.

Second, even if ODJFS should have served Fiorille, her motion is dilatory and, even if it were timely, it proposes an inappropriate remedy. Rather than striking ODJFS's notice of appeal and merits brief, the Court should give Fiorille an opportunity to brief the merits of her argument. Alternatively, if the Court chooses to dismiss ODJFS's appeal, then it should also vacate the lower court judgments because each of those proceedings suffered from the same alleged error that Fiorille identifies here.

**A. ODJFS properly served Anthony Centorbi, the only party with an actual interest in the resolution of this case.**

ODJFS properly served Anthony Centorbi with its notice of appeal and merits brief for two reasons. See Notice of Appeal, *In re Estate of Centorbi*, No. 2010-0597 (Apr. 6, 2010); Appellant's Brief on the Merits, *In re Estate of Centorbi*, No. 2010-0597 (Aug. 10, 2010). First, he is the only party with an actual interest in the resolution of this matter. Second, no judicial body—including the magistrate judge, the common pleas court, and the Eighth District Court of Appeals—has served Fiorille since the probate court closed Josephine Centorbi's estate in December 2007. ODJFS reasonably followed suit here.

This action arises from ODJFS's effort to reopen Josephine Centorbi's estate because the probate court relieved the estate from administration before ODJFS received notice, thereby

depriving ODJFS of its opportunity to pursue a Medicaid estate recovery claim. See *In re Estate of Centorbi* (8th Dist.), No. 93501, 2010-Ohio-442 (“App. Op.”), ¶ 1 (attached as Ex. 1). Josephine Centorbi died intestate, *id.* at ¶ 2, and Fiorille, her estate representative, applied to relieve the estate from administration ten months later, *id.* at ¶ 3. Fiorille identified Josephine Centorbi’s son, Anthony Centorbi, as the only person “entitled to inherit under the statutes of descent and distribution.” Probate Form 1.0—Surviving Spouse, Children, Next of Kin, Legatees and Devisees, Josephine A. Centorbi, No. 2007 EST 0132168, (Dec. 21, 2007) (attached as Ex. 5). The probate court granted Fiorille’s application on December 21, 2007, and transferred all of Josephine Centorbi’s real property to Anthony Centorbi. Probate Form 12.1 Certificate of Transfer, Josephine A. Centorbi, No. 2007 EST 0132168 (Dec. 21, 2007) (attached as Ex. 6).

When the State learned of Centorbi’s estate—*after* the probate court had already relieved it from administration—it sought to reopen the estate. App. Op. at ¶¶ 4, 5. Because the estate had been closed, and the property distributed to a single individual—Anthony Centorbi—the State and the courts properly served only Anthony Centorbi from that point forward. In fact, the magistrate’s decision denying ODJFS’s initial “Application to Vacate Order Releasing Assets from Administration” specifically analyzed the question of service and concluded that the State had given proper notice:

Movant attempted to notify decedent’s next-of-kin, Anthony Centorbi, by certified mail. The certified mail notice was not claimed by Centorbi; however, Movant also notified Centorbi by ordinary mail on March 3, 2009. Thus, notice to the next-of-kin was given as is required pursuant to law.

Magistrate’s Decision, *In re Estate of Centorbi*, No. 2007 EST 132168 (Apr. 10, 2009) (“Magis. Dec.”) at 1 (attached as Ex. 4).

Anthony Centorbi and ODJFS have been the only two parties identified in this action since the estate was closed. The magistrate denied ODJFS's application to vacate the probate court order and mailed copies to both the State and Anthony Centorbi. *Id.* at 3, 5. The common pleas court then adopted the magistrate's decision and ordered the clerk to "serve upon all parties notice of this judgment and date of entry." Judgment Entry, *In re Centorbi*, No. 2007 EST 0132168 (June 3, 2009) at 4 (attached as Ex. 3). The clerk sent notice to the State and Anthony Centorbi. *Id.* And, on appeal, the Eighth District served only the State and Anthony Centorbi with copies of its judgment. See Docket, *In re: Centorbi*, No. CA-09-093501 (attached as Ex. 2).

As the magistrate judge, common pleas court, and appeals court all correctly recognized, Anthony Centorbi is the only party with an active interest in the outcome of this appeal. Accordingly, ODJFS did not err by failing to serve Fiorille.

**B. Even if ODJFS should have served Fiorille, the Court should not grant Fiorille's motion to strike ODJFS's brief.**

Even if ODJFS should have served Fiorille in this action, however, striking ODJFS's brief is not an appropriate remedy under the circumstances.

First, even if Fiorille is correct, her motion is dilatory. Fiorille's counsel filed an appearance on her behalf on October 22, 2010. Notice of Appearance, *In re Estate of Centorbi*, No. 2010-0597 (Oct. 22, 2010). Several weeks later, the Court scheduled oral argument for February 15, 2010. Oral Argument Scheduled, *In re Estate of Centorbi*, No. 2010-0597 (Nov. 19, 2010). Nearly seven weeks after filing a notice of appearance (and nearly three weeks after the Court scheduled oral argument), Fiorille's counsel filed a two and one-quarter page motion to strike ODJFS's brief. Motion to Strike the Appellant's Brief, *In re Estate of Centorbi*, No. 2010-0597 (Dec. 9, 2010). Fiorille's motion devotes less than one page to her legal argument and offers a single supporting citation. *Id.* at 2. This brief motion certainly could have been drafted

more expeditiously after counsel filed their appearance, and before the Court scheduled oral argument. See *State v. Widner* (1981), 68 Ohio St. 2d 188, 191 (“[T]he public has an interest in the prompt and efficient dispatch of justice.”).

Second, even if Fiorille has identified an error that merits correction, she bypasses the most reasonable request for relief—additional time to file a merits brief and a new oral argument date—and instead seeks dismissal of the entire appeal. Dismissal would be excessive under the circumstances. The State’s alleged error reasonably followed the path taken by *three* judicial bodies. Moreover, Fiorille did not timely seek relief. She did not file her motion until almost seven weeks after her counsel entered an appearance, during which interval the Court scheduled oral argument. At most, the Court should give Fiorille an opportunity to articulate the merits of her position.

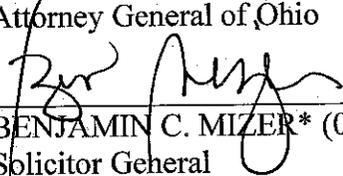
Third, the Court should not dismiss ODJFS’s appeal—which the Court accepted because the case implicates a matter of public and great general interest—unless it also vacates the lower courts’ judgments. If the Court decides to dismiss the State’s appeal, then it cannot leave the lower courts’ judgments intact because the lower court proceedings all suffered from the same service error alleged here. This outcome would be in keeping with Fiorille’s alternative request for relief: “[T]he Court should dismiss the Appellant’s case altogether since service was flawed back to the Eighth District Court of Appeals.” *Id.* at 3.

## CONCLUSION

For the foregoing reasons, this Court should deny the Motion to Strike the Appellant's brief. If the Court decides to grant Fiorille relief, however, it should either allow Fiorille additional time to brief the merits of this case or vacate the lower court's judgment.

Respectfully submitted,

RICHARD CORDRAY (0038034)  
Attorney General of Ohio

  
BENJAMIN C. MIZER\* (0083089)  
Solicitor General

*\*Counsel of Record*

ELISABETH A. LONG (0084128)  
Deputy Solicitor

ROBERT J. BYRNE (0040299)

Assistant Attorney General

30 East Broad Street, 17th Floor

Columbus, Ohio 43215

614-466-8980

614-466-5087 fax

[benjamin.mizer@ohioattorneygeneral.gov](mailto:benjamin.mizer@ohioattorneygeneral.gov)

Counsel for Appellant

Ohio Department of Job and Family Services

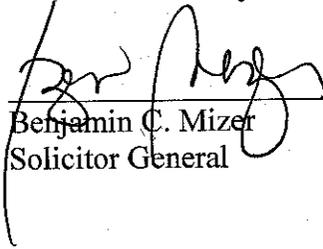
## CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Response of Appellant Ohio Department of Job and Family Services to Motion to Strike Appellant's Brief was served by U.S. mail this 15th day of December, 2010, upon the following:

Anthony Centorbi (*pro se*)  
8502 Jeffries Avenue  
Cleveland, Ohio 44105

Rachel A. Kabb-Effron  
Kenneth S. Kabb, Co., LPA  
21625 Chagrin Blvd., #240  
Beachwood, Ohio 44122

James C. Bates  
Daniel P. Seink, Co., Ltd.  
8180 Compass South Center, Suite 109  
Brecksville, Ohio 44141



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Benjamin C. Mizer  
Solicitor General

# APPENDIX

FEB 23 2010

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 93501

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**IN RE: THE ESTATE OF  
JOSEPHINE A. CENTORBI**

[APPEAL BY THE STATE OF OHIO  
DEPARTMENT OF JOB AND FAMILY SERVICES]

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**JUDGMENT:  
AFFIRMED**

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Civil Appeal from the Cuyahoga  
County Court of Common Pleas - Probate Division  
Case No. 2007 EST1032168

**BEFORE:** Kilbane, J., Gallagher, A.J., and McMonagle, J.

**RELEASED:** February 11, 2010

**JOURNALIZED:** FEB 23 2010



VOL 0699 930541



**ATTORNEYS FOR APPELLANT**

Richard Cordray  
Ohio Attorney General  
Robert J. Byrne  
Assistant Attorney General  
Collections Enforcement  
150 E. Gay Street, 21st Floor  
Columbus, Ohio 43215-3130

Alan H. Weinberg  
Sara M. Donnersbach  
Special Counsel for Ohio Attorney General  
Weltman, Weinberg & Reis Co., L.P.A.  
323 Lakeside Avenue, West  
Suite 200  
Cleveland, Ohio 44113

FILED AND JOURNALIZED  
PER APP.R. 22(C)

FEB 22 2010  
GERALD E. FUERST  
CLERK OF THE COURT OF APPEALS  
BY [Signature] DEP.

**APPELLEE**

Anthony Centorbi  
8502 Jeffries Avenue  
Cleveland, Ohio 44105

ANNOUNCEMENT OF DECISION  
PER APP.R. 22(B) AND 26(A)  
RECEIVED

FEB 11 2010

GERALD E. FUERST  
CLERK OF THE COURT OF APPEALS  
BY [Signature] DEP.

CA09093501

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

COPIES MAILED TO COUNSEL FOR APPELLANT AND APPELLEE

MARY EILEEN KILBANE, J.:

This case came to be heard upon the accelerated calendar pursuant to App.R. 11.1 and Loc.R. 11.1. Appellant, the state of Ohio ("the State"), appeals the trial court's decision that denied the State's application to reopen an estate in order to file its claim for Medicaid reimbursement. After a review of the record and applicable law, we affirm.

The following facts give rise to this appeal.

Josephine Centorbi ("decedent") died intestate on February 12, 2007. On December 21, 2007, decedent's sister, Diane Nancy Fiorille, filed an application to relieve the estate from administration. The trial court granted the application the same day.

On December 11, 2008, the State filed an application to vacate the final accounting and reopen the estate. The trial court scheduled a hearing for January 20, 2009. The State failed to appear and the petition was dismissed.

On January 27, 2009, the State filed a second application to vacate the order releasing assets from administration.<sup>1</sup> On March 30, 2009, a magistrate held a hearing on the application. On April 10, 2009, the magistrate issued a decision denying the application after concluding that pursuant to R.C. 2117.061

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<sup>1</sup>Although titled slightly different than the previously filed application, both applications were nearly identical and cited the same case law.

the time for the State to file its claim against the estate had expired.

On April 17, 2009, the State filed objections to the magistrate's decision. The State maintained that the statute of limitations outlined in R.C. 2117.061 did not apply. On June 3, 2009, the trial court overruled the objections and adopted the magistrate's decision.

The State appealed, asserting one assignment of error for our review.

**“WHETHER THE PROBATE COURT MAGISTRATE COMMITTED REVERSIBLE ERROR BY DENYING APPELLANT’S OBJECTIONS TO MAGISTRATE’S DECISION WHICH DENIED APPELLANT’S APPLICATION TO VACATE FINAL ACCOUNTING AND REOPEN ESTATE BASED UPON ITS INTERPRETATION OF OHIO REVISED CODE 2117.061.”**

The State argues that the one-year statute of limitations to file a claim against an estate pursuant to R.C. 2117.061 did not begin to run and, in the alternative, if the time has now expired, the one-year statute of limitations does not apply. However, after a review of the applicable law, we disagree.

The State alleges that the decedent was a Medicaid recipient. The individual responsible for an estate must, pursuant to R.C. 2117.061(B)(3), complete a Medicaid estate recovery form within 30 days of filing an application to relieve the estate from administration. On the application, to relieve the estate from administration, the applicant must check the box that indicates the “[d]ecedent was 55 years of age or older at the time of death and was a recipient of medical assistance under Chapter 5111 of the Revised Code.” This language

may have been confusing to the decedent's sister who filed the application without an attorney. It is undisputed that the box was not checked and that the Medicaid estate recovery form was never completed.

The State argues that because the form was never completed, the statute of limitations has not been triggered. However, this interpretation contradicts the clear language of the statute. "When the language of a statute is plain and unambiguous and conveys a clear and definite meaning," this court does not need to interpret the statute. *Symmes Twp. Bd. of Trustees v. Smyth*, 87 Ohio St.3d 549, 553, 2000-Ohio-470, 721 N.E.2d 1057, citing *Meeks v. Papadopoulos* (1980), 62 Ohio St.2d 187, 190, 404 N.E.2d 159.

The pertinent portion of R.C. 2117.061(E) in effect at the time of the decedent's death, detailing the time limitations for filing a claim against an estate, states:

**"The administrator of the medicaid estate recovery program shall present a claim for estate recovery to the person responsible for the estate of the decedent or the person's legal representative not later than ninety days after the date on which the medicaid estate recovery reporting form is received under division (B) of this section or one year after the decedent's death, whichever is later."**

The language of R.C. 2117.061(E) is clear in its intent to impose a maximum period of one year from the decedent's death to file a claim. If the legislature had intended the completion and submission of the Medicaid estate

recovery reporting form to be a prerequisite to filing a claim, the legislature would not have specifically used the language "or one year after the decedent's death, whichever is later." (Emphasis added.) Therefore, this argument is without merit.

The decedent died on February 12, 2007. The State did not file its first application to reopen the estate until December 11, 2008, nearly ten months beyond the one-year statute of limitations. The application was dismissed by the trial court. The State filed its second application to reopen the estate on January 27, 2009, nearly two years after the decedent's death, and almost a year beyond the applicable statute of limitations. Clearly, the application was not timely filed.

The State further argues that even if the one-year statute of limitations applied, despite the Medicaid estate recovery form not being completed, statutes of limitation are inapplicable to the State unless the statute specifically provides that the time limitation applies to the State.

The State urges this court to adopt the rationale in a factually similar Ninth District case, *Ohio Dept. of Human Serv. v. Eastman* (2001), 145 Ohio App.3d 369, 763 N.E.2d 193. In *Eastman*, the State did not bring its claim for Medicaid reimbursement against the estate for more than a year after the decedent's death. The *Eastman* court analyzed R.C. 2117.06(B), a broad statute

governing virtually all creditor claims against an estate.

As the basis for its decision, *Eastman* relied on the well-established principle outlined in *Ohio Dept. of Transp. v. Sullivan* (1988), 38 Ohio St.3d 137, 140, 527 N.E.2d 798, which held that the generally worded statutes of limitations do not apply as a bar against the State. *Sullivan* emphasized the protection of government assets as the reason for this rule.

We find the State's reliance on *Eastman* misplaced. In *Eastman*, R.C. 2117.06(B) was the statute at issue and stated that "[a]ll claims shall be presented within one year after the death of the decedent." The statute clearly failed to specifically limit the State's time to file a claim; therefore, pursuant to *Sullivan*, as a generally worded statute it was inapplicable to the State.

However, the statute at issue in the instant case is the version of R.C. 2117.061(E) in effect at the time of the decedent's death in 2007, which unlike R.C. 2117.06(B) at issue in *Eastman*, does not provide a general one-year time limitation; rather, it provides a one-year time limitation specifically for the "administrator of the Medicaid estate recovery program." The goal of the statutory scheme governing claims against an estate is to efficiently and expeditiously resolve these issues. *Reid v. Premier Health Care Serv.* (Mar. 19, 1999), Montgomery App. No. 17437. The legislature addressed this issue when it specifically imposed a one-year statute of limitations for Medicaid claims.

Therefore, the State's sole assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court, Probate Division, to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

  
\_\_\_\_\_  
MARY EILEEN KILBANE, JUDGE

CHRISTINE T. McMONAGLE, J., CONCURS;  
SEAN C. GALLAGHER, A.J., DISSENTS (SEE SEPARATE DISSENTING  
OPINION)

SEAN C. GALLAGHER, A.J., DISSENTING:

I respectfully dissent from the majority view that R.C. 2117.061(E) clearly imposes a maximum period of one year from the date of decedent's death for the State to file a claim against the estate. The majority view would allow a representative of a decedent's estate to intentionally not fill out a Medicaid estate recovery form, and by failing to do so, retain an undeserved windfall upon the expiration of one year from the date of decedent's death.

It is clear that R.C. 2117.061(E) is written in the alternative. A claim must be made within 90 days from the date a completed form is received *OR* within one year following decedent's death, with the deciding option being "whichever is later."

Because a completed Medicaid estate recovery form was never received by the State, the provision requiring a claim within one year of decedent's death resolves only half the puzzle. In order for the 90-day clock to run on the first option, the form must actually be received. Since it was not, I cannot find that the lapse of one year from the date of decedent's death alone satisfies the requirement that this option is the one that occurred later.

**EIGHTH DISTRICT COURT OF APPEALS**

DATE: 6/29/2010  
TIME: 12:26 PM

APPEARANCE DOCKET

Case No: CA-09-093501

IN RE: EST OF

VS

JOSEPHINE A. CENTORBI

Filing Date: 06/19/2009

Filing Cd:27	OTHER	<input type="checkbox"/>	Arbitration
Judge:N/A		<input type="checkbox"/>	Mediation
Prior Judge:N/A		<input type="checkbox"/>	Settlement
Magistrate:N/A		<input checked="" type="checkbox"/>	Notes
Panel Chair:N/A		<input checked="" type="checkbox"/>	Appealed
Status:A			
Jury Req:N/A			
Class:			
Prayer Amt:N/A			

<b>Disposition:</b>	<b>Date:</b>
NEWLY FILED	06/19/2009
RECORD FILED	06/23/2009
APPELLANT BRIEF FILED	08/03/2009
DECISION RELEASED	02/24/2010
APPEALED TO OHIO SUPREME COURT	04/09/2010

Next Action:  
Date/Time:

-----File Location -----

Name: PEND.FILE  
Date: 06/19/2009

A	1	OHIO DEPARTMENT OF JOB AND FAMILY SERV	0007708	WEINBERG/ALAN/H LAKESIDE PLACE SUITE 200 323 LAKESIDE AVENUE, WEST CLEVELAND, OH 44113-0000	(216)	363-4110
			0069672	DONNERSBACH/SARA/M. LAKESIDE PLACE, SUITE 200 323 LAKESIDE AVE, WEST CLEVELAND, OH 44113-0000	(216)	685-1039
			0040299	BYRNE/ROBERT/J COLLECTIONS ENFORCEMENT SECTION 150 EAST GAY STREET ,21ST FLOOR COLUMBUS, OH 43215-0000	(614)	466-8459
E	1	Service: CENTORBI, ANTHONY  8502 JEFFRIES AVENUE CLEVELAND, OH 44105-0000	9999999	SE/PRO/		

Service:

Type	- Docket - Code	Party	Date	Description	Cost Amount
EV	121	A 1	6/19/2009	NOTICE OF APPEAL FILED FROM COMMON PLEAS COURT,PROBATE DIVISION, CASE # 2007 EST 0132168 WITH A JOURNAL ENTRY,PRAECIPE,DOCKETING STATEMENT AND A COPY OF THE DOCKET SHEET.	
SF	INIT		6/19/2009	CASE INITIATED	
SF	RECT	A 1	6/19/2009	DEPOSIT AMOUNT PAID WELTMAN, WEINBERG & REIS CO., L.P.A.	125.00
SF	CASP	A 1	6/19/2009	COURT OF APPEALS SPECIAL PROJECTS	25.00
SF	LR	A 1	6/19/2009	LEGAL RESEARCH	3.00

**EXHIBIT 2**

## EIGHTH DISTRICT COURT OF APPEALS

PAGE: 2  
CMSR5143DATE: 6/29/2010  
TIME: 12:26 PM  
CASE: CA-09-093501

## APPEARANCE DOCKET

LN	LN	A	DATE	DESCRIPTION	AMOUNT
SF	LN	A 1	6/19/2009	LEGAL NEWS	10.00
SF	CM	A 1	6/19/2009	COMPUTER FEE	10.00
SF	CF	A 1	6/19/2009	CLERK'S FEE	25.00
EV	101	A 1	6/23/2009	ORIGINAL PAPERS FILED BY TRIAL COURT.	
NT	401	A 1	6/23/2009	RECORD ON APPEAL FILED AND NOTICE ISSUED TO ALL PARTIES.	
MO	301		7/16/2009	MOTION BY APPELLANT TO EXTEND TIME TO FILE ASSIGNMENTS OF ERROR AND BRIEF	
JE	201		7/21/2009	MOTION BY APPELLANT TO EXTEND TIME TO FILE ASSIGNMENTS OF ERROR AND BRIEF IS GRANTED TO AUGUST 7, 2009. NO FURTHER EXTENSION WILL BE GRANTED. THE APPEAL IS ON THE ACCELERATED DOCKET. VOL. 686 PG. 384. NOTICE ISSUED.	6.00
EV	102	A 1	8/03/2009	APPELLANT'S BRIEF FILED.	
MO	301		1/04/2010	NOTICE OF APPEARANCE OF SARA M. DONNERSBACH AS CO-COUNSEL FOR APPELLANT	
MO	301		1/04/2010	NOTICE OF APPEARANCE OF ROBERT BYRNE AS CO-COUNSEL FOR APPELLANT	
SR	201		2/11/2010	ANNOUNCEMENT OF COURT'S DECISION FILED (SEE APPELLATE RULE 26). COPIES MAILED COST TAXED	6.00
BL	A		2/22/2010	February 22, 2010: AFFIRMED.  MARY EILEEN KILBANE, J., AND CHRISTINE T. MCMONAGLE, J., CONCUR; SEAN C. GALLAGHER, A.J., DISSENTS (SEE SEPARATE DISSENTING OPINION). VOL. 699 PG. 541. NOTICE ISSUED.	
JE	JE		2/22/2010	February 22, 2010: AFFIRMED.  MARY EILEEN KILBANE, J., AND CHRISTINE T. MCMONAGLE, J., CONCUR; SEAN C. GALLAGHER, A.J., DISSENTS (SEE SEPARATE DISSENTING OPINION). VOL. 699 PG. 541. NOTICE ISSUED.	26.00
SF	502		3/01/2010	CERTIFIED COPY OF JOURNAL ENTRY BOOK 699 PAGE 541 ISSUED TO PROBATE DIVISION.	
EV	128		4/09/2010	OHIO SUPREME COURT CASE NUMBER 10-0597--NOTICE OF APPEAL TO THE SUPREME COURT OF OHIO FILED BY APPELLANT IN THE OSC ON APRIL 6, 2010	
JE	201		6/28/2010	OHIO SUPREME COURT CASE NO. 2010-0597. UPON CONSIDERATION OF THE JURISDICTIONAL MEMORANDA FILED IN THIS CASE, THE COURT ACCEPTS THE APPEAL. THE CLERK SHALL ISSUE AN ORDER FOR THE TRANSMITTAL OF THE RECORD FROM THE COURT OF APPEALS FOR CUYAHOGA COUNTY, AND THE PARTIES SHALL BRIEF THIS CASE IN ACCORDANCE WITH THE RULES OF PRACTICE OF THE SUPREME COURT OF OHIO. VOL. 706 PG. 939. NOTICE ISSUED.	6.00
JE	201		6/28/2010	SUPREME COURT OF OHIO SUPREME COURT NO. 2010-0597. ORDER TO CERTIFY RECORD TO THE SUPREME COURT OF OHIO GRANTED. VOL. 706 PG. 940. NOTICE ISSUED.	6.00

PROBATE COURT  
FILED  
JUN - 3. 2009  
CUYAHOGA COUNTY, O.

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO  
PROBATE DIVISION

IN RE: ESTATE OF  
JOSEPHINE A. CENTORBI

) CASE NO. 2007 EST 0132168  
)  
) JUDGE ANTHONY J. RUSSO  
)  
) JUDGMENT ENTRY  
)

This matter is before the Court on an Application to Vacate Order Releasing Assets From Administration filed on January 27, 2009 by Attorney Alan H. Weinberg, Special Counsel for the Ohio Attorney General.

A hearing was held on the Application before Magistrate Koenig on March 30, 2009. Notice was given as required by law. No transcript of the proceedings was taken. A Magistrate's Decision was issued on April 10, 2009 recommending that the Application be denied for the reason that under R.C. § 2117.061, the time period that the Administrator had to file a claim against the estate has expired.

The Court finds, after reviewing the entire file, including the Magistrate's Decision, and upon careful review of the objection filed by Attorney Weinberg, that the objection is not well-taken and should be overruled and the Application should be denied for the reasons that the Application is patently defective and that under O.R.C. § 2117.061, the time period the Claimant had to file its claim has expired.

The Court further finds that the findings and conclusions of the Magistrate should be adopted as the findings and conclusions of the Court.

As stated in the Application, Claimant brings the Application to Vacate "pursuant to Section 2113.03 of the Revised Code." R.C. § 2113.03, a statute addressing a release from

~~DUCKETED~~

EXHIBIT 3

administration, does not provide authority or procedure for an Application to Vacate. This Application, which petitions the Court to vacate or grant relief from a prior order, is a form of a Civil Rule 60(B) Motion For Relief From Judgment. Civ. R. 60(B) provides:

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(B); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (5) any other reason justifying relief from the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2) and (3) not more than one year after the judgment, order or proceeding was entered or taken. A motion under this subdivision (B) does not affect the finality of a judgment or suspend its operation.

"In order to prevail on a Civ. R. 60(B) motion for relief from judgment, the movant must establish that she has a meritorious defense or claim to present if relief is granted; that she is entitled to relief under one of the grounds stated in Civ. R. 60(B)(1) through (5); and that the motion is made within a reasonable time." *GTE Automatic Electric, Inc. v. ARC Industries, Inc.*, 47 Ohio St. 2d 146 (Ohio 1976). "A failure to establish any one of these three requirements will cause the motion to be overruled. *Rose Chevrolet, Inc. v. Adams*, 36 Ohio St. 3d 17 (Ohio 1988).

This Application, filed over a year after the decedent's death was not made in reasonable time as required by the Rule. Further, the Application fails to state any underlying facts, either within the Application or by supporting Affidavit, to justify relief. Finally, as granting the

Application would reverse this Court's previous decision in *Estate of Josephine A. Raia*, Case No. 2005 EST 0106474, where this Court issued an order finding that, if no notice is given to the Administrator of the State of Ohio Estate Recovery Program by the estate representative, the State of Ohio has no more than one year from the decedent's date of death to file a claim against the estate, Claimant has failed to establish a meritorious defense.

Even if this Court chose not to analyze this Application under Civ. R. 60(B), the Application must fail for the reason that it is not timely filed under O.R.C. § 2117.061. The version of O.R.C. § 2117.061(B) in effect at the time of the decedent's death required that the person responsible for the decedent's estate shall determine whether the decedent was a Medicaid recipient at any time during her life. If the decedent was known to be a Medicaid recipient, the person responsible for the estate is required to submit a Medicaid Estate Recovery reporting form to the administrator of the Medicaid Estate Recovery Program within 30 days of the filing of the issuance of letters testamentary, or the administration of the estate, or the filing of an application to release the estate from administration.

O.R.C. § 2117.061(E) provided that the Administrator of the Estate Recovery Program shall present the claim for recovery not later than 90 days after the date on which the Medicaid Estate Recovery reporting form is received under division (B) of the section, or one year after the decedent's death, whichever is later.

In this case, the person responsible for the estate, Diane Nancy Fiorille, indicated that no notice was required to be given to the Administrator of the Estate Recovery Program and therefore did not submit a reporting form. O.R.C. § 2117.061 does not define the criteria or steps required in making that determination. Since no form was filed, under O.R.C. § 2117.061(E), the

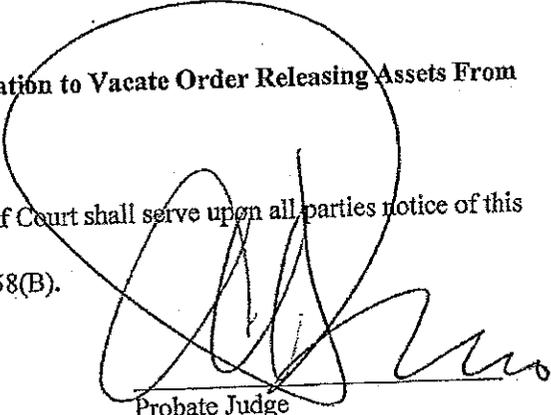
Administrator of the Estate Recovery Program had one year from the decedent's date of death to make the claim, or February 12, 2008. No claim was made. Therefore, the claim is barred.

As Magistrate Koenig set forth in her decision, and as this Court previously held in *Raia*, the purpose of the statute is to require the State of Ohio to make its claim no later than one year after the decedent's death. This is to facilitate prompt administration of the estate and to bar creditors who fail to file claims on time. The Ohio legislature clearly intended to give the Administrator of the Ohio Medicaid Estate Recovery Program deference by extending his/her time period to one year, versus the six months other creditors have to file claims. Providing the State of Ohio with an indefinite time period to file its claims contradicts the legislature's attempt to place a time restriction on the filing of claims by the State of Ohio. (Magistrate's Decision Page 4).

Therefore, it is **ORDERED** that the Magistrate's Decision is **ADOPTED** as the decision of this Court.

It is further **ORDERED** that the **Application to Vacate Order Releasing Assets From Administration is DENIED.**

It is further **ORDERED** that the Clerk of Court shall serve upon all parties notice of this judgment and date of entry pursuant to Civ. R. 58(B).



Probate Judge

JUDGE ANTHONY J. RUSSO

PROBATE COURT  
FILED  
APR 10 2009  
CUYAHOGA COUNTY, O.

IN THE COURT OF COMMON PLEAS  
PROBATE DIVISION  
CUYAHOGA COUNTY, OHIO

IN RE: ESTATE OF  
JOSEPHINE A. CENTORBI,  
DECEASED

)  
)  
)  
)  
)

CASE NO. 2007 EST 132168  
MAGISTRATE'S DECISION

APR 10 2009

This matter is before the Court on the **Application to Vacate Order Releasing Assets from Administration** filed by Alan H. Weinberg, Special Counsel for the State of Ohio Medicaid Estate Recovery Program.

Movant attempted to notify decedent's next-of-kin, Anthony Centorbi, by certified mail. The certified mail notice was not claimed by Centorbi; however, Movant also notified Centorbi by ordinary mail on March 3, 2009. Thus, notice to the next-of-kin was given as is required pursuant to law.

Present at the hearing was Sara Donnersbach, on behalf of Alan H. Weinberg. No transcript of the proceedings was taken.

ISSUE

Whether the *Entry Relieving Estate from Administration* dated December 21, 2007 should be vacated for the reason that the Applicant did not give notice of filing the *Application to Relieve Estate from Administration* to the Administrator of the State of Ohio Estate Recovery Program.

**EXHIBIT 4**

## LAW

The Movant uses outdated law applicable prior to September 26, 2003. Previously, creditors had one year from the decedent's date of death to file a claim against the estate. The State of Ohio apparently had no bar. However, **ORC Section 2117.06** was amended. Since September 26, 2003, creditors only have six months from the decedent's date of death to file a claim against the estate. Furthermore, the Ohio legislature specifically addressed claims brought by the Administrator of the State of Ohio Estate Recovery Program. In enacting **ORC Section 2117.061**, the procedure for notice to the Administrator of the Estate Recovery Program is set forth, as are the time limits for filing claims. The Administrator of the State of Ohio Estate Recovery Program has 90 days from the date he/she receives notice from the estate representative that the decedent was a Medicaid recipient or one year from the decedent's date of death, whichever is later.

## FACTS

Josephine Centorbi died on February 12, 2007. On December 21, 2007, Diane Nancy Fiorille, the decedent's sister, filed an *Application to Relieve Estate from Administration*. Ms. Fiorille informed the Court that notice to Estate Recovery was not required. The *Application* was granted the same date. The decedent's brother, Andy Russo, paid the funeral bill of \$7,730.18. He waived any reimbursement and consented to Ms. Fiorille receiving the intangible personal property. An Avon Products account valued at \$310.92 was distributed to Ms. Fiorille and the decedent's 1/4 interest in real estate valued at \$28,050.00 was transferred to the decedent's son, Anthony Centorbi.

The Movant filed the *Application to Vacate Order Releasing Assets from Administration* on January 27, 2009, noting that the decedent was a Medicaid recipient during her lifetime.

### CONCLUSION

It is the decision of this Magistrate that the *Application to Vacate Order Releasing Assets from Administration* be **DENIED** based on the reason that, under **ORC Section 2117.061**, the time period that the Administrator had to file a claim against the estate has expired.

The version of **ORC Section 2117.061(B)** in effect at the time of the decedent's death required that the person responsible for the decedent's estate shall determine whether the decedent was a Medicaid recipient at any time during her life. If the decedent was known to be a Medicaid recipient, the person responsible for the estate is required to submit a Medicaid Estate Recovery reporting form to the administrator of the Medicaid Estate Recovery Program within 30 days of the filing of the issuance of letters testamentary, or the administration of the estate, or the filing of an application to release the estate from administration.

**ORC Section 2117.061(E)** provided that the Administrator of the Estate Recovery Program shall present the claim for recovery not later than 90 days after the date on which the Medicaid Estate Recovery reporting form is received under division (B) of the section, or one year after the decedent's death, whichever is later.

In this case, the person responsible for the estate, Diane Nancy Fiorille, indicated that no notice was required to be given to the Administrator of the Estate

Recovery Program and therefore did not submit a reporting form. **ORC Section 2117.061** does not define the criteria or steps required in making that determination. Since no form was filed, under **ORC Section 2117.061(E)**, the Administrator of the Estate Recovery Program had one year from the decedent's date of death to make the claim, or February 12, 2008. No claim was made. Therefore, the claim is barred.

The purpose of the statute is to require the State of Ohio to make its claim no later than one year after the decedent's death. This is to facilitate prompt administration of the estate and to bar creditors who fail to file claims on time. The Ohio legislature clearly intended to give the Administrator of the Ohio Medicaid Estate Recovery Program deference by extending his/her time period to one year, versus the six months other creditors have to file claims. Providing the State of Ohio with an indefinite time period to file its claims contradicts the legislature's attempt to place a time restriction on the filing of claims the by the State of Ohio.

Finally, there is precedent for this decision. This Court issued an Order in *Estate of Josephine A. Raia, Case No. 2005 EST 0106474*, finding that, if no notice is given to the Administrator of the State of Ohio Estate Recovery Program by the estate representative, the State of Ohio has no more than one year from the decedent's date of death to file a claim against the estate. In *Raia*, this Court found that the State of Ohio was time barred from filing its claim.

**NOTICE TO COUNSEL OR PARTIES**

**Pursuant to Civil Rule 53(D)(3)(b)(iv), a party shall not assign as error on appeal the Court's adoption of any factual finding of fact or legal conclusion of a magistrate, whether or not specifically designated as a finding of fact or conclusion of law under Civ R. 53(D)(3)(a)(ii), unless that party has objected to that finding or conclusion as required by Civil Rule 53(D)(3)(b).**

Respectfully submitted,

  
Heidi M. Koenig  
Magistrate

APR 10 2009

Copy mailed to:

Alan H. Weinberg, Esq.  
Weltman, Weinberg & Reis Co., L.P.A.  
323 West Lakeside Avenue  
Suite #200  
Cleveland, OH 44113

Anthony Centorbi  
8502 Jeffries Avenue  
Cleveland, OH 44105

PROBATE COURT OF CUYAHOGA COUNTY, OHIO

JOHN J. DONNELLY, Presiding Judge

JOHN E. CORRIGAN, Judge

ESTATE OF JOSEPHINE A. CENTORBI, DECEASED

CASE NO. \_\_\_\_\_

**SURVIVING SPOUSE, CHILDREN, NEXT OF KIN,  
LEGATEES AND DEVISEES**

(R.C. 2105.06, 2106.13, 2107.19)

[Use with those applications or filings requiring some or all of the information in this form, for notice or other purposes. Update as required.]

The following are decedent's known surviving spouse, children, and the lineal descendants of deceased children. If none, the following are decedent's next of kin who are or would be entitled to inherit under the statutes of descent and distribution.

Name	Residence Address	Relationship to Decedent	Birthdate of Minor
N/A		Surviving Spouse	
ANTHONY CENTORBI	8502 Jeffries Ave Cleve. OHIO 44105	SON	

PROBATE COURT  
FILED  
DEC 21 2007  
CUYAHOGA COUNTY, O.

[Check whichever of the following is applicable]

- The surviving spouse is the natural or adoptive parent of all of the decedent's children.
- The surviving spouse is the natural or adoptive parent of at least one, but not all of decedent's children.
- The surviving spouse is not the natural or adoptive parent of any of the decedent's children.
- There are minor children of the decedent who are not the children of the surviving spouse.
- There are minor children of the decedent and no surviving spouse.

**EXHIBIT 5**

PROBATE COURT OF CUYAHOGA COUNTY, OHIO

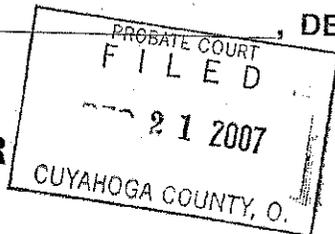
JOHN J. DONNELLY, Presiding Judge

JOHN E. CORRIGAN, Judge

ESTATE OF JOSEPHINE A. CENTORBI

, DECEASED

CASE NO. \_\_\_\_\_



CERTIFICATE OF TRANSFER

NO. 1

2007 EST 0132168  
Centorbi, Josephine A.

[Check one of the following]

Decedent died intestate.

Decedent died testate.

Decedent died on Feb. 12, 2007 owning the real property described in this certificate. The persons to whom such real property passed by devise, descent or election are as follows:

Name	Residence Address	Transferee's share of decedent's interest
<u>ANTHONY J. CENTORBI</u>	<u>8502 JEFFRIES AVE Cleveland, OH 44105</u>	<u>entire</u>



[Complete if applicable] The real property described in this certificate is subject to a charge of \$ \_\_\_\_\_ in favor of decedent's surviving spouse, \_\_\_\_\_ in respect of the unpaid balance of the specific monetary share which is part of the surviving spouse's total intestate share.