

OHIO CASE SUMMARIES

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Ohio case summaries will be provided on a continuing basis every Wednesday and Friday of each week (excluding holidays). Summaries include brief descriptions of cases decided in the past week by the Ohio Supreme Court and lower appellate courts on issues related to insurance law. To discontinue receiving this service, please call Sean McCormick at 937.224.3333 or send an email to smccormick@green-law.com.

Court of Appeals: Second Appellate District

Case Name: *Hummons v. Dayton*, 2009-Ohio-5398

Decided: October 9, 2009

Issue(s): Statute of Limitations and Nuisance

Summary of Opinion: On April 21, 2000, the City of Dayton (Dayton) was notified that the traffic lights at a local intersection were not operating correctly. It dispatched a crew to the scene, where it was discovered that electrical power was out. The crew posted stop signs at each corner of the intersection, and notified Dayton Power & Light (DP&L) that the power was out. Over the next several days, Dayton and DP&L would work to fix various power and electrical problems with the traffic lights.

The following morning, Michael Hummons was involved in a car accident with Doris Nixon at the aforementioned intersection. He filed a complaint for those injuries on April 22, 2002. In his complaint he named Nixon, Dayton, and all other Jane or John Does as defendants. After filing an amended complaint, without adding any additional defendants, Hummons filed a second amended complaint on May 8, 2004, adding DP&L as a defendant in place of John Doe.

The trial court granted DP&L's motion for summary judgment because Hummons had not timely commenced his action against the company. It also granted summary judgment in favor of Dayton because it did not have sufficient time to remedy the problem with the traffic lights. Hummons appealed.

First, the Second District Court of Appeals explained that a personal injury claim

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must be initiated within two years after the cause of action arises, which in this case was the day of the accident, April 22, 2000. The court concluded that in order for the amended complaint naming DP&L as a defendant to relate back to the filing of the original complaint Hummons was required to obtain service within one year of the filing of the original complaint. Therefore, since DP&L was not identified as a defendant until May 28, 2004, two years after the original complaint was filed, his claim against DP&L was time-barred by the statute of limitations.

Second, the court explained that although Dayton did have a duty to repair the malfunctioning traffic lights, it could not be held liable without a showing that it had actual or constructive notice that the light was not working properly. The court emphasized that electrical power had been restored to the area seventeen minutes before the accident took place, Dayton had acted prudently in placing stop signs at all corners of the intersection, and there was conflicting evidence as to whether the lights were operating properly at the time of the accident.

In conclusion, the court held that Dayton did not have actual or constructive notice that the traffic lights had once again failed to work properly. Moreover, it held that even if Dayton did have notice, the twenty-five minute window that existed to repair the lights before the accident occurred was insufficient for it to fix the problem as a matter of law.

The judgment was affirmed.

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