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Civil Procedure--Verification of the Petition

David G. Clark

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Recent Decisions

CIVIL PROCEDURE — VERIFICATION OF THE PETITION

Hunt v. Rohrbaugh Enterprises, Inc., 171 Ohio St. 92, 168 N.E.2d 299 (1960)

The attorneys for plaintiff filed an unverified petition for damages for personal injuries. After the statute of limitations had run on plaintiff's cause of action, the defendants filed a motion to set aside the service and return of the summons issued on the petition. The defendants contended that the petition was void (because it had not been verified as required by statute¹) and, therefore, no summons could be issued on it. The court granted the defendant's motion, and overruled a motion by the plaintiff to amend the petition by adding a verification. The court of appeals affirmed this judgment. As a result, plaintiff was left without a cause of action as the statute of limitations barred him from filing another petition.

The Ohio Supreme Court certified the appellate court record and examined the issue of whether an unverified petition may be amended by the addition of a verification of the pleaded facts after the statute of limitations has run.² This was a question of first impression in that court.

In reaching its decision, the court first considered whether the lack of a verification made the petition merely defective or a nullity. All prior Ohio lower court cases deciding this question had held that an unverified petition was a nullity.³ This position was rejected by a majority of the court who analogized their decision to the holding in *Irwin v. Bank of Bellefontaine*.⁴ In that case the court did not consider an appeal bond a nullity when it did not meet a statutory requirement. Therefore, the court in the present case held it should not consider a petition a nullity when it does not meet the statutory requirement of verification.

Having established that an unverified petition is merely defective, the court considered whether the defect could be corrected. In the past, amendments had been permitted to remedy similar defects in cases involving a defective appeal bond⁵ and an unsigned petition in error.⁶ By

1. OHIO REV. CODE § 2309.46.

2. *Hunt v. Rohrbaugh Enterprises, Inc.*, 171 Ohio St. 92, 168 N.E.2d 299 (1960).

3. *Sellers v. Williams*, 105 Ohio App. 332, 152 N.E.2d 299 (1957); *Boyles v. Hoyt*, 2 Ohio Dec. Reprint 376 (Dist. Ct. 1860); *Stevens v. White*, 2 Ohio Dec. Reprint 107 (C.P. 1859). *But see*, *Dunaway v. Torline*, 90 Ohio App. 516, 105 N.E.2d 75 (1951) (dictum); *Meade v. Thorne*, 2 Ohio Dec. Reprint 289 (C.P. 1859) (dictum).

4. 6 Ohio St. 81 (1856).

5. *Ibid.*

6. *Cincinnati, Hamilton & Dayton Ry. v. Bailey*, 70 Ohio St. 88, 70 N.E. 900 (1904).