

**COURT OF COMMON PLEAS
PROBATE DIVISION
HAMILTON COUNTY, OHIO**

ESTATE OF:	:	CASE NO. 973285
THELMA W. DIERS	:	
	:	OPINION AND ENTRY
	:	DENYING APPLICATION
	:	FOR ALLOWANCE OF CLAIM
	:	
	:	
	:	

This matter came for hearing before Judge Wayne F. Wilke on November 18, 1997, concerning an application for the allowance of a fiduciary's claim. The applicant, Fred C. Brown, was represented by Edward G. Bruck.

The facts of this case may be plainly stated. The decedent herein, Thelma W. Diers, died testate on July 2, 1997. On July 14, 1997, Fred C. Brown was appointed Executor of the decedent's estate. On Friday, October 17, 1997, the Executor filed a claim against the Estate. The Executor contends that he loaned the decedent \$1,500.00.¹ For the reasons that follow, the claim shall be denied.

Ohio Revised Code §2117.02 provides the mechanism for a fiduciary to present a claim against an estate. That section prohibits a claim from being paid unless allowed by the court. Further, when the claim exceeds five hundred dollars, all interested persons must be notified of the hearing that shall be conducted to elicit testimony with respect to the claim. Last and most importantly, R.C. §2117.02 obligates a fiduciary to present, within three months after the date of appointment, any claim the fiduciary may have against the estate.

¹ Incidentally, this contention is inconsistent with the Executor's Application for Authority to Administer Estate from July 14, 1997, which indicated that the estate owed the Executor nothing.

Statutes of limitations, such as the three month period in which a fiduciary may present a claim pursuant to R.C. §2117.02, have been found to bear a real and substantial relationship to the public's general welfare in that they require the orderly and timely prosecution of claims. *Burgess v. Eli Lilly & Co.* (1993), 66 Ohio St.3d 59, 63. Where a statute provides a right of action which did not exist at common law, and the statute giving the right fixes the time within which the right may be enforced, the time so fixed becomes a limitation or condition on such right and will control. *Castrovinci v. Castrovinci* (1952), 93 Ohio App. 133.

In this case, the presentment of claims by a fiduciary against an estate is a purely statutory right. Accordingly, Ohio public policy requires this court to strictly enforce the statute of limitations, despite the sometimes harsh result. Here, it is patently clear that the claim was filed outside of the three-month statute of limitations. The Court therefore denies Fred C. Brown's claim against the Estate of Thelma W. Diers.

SO ORDERED.

WAYNE F. WILKE, JUDGE

cc: Edward G. Bruck