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A blockbuster term ahead for Illinois Supreme Court

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Two gun cases, a case that touches on issues related to abortion, a case addressing the defamation claims related to "Murder in the Park," and much more were taken by the Illinois Supreme Court recently. The wider reaching social issues that typically characterize the docket of the U.S. Supreme Court are somewhat unusual for the state high court, but those cases should not obscure the very important civil procedure cases to be decided in the coming term.

In *Guns Save Life Inc., et al., v. Zahra Ali*, the court will hear argument on whether the Cook County tax on firearm ammunition sales is constitutional, and in *Thomas Brown v. The Illinois State Police*, the court will hear a challenge to a revocation of a FOID card because of a domestic violence conviction.

Now the real meat of the docket: the civil procedure cases.

Thomas v. Khoury presents the following difficult and interesting certified question that the 1st District Appellate Court, answered in the negative: "[w]hether section 2.2 of the Wrongful Death Act, 740 ILCS 180/2.2, bars a cause of action against a defendant physician or medical institution for fetal death if the defendant knew or had a medical reason to know of the pregnancy and the alleged malpractice resulted in a non-viable fetus that died as a result of a lawful abortion with requisite consent." The question itself says it all about the difficulty of the issues presented.

The Anthony Porter, Alstory Simon, Paul Ciolino, David Protess saga continues, this time in the Illinois Supreme Court in a defamation case brought by Ciolino against numerous defendants related to the movie. The trial court dismissed the case based upon the one-year statute of limitations for such claims and the 1st District reversed, but later withdrew the opinion. The appellate court held that the movie was screened at a film festival, but arguably not available publicly for the plaintiff to be aware of its content until sometime later. The trial court held that the statute began to run from the date it was first screened, while the plaintiff argued that he could not have known of the allegedly defamatory content until the movie was aired on Showtime. A potentially critical extension (or contraction) of the discovery rule in the defamation context is at stake in a dispute that simply will not end.

In what would seem a very straightforward case, the Illinois Supreme Court will hear *Eighner v. Tiernan*, a case from the 1st District, in which the appellate court answered the following question: "[w]hether refiling a complaint in a previously dismissed lawsuit as opposed to filing a new action satisfies the language of 735 ILCS 5/13-217, which states a plaintiff may commence a new action after the case is voluntarily dismissed pursuant to 735 ILCS 5/2-1009." The appellate court answered the question in the negative.

It will be interesting to see what the court does with this quirk of Illinois procedure that so advantages plaintiffs and which the *Eighner* decision pared back somewhat by applying the plain language of the applicable statutes to find that the plaintiff had blown the statute.

The court will also decide the contours of another unique aspect of Illinois law: the right of a party to take a change of judge as of right under 735 ILCS 5/2-1001(a)(2)(i). The 1st District in *Palos Community Hospital v. Humana Inc.*, held that the "waters had been sufficiently tested" to warrant denial. The appellate court also addressed a limitation on the right to change judge when "the judge herself voluntarily brought the issue to counsel's attention." The appellate court found that the party moving for substitution, and not the court, raised the issue about which the trial court found it had given the court's view of the case, and the appellate court found that the denial of the motion for substitution of judge was proper.

Whether this limitation applies and whether it was properly exercised in this case will be important for the application of this important right and address a rule it may not have addressed since *Powell v. Dean Foods Company*, 2012 IL 111714.

As was addressed in this space on May 27, some direction is needed from the Illinois Supreme Court, whether by rule or ruling, with regard to HIPAA Qualified Protective Orders. The Supreme Court Rules Committee rejected the proposed rule to adopt the Cook County HIPAA order. The court has now granted leave to appeal in *Haage v. Zavala*, in which the 2nd District Appellate Court also rejected use of the Cook County HIPAA order urged by intervenor State Farm, but also found that an insurer has no duty to maintain certain records under the Illinois Insurance Code and implementing regulations.

The clarity the court has the opportunity to provide on this issue will likely be welcomed by bench and bar alike, plaintiffs and defendants, providers and hospitals. Continued fights over obtaining medical records take too much time, cost too much money and do not serve the interests of justice.

An Illinois Supreme Court term with important and interesting cases for civil litigators is ahead. Illustrating their importance, it is likely that several of these cases will attract significant amici participation from a variety of interest groups and industries.

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