

# Have I established grounds for a prescriptive easement?

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## Prescriptive easements

### ***Miller Land Co. v. McCaleb*, 4th Dist. Pike No. 19CA898, 2020-Ohio-794**

In this appeal, the Fourth Appellate District affirmed the trial court's decision to grant the defendants' motion for summary judgment, finding that the plaintiff failed to produce evidence to support a prescriptive easement.

**The Bullet Point:** In Ohio, a prescriptive easement is the acquisition of an easement, over the property owned by another, through adverse use of that property. Prescriptive easements are not favored in Ohio, as such easements deprive the legal property owner of rights to their land without compensation. In order to acquire an easement by prescription, the court requires the claimant to demonstrate clear and convincing evidence of 1) open, 2) notorious, 3) adverse, and 4) continuous use by it or its predecessor of an easement over property owned by another for a period of 21 years or more.

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## Defamation

### ***Halliday v. Bd. of Dirs. of the Mental Health & Recovery Bd. of Erie & Ottawa Counties*, 6th Dist. Erie No. E-19-011, 2020-Ohio-702**

In this appeal, the Sixth Appellate District affirmed the trial court's decision to grant the defendants' motions for summary judgment, finding that there was no evidence the alleged defamatory statements were made with actual malice.

**The Bullet Point:** Statements made about a public official are constitutionally protected when the statements concern "any matter which may touch on the official's fitness for office." As such, a public official in a defamation action has a higher burden of proof as compared to a private individual bringing a defamation action. In order for a private individual to succeed on a claim of defamation, it must show the defendant made or published a false statement with "a degree of fault which injured the plaintiff's reputation, exposed the plaintiff to public hatred, contempt, ridicule, shame or disgrace, or adversely affected the plaintiff's profession." However, in order for a public official to succeed on a claim of defamation, it must also prove with clear and convincing evidence that the false statement was made with 'actual malice'. Stated differently, a public official must prove the defamatory statement was made with knowledge that it was false or with reckless disregard of whether the statement was false or not. The public official plaintiff establishes "reckless disregard" by

presenting evidence that the defendant made the defamatory statement even though it had “serious doubts regarding the truth of the statements or the accuracy or veracity of the sources.”

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### Waiver of Right to Arbitrate

#### ***Blue Technologies Smart Sols, L.L.C. v. Ohio Collaborative Learning Solutions, Inc.*, 8th Dist. Cuyahoga No. 108535, 2020-Ohio-806**

In this appeal, the Eighth Appellate District affirmed the trial court’s decision to deny the defendant’s motion to stay and to compel arbitration, finding that the defendant waived the right to compel arbitration.

**The Bullet Point:** Although the law favors arbitration, the right to arbitration may be waived just like any other contractual right. To establish waiver of an arbitration clause, the party seeking waiver must demonstrate “1) that the defendant knew of its right to assert an argument or defense for arbitration, and 2) that the totality of the circumstances establish that the defendant acted inconsistently with that right of arbitration.” The court presumes that a contracting party is aware of the contents of the contract it signed, including the existence and scope of an arbitration clause. As such, unless the defendant overcomes this presumption, the defendant will be deemed to have knowledge of its right to arbitration. In analyzing the totality of the circumstances to determine if the defendant acted inconsistently with its right of arbitration, the court weighs factors such as, “1) whether the defendant invoked the jurisdiction of the trial court by filing a complaint, counterclaim, or third-party complaint without asking for a stay of proceedings; 2) the delay, if any, by the defendant in requesting a stay of proceedings or an order compelling arbitration; 3) the extent to which the defendant participated in the litigation, including the status of discovery, dispositive motions, and the trial date; and 4) any prejudice to the plaintiff due to the defendant’s prior inconsistent actions.”

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### Civil Contempt

#### ***Young v. Young*, 5th Dist. Stark No. 2019CA00035, 2020-Ohio-754**

In this appeal, the Fifth Appellate District reversed the trial court’s decision and remanded the case to the trial court for further proceedings, finding that the defendant had not been afforded the opportunity to purge himself of civil contempt.

**The Bullet Point:** Failure to comply with a court order can result in a party being held in contempt. Trial courts impose sanctions, such as a jail sentence, to coerce a party who is in civil contempt into complying with a court order. However, courts are guided by the principle that due process must be observed in both civil and criminal contempt proceedings. As such, a sanction for civil contempt must allow the contemnor the “opportunity to purge” himself of contempt. Stated plainly, a court’s sentencing order imposing a sanction must include specific language guiding the contemnor as to what conditions must be met in order to remove the contempt prior to the sanction being imposed.

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