

IN THE SUPREME COURT OF OHIO

ANDREA BARNES, EXEC.,

Plaintiff-Appellee,

-vs-

UNIVERSITY HOSPITALS
OF CLEVELAND, et al.

Defendants-Appellants.

CASE NO. 2007-0140

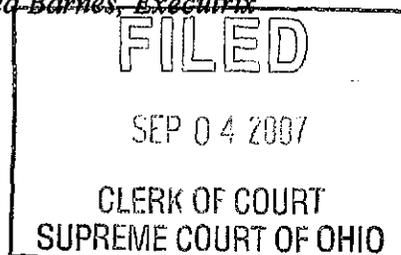
On Appeal from the Cuyahoga County Court
of Appeals, Eighth Appellate District

Court of Appeals Case No. 87247,
Consolidated with Case Nos. 87285, 87710,
87903, and 87946

MEMORANDUM IN OPPOSITION TO PLAINTIFF-APPELLEE'S MOTION TO
STRIKE SUPPLEMENT TO BRIEFS SUBMITTED BY DEFENDANT-APPELLANTS

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MEMORANDUM IN OPPOSITION

Appellants Medlink of Ohio and The Medlink Group, Inc. ("Medlink") filed a Motion to Supplement the Record with this Court on August 1, 2007. Thereafter, Medlink's Merit Brief and Supplement was due and timely filed on August 15, 2007, before the Court's denial of Medlink's Motion to Supplement. Medlink agrees that its Supplement now includes documents this Court has ordered will not be added to the Record and Medlink will comply with any Order this Court issues with regard to Medlink's Supplement to the Briefs.

Medlink submits that the result Appellee seeks -- to strike the entire contents of Medlink's Supplement -- is neither helpful to the Court nor to the parties. The purpose of the Supplement is to provide a practical guide to important cites to the Record for the Court's use in determining the questions presented. See, S.Ct.Prac.R.VII, Section 1(A). Striking Medlink's entire Supplement will not serve this purpose.

If the Court is inclined to strike the entire Supplement, Medlink asks that it be permitted to provide the Court with a redacted Supplement that has those portions outside the record excluded. Medlink would maintain the same pagination as was in the original Supplement so that the Supplement would still be referenced correctly in Medlink's Brief.

I. Brief Response to Plaintiff's Position Regarding the Public Records at Issue.

It is Medlink's position that the documents which Medlink asked to be added to the Record are public records. (*Motion of Medlink to Supplement the Record*, p. 1). Therefore, this Court may take judicial notice of these records. See *State v. Becker* (Ohio App. 12th Dist. 2006), 2006-Ohio-148, 2006 WL 93229; *In re Estate of Janes* (Ohio App. 5th Dist. 2004), 2004-Ohio-1766, 2004 WL 737331. Further, Plaintiff's assertion that this Court's review of Proposition of

Law No. 3 requires review of materials outside the Record is false. Indeed, Proposition of Law No. 3 presents the following question:

PROPOSITION OF LAW NO. 3: One who has never been elected to a judgeship in Ohio may not serve as a private judge under R.C. 2701.10

Quite obviously, this proposition of law only requires a review of the applicable statutes and rules that regulate Ohio's Private Judge statute.

With regard to Robert T. Glickman's lack of qualifications to serve as a private judge under R.C. 2701.10, Medlink takes the position that the records which support Glickman's lack of qualifications are public records this Court may review, whether or not they are part of the Record. Those public records never had a chance to be added to the trial court's record, because Glickman ruled on the last pending motion – Plaintiff's Motion for Prejudgment Interest – within days after Medlink filed a Writ of Prohibition in this Court.¹

Medlink did ask that those records be added to the record on appeal, after Appellee took the astonishing position that there was no proof that Glickman was younger than the age of seventy and would not concede or stipulate that Glickman had never won an election. Nevertheless, Appellee has since in his pleadings conceded that Glickman was defeated in his run for the Bench in Cuyahoga County. (*Plaintiff-Appellee's Motion to Strike Supplement to Briefs Submitted by Defendant-Appellants*, at pp. 2-3; *Plaintiff-Appellee's Memorandum In Opposition Medlink's Motion to Supplement*, at pp. 3-4).

¹ Medlink filed a Writ of Prohibition regarding Glickman's lack of qualifications to serve as a Private Judge under R.C. 2701.10 on March 7, 2006. (Case No. 2006-0478). Glickman awarded prejudgment interest to Plaintiff on March 14, 2006. (See Cuyahoga County Clerk's Docket, March 14, 2006; See also, Appendix pg. 78 to Medlink's Merit Brief). Once Glickman made the prejudgment interest award, there was no longer a case pending at the trial court level.

II. Conclusion.

For the foregoing reasons, Medlink asks that, if this Court orders that Medlink's Supplement, filed August 15, 2007, be stricken, Medlink have the opportunity to provide a Supplement excluding the stricken documents so that the Court and the parties might have a Supplement that serves the purpose of S.Ct.Prac.R.VII, Section 1(A).

Respectfully submitted,



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PROOF OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served by ordinary U.S. Mail, postage prepaid, on this 4th day of September, 2007, upon the following:

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