ORIGINAL

In the
Supreme Court of Ohio

MEDCORP, INC.,	:	Case No. 2008-0584
	:	2008-0630
Appellee,	:	
	:	On Appeal from the
v.	:	Franklin County
	:	Court of Appeals,
OHIO DEPARTMENT OF JOB AND FAMILY SERVICES,	:	Tenth Appellate District
	:	
	:	Court of Appeals Case
Appellant.	:	No. 07-APE 04-312
	:	

APPELLANT'S MEMORANDUM
OPPOSING APPELLEE'S MOTION FOR RECONSIDERATION

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INTRODUCTION

Medcorp asks this Court to reconsider its conclusion about the meaning of the word "grounds" in R.C. 119.12, based on Medcorp's unsupported claim of a contrary legislative intent when that statutory language was written and also based on Medcorp's warning of impending disaster. But Medcorp never addresses the issue at the heart of this case: the meaning of "grounds" for purposes of R.C. 119.12. Medcorp's arguments add up to a theory that "grounds" means the equivalent of nothing, but that cannot be the law.

No canon of statutory construction permits Medcorp effectively to ignore the text of R.C. 119.12—much less a jurisdictional requirement. The Court provided three examples, neither lengthy nor difficult, of grounds that Medcorp might have stated that would have satisfied R.C. 119.12 in this case. See *Medcorp, Inc. v. Ohio Dep't of Job & Family Servs.*, 2009-Ohio-2058, ¶ 12 ("Op."). Whatever other satisfactory statements might exist, Medcorp did not offer one. Instead, by saying the equivalent of nothing, Medcorp failed to state grounds for its appeal, and thus the common pleas court lacked jurisdiction.

This Court's decision correctly recognized that the General Assembly did not mean to accomplish nothing when it included a jurisdictional requirement that an appellant must state the grounds for appealing in the notice of appeal to common pleas court. The sky will not fall as a result of this case. The Court should deny Medcorp's Motion for Reconsideration.

A. R.C. 119.12's stating-grounds requirement must mean something more than nothing, but Medcorp's arguments lead directly to that result. Furthermore, Medcorp's policy concerns are properly addressed to the General Assembly, not the Court.

Medcorp wants the Court to hold that all appellants can satisfy the requirement to state "grounds" for an appeal using the same phrase, regardless of what any appellant is challenging in a particular case. According to Medcorp, any appellant (which also means every single

appellant) can state that the agency order "is not supported by reliable, probative, and substantial evidence and/or is not in accordance with law."

1. The General Assembly did not intend to include a meaningless requirement.

As a practical matter, Medcorp's argument, if successful, would read the stating-grounds requirement out of the statute. If all appellants can use that same standard-of-review phrase, then the grounds statement says nothing more than "I'm appealing," which the very filing of a notice of appeal already does. See Op., ¶ 14. Accepting Medcorp's position would rob the grounds requirement of meaning and effect. *Id.* at ¶ 15. Medcorp complains that a true grounds requirement would be unfair (an argument better addressed by the General Assembly, not the courts), and presents new research suggesting that the General Assembly may have used the word "errors" and the word "grounds" differently for purposes of its drafts of proposed administrative-appeal procedures in the 1940s. But Medcorp never explains why the General Assembly would include in R.C. 119.12 a requirement that accomplishes nothing. Even if, as Medcorp surmises, "grounds" meant something less specific than "errors" to the General Assembly during the drafting stages of R.C. 119.12 (or its predecessor), the question remains what "grounds" means—and that meaning cannot equate to zero.

Medcorp argues that the concept of flexibility, which the Court mentioned in its decision, is in tension with a goal of having uniformity among agencies' appeal procedures. But flexibility and uniformity can and do peacefully coexist. Appeals under R.C. 119.12 get into courts the same way; there are a number of common requirements among all such appeals; and courts use the same basic tools to decide those appeals. But a court then may choose which specific tools it wants or needs in a given case. As an analogy, the Ohio Rules of Civil Procedure provide a level of uniformity among trial courts across the State, while local rules and judicial discretion allow

for flexibility alongside those uniform rules to permit judges to control their dockets and respond to cases depending on particular facts and circumstances. Similarly, R.C. 119.12 provides general uniformity for appeals taken from a large number of state-agency adjudication orders, while the decision of how to address a specific case—for instance, to accept briefs, hear oral arguments, take newly discovered evidence, and the like—allows for individual courts and judges to manage their dockets as they see fit and address cases according to their particulars. This Court's decision, contrary to Medcorp's claim, is not "clearly at odds" with any desire for general procedural uniformity that the General Assembly may have had.

2. This case will not result in long, expensive battles in every administrative appeal; and if any such battles do result, they are likely to be few.

Medcorp offers no sound reason to believe that the decision in this case will result in a protracted battle over jurisdiction in "every appeal pursuant to R.C. 119.12." See Mot. for Recon., p. 3. There will likely be a number of appeals where no grounds are stated at all or where the notice of appeal closely resembles Medcorp's. Those cases will not require a "time-consuming and expensive process of having the court determine" whether adequate grounds were stated. In fact, contrary to Medcorp's prediction of adding to courts' burdens (see Mot. for Recon., p. 5), the Court's judgment here would alert courts to a lack of jurisdiction in similar cases so that the cases could be dismissed before the parties and courts undertook the "time-consuming and expensive process" of addressing the merits. This would help *un*burden courts.

Just as there will be clearly inadequate notices of appeal in some cases, in others the notices will clearly be adequate in their description of the issues on appeal. Disagreement among the parties as to these cases, if any exists, would not tax the courts. Indeed, the Court's decision here will likely lead more appellants to state adequate grounds, which could help courts better deal

with any cases where no appellant's brief is filed. Again, burdens on courts in those instances would be lightened, not increased.

For the cases in which a real question exists as to whether the appellant in fact adequately stated grounds under R.C. 119.12, Medcorp does not support its claim that the decision-making process would always be "time-consuming and expensive." There may be briefing on the matter, or the court could sua sponte raise and decide the issue. In the vast majority of close-call cases, it should not be terribly difficult for a party to explain—or for a court to decide—whether the words in a notice of appeal add up to "grounds" or not.[1] But even assuming that some hard cases will exist, those close calls are no reason to ignore statutory language or to second-guess the General Assembly's wisdom in requiring a party to state the grounds for appeal.

3. The Court's decision will not impose an unfair or significant risk on "unsophisticated litigants," other litigants, or Ohio's Medicaid program.

Medcorp points to "unsophisticated appellants"—presumably meaning nonlawyers—as running the greatest risk from the Court's decision in this case. See Mot. for Recon., p. 5. Medcorp argues that "if a layman is not likely to file a brief or other paper explaining his position, he also is not likely to divine from the appeal instructions in the agency order or the statutory 'grounds' language of R.C. 119.12 the need to state 'specific legal or factual errors.'" See Mot. for Recon., pp. 5-6. But "unsophisticated appellants" are surely more likely than knowledgeable appellants to omit any statement of grounds whatsoever. Therefore, Medcorp must be assuming one of two things: either that no-statement-at-all cases are jurisdictionally sound, or that nonlawyers will somehow figure out that they should state grounds—as instructed near the beginning of R.C. 119.12—by repeating the standard-of-review words found many

[1] That a motion to dismiss based on this Court's decision has been filed in another case need not long detain the Court (see attachment to Mot. for Recon.). Any court is equipped to decide whether or not that moving party is correct, and a right of appeal will lie from that determination.

paragraphs later in the statute. The former assumption is textually untenable and rejected by this Court's decision; the latter assumption is unsupported.

Medcorp suggests that Ohio's Medicaid program could be at risk, but that suggestion is both unavailing and belated. Medcorp asserts that, if an appellant in a R.C. 119.12 appeal is required to state specific reasons why the appealed agency order is incorrect, this will somehow mean that Ohio is no longer providing or paying for "care and services" to Medicaid recipients in a "manner consistent with simplicity of administration and in the best interests of the recipients." See Mot. for Recon., pp. 6-7. First, it makes no sense to interpret Ohio laws based on unrelated federal laws enacted decades later. Second, nothing has changed here; rather, the Court has simply recognized what R.C. 119.12 always required. Third, how the statutory appellate procedures in R.C. 119.12 constitute the provision of or payment for medical services is left unexplained. Medcorp provides no authority or examples to support its theory, and the Court should ignore it. ODJFS is well-versed in the federal requirements for Ohio's Medicaid program, and is unaware of any danger to that program posed by the Court's holding in this case.

B. The Court's judgment in this case should not be confined to prospective application. But if the Court disagrees, then at most the Court should exempt only appeals filed before the Second District decided *Green v. State Bd. of Registration* (2d Dist.), 2006-Ohio-1581.

Medcorp asks the Court, in the alternative, to apply its holding prospectively only, for three reasons: first, old judgments can now be overturned for inadequate notices of appeal, regardless of how much time has passed since final judgment; second, Medcorp prevailed on the merits in the lower courts; and, finally, doing otherwise would be "unfair to Ohio's citizens and contrary to the purposes of government" because the holding in this case is contrary to "65 years of well-settled practice" and "implicates subject matter jurisdiction where never before implicated." See Mot. for Recon., pp. 7-8. None of these reasons withstands scrutiny.

1. Old cases are not vulnerable to attack based on this case.

Medcorp posits that every administrative appeal decided in the past where the notice of appeal looked like Medcorp's can now be overturned based on the decision in this case. See Mot. for Recon., pp. 7-8. As ODJFS explained in its reply brief, a final judgment entry precludes the parties from litigating the question of the court's subject-matter jurisdiction. See Restatement 2d of Judgments, §12; *Vitale v. Connor* (5th Dist.), 1985 Ohio App. Lexis 8004, *7; *Kansas City Southern Railway Co. v. Great Lakes Carbon Corp.* (8th Cir. 1980), 624 F.2d 822, 825 (denying collateral attack on final judgment for lack of subject-matter jurisdiction).

None of the three exceptions to this general rule apply here. See Restatement 2d of Judgments, §12. It is hard to imagine a R.C. 119.12 appeal where the judgment will be deemed "so plainly beyond the court's jurisdiction that its entertaining the action was a manifest abuse of authority"; where allowing the judgment to stand will "substantially infringe the authority of another tribunal or agency of government"; or where the judgment was "rendered by a court lacking capability to make an adequately informed determination of a question concerning its own jurisdiction" such that "procedural fairness" requires allowing an attack on the judgment. See Restatement 2d of Judgments, §12.

This settled rule should resolve concerns raised by *Amicus* Ohio Academy of Nursing Homes in its Memorandum. The Academy notes two exceptions to retroactive application that have been recognized by this Court, although arguably the exceptions apply only where the court is overruling a prior decision, which is not the case here. See *DiCenzo v. A-Best Prods. Co.*, 120 Ohio St.3d 149, 2008-Ohio-5327, syllabus, ¶ 1; ¶ 11 (exceptions apply when a court overrules a prior decision that parties have relied on). But assuming these exceptions could apply here, they do not implicate currently pending cases, as the exceptions come into play only (1) when

contractual rights have arisen and (2) when vested rights have been acquired. See *Amicus* Memo., p. 2. That may be true of old cases—that is, cases already decided to finality—but not pending cases, because rights do not vest while litigation is pending, before one party has clearly prevailed. Thus, ODJFS maintains that old cases are *not* vulnerable based on the holding here.

ODJFS would have no objection, however, if this Court wishes to clarify that its holding here cannot be the basis for vacating or otherwise disturbing a judgment in any case that has been finally decided and for which all appeal times have expired.

2. Cases currently pending, or with appeal time left, should not be exempt from the Court's holding here.

For cases currently pending, or with appeal time remaining, the Court's decision here should apply. The Court did not impose a prospective-only application of its decision in *Hughes v. Ohio Dep't of Commerce*, 114 Ohio St. 3d 47, 52, 2007-Ohio-2877—pertaining to the question concerning the filing of originals and copies of notices of appeals regarding agency decisions and also to the issue of consequences of an agency's failure to certify its adjudication order—and it should likewise refrain from doing so here.

Medcorp (along with its *Amicus*) characterizes the underlying merits in this case as a reason why the stating-grounds requirements should not be applied to Medcorp, see Mot. for Recon., p. 8; *Amicus* Memo., pp. 4-5, but the merits are not before the Court. The issue here is simple: whether the common pleas court ever had jurisdiction to hear Medcorp's appeal at all. Without jurisdiction, the merits are irrelevant.

None of the three reasons for prospective-only application listed by Medcorp have been met. See Mot. for Recon., p. 8. First, this Court's decision does not establish a "new principle of law." For decades this Court has required strict compliance with jurisdictional appeal requirements found in statutes. See, e.g., *Nibert v. Ohio Dept. of Rehab. and Corr.* (1998), 84

Ohio St.3d 100, 102; *Bd. of Edn. of Mentor v. Bd. of Revision* (1980), 61 Ohio St.2d 332, 334; *McCruter v. Bd. of Review* (1980), 64 Ohio St.2d 277; *Holmes v. Union Gospel Press* (1980), 64 Ohio St.2d 187, 188; *Cooke v. Kinney* (1981), 65 Ohio St.2d 7, 8. And courts of appeals have held that the purpose of stating grounds in a R.C. 119.12 appeal is to give the agency or the court (or both) notice of the issues being raised. See, *Green*, supra, at ¶ 13; *CHS-Windsor, Inc. v. Ohio Dep't of Job & Family Servs.* (10th Dist.), 2006 Ohio App. Lexis 2288, 2006-Ohio-2446, at ¶ 9.

Second, applying this decision clearly promotes the purpose of the stating-grounds rule, which is to provide notice of issues being raised. See Op. ¶¶ 15-16. Third and finally, there will be no inequitable result caused by applying the Court's decision to cases where the no-grounds argument can still be raised (either in common pleas court or on appeal), any more than would be caused by application of *Hughes* or any other similar case recognizing a jurisdictional requirement. It is not inequitable to hold that a court lacks jurisdiction when the party, through its own error, failed to invoke that court's jurisdiction.

3. If the Court decides that its holding here should not be applied to all pending cases, it should exempt only appeals instituted prior to the issuance of *Green*.

If this Court disagrees and decides that its holding should not be applied universally, then ODJFS respectfully suggests that the Court confine the non-application only to cases where the appeals to common pleas courts were filed prior to the issuance of the Second District's decision in *Green v. State Bd. of Registration* (2d Dist.), 2006 Ohio App. Lexis 1485, 2006-Ohio-1581. After that decision was issued, it was clear that this was a live issue in Ohio courts (although earlier appeals court cases cited above, holding statutory requirements to be jurisdictional and describing the purpose of stating grounds under R.C. 119.12, also foreshadowed a holding that grounds cannot be simply the standard of review applicable in all appeals). *Green* was decided

on March 31, 2006. According to this Court's website, it was posted that same day, and was almost certainly available on widely used online research tools within, at most, a few days.[2]

CONCLUSION

This Court should deny the Motion for Reconsideration. The stating-grounds requirement in R.C. 119.12 must be accorded meaning. A notice of appeal that simply recites the generally applicable standard of review does nothing more than indicate a belief that the agency decision is wrong—which any notice of appeal itself already indicates.

Respectfully submitted,

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[2] Even if this court chooses a more universal prospective application, the Court's holding should still apply to Medcorp, if for no other reason than to avoid issuing an advisory opinion. See, e.g., *County of Wayne v. Hathcock* (Mich. 2004), 471 Mich. 445, 684 N.W.2d 765, 788 n.98 ("purely prospective opinions * * * are, in essence, advisory opinions"). See, also, *Beckman v. Butte-Silver Bow County* (Mont. 2000), 1 P.3d 348, 299 Mont. 389, ¶ 45; *Hoover v. Bd. of County Commrs.* (1985), 19 Ohio St.3d 1, 9 (Douglas, J., concurring) (failure to apply holding to parties to the case would render decision "obiter dictum").

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Appellant's Memorandum Opposing Appellee's Motion for Reconsideration was served by U.S. mail this 20th day of May 2009 upon the following counsel:

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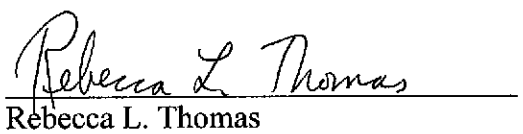

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