

ORIGINAL

IN THE SUPREME COURT OF OHIO

MENTOR EXEMPTED VILLAGE SCHOOL)
DISTRICT BOARD OF EDUCATION, *et al.*,)

Petitioners,)

vs.)

WILLIAM MOHAT, *et al.*,)

Respondents.)

CASE NO. 2010-0951

On Certified Question of State Law
from the United States District Court
for the Northern District of Ohio
Case No. 1:09-cv-00688-DCN

**NOTICE OF ADOPTION OF PRELIMINARY MEMORANDUM
OF AMICUS CURIAE IN SUPPORT OF RESPONDENTS**

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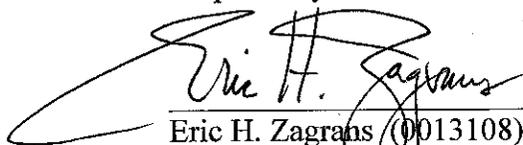
Amicus Curiae, Nikki C. Hardy, in support of Respondents, hereby respectfully gives notice of her request that the Court review and accept the points, authorities and arguments set forth in her Preliminary Memorandum of *Amicus Curiae* on Certified Question, previously submitted in this matter and available on the on-line docket of the Court, as her Merit Brief on the Certified Question before the Court, and that the Court answer the Certified Question (as requested by *Amicus Curiae*'s Preliminary Memorandum and for the reasons more fully set forth therein) as follows:

Answer to the Certified Question: The Ohio Wrongful Death Statute, R.C. 2125.02(A)(1), requires that the duly-appointed personal representative of the decedent's estate must bring a wrongful death action. It does not require that the personal representative be appointed before the wrongful death action is filed. R.C. 2125.02(C) mandates that the personal representative must be appointed before the case is resolved by settlement or judgment. Therefore, construing R.C. 2125.02(A)(1) and R.C. 2125.02(C) *in pari materia*, the personal representative of the estate may be court-appointed either before or after the wrongful death complaint has been filed, but in all events must be court-appointed before any judgment is entered or any settlement is reached. *Ramsey v. Neiman* (1994), 69 Ohio St.3d 508, 513-514 (Pfeifer, J., on behalf of a majority of the Court, concurring in judgment only), followed and applied.

If a wrongful death action was not originally commenced in the name of the real party in interest, and if the duly-appointed personal representative subsequently ratifies the commencement of the action, under Civ. R. 17(A) such ratification "shall have the same effect as if the action had been commenced in the name of the real party in interest." Therefore, pursuant to Civ. R. 15(A) and 17(A), an amendment to add the duly-appointed personal representative of the estate as the plaintiff in the wrongful death suit, and his or her ratification of the commencement of the action, will both relate back to the original filing of the wrongful death complaint.

Dated: November 15, 2010

Respectfully submitted,



Eric H. Zagrans (0013108)

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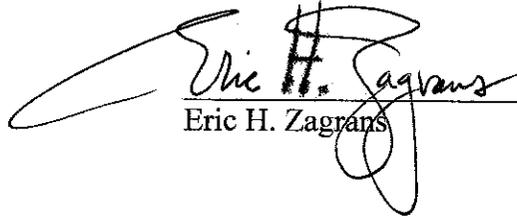
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Adoption of Preliminary Memorandum of *Amicus Curiae* in Support of Respondents was served by ordinary U.S. mail, postage prepaid, on Kenneth D. Myers, 6100 Oak Tree Boulevard, Suite 200, Cleveland, Ohio 44131, Attorney for Respondents, and David K. Smith, Krista K. Keim and Lindsay F. Gingo, BRITTON, SMITH, PETERS & KALAIL, 3 Summit Park Drive, Suite 400, Independence, Ohio 44131, Attorneys for Petitioners, this 13TH day of November, 2010.


Eric H. Zagrans