

ORIGINAL

IN THE SUPREME COURT OF OHIO

KENNETH DALE ARNOTT  
WANDA JO ARNOTT  
JONATHON SCOTT ARNOTT  
BETHANY JO TOLBERT

Plaintiffs-Appellants  
v.

JAMES WAYNE ARNOTT  
KATHRYN ARNOTT  
KAREN ANN (TOLBERT) CARPER

Defendants-Appellees

Case No. 10-2180

On Appeal from the Highland  
County Court of Appeals,  
Fourth Appellate District

**REPLY BRIEF OF APPELLANTS KENNETH DALE ARNOTT,  
WANDA JO ARNOTT, JONATHON SCOTT ARNOTT,  
AND BETHANY JO TOLBERT**

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**Adoption of Appellee's Proposition of Law Ignores the Established Precedent of this Court.**

Appellee would have this Court abandon its holding in Mid-American Fire & Cas. Co. v. Heasley in order to adopt a de novo standard of review in declaratory judgment actions. In Mid-American, this Court clearly, unequivocally, and without qualification stated that: "[D]eclaratory judgment actions are to be reviewed under an abuse-of-discretion standard."<sup>1</sup> This Court did not truncate this statement of law with any qualification limiting its applicability to only the determination of whether or not to go forward with a declaratory judgment action. Instead the above statement was broad, clear-cut, and straightforward. As such, the matter before this Court cannot be distinguished from that presented in the Mid-American case. This Court stated plainly that not only a "Dismissal of a declaratory judgment action is [to be] reviewed under an abuse-of-discretion standard;"<sup>2</sup> but that declaratory judgment actions as a whole are to be reviewed under an abuse-of-discretion standard.

Thus, the standard of review for declaratory judgment actions has been settled: it is abuse-of-discretion. "It is the policy of courts to stand by precedent and not to disturb a point once settled."<sup>3</sup> Such is the doctrine of stare decisis et non quieta movere (to stand by precedents and not to disturb settled points). In applying this fundamental principle of law<sup>4</sup> this Court has stated that, "security and certainty require that an established legal decision be recognized and followed in subsequent cases where the question of law is again in controversy."<sup>5</sup>

Therefore, to adopt any other standard of review other than abuse-of-discretion, would be a departure from the doctrine of stare decisis. As this Court has explained,

"[t]he doctrine of stare decisis is designed to provide continuity and predictability in our legal system. We adhere to stare decisis as a means of thwarting the arbitrary administration of justice as well as providing a clear rule of law by which the citizenry can organize their affairs."<sup>6</sup>

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<sup>1</sup> Mid-American Fire & Cas. Co. v. Heasley, 113 Ohio St.3d 133, 2007-Ohio-1248, 863 N.E.2d 142 at ¶14

<sup>2</sup> Bilyeu v. Motorists Mut. Ins. Co., 36 Ohio St.2d at 37, 65 O.O.2d 179, 303 N.E.2d 871.

<sup>3</sup> Clark v. Snapper Power Equipment, Inc., (1986) 21 Ohio St. 3d 58, 60, 488 N.E.2d 138.

<sup>4</sup> Wampler v. Higgins, 93 Ohio St. 3d 111, 120, 2001-Ohio-1293, 752 N.E.2d 962.

<sup>5</sup> Supra Clark at p.60.

<sup>6</sup> Westfield Ins. Co. v. Galatis, 100 Ohio St. 3d 216, 2003-Ohio-5849, 797 N.E.2d 1256 at ¶43.

The doctrine is "of fundamental importance to the rule of law."<sup>7</sup> Indeed, the United States Supreme Court has long revered the doctrine.<sup>8</sup> "[Stare decisis] permits society to presume that bedrock principles are founded in the law rather than in the proclivities of individuals, and thereby contributes to the integrity of our constitutional system of government, both in appearance and in fact"<sup>9</sup> "The fundamental conception of a judicial body is that of one hedged about by precedents which are binding on the court without regard to the personality of its members."<sup>10</sup> Therefore, this Court has rightly held that the doctrine of stare decisis will not be abandoned without special justification.<sup>11</sup> Indeed this Court has noted that, "Departure from controlling authority should be reserved for those instances where it is necessary to discard old ideas which are no longer beneficial and where it is wise to formulate new concepts to remedy continued injustice."<sup>12</sup>

As such, this Court will adhere to prior precedent unless "(1) the decision was wrongly decided at that time, or changes in circumstances no longer justify continued adherence to the decision, (2) the decision defies practical workability, and (3) abandoning the precedent would not create undue hardship for those who have relied upon it."<sup>13</sup> Appellee has presented no argument that any of the above is applicable. There have been no change in circumstances, and neither party asserts that Mid-American was wrongly decided. Further, there is no evidence that this Court's decision in Mid-American defies practical workability. There is no indication that this decision has caused chaos in the lower courts or created "massive and widespread confusion,"<sup>14</sup> There is also no indication that the jurisdictions cited in Appellants Merit Brief which have held that an abuse-of-discretion or similar standard is appropriate have experienced any confusion.

Finally, it is clear that abandoning the clearly established precedent would create an undue hardship upon those who have relied upon it. A party should be able to rely upon consistent precedent for guidance in organizing and filing an appeal with a court. Stability and

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<sup>7</sup> Id. at ¶43-44

<sup>8</sup> See Helvering v. Hallock (1940), 309 U.S. 106, 119, 60 S. Ct. 444.

<sup>9</sup> Pollock v. Farmers' Loan & Trust Co. (1895), 157 U.S. 429, 652, 15 S.Ct. 673. (White, J., dissenting)

<sup>10</sup> Id.

<sup>11</sup> Galatis, at ¶44.

<sup>12</sup> Id. at p.60-61.

<sup>13</sup> Id. Syllabus ¶1; State v. Mathis, 109 Ohio St.3d 54, 2006-Ohio-855, fn. 7, 846 N.E.2d 1.

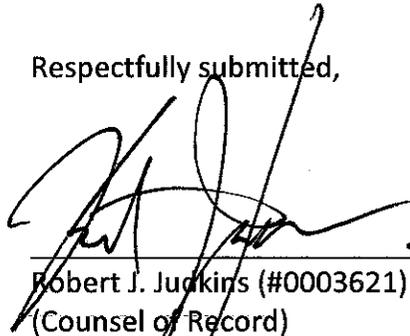
<sup>14</sup> Galatis, at ¶50.

consistency are of fundamental importance in interpreting rules prescribing methods of access to courts of law. Litigants and lower courts have a right to rely upon consistent case law and should not be subjected to arbitrary administration of justice. "At its core, stare decisis allows those affected by the law to order their affairs without fear that the established law upon which they rely will suddenly be pulled out from under them."<sup>15</sup>

It is clear that this Court should not abandon the principles of stare decisis in this case. The decisions upon which Appellant relies were not wrongly decided, no change of circumstance has occurred, the decisions do not defy practical workability, and any departure from established precedent would create undue hardship.

Therefore, this Court should not overrule its decision in Mid-American, and it should continue to adhere to the fundamental principle of stare decisis. As such, this Court should once again reaffirm its long-held holding that declaratory judgments should be reviewed under an abuse of discretion standard.

Respectfully submitted,



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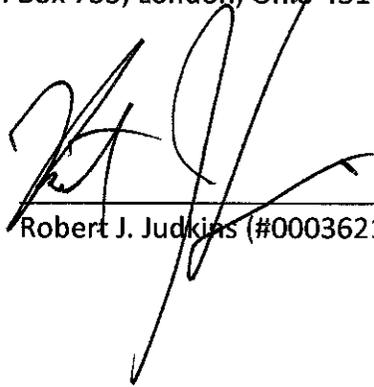
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<sup>15</sup> James B. Beam Distilling Co. v. Georgia (1991), 501 U.S. 529, 551-552, 111 S. Ct. 2439. (O'Connor, J. dissenting).

CERTIFICATE OF SERVICE

A copy of this Reply Brief of Appellants was served upon Shannon M. Treynor, Attorney for Appellees, at 63 North Main Street, P.O. Box 735, London, Ohio 43140, by regular U.S. Mail, this 28<sup>th</sup> day of June, 2011.



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