

**IN THE SUPREME COURT OF OHIO**

**DENNIS CARTER and  
MARY CARTER,**

**Appellants,**

**v.**

**LARRY REESE, JR.,**

**Appellee.**

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**On Appeal from the Butler County  
Court of Appeals, Twelfth Appellate  
District (Case No. CA 14 04 0095)**

**Case No. 2015-0108**

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**REPLY BRIEF FOR APPELLANTS  
DENNIS CARTER AND MARY CARTER**

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Robert A. Winter, Jr. (0038673) (COUNSEL  
OF RECORD)  
P.O. Box 175883  
Fort Mitchell, KY 41017-5883  
Phone: (859) 250-3337  
Email: robertawinterjr@gmail.com

Stephanie Collins (0089945)  
5247 Madison Pike  
Independence, KY 41051-7941  
Phone: (859) 363-1900  
Fax: (859) 363-1444  
Email: scollins@ericdeters.com  
Counsel for Appellants Dennis Carter and  
Mary Carter

Katherine A. Clemons (0081072) (COUNSEL  
OF RECORD)  
Glenn A. Markesbery (0040204)  
Markesbery & Richardson Co., LPA  
2258 Victory Parkway, Suite 200  
P.O. Box 6491  
Cincinnati, OH 45206  
Phone: (513) 961-6200  
Fax: (513) 961-6201  
markesbery@m-r-law.com  
clemons@m-r-law.com  
Counsel for Appellee Larry Reese, Jr.

Jackie M. Jewell (0090499) (COUNSEL OF  
RECORD)  
Andrew D. Bowers (0071486)  
Special Counsel for the Attorney General  
612 North Park Street, Suite 300  
Columbus, Ohio 43215  
Phone: (614) 465-0181  
Fax: (614) 220-7903  
Counsel for Appellee Ohio Bureau of Worker's  
Compensation

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## ARGUMENT IN REPLY TO APPELLEE'S PROPOSITIONS OF LAW

**Appellee's First Proposition of Law: The Carters' argument that R.C. 2305.23 only applies to health care professionals, firefighters, and law enforcement officers ignores the plain and unambiguous statutory language, is not supported by case law, and is being impermissible raised for the first time in this appeal so cannot be considered.**

Appellee argues he was entitled to the immunity from tort damages here provided by Ohio's Good Samaritan Act, R.C. 2305.23. (Merit Brief of Appellee, Larry Reese, Jr., p. 1) (hereinafter, "Memo Contra, p. \_\_") Appellee further argues that he was entitled to the grant of summary judgment on that basis and that the appellate court correctly affirmed the trial court's decision. (*Id.*) Appellee concludes that appellants incorrectly contend he is not entitled to immunity under the Good Samaritan statute because: (i) he is not a health care practitioner, a firefighter, or a law enforcement officer, (ii) he did not render any medical care to Mr. Carter, and (iii) he did not render any type of care to Mr. Carter. (*Id.*) Appellants will address each of Appellee's arguments *seriatim*.

Appellee first argues that the following fraction of the Good Samaritan Act, R.C. 2305.23, is all that this Court need consider to ascertain our General Assembly's intent regarding scope of the statutory immunity: "[n]o *person* shall be liable in civil damages for administering emergency care or treatment at the scene of an emergency \*\*\*." (Memo Contra, p. 1, Appellee's emphasis) In making his argument, Appellee disregards his own admonition about statutory construction when ascertaining and giving effect to the legislature's intent -- ". . . none of the language employed therein should be disregarded . . ." *Carter v. Youngstown Div. of Water*, 146 Ohio St. 203, 65 N.E.2d 63 (1946) (syllabus, ¶1) (Memo Contra, p. 2) *See generally* R.C. 1.47(B) ("In enacting a statute, it is presumed that . . . the entire statute is intended to be effective."). Consequently, the entire Good Samaritan statute must be considered:

No person shall be liable in civil damages for administering emergency care or treatment at the scene of an emergency outside of a hospital, doctor's office, or other place having proper medical equipment, for acts performed at the scene of such emergency, unless such acts constitute willful or wanton misconduct.

Nothing in this section applies to the administering of such care or treatment where the same is rendered for remuneration, or with the expectation of remuneration, from the recipient of such care or treatment or someone on his behalf. The administering of such care or treatment by one as a part of his duties as a paid member of any organization of law enforcement officers or fire fighters does not cause such to be a rendering for remuneration or expectation of remuneration.

As discussed at pages 6-15 of Appellants' Merit Brief, when R.C. 2305.23 is read in its entirety, in context, and construed according to the rules of grammar and common usage, it is evident that our General Assembly intended that the statutory immunity from negligence claims is limited to persons administering medical care and treatment during the exigencies of an emergency. The persons immunized from negligence suits by R.C. 2305.23 can and do administer care and treatment to injured persons within "... a hospital, doctor's office, or other place having proper medical equipment ...." as those activities are exempted from the immunity. The laymen who Appellee seeks to be immunized by the statute do not.

Additionally, the persons immunized by the statute can and do expect remuneration for the care and treatment that they ordinarily provide in the course of their professions. Those kinds of emergency providers are health care providers – doctors, nurses, and similar health care providers. These persons are not laymen. Law enforcement officers and fire fighters – trained medical first responders -- do not receive remuneration or expect it for rendering emergency care or treatment to injured persons. These men and women are compensated because they serve as employees or contractors for a governmental entity – and not because they render emergency care or treatment as a first responder to an injured person in any given situation.

Appellee next argues that “no case law supports the Carters’ proposition that R.C. 2305.23 was ever intended to or interpreted to apply only to health care workers.” (Memo Contra at 2) However, as discussed at pages 8-9 and 13-15 of their Merit Brief, Appellants identify four Ohio appellate court decisions recognizing that our General Assembly’s intent regarding the scope of R.C. 2305.23 was to limit its immunity to health care professionals and first responders. *Primes v. Tyler*, 43 Ohio St.2d 195, 205, n. 5, 331 N.E.2d 723 (1975) (persons “rendering medical treatment”); *Hamisfar v. Baker Concrete Constr.*, 1st Dist., Hamilton No. C-970228, 1998 WL 173238 at \*5, n. 2 (Feb. 8, 1998) (“health-care providers”); *Butler v. Rejon*, 9th Dist. Summit No. 19699, 2000 WL 141009 at \*3 (Feb. 2, 2000) (to be covered, “one must be providing emergency *medical* care or treatment”); and *Held v. City of Rocky River*, 34 Ohio App.3d 35, 38-39, 516 N.E.2d 1272 (8<sup>th</sup> Dist. 1986) (firefighters). The California Supreme Court also restricted the scope of that state’s analogous Good Samaritan statute to the rendition of emergency medical care at the scene of a medical emergency. *Van Horn v. Watson*, 45 Cal.4th 322, 334, 86 Cal. Rptr.3d 350, 197 P.3d 164 (2008).

Appellee next argues that the General Assembly’s use of the phrase “health care professionals” at R.C. 2305.234, and the phrases “emergency medical care” and “first aid treatment” at R.C. 2305.231(B), somehow demonstrates that it intended for laymen to be encompassed by the immunity from tort suits at R.C. 2305.23. (Memo Contra, pp. 2-3 and 6)<sup>1</sup> His argument ignores the legislative histories of the three statutes and, consequently, is incorrect.

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<sup>1</sup> Appellee’s argument about the applicability of R.C. 2305.231 and R.C. 2305.234 when construing the Good Samaritan statute was not made to either the trial court or the Twelfth District Court of Appeals. (See *Motion of Larry Reese, Jr. for Summary Judgment*, Td. #50, pp. 6-8; *Reply of Larry Reese, Jr. in Support of His Motion for Summary Judgment*, Td. #52, pp. 1-2; and *Brief of Defendant-Appellee, Larry Reese, Jr.*, filed with the Twelfth District Court of Appeals on July 22, 2014)

The Good Samaritan statute was enacted in 1963. Am.Sub.S.B. No. 14, 130 Ohio Laws 648-649 and 1425-1426. In 1975, this Court rendered its decision in *Primes v. Tyler*, 43 Ohio St.2d 195, 205, n. 5, 331 N.E.2d 723 (1975), stating that R.C. 2305.23 singles out a group of benevolently-disposed individuals for immunity from negligent injury to persons while rendering medical treatment during the exigencies of a medical emergency because the immunity advances the legislative objective of providing emergency medical assistance to injured persons where delay might result in death or great bodily injury. R.C. 2305.23 was amended in 1977 to remove doubts “among some concerning the status of police officers and fire fighters with regard to immunity from liability while offering emergency care to injured persons, which is detrimental to the public service rendered by these personnel.” S.B. No. 209, §3, 1977 Ohio Laws. The 1977 amendment did not attempt to legislatively overrule the ruling of the *Primes* Court.

In 1981, our General Assembly enacted R.C. 2305.231. S.B. No. 159, 1981 Ohio Laws. This statute did not purport to address the immunity provided to health care practitioners and first responders at R.C. 2305.23 while rendering emergency medical assistance during a medical emergency. Rather, to paraphrase, R.C. 2305.231 provides immunity from negligence suits to physicians, dentists, and registered nurses who volunteer their professional services to a school’s athletic program and who render emergency professional services or first aid to a participant in a school athletic event, while the participant is being transported to a professional office or facility, or for acts performed in administering the care or treatment. No immunity was afforded to first responders within R.C. 2305.231. The two statutes address different activities. Nevertheless, the General Assembly enacted R.C. 2305.231 in 1981 patterned upon the *Primes* Court’s construction of the Good Samaritan statute, as it was presumed to know the state of the law espoused in the 1975 decision of *Primes* at the time it enacted R.C. 2305.231. *East Ohio Gas*

*Co. v. City of Akron*, 2 Ohio App.2d 267, 270, 207 N.E.2d 780 (9<sup>th</sup> Dist. 1965), *aff'd.*, 7 Ohio St.2d 73, 218 N.E.2d 608 (1966), *rev'd. on other grounds*, *Cincinnati Bell Telephone Co. v. City of Cincinnati*, 1998-Ohio-339, 81 Ohio St.3d 599.

Thereafter, in 1995, our General Assembly enacted R.C. 2305.234. H.B. No. 218, 1995 Ohio Laws. Like R.C. 2305.231, R.C. 2305.234 did not attempt to address the immunity provided by the Good Samaritan statute. Rather, its stated purpose was “to provide certain health care professionals and workers and nonprofit shelter or health care facilities with qualified immunities from civil liability for providing free health services to indigent and uninsured persons. . .” with a five-year sunset provision. The statutes address different subjects and activities.

Following the enactments of R.C. 2305.231 in 1981 and R.C. 2305.234 in 1995, the First District Court of Appeals rendered its opinion in *Hamisfar v. Baker Concrete Constr.*, 1<sup>st</sup> Dist., Hamilton No. C-970228, 1998 WL 173238 (Feb. 8, 1998), and the Ninth District Court of Appeals rendered its opinion in *Butler v. Rejon*, 9<sup>th</sup> Dist. Summit No. 19699, 2000 WL 141009 (Feb. 2, 2000). Both Courts agreed with the *Primes* Court’s limited application of R.C. 2305.23 to emergency medical treatment rendered during a medical emergency.

The rule of construction applicable to Appellee’s reliance upon the subsequently-enacted R.C. 2305.231 and R.C. 2305.234 is that statutes that relate to the same general subject matter may be read in *pari materia* to discover and carry out legislative intent. *Sheet Metal Workers’ International Association, Local Union No. 33 v. Gene’s Refrigeration, Heating & Air Conditioning, Inc.*, 122 Ohio St.3d 248, 255, 910 N.E.2d 444, ¶38 (2009). Given the legislative history of R.C. 2305.23, the holding by the *Primes* Court, the decision’s subsequent application at R.C. 2305.231 and R.C. 2305.234, the discussion of the limited immunity of R.C. 2305.23 by

the *Hamisfar* and the *Butler* Courts, and the refusal of our General Assembly to amend the Good Samaritan statute, as was done in California in response to the *Van Horn* Court's decision, it cannot be said that R.C. 2305.231 and R.C. 2305.234 legislatively overruled R.C. 2305.23 to expand the Good Samaritan statute's immunity to laymen and non-medical activities in emergency situations.

As an aside, our General Assembly is currently considering amendments to R.C. 2305.23, R.C. 2305.231, and R.C. 2305.234 within House Bill No. 157. 2015 H.B. No. 157, §1. The proposed legislation's summary purpose is "[t]o revise the laws governing health insurance coverage, medical malpractice claims, the Medicaid program, health care provider discipline, and required and permitted health care provider disclosures; and to create the Nonstandard Multiple Employer Welfare Arrangement Program and to terminate that program after five years." For our purposes here, it is remarkable that there is presently no effort within House Bill No. 157 to amend the scope of R.C. 2305.23 to legislatively overrule the *Primes*, *Hamisfar*, and *Butler* Courts' decisions or to have it conform to R.C. 2305.231 and R.C. 2305.234. This inaction stands in stark contrast to the legislation enacted by the California legislature in response to the *Van Horn* Court's decision. We can presume from House Bill No. 157 that our General Assembly approves of the construction given to the limited scope of R.C. 2305.23 by Ohio's courts.

Appellee's last argument within this section is that Appellants' contention that he does not fall within the category of people protected by the Good Samaritan statute was not presented to the Courts below and is waived. (Memo Contra, pp. 3-4) Appellants initially opposed Appellee's summary judgment motion by contending that the Good Samaritan statute has no application to this case. (*Response to Motion for Summary Judgment*, Td. #51, p. 1) The

authority on which Appellee relied in support of his motion, *Held v. City of Rocky River*, 34 Ohio App.3d 35, 516 N.E.2d 1272 (8<sup>th</sup> Dist. 1986), was distinguishable because Appellee is not a firefighter. (*Id.*) Additionally, Appellee's operation of a tractor-trailer rig does not constitute any kind of care or treatment, let alone emergency care or treatment. (*Id.*)

Appellants also contended before the trial court that R.C. 2305.23 immunizes only health care professionals rendering medical treatment during the exigencies of an emergency, citing *Primes v. Tyler*, 43 Ohio St.2d 195, 331 N.E.2d 723 (1975), and *Hamisfar v. Baker Concrete Constr.*, 1<sup>st</sup> Dist., Hamilton No. C-970228, 1998 WL 173238 (Feb. 8, 1998). (*Plaintiff's Sur-Reply to the Defendant's Reply in Support of His Motion for Summary Judgment*, Td. 53, pp. 1-2) Appellants reiterated that Appellee's operation of a tractor-trailer does not constitute emergency care. (*Id.*, p. 2)

Thereafter, Appellants contended before the Twelfth District Court of Appeals that the Good Samaritan statute "singles out a group of benevolently-disposed individuals for immunity from negligent injury to persons while rendering **medical treatment during the exigencies of an emergency**. *Primes v. Tyler*, 331 N.E.2d 723, 727 (Ohio 1975) (emphasis added)." (*Brief of Plaintiff-Appellant*, p. 4) Appellants further contended that "the intent of R.C. 2305.23 is to protect health care professionals not non-medically trained individuals . . . from liability during truly emergent circumstances, see *Hamisfar v. Baker Concrete Const. Co., Inc.*, Hamilton No. C-970228, 1998 WL 173238 (Ohio App. 1<sup>st</sup> Dist. 1998)." (*Brief of Plaintiff-Appellant*, p. 5) Since Appellee did not render emergency, or any, care to Mr. Carter, the Good Samaritan statute has no application here. (*Id.*)

During oral argument before the Twelfth District Court of Appeals, Appellants further relied upon and cited the Court to *Butler v. Rejon*, 9th Dist. Summit No. 19699, 2000 WL

141009 (Feb. 2, 2000), and 70 Ohio Jur.3d, *Negligence*, §29 (2014), as additional support for the principle that the Good Samaritan statute applies only to persons providing emergency medical care or treatment. At the Court's suggestion, Appellants filed a *Notice of Supplemental Authorities of Plaintiffs-Appellants* to address these authorities. Appellee filed a written response thereto.

Appellants contended before the trial court and the Twelfth District Court of Appeals that Appellee did not fall into a category of persons protected by R.C. 2305.23. The issue has been properly preserved for review.

**Appellee's Second Proposition of Law: The Carters' argument that R.C. 2305.23 only affords immunity to people rendering emergency medical care or treatment requires this Court to read a work into the statute that the Legislature did not include, thereby ignoring long-standing rules of statutory construction and case law involving the statute.**

Appellee argues again at his Second Proposition of Law that R.C. 2305.23 provides immunity to anyone providing any sort of care or treatment at the scene of an emergency. (Memo Contra, p. 4) To make the argument, Appellee again informs us that "[t]he pertinent language of the statute is: 'No person shall be liable in civil damages for administering emergency care or treatment at the scene of an emergency \*\*\*.' R.C. 2305.23." (Memo Contra, p. 4)

Appellants refer the Court to pages 6-15 of their Merit Brief and their reply to Appellee's First Proposition of Law above that address Appellee's argument.

Appellee relies extensively upon the discussion of statutory construction within *Wachendorf v. Shaver*, 149 Ohio St. 231, 236-237, 78 N.E.2d 370(1948), to support his argument that this Court may not add the word "medical" into R.C. 2305.23. (Memo Contra, pp. 5-6) Appellants wholeheartedly agree with the *Wachendorf* Court's discussion of the law of statutory

construction. Nevertheless, in asking the Court not to consider the full text of R.C. 2305.23, Appellee contravenes the very rules of statutory construction prohibiting the Court from omitting consideration of those parts of the statute that do not support his argument:

**It is a general rule that courts, in the interpretation of a statute, may not take, strike or read anything out of a statute, or delete, subtract or omit anything therefrom. To the contrary, it is a cardinal rule of statutory construction that significance and effect should if possible be accorded every word, phrase, sentence and part of an act.** There rules of construction are of such general application that citing of specific cases is unnecessary. These rules of construction are subject to some exceptions; nevertheless, if the act or acts in question are couched in plain and unambiguous language, courts are not justified in adding words to such statutes, **neither may the courts delete words from a statute, but must construe intent of the lawmakers as expressed in the law itself.**

*Wachendorf v. Shaver*, 149 Ohio St. at 237 (emphasis added and internal citation omitted).

The portions of R.C. 2305.23 that Appellee seeks to strike or ignore from consideration here were deemed by the *Butler* Court to be pivotal in ruling that the statute only immunizes a Good Samaritan who renders medical emergency care or treatment at the scene of an emergency:

Ohio's Good Samaritan statute, R.C. 2305.23, states in pertinent part:

No person shall be liable in civil damages for administering emergency care or treatment at the scene of an emergency outside of a hospital, doctor's office, or other place having proper medical equipment, for acts performed at the scene of such emergency, unless such acts constitute willful or wanton misconduct. \* \* \*

In interpreting a statute, "[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage." R.C. 1.42. In order to be covered by the Good Samaritan statute, one must be providing emergency *medical* care or treatment to another individual. R.C. 2305.23. Consequently, R.C. 2305.23 shields a good samaritan from civil liability in an action brought by the person to whom emergency *medical* care was rendered.

*Butler*, 2000 WL 141009 at \*3.

Judge Ringland, the judge who dissented below, also considered that portion of R.C. 2305.23 sought to be ignored by Appellee and concluded that the Good Samaritan statute only applies to emergency medical care:

I agree with the Ninth District's determination in *Butler* that when the Good Samaritan statute in R.C. 2305.23 is "read in context and construed according to the rules of grammar and common usage," R.C. 1.42, it is clear that "[i]n order to be covered by the Good Samaritan statute, one must be providing emergency *medical care or treatment to another individual.*"

*Carter v. Reese*, 2014-Ohio-5395, ¶39, 25 N.E.3d 1086, 1095 (12<sup>th</sup> Dist. 2014) (Ringland, J., dissenting).

**Appellee's Third Proposition of Law: The lower court did not err by holding that Mr. Reese, by attempting to free Mr. Carter from being trapped by the semi, was providing emergency care and was, therefore, protected by R.C. 2305.23.**

Appellee argues that the case of *Held v. City of Rocky River*, 34 Ohio App. 3d 35, 516 N.E.2d 1272 (8<sup>th</sup> Dist. 1986), is dispositive of whether he is entitled to immunity under the Good Samaritan statute and to the grant of summary judgment on Appellants' negligence claims. (Memo Contra, pp. 6-7) Appellee also recites the majority of the appellate court panel's discussion that the holdings of the *Primes*, *Hamisfar*, and *Butler* Courts regarding the limited application of R.C. 2305.23 are dicta and of no application. (Memo Contra, pp. 7-8)

The majority of the court of appeals panel relied upon *Held v. City of Rocky River*, 34 Ohio App.3d 35, 516 N.E.2d 1272 (8<sup>th</sup> Dist. 1986), to support the application of the Good Samaritan statute to lay emergency activities of a non-medical character. *Carter v. Reese*, 2014-Ohio-5395, ¶10. In *Held*, the Eighth District Court of Appeals stated, as an alternative holding, that an off-duty fire fighter's rescue of a colleague who had been knocked to the ground and pinned by a continuous stream of rushing water was an emergency situation and within the scope of the statute. *Held*, 34 Ohio App.3d at 38-39. Remarkably, this ruling was not part of the case's

syllabus and is, therefore, *dicta*. See *Williams v. Ward*, 18 Ohio App.2d 37, 39, n.1, 246 N.E.2d 780 (6<sup>th</sup> Dist. 1969) (“Where the opinion of the Ohio Supreme Court contains statements not necessary to reach the actual decision and is not part of the syllabus, it is obiter dicta, and is not binding[.]”).

In any event, off-duty firefighters are expressly within the class of health care/first responders encompassed by the immunity provided by the Good Samaritan statute; *i.e.*, “The administering of such care or treatment by one as a part of his duties as a paid member of any organization of law enforcement officers or fire fighters does not cause such to be a rendering for remuneration or expectation of remuneration.” R.C. 2305.23. Thus, the alternative holding by the *Held* Court is in complete conformity with the Good Samaritan statute.

However, unlike firefighter Thomas Cahill in the *Held* case, it is undisputed that Appellee was not a law enforcement officer, firefighter, or health care provider at the time he moved Mr. Carter’s tractor-trailer rig. Consequently, the portion of the Good Samaritan statute immunizing Mr. Cahill from a subsequent negligence claim in the *Held* case has no application to Appellee’s claim to statutory immunity here.

The majority of the court of appeals panel characterized the *Primes* Court’s discussion of the Good Samaritan as dicta and not binding. The majority also characterized the *Hamisfar* and *Butler* Court’s discussions as dicta. However, as discussed above and at pages 8-9 of Appellants’ Merit Brief, the *Primes* Court’s discussion of R.C. 2305.23 was an unequivocal articulation of Ohio law regarding the limited scope and application of the Good Samaritan statute. Assuming *arguendo* that its discussion was dicta, the trial court and the majority still committed reversible error in expanding the immunity provided by the Good Samaritan statute to

Appellee. As expressed by the Fourth District Court of Appeals in *State v. Boggs*, 89 Ohio App.3d 206, 624 N.E.2d 204 (4<sup>th</sup> Dist. 1993):

Be that as it may, the reality of appellate practice is that this court, and others, frequently rely on Supreme Court dicta for resolution of issues. Any court which disregards the Supreme Court's discussion of certain issues merely on the basis that it was not carried into the syllabus would be treading on dangerous and unstable ground. A healthy regard should be maintained for considered dicta.

*Id.*, 89 Ohio App.3d at 209.

Last, Appellee argues that he rendered care and treatment to Mr. Carter by moving his tractor/trailer rig when he had no training, education, or experience in the operation of such a rig. Appellants discussed this at pages 18-19 of their Merit Brief and no further elaboration on this issue is required.

### **CONCLUSION**

For the reasons discussed above and within Appellants' Merit Brief, our General Assembly intended for R.C. 2305.23 to immunize from liability for civil damages only those persons administering emergency medical care at the scene of an emergency. Assuming for the sake of discussion that R.C. 2305.23 immunizes emergency non-medical care at the scene of an emergency, then triable issues of fact exist whether Appellee administered care and treatment to Mr. Carter, let alone emergency care and treatment. Appellants Dennis Carter and Mary Carter request that this Court hold that R.C. 2305.23 has no application to Appellee, reverse the judgment of the Court of Appeals and remand this case to the trial court for further proceedings.

Respectfully submitted,



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Robert A. Winter, Jr. (#0038673),  
Counsel of Record,  
P.O. Box 175883  
Fort Mitchell, KY 41017-5883  
Phone: (859) 250-3337  
Email: robertawinterjr@gmail.com

and

Stephanie Collins (#0089945)  
5247 Madison Pike  
Independence, KY 41051-7941  
Phone: (859) 363-1900  
Fax: (859) 363-1444  
Email: scollins@ericdeters.com

Counsel for Appellants Dennis Carter and  
Mary Carter

**CERTIFICATE OF SERVICE**

I certify that true and correct copies of the foregoing were served upon the following by depositing the same into the United States mail, first class postage prepaid, on this 12<sup>th</sup> day of October 2015, to:

Glenn A. Markesbery, Esq.  
Katherine A. Clemons, Esq.  
Markesbery & Richardson Co., LPA  
2258 Victory Parkway, Suite 200  
P.O. Box 6491  
Cincinnati, OH 45206

Andrew D. Bowers, Esq.  
Jackie M. Jewell, Esq.  
Special Counsel for the Attorney General  
612 North Park Street, Suite 300  
Columbus, Ohio 43215



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Robert A. Winter, Jr.