

**IN THE SUPREME COURT OF
THE STATE OF MISSISSIPPI**

2006-CA-00707

SHERRY SCALES

APPELLANT

VS.

LACKEY MEMORIAL HOSPITAL

APPELLEE

**APPEAL FROM THE CIRCUIT COURT OF
SCOTT COUNTY, MISSISSIPPI**

REPLY BRIEF OF APPELLANT

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REPLY BRIEF

The attorney for the Appellant would file this his Reply Brief rebutting why the lower court should not have granted summary judgment in this case.

Rule 56 of the Mississippi Rules of Civil Procedure provides that summary judgment may be entered by a trial court if there are no genuine issues as to material fact.

In the case at bar, the interrogatories first answered by the Appellant showed that she had two treating physicians, George Reynolds and Steve Hindman and later supplemental interrogatories state the summary of their position as well as the summary of Dr. Donald Marks.

The allegations in the pleadings in this cause support a genuine issue of material fact in that Lackey Memorial Hospital improperly treated Ms. Scales during the onset of a massive heart attack.

As has been stated on previous occasions, sworn affidavits were furnished to the Appellee. These affidavits detailed the actions of the hospital on the date in question and were sworn to by the Appellant, her mother, and her brother who were present during the stay at Lackey Memorial Hospital.

As has been pointed out, the Appellee neglected to depose any of the people listed in the original answer to interrogatories, all of whom would show that there exists a genuine issue of material fact.

As has been previously noted in the first brief, had the Appellee taken the time and effort to depose the people that were listed and also to depose the people who had given sworn affidavits, then in that event there would be no argument about the existence of a genuine issue of material fact.

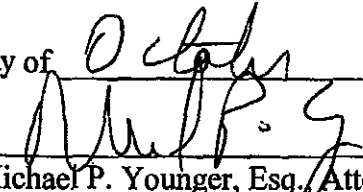
The undersigned believes that the summary judgment was premature and should have

been continued until such time as depositions could have been offered from the attending physicians, Dr. Marks, the Appellant, and the Appellant's occurrence witnesses.

If after this discovery is completed there exists no issue of material fact, then summary judgment should issue. However, at the present time, the argument on the motion was premature and could have been avoided by deposing the individuals furnished to the Appellee.

The Appellant would respectfully request that the summary judgment be overturned and this cause be remanded for additional discovery.

Respectfully submitted this the 30 day of October, 2007.



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CERTIFICATE OF SERVICE

I, Michael P. Younger, do hereby certify that I have this date mailed a true and correct copy, via U.S. Mail, of the above and foregoing to:

Jan Gadow, Esq.
P.O. Box 1163
Jackson 39215-1163

This 30 day of October, 2007.



Michael P. Younger, Attorney for Appellant