

**IN THE SUPREME COURT OF MISSISSIPPI**

**No. 2006-CA-01601**

**JONATHAN CRAIG GRAY**

**APPELLANT**

**V.**

**UNIVERSITY OF MISSISSIPPI  
SCHOOL OF MEDICINE**

**APPELLEE**

---

**BRIEF OF APPELLANT**

**APPEAL FROM ENTRY OF FINAL JUDGMENT  
ENTERED FROM HINDS COUNTY CIRCUIT COURT**

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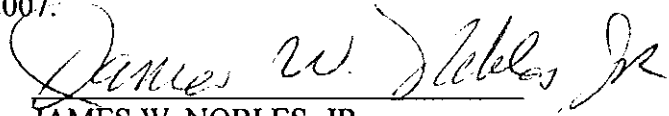
**CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel of record for the Appellant certifies that the following are listed in order that the justices of this Court may evaluate possible disqualification or recusal.

1. Jonathan Craig Gray, Appellant, 290 Berrytown Circle, SSE, Meadville, Mississippi 39653.
2. Earnest Allen Gray, III, Appellant, 290 Berrytown Circle, SSE, Meadville, Mississippi 39653.
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This the 20<sup>th</sup> day of April, A.D., 2007.

  
JAMES W. NOBLES, JR.

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## **STATEMENT OF THE ISSUES**

The Issues to be determined by the Court on this appeal are:

### **ISSUE NUMBER ONE**

**WHERE UMCC REFUSED TO PRODUCE GRAY'S MEDICAL RECORDS SO AS TO ALLOW THE SAME TO BE REVIEWED AS REQUIRED BY § 11-1-58 PRIOR TO JULY 5, 2005, WHEN IT IS UNCONTRADICTED THAT UMMC WITHHELD THE MEDICAL RECORDS UNTIL NOVEMBER 2, 2005 AND PLAINTIFF EXERCISED DUE DILIGENCE TO OBTAIN HUGHLENE GRAY'S MEDICAL RECORDS DID THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT TO UMMC BY REFUSING TO CONSIDER THE DISCOVERY RULE AND THE EFFECT OF § 11-1-58 OF THE MISSISSIPPI CODE OF 1972, AS AMENDED, IN CONJUNCTION WITH THE STATUTE OF LIMITATIONS PROVIDED FOR BY § 11-46-11(3)**

### **ISSUE NUMBER TWO**

**WHETHER A CAUSE OF ACTION BASED ON MEDICAL NEGLIGENCE OF A STATEOWNED AND OPERATED HOSPITAL WHOSE DOCTORS AND STAFF ARE ALLEGED TO HAVE BEEN GUILTY OF NEGLIGENCE MAY BE SPLIT OR SEVERED WHEN THE ONLY MEANS THAT THE PLAINTIFF HAS IS AGAINST THE ENTIRE AGENCY, AND NOT THE INDIVIDUAL EMPLOYEES**

## **STATEMENT OF THE CASE**

Hughlene Gray was hospitalized at UMCC in June, 2005 for a bariatric gastric bypass surgical procedure. The surgery was performed by Dr. Roger Blake on January 12, 2004, following which Hughlene Gray was treated and administered care by UMCC staff and personnel until December, 2004 at which time she was discharged with an open fistula, a colostomy and rampant infection at the surgical site. Notice was given under the Mississippi Tort Claims Act to UMCC on January 10, 2005 setting forth Hughlene Gray's claim for damages against the Hospital and the Staff for their negligence in the original surgery, several follow up surgeries and discharging her with the

fistula and infection. (Record 0008-0009) She died on January 17, 2005 (Record 0027 ).

UMCC acknowledged receipt of the Tort Claims Act Notice on January 10, 2005 by notation on the Notice by Jeanee Shell, Assistant to Dr. Daniel W. Jones. UMCC, through Marilyn Wilson, Claims Manager in the Legal/Claims Department, University of Mississippi Medical Center, further acknowledged the receipt of the Tort Claim Notice on January 13, 2005 and stated: "An investigation of the claim is underway into your allegation and upon completion, we will contact you regarding our position on liability" (Record pp. 0011- 0013 Record Excerpts, p. 0013 ). No response was ever forthcoming. The letterhead on which that response was sent shows the UMCC has a Staff Attorney, Claims Manager and a Claims Management Assistant.

It is uncontradicted that the attorney for the Plaintiff sent written requests for Hughlene Gray's medical records to UMCC on January 17, 2005, March 17, 2005, April 25, 2005, May 12, 2005, and November 2, 2005, along with at least 30 phone calls requesting Hughlene Gray's medical records per the Affidavit of Dallas Cowart, legal secretary to James W. Nobles, Jr. dated February 27, 2006. (Record 0028-0036). These records, containing numerous gaps, were finally produced on November 2, 2005. A complete set of the medical records have never been produced.

Hughlene Gray left surviving her as wrongful death beneficiaries, two sons, Jonathan Gray and Earnest M. Gray, III, who are the Plaintiffs below and the Appellants here. Suit was filed on January 6, 2006 against UMCC under the Mississippi Wrongful Death Statute, §11-7-13 and the Mississippi Tort Claims Act, § 11-46-1 et seq. ( Record 0003-0013).

The allegations of the Complaint state that Hughlene Gray died occurred on January 17, 2005. The bariatric bypass surgical procedure was performed on her by Dr. Blake at UMCC on January 12, 2004. Her medical conditions following that surgery and numerous other failed surgeries

administered to her to correct the surgical errors caused her medical condition to deteriorate through December, 2004, when she was discharged home with an open fistula, a colostomy and rampant surgical site infection. The allegations of the Complaint further set forth that the entire course of negligent treatment and care fell below the applicable standard of care by UMCC physicians and staff through December, 2004 and that negligence proximately caused and proximately contributed to the death of Hughlene Gray on January 17, 2005. (Record 0003-0006)

In response to the Complaint, UMCC filed a Motion to Dismiss or for Summary Judgment claiming that any negligence on the part of UMCC which occurred prior to July 5<sup>th</sup>, 2004 was barred under the applicable provisions of § 11-41-11(3) of the Mississippi Code of 1972, as amended in 2002. UMCC contended that the July 5, 2004 date should be calculated by taking the date of Notice of Claim under the Tort Claims Act, which tolls the statute for 95 days, adding 90 days to the 95 days during the tolling period, and one year past that date.  $95+90+365=550$  days.

Plaintiff's Response to the Motion to Dismiss contained evidence and documents which, by operation of Rule 56 Mississippi Rules of Civil Procedure, converted UMCC's Motion into one for Summary Judgment. Those documents include an affidavit from Dallas Cowart, legal secretary to the attorney for Gray that numerous written and telephonic requests for the medical records for Hughlene Gray at UMCC were made from January 17, 2005 through October 16, 2005 when the invoice for Gray's medical records was made out and the records were finally provided to Plaintiff's counsel on November 2, 2005, because UMCC required an additional medical authorization before release of these records. (Record 0028-0036). These records contain over 3400 pages of incomplete medical records, which have gaps, recorded during Hughelene Gray's hospitalization at UMCC during 2004. (Record 0035).

At the hearing of UMCC's Motion for Summary Judgment, The Honorable Trial Court sustained UMCC's position that any medical negligence which occurred prior to July 5, 2004 was barred by the applicable statute of limitations contained § 11-46-11(3) in the Mississippi Tort Claims Act, leaving intact the remaining portion of the claim for the wrongful death of Hughlene Gray against UMCC.

The Trial Court rendered a Memorandum Opinion and Order explaining the reasoning for the Grant of the Summary Judgment. (Record 0048-0050). From that Grant of Summary Judgment entered on August 15, 2006, Gray appeals to this Court. (Record 0046).

Timely Notice of Appeal dated August 29, 2006 was filed within 30 days from the entry of the Summary Judgment as required by Rule 3(a) of the Mississippi (Record 0051). Designation of the Record on Appeal and Notice to the Court Reporter were given on August 29, 2006. (Record 0053-54). Certification of Compliance with Rule 11(b)(1) of the Mississippi Rules of Appellate Procedure was dated September 26, 2006 and filed on September 27, 2006. (Record 0056).

### **SUMMARY OF THE ARGUMENT**

Gray's argument may be summarized:

(1) The Honorable Trial Court's ruling that the Mississippi Tort Claims Act statute of limitations barred the negligent actions of the UMCC physicians and staff prior to July 5, 2005 was erroneous because splits into several parts, a single claim for the wrongful death of Hughlene Gray which had its beginning in January, 2004 and ending when she was discharged from UMCC in December, 2004. Hughlene Gray's medical treatment for the surgery continued from January 12, 2004 until her Death on January 17, 2005 resulting from improperly performed surgery and the numerous improperly performed followup corrective surgeries which attempted to correct the first.

Hughlene Gray was discharged from UMCC in December, 2004, with an open fistula, colostomy and rampant infection which resulted in her demise. Gray's argument further will set forth that the cause of action for the wrongful death of Hughlene Gray cannot be split into components or pieces under the Mississippi Wrongful Death Act or the Mississippi Tort Claims Act, both of which create statutory causes of action, unknown to common law, which is vested in the survivors, for death which results from the negligence of employees of the state of Mississippi.

(2) Gray had one year from January 17, 2005 in which to file suit for the wrongful death of Hughlene Gray under the Mississippi Tort Claims Act and the Mississippi Wrongful Death Act. Due to the actions of UMMC refusing to produce the medical records, the applicable statute of limitations began to run the earliest of October 16, 2005 based on the discovery rule for the reason that it would be virtually impossible to determine from a laymen's standpoint whether the results of the surgeries were due to medical negligence or complications which occur in a statistical number of cases of the same surgical procedure. Section 11-1-58 of the Mississippi Code of 1972, as amended, must be considered in making the determination of when the applicable statute of limitations started to run in this case.

## ARGUMENT

### SUMMARY JUDGMENT STANDARD

In **Harrison v Chandler-Sampson Insurance, Inc.**, 891 So.2d 224 (Miss. 2005) the Summary Judgment Standard was stated:

¶ 11. We apply a de novo standard of review of a trial court's grant or denial of a motion for summary judgment. *Satchfield v. R.R. Morrison & Son, Inc.*, 872 So.2d 661, 663 (Miss.2004); *McMillan v. Rodriguez*, 823 So.2d 1173, 1176-77 (Miss.2002); *Lewallen v. Slawson*, 822 So.2d 236, 237-38 (Miss.2002); *Jenkins v. Ohio Cas. Ins. Co.*, 794 So.2d 228, 232 (Miss.2001); *Aetna Cas. & Sur. Co. v. Berry*, 669 So.2d 56, 70 (Miss.1996).

Accordingly, just like the trial court, this Court looks at all evidentiary matters in the record, including admissions in pleadings, answers to interrogatories, depositions, affidavits, etc. *Id.* at 70. The evidence must be viewed in the light most favorable to the party against whom the motion has been made. *Id.* If, in this view, the moving party is entitled to judgment as a matter of law, summary judgment should forthwith be entered in his favor. *Id.* When a motion for summary judgment is made and supported as provided in Miss. R. Civ. P. 56, an adverse party may not rest upon the mere allegations or denials of the pleadings, but instead the response must set forth specific facts showing that there is a genuine issue for trial. *Miller v. Meeks*, 762 So.2d 302, 304 (Miss.2000). If any triable issues of fact exist, the trial court's decision to grant summary judgment will be reversed. Otherwise, the decision is affirmed. *Id.* at 304.

The Mississippi Tort Claims Act, §11-46-1 et seq of the Mississippi Code of 1972, as amended, was passed to counter the ruling of this Court abolishing the doctrine of sovereign immunity in **Pruett v. City of Rosedale**, 421 So.2d 1046(Miss.,1982). Since the enactment of the Mississippi Tort Claims Act, claimants and attorneys for claimants have experienced numerous constructions placed on this act, i.e. construction of the notice requirements, strict compliance is required **South Cent. Regional Medical Center v. Guffy**, 930 So.2d 1252,(Miss.,2006), **Black v. City of Tupelo**, 853 So.2d 1221(Miss.,2003); **University of Mississippi Medical Center v. Easterling** 928 So.2d 815(Miss.,2006);**City of Jackson v. Lumpkin**, 697 So.2d 1179 (Miss.,1997), **Lattimore v. City of Laurel** 735 So.2d 400 (Miss.,1999). whereas under prior recent and subsequent decisions substantial compliance was found to be proper. **Jackson v. City of Wiggins**, 760 So.2d 694 (Miss.,2000); **City of Pascagoula v. Tomlinson**, 741 So.2d 224 (Miss.,1999); **Carr v. Town of Shubuta**, 733 So.2d 261, 263 ( Miss.,1999) where this Court held:

In *Reaves v. Randall*, 729 So.2d 1237 (Miss.1998), this Court adopted a substantial compliance standard with respect to the notice of claim requirements of the Tort Claims Act. **To the extent that Reaves and the opinion in this case conflict with City of Jackson v. Lumpkin, 697 So.2d 1179, 1182 (Miss.1997), Carpenter v. Dawson, 701 So.2d 806, 808 (Miss.1997), and Holmes v. Defer, 722 So.2d 624 (Miss.1998), which require strict compliance, Lumpkin, Carpenter, and Holmes are hereby overruled.**

¶ 7. In *Pruett v. City of Rosedale*, 421 So.2d 1046, 1052 (Miss.1982), this Court abolished the judicially created doctrine of sovereign immunity for general tort liability, leaving the Legislature the responsibility to place limitations on governmental liability within constitutional limits. *Presley v. Mississippi State Highway Comm.*, 608 So.2d 1288, 1291 (Miss.1992)(plurality opinion). (emphasis added).

In **Gale v. Thomas**, 759 So.2d 1150 (Miss.,1999) in which this Court held that notice of claim under the MCTA was a condition precedent to right to filing suit under the Act and compared the substantial compliance construction with non-compliance. Non-compliance was fatal in **Little v. Mississippi Dept. of Human Services**, 835 So.2d 9 (Miss.,2002)

In **McNair v. University of Mississippi Medical Center**, 742 So.2d 1078 (Miss.,1999) the Court examined the facts to determine whether the Notice of Claim was properly served and received by UMMC. McNair was found to have “substantially complied” with the notice requirements. In **Fairley v. George County**, 871 So.2d 713 (Miss.,2004) a Notice of Claim sent to an attorney for the County was found to be minimal, not substantial compliance, and the summary judgment granted the county was affirmed.

Whether substantial compliance or strict compliance with Notice requirements is not the issue here. It is the application of the statute of limitations where Gray gave proper notice, served it, got a receipt for the Notice, received an acknowledgment of the Notice from the Legal Department/Claim Manager at UMCC of that Notice. The issue is whether Gray’s claims were partially barred because of the passage of one year from the date of negligent acts which proximately contributed to the death of Hughlene Gray. There are some circumstances which appear in the record in this case which are substantial and bear examination before any decision is made by this Court. Gray’s attorney requested her medical records from the University of Mississippi Medical Center numerous times in writing, commencing January 17, 2005 through November, 2, 2005. (Record 0028-0036).

In **Forrest County General Hosp. v. Kelley**, 914 So.2d 242, 244, 245 (Miss.App.,2005)

the Court Appeals, determined in an Interlocutory Appeal, assigned to it by this Court, that the denial of Summary Judgment to Forrest General Hospital was proper on the issue of timeliness of filing of the tort claim notice where the Hospital refused to produce Kelley's medical records, preventing Kelley from filing the Notice of Claim because of the lack of foundational evidence on which to base his claim. There, the Court of Appeals held:

¶ 8. The issue of whether or not Mr. Kelley's claims against the Hospital are barred by the statute of limitations will be decided based on the timely production of the medical records. In March of 2001, two weeks after Mrs. Kelley's death, Mr. Kelley made the first request for medical records. The Hospital responded and informed him that the records were not yet on file. Mr. Kelley tried diligently and repeatedly over the following months to obtain the records.

¶ 9. On September 6, 2001, Mr. Kelley received a small portion, approximately fifty-eight pages, of the medical records. Mr. Kelley continued to request the entire file without success. Mr. Kelley contends that he filled out numerous requests for the records and was either told that the file was incomplete, unavailable, or that his request had been lost, and he would have to make another request.

¶ 10. It was not until January 14, 2003, that the full set of medical records, totaling 131 pages, was given to Mr. Kelley. On January 16, 2003, an expert in nursing rendered her opinion that, based on the medical records, the nurses' negligence in the care of Mrs. Kelley caused of her death.

¶ 11. On March 3, 2003, approximately six weeks after receiving the complete set of records, Mr. Kelley filed the Notice of Claim against the Hospital. The complaint in this matter was filed on July 15, 2003.

¶ 12. The Hospital argues that Mr. Kelly's claims are time barred and cites Wayne General Hospital v. Hayes, 868 So.2d 997 (Miss.2004). In Wayne General, the supreme court held that the plaintiffs' claim was barred by the statute of limitations since they did not file their action against the defendants until after the expiration of the MTCA statute of limitations. Id. at 1001 (¶ 18). The plaintiffs filed suit after a "chance meeting" and conversation with a treating nurse and former employee of the defendant hospital, which revealed the nurse's belief that the defendant hospital negligently caused the decedent's death. Id. at 999 (¶ 6). The court found that the discovery rule applied to the one-year MTCA statute of limitations and stated that "to claim benefit of the discovery rule, a plaintiff must be reasonably diligent in investigating the circumstances surrounding the injury. The focus is on the time that the patient discovers, or should have discovered by the exercise of reasonable diligence, that he probably has an actionable injury." Id. at 1000 (¶ 15). In finding the plaintiffs' claim time barred, the court noted that there was no indication that the plaintiffs took any investigative action and were

therefore "not reasonably diligent in investigating the cause of [the decedent's] injuries." *Id.* at 1001 (¶ 16).

¶ 13. Here, however, we find that there is sufficient evidence to show that Mr. Kelley was reasonably diligent in investigating the cause of Mrs. Kelley's death. The medical records were persistently requested, by either Mr. Kelley or his attorney, for over two and one-half years. There were at least twelve requests or inquiries made asking for medical records. Medical experts were hired and, upon receipt of the complete set of records, promptly rendered an opinion. Mr. Kelley submitted a notice of claim and filed suit shortly after the expert witness determined that the records indicated wrongful conduct.

This Court also considered the discovery rule in Sarris v. Smith, 782 So.2d 721, 723, 724 (Miss. 2001). There, Justice Cobb examined the application of the rule in the context of the 2 year statute of limitations of a medical negligence case against a non-governmental protected physician:

**A. Is the discovery rule applicable?**

¶ 8. The parties do not dispute that Sarris filed suit more than two years after Johnson's death. Sarris argues, however, that the statute of limitations was tolled until she was able to secure her husband's medical records, since she exercised reasonable diligence in getting those records and could not reasonably be expected to know of Dr. Smith's and JHC's tortious conduct without the records. Smith and JHC argue that the trial court was correct in holding that the statute of limitations began to run at Johnson's death, because Sarris was on notice that some negligent act might have occurred to cause that death. The resolution of this issue therefore turns on when Sarris "discovered" the wrongful conduct within the meaning of the statute.

¶ 9. This Court interpreted the discovery rule to mean that "the operative time is when the patient can reasonably be held to have knowledge of the injury itself, the cause of the injury, and the causative relationship between the injury and the conduct of the medical practitioner." *Smith v. Sanders*, 485 So.2d 1051, 1052 (Miss.1986); *see also Kilgore v. Barnes*, 508 So.2d 1042, 1043-46 (Miss.1987)(holding statute of limitations did not bar malpractice suit over surgical needle left in lining of plaintiff's heart in 1974 but not discovered by plaintiff until 1982).

We believe that Sarris could not reasonably have known, until she reviewed the medical records, the causal relationship between Johnson's death and Smith's failure to inform either him or Dr. Grenfell that Johnson needed follow-up treatment.

.....

¶ 15. Sarris could not reasonably have known of the nature of Smith's acts or their alleged causal connection with the death of Johnson without access to Johnson's medical records. It is undisputed that the hospital was for some reason unable to provide those records until nine months after Johnson's death. Under the specific facts of this case, the statute of limitations was tolled for that nine-month period, bringing the commencement of Sarris's suit within the two-year statutory period.

¶ 16. We do not establish a bright line rule tolling the statute of limitations in all cases until potential plaintiffs can get medical records. Application of the discovery rule is a fact-intensive process. Under the facts of this case, we believe that Sarris could not have discovered the negligent acts until she received the medical records. Therefore, we reverse the circuit court's grant of summary judgment and remand this case to the circuit court for proceedings consistent with this opinion.

The discovery rule is applicable as set forth in **Forrest General Hospital v Kelley**, supra, and **Sarris v Smith**, supra, as to the negligent acts which occurred from January 12, 2004 to July 5, 2004 because UMCC refused to provide Hughlene Gray's medical records until November 2, 2005, 120 days past July 5, 2005 and were not even ordered by UMCC until "Elaine ordered 10-14- 05" and they were to be provided "end of next week". (Affidavit of Dallas Cowart, Record 0030, handwritten note) Gray was diligent and should not be penalized here for not filing suit before July 5, 2005 without those medical records. Once the records were produced, it was necessary to have them reviewed by a bariatric medical expert surgeon to determine whether negligence occurred which caused or contributed to the cause of death of Hughlene Gray, or whether she simply had statistically recognized complications. These records are voluminous and took some time for the expert to review.

Under the undisputed facts of this case, Gray's Complaint was timely and filed within one year from the date of discovery of the medical negligence which occurred at UMMC which caused her

death. There being no bright line rule regarding the application of the discovery rule, per Sarris v Smith, supra, an examination of the facts here call for the Summary Judgment being reversed and this cause remanded to the Circuit Court of the First Judicial District of Hinds County, Mississippi for further proceedings. The Trial Court failed to consider the fact specific basis for the application of the discovery rule and as a result, erred in sustaining UMCC's Motion for Summary Judgment. Said ruling was a mechanical application § 11-46-11(3) without regard to the undisputed facts which were before the Court which demonstrated that Gray had been prejudiced by the refusal of UMCC to produce the medical records for 120 days past the date the Court held the claims for her wrongful death were barred. Compliance with § 11-1-58(1) of the Mississippi Code of 1972, as amended was not possible until the records had been reviewed.

The Court of Appeals in May v Pulmosan Safety Equipment Co., 948 So.2d 483,485 (Miss App. 2007) consider the effect of this Court's opinion in Jenkins v Pensacola Health Trust, Inc., 933 So.2d 923 (Miss. 2006) which overruled Gentry v. Wallace, 606 So.2d 1117 (Miss. 1992), in the context of the facts present in this case, that is, that Hughlene Gray died during the time that the applicable statute of limitations had not run. In May v. Pulmosan, supra, the Court of Appeals stated:

We interpret the separate opinion to say that there remains the possibility of a restart to the limitations period so long as the injured person dies within the limitations period, but there is no such possibility of a restart to the limitations period if the injured person dies outside of the limitations period.

Hughlene Gray died during the time encompassed within the limitations period. The statute of limitations here, should be so construed by this Court.

The Second Issue is whether the Trial Court's ruling, in effect, splits Gray's cause of action. Splitting causes of action is not permitted under the precedents of this Court and the applicable rules. **In Re: the Estate of England**, 846 So.2d 1060, 1068 (Miss.App. 2003), the Court of Appeals examined the wrongful death statute in the context of whether all or part of the claims for survival and for the wrongful death of a person who died as a result of someone else's negligence of fault could be assigned or conveyed by will. While that ruling does not affect the issue here, it is instructive in the light of what attempts at splitting causes of action does. In *England*, supra, the Court held:

¶ 23. The wrongful death statute allows the statutory heirs to recover damages for the defendant's wrongful, *lethal* conduct. Miss.Code Ann. § 11-7-13 (Supp.2002); *Gentry v. Wallace*, 606 So.2d 1117, 1122 (Miss.1992). To be entitled to recovery, the wrongful death plaintiff must prove that the wrongful conduct proximately caused the death. *Berryhill v. Nichols*, 171 Miss. 769, 773, 158 So. 470, 471 (1935). If the plaintiff so proves, then the plaintiff may recover all damages arising "from the death." *Gentry*, 606 So.2d at 1120.

In **Harrison v Chandler-Sampson Insurance, Inc.**, supra, this Court examined the identity of a cause of action, the issue of splitting causes of action and the legal effect of same. In discussion of the "identity of the cause of action", Justice Randolph held:

This identity, which has proven to be difficult to apply, requires that the "cause of action" be the same. As an initial note, Miss. R. Civ. P. 2 was specifically promulgated to relieve confusion as to the term "cause of action." The purpose of the rule was to replace "cause of action" with "claim" or the courts, consistent with the jurisdiction of the courts."<sup>FN8</sup> In cases involving claim preclusion, this distinction is indeed very important and requires that the parties, as well as the courts, distinguish between what body of fact constitutes a claim and what legal theories attach to that body of fact.

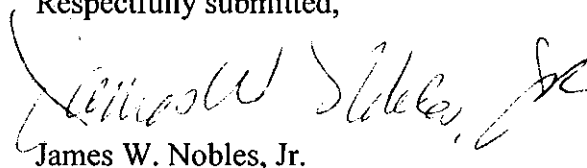
How can Gray's claim for her wrongful death be split into components date wise? Either her death resulted from the negligence of the doctors and staff of UMCC while she was hospitalized there when multiple surgeries were performed on her and she was discharged home with an open fistula,

a colostomy and rampant infection, or it did not. Appellant submits that the claim cannot be compartmentalized by date as the Honorable Trial Court did in Granting Summary Judgment below, since only one action may be brought for the wrongful death of Hughlene Gray.

### **CONCLUSION**

This cause ought to be reversed and remanded. UMMC's refusal to produce the Medical Records prevented Gray from securing a timely review from a qualified expert medical doctor to determine whether the acts and procedures performed on Hughlene Gray by the UMCC doctors and staff constituted negligence on which to predicate a wrongful death suit under the Mississippi Tort Claims Act. Notice of the claim for Hughlene Gray was give a little more than a month prior to her death, without the benefit of the medical records. Those records contained evidence which was not discoverable by Gray until they were produced. Gray was diligent in efforts to obtain copies of these medical records. The discovery rule is applicable and prevents the bar of the claims prior to July 5, 2005, as found by the Honorable Circuit Court Judge. This case should be reversed and remanded.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "James W. Nobles, Jr.", with a stylized flourish at the end.

James W. Nobles, Jr.

CERTIFICATE OF SERVICE

I, James W. Nobles, Jr., do hereby certify that I have this day served by United States Mail,  
or Hand-Delivered, as indicated, a true and correct copy of the above and foregoing to:

VIA HAND DELIVERY


Ms. Betty Sephton  
Supreme Court Clerk  
The Gartin Building  
Third Floor  
Jackson, Mississippi 39205

Honorable Swan Yerger  
Circuit Court Judge  
Hinds County Circuit Court  
Jackson, Mississippi 39201

VIA UNITED STATES MAIL

Stephen P. Kruger  
PAGE KRUGER & HOLLAND, P.A.  
Post Office Box 1163  
Jackson, Mississippi 39215-1163

SO CERTIFIED this the 20<sup>th</sup> day of April A.D., 2007.

  
\_\_\_\_\_  
JAMES W. NOBLES, JR.