

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

J. W. CLAYTON

APPELLANT

VS.

CASE NO. 2006-CA-01694

JEFFREY HARTSOG

APPELLEE

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**BRIEF OF APPELLEE  
JEFFREY HARTSOG**

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**ON APPEAL FROM  
THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT  
OF HINDS COUNTY, MISSISSIPPI  
CIVIL ACTION NO. 251-06-69CIV**

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SUBMITTED BY:

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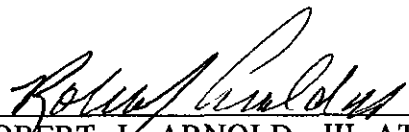
**CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Circuit Court Judge may evaluate possible disqualification or recusal.

1. J. W. Clayton, Appellant
2. Jeffrey Hartsog, Appellee
3. Honorable William R. Barnett  
County Court of Hinds County  
Post Office Box 327  
Jackson, Mississippi 39205
4. Honorable Winston Kidd  
Circuit Court Judge  
Hinds County Circuit Court  
Post Office Box 327  
Jackson, Mississippi 39205
5. Ms. Barbara Dunn, Clerk  
Hinds County Circuit Court  
Post Office Box 327  
Jackson, Mississippi 39205

6. Gary D. Thrash, Esq.  
John N. Satcher, Esq.  
Singletary & Thrash  
Post Office Box 587  
Jackson, Mississippi 39205  
Attorneys for Appellant

THIS, the 13<sup>th</sup> day of June, 2007.

  
\_\_\_\_\_  
ROBERT J. ARNOLD, III ATTORNEY  
FOR JEFFREY HARTSOG

## **TABLE OF CONTENTS**

CERTIFICATE OF INTERESTED PERSONS .....	i
TABLE OF CONTENTS .....	iii
TABLE OF CASES AND STATUTES .....	iv
I. STATEMENT OF THE ISSUES .....	v
1. Whether the trial court abused its discretion by denying Appellant's Motion to Reopen Time for Appeal .....	v
II. STATEMENT OF THE CASE AND FACTS .....	1
III. ARGUMENT .....	2
A. Standard of Review .....	2
B. Argument .....	2
IV. CONCLUSION .....	3
CERTIFICATE OF SERVICE .....	4

**TABLE OF CASES, STATUTES AND OTHER AUTHORITIES**

**CASES**

<i>Pre-Paid Legal Services, et al. v. Anderson</i> 873 So. 2d 1008 (Miss. 2004) . . . . .	2
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## **I. STATEMENT OF THE ISSUES**

1. Whether the trial court abused its discretion by denying Appellant's Motion to Reopen Time for Appeal.

## II. STATEMENT OF THE CASE AND FACTS

On April 20, 2004, J.W. Clayton, Jr. (Appellant), filed a Complaint against Dr. Jeffrey Hartsog (Appellee) for slander and intentional infliction of emotional distress in the County Court First Judicial District of Hinds, County, Mississippi. Thereafter, Dr. Hartsog filed a Motion for Summary Judgment or in the Alternative Motion to Dismiss. In response, Appellant filed a response and a Motion to Compel Discovery Responses and a Motion for Leave to Amend Complaint.

On October 6, 2005, Honorable William Barnett denied Appellant's motions and granted summary judgment to Dr. Hartsog. (R. E. 3). Further, and without prompting, Judge Barnett issued \$500 in sanctions against the Appellant for filing such a frivolous suit. *Id.*

Thereafter, Appellant appealed Judge Barnett's ruling to the Circuit Court of Hinds County. On June 9, 2006, Judge Kidd affirmed Judge Barnett's ruling and entered his Memorandum Opinion and Order. (R.E. 4). Subsequently, Dr. Hartsog's counsel received a copy of Judge Kidd's filed Memorandum Opinion and Order from the clerk. Once the time for appeal had run and Appellant had not appealed Judge Kidd's decision, Dr. Hartsog's counsel wrote Appellant's counsel requesting the \$500 in sanctions Judge Barnett had awarded, and Judge Kidd had affirmed. (R.E. 5).

At that time, thirty- nine days after Judge Kidd had entered his Memorandum Opinion and Order, Appellant filed his Motion to Reopen Time for Appeal. *Id.* On August 30, 2006, Judge Kidd entered an Order Denying Motion to Reopen Time for Appeal. (R.E. 6). Appellant has now appealed Judge Kidd's Order Denying Motion to Reopen Time for Appeal to this Court.

### **III. ARGUMENT**

#### **A. Standard of Review**

Granting or denying a motion pursuant to M.R.A.P. 4(h) is discretionary, and the decision is reviewed under an abuse of discretion standard. *Pre-Paid Legal Services, et. al. v. Anderson*, 873 So. 2d 1008 (Miss. 2004).

#### **B. Argument**

Mississippi Rule of Appellate Procedure 4(h) states that the court “may” reopen the time for appeal for a period of fourteen days if it believes the party did not receive notice of entry of a judgment or order from the clerk, and no party will be prejudiced by the reopening of time. According to the rule, reopening the time for appeal is not mandatory but is within the discretion of the court. In the case at bar, Judge Kidd did not abuse his discretion in denying Appellant’s Motion to Reopen Time for Appeal.

By denying Appellant’s Motion to Reopen Time for Appeal, Judge Kidd did not abuse his discretion. Notably, Dr. Hartsog’s counsel received a copy of Judge Kidd’s filed Memorandum Opinion and Order from the clerk shortly after the clerk entered it; however, Appellant asserts he never received such notice. Also, should this appeal be allowed to be filed out of time, a frivolous harassment suit would continue against Dr. Hartsog. The county court judge granted summary judgment and, on his own volition, found the pursuit of this action so frivolous that he ordered \$500 in sanctions against Appellant. On appeal, the circuit court judge entered an Opinion and Order affirming the county court’s decision to grant summary judgment to Dr. Hartsog and ordered sanctions against Appellant for filing such a frivolous suit. The continued incurrence of fees, time and harassment in a suit that has no validity constitutes prejudice against Dr. Hartsog.



Also, to allow such a frivolous suit to continue would disregard any interest in judicial efficiency as the county court judge ordered sanctions against the Appellant for filing such a frivolous suit, and Judge Kidd affirmed his ruling. Therefore, Judge Kidd did not abuse his discretion in denying Appellant's Motion to Reopen Time for Appeal, and his decision should be affirmed.

#### IV. CONCLUSION

Judge Kidd did not abuse his discretion in denying Appellant's Motion to Reopen Time for Appeal as counsel for Dr. Hartsog received notice of Judge Kidd's filed Memorandum Opinion and Order soon after the clerk had entered it, and to grant Appellant's motion would prejudice Dr. Hartsog as a frivolous and harassing suit would be allowed to continue against him. Therefore, the Order denying Appellant's Motion to Reopen Time for Appeal should be affirmed.

Respectfully submitted,

JEFFREY HARTSOG

BY: 

OF COUNSEL

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**CERTIFICATE OF SERVICE**


I, Robert J. Arnold, III, of counsel for appellee herein, do hereby certify that I have this day mailed via United States mail, postage prepaid, a true and correct copy of the above and foregoing Brief of Appellee to:

Gary D. Thrash, Esq.  
John N. Satcher, Esq.  
Singletary & Thrash  
Post Office Box 587  
Jackson, Mississippi 39205

Honorable William R. Barnett  
County Court of Hinds County  
Post Office Box 327  
Jackson, Mississippi 39205

Honorable Winston Kidd  
Circuit Court Judge  
Hinds County Circuit Court  
Post Office Box 327  
Jackson, Mississippi 39205

THIS, the   3<sup>rd</sup>   day of June, 2007.

  
\_\_\_\_\_  
ROBERT J. ARNOLD, III