

IN THE SUPREME COURT OF MISSISSIPPI

No. 2006-CA-01947

MARVIN BROWN

Appellant

vs.

**JULIAN JANES, M.D.; SCOTT SMITH, M.D.;
JENNIFER BROWN, NURSE; and SOUTHWEST
MISSISSIPPI REGIONAL MEDICAL CENTER**

Appellees

**REPLY BRIEF OF APPELLANT,
MARVIN BROWN**

**Suzanne G. Keys, MSB# [REDACTED]
BYRD & ASSOCIATES, PLLC
P. O. BOX 19
JACKSON, MS 39205-0019
Telephone: 601. 354-1210
Facsimile: 601.354.1254
*Attorney for Appellant***

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Cases

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741 So.2d 224 (Miss. 1999).....1

South Central Regional Medical Center v. Guffy,

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Miss. Code Ann. §11-46-11(1).....1

INTRODUCTION

The trial court's dismissal of Mr. Brown's case based upon this Court's decision in *Univ. of Mississippi Medical Center v. Easterling*, 928 So.2d 815 (Miss. 2006), is clearly erroneous. The facts in *Easterling* are distinguishable from the facts in Mr. Brown's case because unlike the plaintiff in *Easterling*, Mr. Brown sent his Notice of Claim letter to Defendants.

Furthermore, given the facts in Mr. Brown's case, an exception to the retroactivity rule is warranted and the application of the *Easterling* decision clearly denies Mr. Brown his right of due process of law. Allowing the trial court's ruling to stand will set forth an arbitrary and unconscionable precedent effectively stripping Mr. Brown of his vested property right to pursue his medical negligence claim. Therefore, it is paramount that this Court grant Mr. Brown adequate relief by reversing the decision of the trial court.

ARGUMENT

I. The Trial Court erred in dismissing Mr. Brown's claims against Defendant.

Contrary to the argument made by Defendant, the trial court did err in dismissing Mr. Brown's claim for failure to follow the notice provisions of the Torts Claims Act, Miss. Code Ann. §11-46-11(1). Mr. Brown complied with the statute and the law in effect at the time of his filing in December 2002. Mr. Brown sent his Notice of Claim Letter to Defendants on December 13, 2002 and filed suit on December 18, 2002. While Mr. Brown concedes that the case was filed before the ninety days notice period had run, he was entitled to rely on the procedure established by this Court at that particular time. The operative procedure at that time required that a defendant raising a premature filing defense against a plaintiff request a stay of any action on the case until the full ninety days had expired. *See City of Pascagoula v. Tomilson*, 741 So.2d 224 (Miss. 1999). Based on the caselaw available at the time of Mr. Brown's filing, there was no bar to prevent his filing and this Court had established a clear method to cure any procedural deficiencies. For the trial court to retroactively bootstrap the *Easterling* opinion to Mr. Brown's claim clearly creates a Fourteenth Amendment violation by denying Mr. Brown due process of law.

Furthermore, Defendant's citation of this Court's decision in *South Central Regional Medical Center v. Guffy*, 930 So.2d 1252 (2006), is also inapplicable because like *Easterling*, the facts in this case are distinguishable in that the plaintiff in *Guffy* failed to provide any written notice to comply with the Mississippi Torts Claim Act (MTCA), while Mr. Brown provided timely notice to all Defendants involved in this action. The retroactive application of *Guffy* in terms of strict compliance with the ninety day waiting period would create an unconscionable

result by imposing new conduct upon Mr. Brown which was not required at the time he filed his medical malpractice claim. When Mr. Brown filed his cause of action in December of 2002, the standard set by this Court was one of substantial compliance and to deviate from that applicable standard to retroactively apply *Easterling* and *Guffy*, is arbitrary, unfair, and unconscionable.

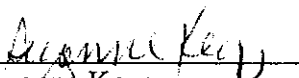
Conclusion

The facts presented in this case warrant an exception to the retroactivity rule and the application of *Easterling*, and *Guffy* will only deprive Mr. Brown of his vested property right in his medical malpractice claim. Therefore, the ruling of the trial court should be reversed.

Respectfully submitted this the 13th day of July, 2007.

Marvin Brown

By:



Suzanne Keys

Attorney for Plaintiff-Appellant

Certificate

I, Suzanne Keys, attorney for Plaintiff-Appellant, hereby certify that I
mailed on this day and date a true and correct copy of the foregoing Reply Brief of
Appellant, to the attorneys for the Appellee Jennifer Brown and other defendants :

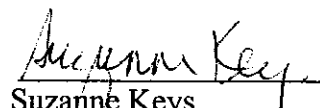
The Honorable Mike Taylor
Circuit Court Judge
P.O. Drawer 1350
Brookhaven, MS 39602

R. Mark Hodges
Mark J. Goldberg
Wise Carter Child & Caraway
401 East Capitol Street, Suite 600
Post Office Box 651
Jackson, MS 39205-0651

W. Robert Coleman, Jr.
Scott Sullivan Streetman & Fox
P.O. Box 13847
Jackson, MS 39236-3847

James M. Hood, III
Attorney General of the State of Mississippi
P.O. Box 220
Jackson, MS 39205-0220

So certified this the 12 th day of July 2007.


Suzanne Keys

BYRD & ASSOCIATES
P.O. Box 19
Jackson, MS 39205
(601) 354.1210
(601) 354.1254 (fax)