

IN THE COURT OF APPEALS OF MISSISSIPPI

NO. 2007-CA-00095

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SUPREME COURT
COURT OF APPEALS**

**ZEONIA WILLIAMS, INDIVIDUALLY AND ON
BEHALF OF THE WRONGFUL DEATH HEIRS OF
ANTHONY WILLIAMS, DECEASED**

APPELLANTS

V.

**DEBORAH SKELTON, M.D. AND STEVEN
J. PATTERSON, M.D.**

APPELLEES

REPLY BRIEF OF THE APPELLANT

**Appeal from Summary Judgment for the Defendants from the Circuit Court of the First
Judicial District of Hinds County, Mississippi**

ORAL ARGUMENT REQUESTED

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STATEMENT REGARDING ORAL ARGUMENT

Pursuant to MRAP 34, Appellants, Zeonia Williams, et., al., request oral argument in this cause. This cause presents a case of first impression, in that presents the question of whether the filing of a complaint prior to the expiration of the notice requirements of Miss. Code Ann. §15-1-36(15) has the effect of tolling the statute of limitations. Oral argument will be of invaluable assistance to the Court in resolving this issue.

ARGUMENT

The applicable statute in this case is Miss. Code Ann. §15-1-36(15). It provides:

No action based upon the health care provider's professional negligence may be begun unless the defendant has been given at least sixty (60) days' prior written notice of the intention to begin the action. No particular form of notice is required, but it shall notify the defendant of the legal basis of the claim and the type of loss sustained, including with specificity the nature of the injuries suffered. If the notice is served within sixty (60) days prior to the expiration of the applicable statute of limitations, the time for the commencement of the action shall be extended sixty (60) days from the service of the notice for said health care providers and others. This subsection shall not be applicable with respect to any defendant whose name is unknown to the plaintiff at the time of filing the complaint and who is identified therein by a fictitious name.

Plaintiff Zenoia Williams ("Williams") gave notice of the intent to commence the lawsuit on June 15, 2005. The original complaint was filed on July 22, 2005. Process was not served on the Defendants before October 19, 2005. An amended complaint was filed, pursuant to an agreed order, on November 9, 2005.

Williams asserts that first that the filing of the amended complaint, by agreement of the parties, cured any defect created by filing of the original complaint prior to the sixty (60) day days provide by Miss. Code Ann. §15-1-36(15).

Second, Williams maintains that the filing of the complaint tolled the statute of limitations. *Triple "C" Transport, Inc. v. Dickens*, 870 So.2d 1195, 1199 (Miss. 2004); *Watters v. Stripling*, 675 So.2d 1242, 1244 (Miss. 1996). In this case, the cause of action accrued on August 14, 2003, when Williams' decedent died. There is a two (2) year statute of limitations for medical malpractice actions. Miss. Code Ann. §15-1-36. Upon the filing of the complaint in this action on July 22, 2005, the statute of limitations was tolled. 23 days were left on the statute of limitations.

On December 14, 2006, a judgment of dismissal was entered in this cause. Seven (7) days later, Williams filed her notice of appeal. The filing of the notice of appeal stayed the finality of the judgment of dismissal and therefore the tolling of the statute continues.

Appellees assert that the statute was never tolled because the complaint filed by Williams was a nullity. Citing *Dalton v. Rhodes Motor Co.*, 153 Miss. 51, 120 So. 821 (1929), they argue that no tolling took place because the complaint was filed prior to the expiration of the sixty (60) day notice requirement of Miss. Code Ann. §15-1-36(15).

The fallacy of Appellees argument is clearly apparent. First, *Dalton* is a pre-Mississippi Rules of Civil Procedure case. There were rule provisions for tolling statute of limitations in 1929.

Second, *Dalton* does not address effect of the filing of a “null” pleading on tolling provisions. In fact, *Dalton* deals with the effect of taking a default judgment when a plea is pending in the civil action. *Dalton*, 120 So. at 821.

Williams maintains that the filing of her complaint tolled the applicable statute of limitations. The statute remained tolled after the judgment of dismissal was entered, because a timely notice of appeal was filed.

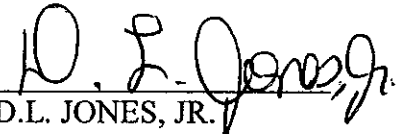
While Appellees have crafted an interesting argument of nullity of pleading, it is unsupported in fact or law. The simply fact in this case is that the Williams is entitled to refile her complaint because the statute of limitations in this cause has not expired.

CONCLUSION

The statute of limitations in this cause was tolled by the filing of the complaint. This tolling continues during the pendency of this appeal. Therefore, Williams is entitled to refile her complaint in this cause.

This Court should reverse the final judgment of dismissal, with instructions allowing Williams to refile her complaint prior to the expiration of the tolled the statute of limitations.

Respectfully submitted,
Zeonia Williams, et. al.

By: 
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CERTIFICATE OF SERVICE

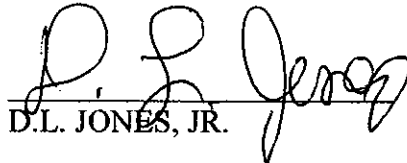
I certify that I mailed a copy of this REPLY F THE APPELLANT to:

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This the 13th day of November, 2007.


D.L. JONES, JR.