

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2007-CA-00095

**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

BRIEF OF THE APPELLANT

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

**D.L. JONES, JR., ESQ.
860 EAST RIVER PLACE
SUITE 102
JACKSON, MS 39202
601/352-4418
MB# [REDACTED]**

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2007-CA-00095

**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

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 justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

ZEONIA WILLIAMS

APPELLANT

STEVEN J. PATTERSON, M.D.

APPELLEE

DEBORAH SKELTON, M.D.

APPELLEE

REBECCA LEE WIGGS, ESQ.

**ATTORNEY FOR
APPELLEE STEVEN J.
PATTERSON, M.D.**

WHITMAN B. JOHNSON, III, ESQ.

**ATTORNEY FOR
APPELLEE DEBORAH
SKELTON, M.D.**

D.L. JONES, JR., ESQ.

**ATTORNEY FOR
APPELLANTS**

S/ D.L. Jones, Jr.

**D.L. JONES, JR., ATTORNEY OF RECORD FOR
ZEONIA WILLIAMS, ET. AL.**

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS	i
TABLE OF CONTENTS	ii
STATEMENT OF THE ISSUE	1
STATEMENT OF THE CASE	2
SUMMARY OF THE ARGUMENT	4
ARGUMENT	5
CONCLUSION	8
CERTIFICATE OF SERVICE	9

TABLE OF AUTHORITIES

CASES	PAGE
<i>Holmes v. Coast Transit Authority</i> , 815 So.2d 1183, 1185(Miss. 2002)	6
<i>Pitalo v. GPCH-GP, Inc.</i> , 933 So.2d 927 (Miss. 2006)	5
<i>Triple "C" Transport v. Dickens</i> , 870 So.2d 1195 (Miss. 2004)	4, 6
STATUTES	
Miss. Code Ann. §15-1-36	3, 4, 5, 6, 7, 8
COURT RULES	
MRCP 4	4, 6

STATEMENT OF ISSUE

- I. WHETHER THE TRIAL COURT COMMITTED ERROR IN GRANTING SUMMARY JUDGMENT FINALLY DISMISSING THE COMPLAINT OF ZEONIA WILLIAMS.

IN THE COURT OF APPEALS OF MISSISSIPPI

NO. 2007-CA-00095

FILED COPY

NOV 13 2007

OFFICE OF THE CLERK
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

**D.L. JONES, JR., ESQ.
860 EAST RIVER PLACE
SUITE 102
JACKSON, MS 39202
601/352-4418
MB#3194**

TABLE OF CONTENTS

TABLE OF CONTENTS	i
STATEMENT REGARDING ORAL ARGUMENT	1
ARGUMENT	2
CONCLUSION	4
CERTIFICATE OF SERVICE	5

TABLE OF AUTHORITIES

CASES	PAGE
<i>Dalton v. Rhodes Motor Co.</i> , 153 Miss. 51, 120 So. 821 (1929)	3
<i>Triple "C" Transport v. Dickens</i> , 870 So.2d 1195 (Miss. 2004)	2
<i>Watters v. Stripling</i> , 675 So.2d 1242, 1244 (Miss. 1996)	3
STATUTES	
Miss. Code Ann. §15-1-36	1, 2, 3, 4

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.

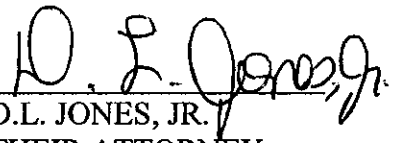
While Appellees have crafted an interesting argument of nullity of pleading, it is unsupported in fact or law. The simply fact in this case is that the Williams is entitled to refile her complaint because the statute of limitations in this cause has not expired.

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: 
D.L. JONES, JR.
THEIR ATTORNEY

D.L. JONES, JR., ESQ.
860 EAST RIVER PLACE
SUITE 102
JACKSON, MS 39202
601/352-4418
MB# 3194

CERTIFICATE OF SERVICE

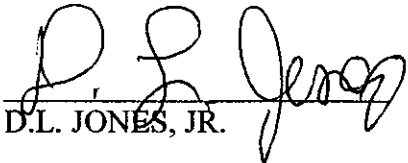
I certify that I mailed a copy of this REPLY F THE APPELLANT to:

HON. W. SWAN YERGER
CIRCUIT COURT JUDGE
POST OFFICE BOX 327
JACKSON, MS 39205-0327

WHITMAN B. JOHNSON, III, ESQ.
CURRIE JOHNSON GRIFFIN GAINES
& MYERS, P.A.
POST OFFICE BOX 750
JACKSON, MS 39205-0750

REBECCA L. WIGGS, ESQ.
WATKINS & EAGER
POST OFFICE BOX 650
JACKSON, MS 39205

This the 13th day of November, 2007.


D.L. JONES, JR.

STATEMENT OF THE CASE

i. Nature of the Case, course of proceedings and disposition in the court below.

This is an appeal from the December 14, 2006 Judgment of Dismissal of the Circuit Court of the First Judicial District of Hinds County, Mississippi. (Record Excerpt ("RE"), p. 3-4). This Judgment finally dismissed the wrongful death complaint of Zeonia Williams ("Williams"). (R., p. 3-7).

On December 21, 2006, Williams filed her Notice of Appeal of this Order. (R., p. 83-84).

ii. Statement of Facts

On July 22, 2005, Williams filed a Complaint for wrongful death against Defendants Steven J. Patterson, M.D. ("Patterson") and Deborah Skelton, M.D. ("Skelton"). The basis of the complaint was that Williams' decedent died as a result of the medical malpractice of the Defendants. (R., p.4-5).

Prior to the filing of the complaint, Williams provided written notice to Defendants of the medical practice claim. This notice was served on June 15, 2005. (R., p.67). Process was not served on the Defendants until October 19, 2005. (RE, p. 1).

Pursuant to an Agreed Order, Williams filed an amended complaint on November 9, 2005. (R., p. 42; p.15-20).

Defendants moved for summary judgment alleging that because Williams did not wait sixty (60) days from the date of the June 15, 2005 notice to file her complaint, they were entitled to dismissal of the complaint as a matter of law. (R., p.62-64).

After a hearing, the Court found that Williams' complaint was "void and should be struck." The basis of the ruling was that Williams failed to satisfy the notice requirements of Miss. Code Ann. §15-1-36(15). (RE, p.3).

Williams timely filed her Notice of Appeal from the Judgment of the Circuit Court. (R., 83-84).

SUMMARY OF THE ARGUMENT

Miss Code Ann. §15-1-36(15) 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.

In this case, 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 these facts together preclude the granting of summary judgment.

Additionally, the filing of the complaint on July 22, 2005 tolled the statute of limitations in this cause. The filing of a complaint tolls the applicable statute of limitations for a period of 120 days. MRCP 4(h); *Triple C. Transport, Inc. v. Dickens*, 870 So.2d 1195 (Miss. 2004). Therefore, if dismissal was warranted, then Williams should have been granted leave to give notice and re-file her action.

The trial court committed error in granting summary judgment in this cause. This Court should reverse and remand this action to the Circuit Court of the First Judicial District of Hinds County, Mississippi.

ARGUMENT

I. WHETHER THE TRIAL COURT COMMITTED ERROR IN GRANTING SUMMARY JUDGMENT FINALLY DISMISSING THE COMPLAINT OF THE ZEONIA WILLIAMS.

Williams gave notice of the filing of her medical practice claim prior to the filing of her complaint. However, she filed the complaint prior to the expiration of sixty days from the notice.

The Circuit Court, citing *Pitalo v. GPCH-GP, Inc.*, 933 So.2d 927 (Miss. 2006), held that this was grounds to dismiss the complaint for failure to satisfy the notice requirements of Miss. Code Ann. §15-1-36(15). (RE, p. 3). Williams asserts that *Pitalo* is distinguishable from the case at bar, because it involves a situation where the Plaintiff wholly failed to provide any notice required under Miss. Code Ann. §15-1-36(15). *Pitalo*, 933 So.2d at 929.

In the instant case, notice of intent was served prior to the commencement of the lawsuit. The notice was served on June 15, 2005. The complaint was filed on July 22, 2005. Process was not served until October 19, 2005.

Unlike the Defendants in *Pitalo*, Defendants Skelton and Patterson had written notice of this lawsuit more than sixty days before they were served with a copy of the complaint. Williams contends that the intent of the statute has been fulfilled, *i.e.*, to provide Defendants with sixty (60) days notice before they have to commence the defense of a lawsuit.

Williams, pursuant to an Agreed Order, filed an amended complaint in this cause on November 9, 2005. This amended complaint was filed more than sixty days after the

notice of intent to sue was served. It is evident in this case that Williams has complied with the notice requirements of Miss. Code Ann. §15-1-36(15).

Even if the Court finds that Williams did not comply with Miss. Code Ann. §15-1-36(15), this Court should specifically find that Williams has the right to give notice and re-file this action, because the statute of limitations has not expired.

Mississippi law provides that the filing of a complaint tolls 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 the event process is not served within 120 days from the date of filing, then the statute of limitations begins to automatically run again until it expires. *Holmes v. Coast Transit Authority*, 815 So.2d 1183, 1185 (Miss. 2002).

In the instant 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.

Process was served on October 19 and 20, 2005, within the 120 days provided by MRCP 4(h). Therefore, the tolling of the statute of limitations continued.

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.

Williams asserts that the Court should reverse the judgment of the Circuit Court and remand this action to the trial court, finding that Williams complied with the notice requirements of Miss. Code Ann. §15-1-36(15). Alternatively, Williams asserts that if the Court affirms this action, it should find that the statute of limitations does not begin to resume until the Court enters its order affirming this cause.

CONCLUSION

Williams maintains that she complied with the notice requirements of Miss. Code Ann. §15-1-36(15). Alternatively, Williams asserts that the statute of limitations in this cause does not resume until the appellate court affirms the decision of the trial court.

Williams requests that this cause be reverse and remanded. Alternatively, Williams requests that if this action is affirmed, the Court find that the statute of limitations does not resume until this Court issues an Order affirming the trial court decision.

Respectfully submitted,
Zeonia Williams, et. al.

By: S/ D.L. Jones, JR.
D.L. JONES, JR.
THEIR ATTORNEY

D.L. JONES, JR., ESQ.
860 EAST RIVER PLACE
SUITE 102
JACKSON, MS 39202
601/352-4418
MB# [REDACTED]

CERTIFICATE OF SERVICE

I certify that I mailed a copy of this BRIEF OF THE APPELLANT to:

HON. W. SWAN YERGER
CIRCUIT COURT JUDGE
POST OFFICE BOX 327
JACKSON, MS 39205-0327

WHITMAN B. JOHNSON, III, ESQ.
CURRIE JOHNSON GRIFFIN GAINES
& MYERS, P.A.
POST OFFICE BOX 750
JACKSON, MS 39205-0750

REBECCA L. WIGGS, ESQ.
WATKINS & EAGER
POST OFFICE BOX 650
JACKSON, MS 39205

This the 13th day of August, 2007.

s/D. L. Jones, Jr.
D.L. JONES, JR.