

COPY

SUPREME COURT OF MISSISSIPPI  
COURT OF APPEALS OF THE STATE OF MISSISSIPPI

CASE NO: 2007-CA-00806

GREGORY HILL

APPELLANT

VS.

**FILED**

JUL - 10 2008 *wsj*

DURENDA RAMSEY, ET AL

APPELLEE

OFFICE OF THE CLERK  
SUPREME COURT  
COURT OF APPEALS

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REPLY BRIEF OF APPELLANT

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APPEAL FROM THE CIRCUIT COURT  
OF NOXUBEE COUNTY, MISSISSIPPI

TRIAL COURT NO: 2000-070

OF COUNSEL:

BENNIE L JONES, JR MSB# [REDACTED]  
ATTORNEY FOR PLAINTIFF  
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WEST POINT, MS 39773  
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REASONS FOR THE MISSISSIPPI COURT OF APPEALS  
OR THE MISSISSIPPI SUPREME COURT TO OVERTURN  
THE TRIAL COURT

I. NO VIOLATIONS BY THE PLAINTIFF OF ANY ALLEGED 18 MONTH  
DILATORINESS

The Plaintiff Gregory Hill played no role at all in any alleged failure to prosecute or in any alleged clear record of delay, or alleged failure to comply with Mississippi Rules of Civil Procedure, or any alleged failure to comply with any Order of the Court. Nor was he involved in any alleged aggravating factor or factors. There is no evidence in the record that the Plaintiff Gregory Hill personally made any contribution to or played a role in any alleged violation of MRCP 41.

II. INFORMATION CONCERNING THE PRESERVATION OF THE  
PHYSICAL EVIDENCE. THE EVIDENCE IS STILL AVAILABLE

1. Evidence in the record of Notices of depositions filed :
  - a. Gregory Hill, Plaintiff, had his deposition scheduled for 9:00 a.m on January 9,2003. He gave testimony. R. pages 35-39.
  - b. Kent Hailey, an employee/Supervisor of the Mississippi Department of Transportation, 102 Jefferson Street, Macon, Miss. His deposition was scheduled for January 9, 2003 at 10:00 a.m. He gave testimony. R. Pages 35-39.
  - c. Ronald Franks, Jr., an employee of the Mississippi Department of Transportation , residence in Prairie, Mississippi. His deposition was scheduled for January 9, 2003 at 11:00 a.m. He gave testimony R. pages 35 - 39.

The copies of these depositions are still available along with many color photographs of the subject New Holland North America, fka Ford Motor Company backhoe.

2. Reference is in the record to the 1989 455 C Ford/New Holland Backhoe,Serial No. 2105487 Vol. 2 Record p. 189 and 193.
3. A three page Agreed Order was signed by Circuit Court Judge James T. Kitchens, Jr., on August 23<sup>rd</sup>, 2004 allowing and authorizing the disclosure of protected

Health Information on Plaintiff Gregory L. Hill, SSN: 425-27-5874, dob: 9-15-1963, Vol 1, R. pages 111 - 114.

4. In the record are copies of Letters dated August 26, 2004 and September 3 and 9, 2004, etc., and copies of the following Civil Subpoenas Duces Tecum seeking the protected health information of Gregory L. Hill from the following:

- a. Dr. Walter N. Cosby  
Columbus, Miss.
- b. Health South  
Columbus, Miss.
- c. Dr. Robert E. Dilworth  
Meridian, Miss.
- d. Dr. Joel T. Callahan  
Meridian, Miss.
- e. Noxubee General Hospital  
Macon, Miss.
- f. Dr. Larry Morris  
Macon, Miss.
- g. Dr. Brad A. Ward  
Columbus, Miss.

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- h. Mississippi Worker's Compensation Commission  
Jackson, Miss.
- i. Mississippi Department of Transportation  
Hwy 14  
Newton, Miss.
- j. Riley Hospital  
Meridian, Ms 39301-4001

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The above listed civil subpoenas duces tecum were requested to be issued and were issued and served upon the various holders of protected health care information from the health

care providers of Gregory L. Hill, Plaintiff herein; and upon the Mississippi Department of Transportation, as well as on the Mississippi Workers Compensation Commission. These civil subpoenas duces tecum were served at various times in August, September and October of 2004 at the request of the Law Firm of Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C. by Ms. Dora Y. Smith, LLA Paralegal, and Hon. J. Kyle Fletcher, Attorney at Law

Therefore it is very clear that there were no aggravating factors present in this case impacting New Holland North America, Inc. fka Ford Motor Company prejudicing them in any way in their ability to defend this case.

There was no delay caused by the Plaintiff Gregory L. Hill; there is no actual prejudice to New Holland, and there was no intentional attempt to abuse the judicial process.

It is clear from the above presented information that there is sufficient information preserved for the defendants not to be prejudiced in their defense of this case.

Further opposing counsel is mistaken in his assertion about the length of time that the claims against New Holland were allegedly not prosecuted. See brief of New Holland at pages 2 and 11.

Clearly action of record in this case was taken in 2003, 2004, 2005 and 2007. See the record pages 46 and 50; R. pages 107, 111-114, 117-150, 151-166, R. pages 167-172, 174-185, 189-196.

### III. DISMISSAL WITHOUT PREJUDICE WAS NOT A LESSER SANCTION

As far as lesser sanctions are concerned, at the time the court dismissed the case without prejudice on April 4, 2007 the statute of limitations had expired since the cause of action arose in 2000. Therefore, there was no chance that the case could have been refiled.

Therefore the dismissal without prejudice amounted to a harsh sanction since it amounted to dismissal with prejudice because at the time of dismissal in April 2007 the statute of limitations had expired.

Again the Plaintiff herein did not have anything to do with creating any record of delay; the alleged lesser sanction of dismissal without prejudice amounts to a dismissal with prejudice since the claims arose in 2000 and the dismissal was entered in April 2007. The statute of limitations had expired. And as stated above there are and were no aggravating factors involved in this particular situation. See Peoples bank vs. D'Lo Royalties In. 206 So2d 836, 837 (Miss. 1968). Dismissal is a drastic punishment.

#### CONCLUSION

For the above and foregoing reasons the Plaintiff herein, Gregory L. Hill respectfully requests that this Honorable Court would overrule the lower court's dismissal without prejudice and reinstate the Plaintiff's claims against New Holland and Deviney Equipment Company.

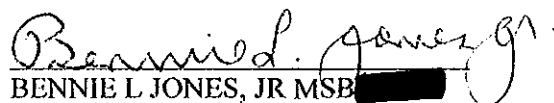
The Court basically stated in Peoples Bank v. D'Lo Royalties, Inc., 206 So2d 836, 837 (Miss. 1968) that dismissal is a drastic punishment which should not be invoked except in extraordinary circumstances.

Specifically, since the Plaintiff personally played no role in the alleged eighteen month dilatoriness he should not be punished by having his case dismissed.

This the 6<sup>th</sup> day of July, 2008.

Respectfully submitted,  
GREGORY L. HILL, PLAINTIFF

BY:

  
BENNIE L. JONES, JR MSB [REDACTED]  
ATTORNEY FOR PLAINTIFF  
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CERTIFICATE OR SERVICE

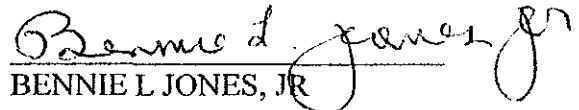
I, Bennie L Jones, Jr attorney for Appellant/Plaintiff, do hereby certify that I have this day mailed a true and correct copy of the Reply Brief of Appellant, via U.S. mail, postage prepaid, and/or via commercial carrier to the following:

Hon. Jack Hayes  
Stone & Hayes  
P O Box 166  
Columbus, Ms 39703

Hon. Marc E. Brand  
Attorney at Law  
P O Box 3508  
Jackson, Ms 39207

Hon. Everette White  
Hon. Robert F. Walker  
Baker Donelson Bearman Caldwell & Berkowitz  
P O Box 14167  
Jackson, Ms 39236

This the 6<sup>th</sup> day of July, 2008.

  
BENNIE L JONES, JR