

IN THE SUPREME COURT OF MISSISSIPPI  
COURT OF APPEALS

KATHY CAMPBELL

APPELLANT

VS.

CAUSE NO. 2007-TS-01627

JEREMY E. DAVIS

APPELLEE

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.

1. Kathy Campbell, Plaintiff/Appellant;
2. Elizabeth B. Fox, Attorney for Plaintiff/Appellant;
3. John Fox, Attorney for Plaintiff/Appellant;
4. Jeremy E. Davis, Defendant/Appellee;
5. Eric J. Dillon, counsel for Defendant/Appellee;
6. Allstate Insurance Company and
7. The Honorable Henry Lackey, Chickasaw County Circuit Court Judge.

Respectfully submitted this the 26<sup>th</sup> day of June 2008.



Eric J. Dillon  
Attorney of Record for Appellee,

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## **Statement of the Issues**

- I. Whether the trial court abused its discretion by denying the Appellant's motion for reconsideration of the trial court's order dismissing the Appellee when the Appellant filed the Amended Complaint after the statute of limitations expired and the Appellant did not mistake the identity of the Appellee.

## **Statement of the Case**

### **I. Procedural History**

This case arises from a motor vehicle accident between the Appellant and the Appellee, which occurred on July 13, 2000. The Appellant filed the original Complaint on May 30, 2001, naming Dorothy Davis, as guardian of Jeremy E. Davis, as the only defendant. The Appellee, Jeremy E. Davis, was not named as a defendant.

The trial court dismissed Ms. Davis from the lawsuit because she was not the legal guardian of the Appellee. At the request of the Appellant, the trial court granted the Appellant leave of court to file an amended complaint to add the Appellee as a new party to the lawsuit. On August 8, 2003, twenty-six days after the statute of limitations expired, the Appellant filed the Amended Complaint.

The Appellee filed a Motion to Dismiss on November 24, 2003. A hearing was held on February 11, 2005, and the trial court dismissed the Appellee with prejudice. The trial court entered the final judgment of dismissal with prejudice on February 11, 2005. The Appellant filed a motion seeking relief from the final judgment on February 22, 2005, which the trial court denied on August 17, 2007.

The Appellant filed the Notice of Appeal on September 17, 2007.

### **II. Statement of Facts**

The motor vehicle accident giving rise to this civil action occurred on July 13, 2000. The Appellee was the driver of a 1995 Dodge Neon which was involved in the accident with the Appellant. The Appellee's grandmother, Ms. Davis, owned the vehicle. (R. 141; Appellee R.E. 045).

The original Complaint incorrectly named the Appellee's grandmother, Ms. Davis, as his guardian and the only defendant to the lawsuit. (R. 2-4; Appellee R.E. 001-003). However, the Complaint alleged the Appellee was the driver of the vehicle involved in the accident. (R. 2-4; Appellee R.E. 001-003). At the time of the accident, the Appellee resided with his mother, Myra Jabri, and his grandmother, Ms. Davis, at Ms. Davis' home in Houston, Mississippi. (R. 143; Appellee R.E. 047). Ms. Davis was not the legal guardian of the Appellee and was not a proper party to the lawsuit. (R. 143; Appellee R.E. 047). On or about May 23, 2002, the Appellant deposed the Appellee. (R. 43-44; Appellee R.E. 005-006).

Ms. Davis filed a Motion for Summary Judgment on February 20, 2003. (R. 63-73; Appellee R.E. 007-017). The Plaintiff responded to Ms. Davis' Motion for Summary Judgment on March 7, 2003, admitting the Appellee was the driver of the vehicle involved in the accident. (R. 93-95; Appellee R.E. 018-020). The trial court also held a hearing on the Motion on March 7, 2003, and decided the case would not be dismissed, but the Appellant should file an amended complaint adding the Appellee as a new defendant. (Transcript 12; Appellee R.E. 119). The trial court reminded the parties that "there is a three year statute of limitations." (Transcript 10; Appellee R.E. 117). Counsel for the Appellant specifically inquired, "We will be allowed 30 days to file an amended complaint?" The trial court's response was "Yes, sir." (Transcript 12; Appellee R.E. 119). Counsel for the Appellant responded, "[i]f we don't take the 30 days, I'm going to adopt the same complaint." The trial court reminded the Appellant that, "[h]e's got to be served." (Transcript 12; Appellee R.E. 119).

On Monday, July 14, 2003, one day after the statute of limitations expired, the trial court signed an order granting the Appellant leave to file an amended complaint. The Appellant filed

the order on July 16, 2003. (R. 99; Appellee R.E. 021). The Appellant waited until August 8, 2003, to file the Amended Complaint. (R. 100-103; Appellee R.E. 022-025).

Since the Appellant filed the Amended Complaint twenty-six days after the statute of limitations expired, the Appellee filed the Motion to Dismiss on November 24, 2003. (R. 122-169; Appellee R.E. 026-073). On November 18, 2004, the Appellee noticed the Motion to Dismiss for hearing on December 7, 2004, at 3:00 p.m. (R. 178-179; Appellee R.E. 074-075).

On November 18, 2004, Appellant's counsel informed counsel for the Appellee that he was concerned about a trial interfering with the December 7, 2004, hearing date. (R. 205; Appellee R.E. 093). Because of the possible conflict, some alternative dates for the hearing were provided. (R. 205; Appellee R.E. 093). On November 24, 2004, after the Appellant's counsel confirmed his availability on January 12, 2005, the Appellee noticed the Motion to Dismiss for hearing on January 12, 2005, at 11:00 a.m. (R. 206-208; Appellee R.E. 094-096).

Appellee's counsel canceled the hearing scheduled for January 12, 2005. The hearing noticed for hearing on February 11, 2005, a date Appellant's counsel had agreed to. (R. 209-211; Appellee R.E. 097-099). As of December 8, 2004, Appellant's counsel knew the hearing on the Appellant's Motion to Dismiss would proceed on February 11, 2005.

On or about February 9, 2005, the court administrator contacted Appellee's counsel confirming the hearing scheduled for February 11, 2005, would still occur. (R. 195; Appellee R.E. 083). Appellee's counsel advised the court administrator that the hearing would occur. (R. 195; Appellee R.E. 083). The court administrator informed Appellee's counsel the hearing may begin one hour later than scheduled since Judge Coleman, who was traveling from Jackson, Mississippi, was assigned to hear cases on Judge Lackey's docket that particular day. (R. 195; Appellee R.E. 083). Appellee's counsel never informed Appellant's counsel the hearing would

be canceled or continued. (R. 195; Appellee R.E. 083). Further, Appellant's counsel did not request a continuance of the hearing or even contact Appellee's counsel in any way suggesting that the hearing should be continued. (R. 195; Appellee R.E. 083).

On February 11, 2005, before proceeding with the hearing at 11:30 a.m. (one hour after it was originally scheduled) the trial court waited approximately twenty additional minutes for Appellant's counsel to arrive. He never did. The trial court proceeded with the hearing on the Appellee's Motion to Dismiss and granted the Motion after hearing argument of Appellee's counsel. (Transcript 18-19; Appellee R.E. 125-126). The Final Judgment of Dismissal with Prejudice was entered on February 11, 2005. (R. 187; Appellee R.E. 076).

The Appellant filed a Motion to Set Aside Order of the Court Dismissing on February 22, 2005. (R. 188-192; Appellee R.E. 077-081). The Appellant's Motion to Set Aside Order of the Court Dismissing was in essence a motion for reconsideration solely premised on the Appellant's failure to attend the February 11, 2005, hearing. (R. 190-191; Appellee R.E. 079-080). The trial court heard the Appellant's motion for reconsideration on April 12, 2005. (R. 216; Appellee R.E. 102).

During the hearing on the Appellant's Motion, counsel for the Appellant admitted the Amended Complaint was filed after the statute of limitations expired. (Transcript 23; Appellee R.E. 131). Counsel for the Appellant stated, "...and you said in your ruling that we could within the three-year statute of limitations; and as it turned out, we were a little beyond that three years because we had not been able to agree on an order." (Transcript 23; Appellee R.E. 131).

The trial court denied the Appellant's motion for reconsideration on August 17, 2007. (R. 238-239; Appellee R.E. 103-104). The Appellant filed the Notice of Appeal on September 17, 2007. (R. 241-242; Appellee R.E. 105-106).



## **Summary of the Argument**

The trial court was within its discretion to deny the Appellant's motion for reconsideration of the dismissal of the Appellee since there was no error of law or any manifest injustice. The dismissal of the Appellee was proper because the Appellant filed the Amended Complaint twenty-six days after the statute of limitations expired and the Amended Complaint does not relate back to the original Complaint.

The Amended Complaint does not relate back because there was no mistake concerning the identity of the Appellee. The Appellant possessed the motor vehicle accident report identifying the Appellee as the driver of the vehicle, and the Appellant specifically referred to the Appellee as the driver of the vehicle in the original Complaint. The Appellant even deposed the Appellee prior to the statute of limitations expiring. During the hearing on March 7, 2003, the trial court informed the Appellant that the Appellee was the proper party and that an amended complaint had to be filed prior to the three-year statute of limitations expiring.

Because the Appellant did not mistake the identity of the Appellee, the Amended Complaint does not relate back to the original Complaint. The Appellant's claims against the Appellee are time barred by the statute of limitations and the dismissal of the Appellee was not an error. Accordingly, the trial court correctly, and entirely within its discretion, denied the Appellant's motion for reconsideration. The trial court's decision should be affirmed.

## Argument

The applicable standard of review is abuse of discretion. Motions to reconsider are to be treated as a post trial motion under Rule 59(e). *Brooks v. Roberts*, 882 So.2d 229, 233 (Miss.2004). The Mississippi Court of Appeals has held “[t]he grant or denial of a Rule 59 motion is within the discretion of the judge and we will not reverse the denial absent an abuse of discretion or if allowing the judgment to stand would result in a miscarriage of justice. *Journey v. Berry*, 953 So.2d 1145, 1160 (Miss. 2007), citing *Clark v. Columbus & Greenville Railway Co.*, 473 So.2d 947 (Miss.1985).

For the Appellant to prevail on a motion for reconsideration, the Appellant must show (1) an intervening change in controlling law, (2) the availability of new evidence not previously available, or (3) the need to correct a clear error of law or to prevent manifest injustice. *Journey v. Berry*, 953 So.2d 1145, 1160 (Miss. 2007), citing *Brooks v. Roberts*, 882 So.2d 229, 233(¶ 15) (Miss.2004). The Appellant has not raised any issues pertaining to an intervening change in controlling law or the availability of new evidence. The issue raised by the Appellant relates to whether the trial court committed a clear error of law by granting the Appellee’s Motion to Dismiss. Thus, only the third avenue for reconsideration is at issue and addressed in this Brief.

The trial court was within its discretion to deny the Appellant’s motion for reconsideration. The trial court correctly granted the Appellee’s Motion to Dismiss since the Amended Complaint was filed after the statute of limitations expired and it does not relate back to the original Complaint. Further, any injustice the Appellant contends to have suffered was not caused by the trial court, but was self-inflicted by the Appellant’s failure to respond or attend the hearing on the Appellee’s Motion to Dismiss.

For the Appellant's Amended Complaint adding the Appellee as a new defendant to relate back to the original Complaint, the claims must (1) arise out of the same conduct, transaction, or occurrence alleged in the original complaint, (2) the new defendant must have notice of the action so not to be prejudiced, and (3) "the newly-named defendant must have or should have known that an action would be brought against him but for a mistake existing as to the parties' identities." *Wilner v. White*, 929 So.2d 315, 323 (Miss. 2006). The Appellee admits the claims in the Amended Complaint arise from the same occurrence and the Appellee had notice of the action. However, the third requirement of mistake is lacking. The Appellant knew the Appellee's identity before initiation of the lawsuit, which prevents the Amended Complaint from relating back. Thus, the claims against the Appellee are barred by the statute of limitations.

**I. The Trial Court was Within Its Discretion to Deny the Appellant's Motion for Reconsideration Since the Dismissal of the Appellee was Proper.**

Rule 59 of the Mississippi Rules of Civil Procedure states:

**a) Grounds.** A new trial may be granted to all or any of the parties and on all or part of the issues (1) in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of Mississippi; and (2) in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in suits in equity in the courts of Mississippi.

On a motion for a new trial in an action without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

**(b) Time for Motion.** A motion for a new trial shall be filed not later than ten days after the entry of judgment.

**(c) Time for Serving Affidavits.** When a motion for new trial is based upon affidavits they shall be filed with the motion. The opposing party has ten days after service to file opposing affidavits, which period may be extended for up to

twenty days either by the court for good cause shown or by the parties' written stipulation. The court may permit reply affidavits.

**(d) On Initiative of Court.** Not later than ten days after entry of judgment the court may on its own initiative order a new trial for any reason for which it might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the court may grant a timely motion for a new trial for a reason not stated in the motion. In either case, the court shall specify in the order the grounds therefore.

**(e) Motion to Alter or Amend a Judgment.** A motion to alter or amend the judgment shall be filed not later than ten days after entry of the judgment.

"M.R.C.P. 59(e) provides for a motion to alter or amend a judgment. In order to succeed on a Rule 59(e) motion, the movant must show: (1) an intervening change in controlling law, (2) the availability of new evidence not previously available, or (3) the need to correct a clear error of law or to prevent manifest injustice. *Journey v. Berry*, 953 So.2d 1145, 1160 (Miss. 2007), citing *Brooks v. Roberts*, 882 So.2d 229, 233(¶ 15) (Miss.2004).

There was no change in controlling law, or any availability of new evidence. The only issue raised by the Appellant is whether the trial court committed a clear error of law or a need to prevent manifest injustice. The trial court made a clear and correct application of the law. The Amended Complaint was filed after the statute of limitations and the Amended Complaint does not relate back because there was no mistake of identity.

**A. Appellant knew the Appellee's identity so the Amended Complaint does not relate back.**

The trial court properly entered the final judgment of dismissal with prejudice because the Amended Complaint does not relate back since there was no mistake concerning the Appellee's identity.

Rule 15(c) of the Mississippi Rules of Civil Procedure sets forth the requirements that must be satisfied for an amended pleading to relate back to an original pleading. Rule 15(c) states:

**(c) Relation Back of Amendments.** Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by Rule 4(h) for service of the summons and complaint, the party to be brought in by amendment:

(1) has received such notice of the institution of the action that the party will not be prejudiced in maintaining the party's defense on the merits, and

(2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party. An amendment pursuant to Rule 9(h) is not an amendment changing the party against whom a claim is asserted and such amendment relates back to the date of the original pleading.

The filing of a motion to amend does not toll the statute of limitations. *Wilner v. White*, 929 So.2d 315, 319 (Miss. 2006). See also *Curry v. Turner*, 832 So.2d 508 (Miss. 2002). Therefore, “if an amended complaint is filed after the statute of limitations has run regardless of when the motion to amend was made-the statute of limitations bars suits against newly named defendants.” *Wilner v. White*, 929 So.2d 315, 319 (Miss. 2006).

When an Amended Complaint adds a newly named party, the following requirements must be met for an Amended Complaint to relate back: “(1) the claim in the amended complaint must arise out of the same conduct, transaction, or occurrence as that set forth in the original complaint; (2) the newly-named defendant must have received notice of the action within the period provided by Miss. R. Civ. P. 4(h) such that the party will not be prejudiced; and, (3) the newly-named defendant must have or should have known that an action would be brought

against him but for a mistake existing as to the parties' identities. Miss. R. Civ. P. 15(c).” *Wilner v. White*, 929 So.2d 315, 323 (Miss. 2006). The last two requirements “must be fulfilled before the statute of limitations has run or with 120 days of the filing of the original complaint.” *Curry v. Turner*, 832 So.2d 508, 513 (Miss. 2002).

The lacking requirement of mistake established by Rule 15(c)(2) prevents the Appellant’s Amended Complaint from relating back. “This part of the rule [15(c)(2)] essentially ask whether, because of the existence of a mistake as to the parties’ identities on the part of the movant or complainant, the newly-named defendant did not know that an action would be brought against him within the prescribed time.” *Wilner v. White*, 929 So.2d 315, 323 (Miss. 2006). “The purpose of this rule is to allow some leeway to a party who made a mistake, so long as the party does what is required within the time period under the rule.” *Wilner v. White*, 929 So.2d 315, 323 (Miss. 2006). “The United States Supreme Court, in looking at the federal counterpart to this rule, Fed.R.Civ.P. 15(c)(3)(B), noted that this subsection applies only in cases involving ‘a mistake concerning the identity of the proper party.’ *Nelson v. Adams USA, Inc.*, 529 U.S. 460, 467 (2000).” *Wilner v. White*, 929 So.2d 315, 324 (Miss. 2006). When there is no mistake concerning the identity of a proper party, the Rule 15(c)(2) requirement is not satisfied.

In *Wilner v. White*, 929 So.2d 315 (Miss. 2006), the plaintiff initiated a medical malpractice case against a hospital and nurse for injuries that occurred on January 27, 1997. *Id.* at 318. On January 27, 1999, the plaintiff amended the complaint, without leave of court, naming four additional defendants. *Id.* On the same date, the plaintiff also moved the court for leave to amend the complaint, but leave was not granted prior to the two-year statute of limitations expiring. *Id.* The *Wilner* case was appealed twice by the plaintiff, which ultimately

resulted in the Mississippi Supreme Court granting defendant White's petition for a writ of certiorari to address when an amended complaint relates back to the original Complaint. *Id.*

Two important holdings from *Wilner* apply to this case. First, the Mississippi Supreme Court reaffirmed that the filing of a motion to amend a pleading does not toll the statute of limitations. *Id.* at 319. Second, there must be a mistake by the amending party concerning the identity of the proper party that is being added by the amended pleading. *Id.* at 323.

The *Wilner* court found the same transaction and occurrence requirement was met, as was the second requirement of notice. *Id.* at 323. However, in examining the third requirement, mistake of identity, the court found, "[h]ere, there can be no attempt to assert that a mistake was made concerning White's identity.... White's name actually appears in the body of the original complaint itself. Wilner admits that months before she filed her motion to amend, she was well aware of the possibility of a claim she might have against White." *Id.* at 324. The court held the amended complaint did not relate back because "[t]here was no mistake as to White's identity, and Wilner did not exercise reasonable diligence in adding the newly named defendants." *Id.*

Another case directly on point that addresses when an amended complaint relates back is *Curry v. Turner*, 832 So.2d 508 (Miss. 2002). In *Curry*, the administratrix of Curry's estate instituted a wrongful death action against two individuals that killed Curry during a convenience store robbery on December 13, 1995. *Id.* at 510-511. On December 11, 1998, the plaintiff filed a motion to amend the complaint to add the owner of the convenience store, Pillai, and others. *Id.* at 511. The motion to amend was granted by the trial court on April 19, 1999, and the amended complaint was filed on November 19, 1999. *Id.* The trial court granted the newly named defendants' motions to dismiss due to the statute of limitations expiring prior to the filing of the amended complaint, and the plaintiff appealed. *Id.*

The Mississippi Supreme Court agreed with the trial court's determination that the amended complaint did not relate back to the original complaint "because the requirements of the second prong-notice and mistake-have not been met by Curry." *Id* at 513. Defendant Pillai's identity was not confused with the original defendants and the plaintiff was merely tardy in discovering Pillai's identity. *Id* at 514. Again, the absence of the third requirement of mistake barred the amended complaint from relating back to the original complaint.

In *Estes v. Starnes*, 732 So.2d 251 (Miss. 1999), the Mississippi Supreme Court applied the relation back doctrine to a motion to amend filed after the statute of limitations had run. However, the *Estes* case is distinguishable and inapplicable to this appeal. In *Estes*, suit was filed against defendant Donald Starnes for a motor vehicle accident that occurred on February 25, 1993. *Id* at 251. On April 10, 1997, the plaintiff filed a motion to amend changing the defendant from Donald Starnes to his son, David C. Starnes. *Id* at 252. The trial court denied the motion to amend because the plaintiff failed to offer any evidence of why the identity of David C. Starnes was not discovered within the applicable statute of limitations. *Id*. The Mississippi Supreme Court reversed finding the amendment should have been allowed because "[t]he younger Starnes and his father knew or should have known that but for some error in identity, he was the proper party and cannot be said to have been prejudiced since his father had retained counsel since the suit was instituted in 1994." *Id* at 253. See also *Mieger v. Pearl River County*, 2008 WL 73661 (Miss.App.) (finding that the notice of claim letter put the proper county official on notice that, except for the mistake of naming the wrong party, the action would have been brought against the county). Thus, the crucial distinction that warranted relation back in *Estes* and *Mieger* is the plaintiffs' mistake regarding the identity of the proper party. No such mistake was made in this case.



It is undisputed that the Amended Complaint was filed after the statute of limitations expired. The motor vehicle accident occurred on July 13, 2000, and the statute of limitations expired on July 13, 2003. The Appellant filed the Amended Complaint on August 8, 2003. During the hearing on the motion to reconsider, the Appellant admitted to filing the Amended Complaint after the statute of limitations expired. The requirement of mistake has not been met.

As set forth in *Wilner*, *Curry*, *Estes*, and *Mieger*, there must be some mistake by the Appellant for the Amended Complaint to relate back. Because there is no mistake concerning the identity of the Appellee, there is no relation back. Much like the plaintiffs in the *Wilner* and *Curry* cases, the Appellant had knowledge that the Appellee was a proper party during the statute of limitations time period, but failed to file the Amended Complaint before the statute of limitations expired. The relation back of the Amended Complaint was not triggered because there simply was no mistake concerning the Appellee's identity.

In at least five separate instances before the statute of limitations expired, the Appellant was informed or acknowledged the Appellee as the proper party to the lawsuit. First, the Appellant possessed the motor vehicle accident report stating the Appellee was the driver of the vehicle involved in the accident with the Appellant. Next, the Appellant stated in the original Complaint that the Appellee drove the vehicle involved in the accident. Third, the Appellant deposed the Appellee on or about May 23, 2002, and inquired about his involvement in the accident. The Appellant's Response to Motion for Summary Judgment and Motion to Amend and Substitute Jeremy E. Davis as Defendant filed on March 6, 2003, the Appellant admitted the Appellee was the operator of the vehicle involved in the accident. The Appellant stated, "[i]t is admitted that Jeremy E. Davis was the driver of the vehicle in question which was owned by his grandmother Dorothy Davis." The fifth instance occurred during the March 7, 2003, hearing.

The trial court informed the Appellant the Appellee was the proper party to the lawsuit and the trial court even granted the Appellant leave to amend the Complaint and make the Appellee a party to the lawsuit. Further, the trial court reminded the Appellant of the three-year statute of limitations and that the Appellee had to be served with process. Even during the course of this appeal, the Appellant admits there was no mistake. The Appellant admits the Appellee was named in “every pleading filed by the plaintiff.” (Appellant’s Brief p. 8). Nevertheless, the Appellant did not file the Amended Complaint until August 8, 2003, twenty-six days after the statute of limitations had expired. Again, the lack of mistake regarding the Appellee’s identity prevents the Amended Complaint from relating back to the original Complaint.

The Appellant, in establishing the Appellee had notice, implies some appearance was made by the Appellee. However, this issue is procedurally barred because it was first raised on appeal and was not presented to the trial court for determination, or asserted in the Appellant’s motion for reconsideration. See *Graves v. Dudley Maples, L.P.*, 950 So.2d 1017, 1021 (Miss. 2007).

In sum, the Appellant unequivocally knew the Appellee was the proper party to the lawsuit prior to the statute of limitations expiring. The requisite of mistake for the Amended Complaint to relate back is absent. Because the Amended Complaint was filed twenty-six days after the statute of limitations expired, the Appellant’s claims against the Appellee are barred. The trial court correctly dismissed the Appellee and did not abuse its discretion when it denied the Appellant’s motion for reconsideration.

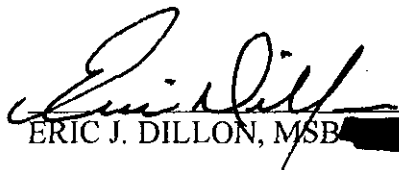
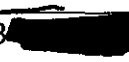
## Conclusion

The trial court was within its discretion to deny the Appellant's motion for reconsideration because there was no clear error of law. The dismissal of the Appellee was proper since the Amended Complaint was filed after the statute of limitations expired and the Amended Complaint does not relate back. The Amended Complaint does not relate back because there was no mistake whatsoever regarding the identity of the Appellee. The Appellant had multiple documents and communications identifying the Appellee as the proper party, but failed to file the Amended Complaint before the statute of limitations expired.

The trial court was correct to dismiss the Appellee and was within its discretion to deny the Appellant's motion for reconsideration. Accordingly, the decision of the trial court should be affirmed.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I do hereby certify that I have this day served a true and correct copy of the above and foregoing instrument by causing a copy of same to be mailed, postage prepaid, to the following counsel of record at the address(es) shown:

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This the 26th day of June, 2008.

  
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