

IN THE SUPREME COURT OF MISSISSIPPI

CAUSE NO: 2007-CA-01762

RUBY LEE

APPELLANT

VERSUS

MEMORIAL HOSPITAL AT GULFPORT

APPELLEE

APPELLEE'S BRIEF

Appeal from the
Circuit Court of Harrison County, Mississippi
First Judicial District

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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 the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Ruby Lee, Appellant.
2. Robert W. Smith, Esq., Attorney for Appellant.
3. Memorial Hospital at Gulfport, Appellee.
4. Patricia K. Simpson, Esq., Franke & Salloum PLLC, Attorney for Appellee
5. Fredrick B. Feeney, III, Esq., Franke & Salloum PLLC, Attorney for Appellee
6. Hon. Lisa P. Dodson, Circuit Judge.



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STATEMENT OF THE ISSUES

- I. THE TRIAL COURT WAS CORRECT IN GRANTING SUMMARY JUDGMENT AS LEE FAILED TO COMPLY WITH THE NINETY DAY NOTICE PROVISION PROVIDED IN MISS. CODE ANN. SEC. 11-41-11(1)
- II. THE TRIAL COURT WAS CORRECT IN GRANTING SUMMARY JUDGMENT AS LEE FAILED TO COMPLY WITH THE NOTICE PROVISIONS REQUIRED BY MISS. CODE ANN. SEC. 11-41-11(2)

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STATEMENT OF THE CASE

Lee's Complaint against Memorial Hospital at Gulfport ("MHG") was filed on September 28, 2006 in the Circuit Court of Harrison County, First Judicial District. (TR. 6) MHG timely filed its Answer. (TR. 27) MHG filed a Motion for Summary Judgment on November 16, 2006. (TR. 8) A hearing was held on the motion on and the trial court entered its Order granting summary judgment in favor of MHG on February 16, 2007. (TR. 47) Lee filed a Motion to Reconsider the granting of summary judgment. (TR. 57) The motion for reconsideration was heard and the trial court entered its Order denying the motion to reconsider on September 17, 2007. (TR. 67) Lee then filed her Notice of Appeal. (TR. 68)

STATEMENT OF FACTS

On July 28, 2006 MHG received a notice of claim from the Plaintiff. (TR. 20) The notice of claim failed to provide the time and place the injury occurred, the names of all persons known to be involved, the amount of money damages sought, the residence of the party making the claim at the time of the injury, and the claimant's residence at the time of filing the notice.

(TR. 20-21) MHG sent its denial letter via certified mail on August 28, 2006. (TR.23) Lee filed her Complaint seeking damages from MHG on September 28, 2006. (TR. 6)

In her complaint, Ruby Lee, alleges that on July 26, 2006 while a patient at MHG, she underwent a surgical procedure, specifically, a coronary artery bypass graft with closure of the sternum. (TR. 6) Lee alleges in her complaint that she was later examined by her physician who discovered multiple sternum fractures and that Robisek wire reinforcement had pulled through the sternum. (TR. 6) Lee alleges that *res ipsa loquitur* applies to this case and that she would not have had such injuries if there was no negligence on the part of MHG. (TR.7) Lee indicated that she was not providing a certificate of consultation in this case as required by *Miss. Code Ann. § 11-1-58(1) (2002, as amended)* since she was relying solely on the theory of *res ipsa loquitur* in this case. (TR. 7)

SUMMARY OF THE ARGUMENT

The trial court was correct when it ruled that the ninety day notice requirement of *Miss. Code Ann. § 11-46-11(1)* was mandatory and Lee failed to comply with the requirement when she failed to wait the required ninety (90) days from providing notice to MHG before filing suit. In *University of Mississippi Medical Center v. Easterling*, 928 So. 2d 815 (Miss. 2006), this Court dictated that the ninety day notice requirement was a “hard-edged, mandatory rule which the Court strictly enforces.” *Id. at 820* MHG contends that it cannot waive the requirement by sending a denial letter to a claimant. MHG argues that the ninety day notice requirement is a

jurisdictional pre-requisite that must be satisfied before a claimant can institute a tort lawsuit against a governmental entity.

The trial court was correct when it ruled that Lee failed to comply with the notice of claim requirements articulated in *Miss. Code Ann. § 11-46-11(2)*. The trial court found that Lee did not provide all seven (7) categories of information and thus the notice “falls short of the statutory requirement and amounts to non-compliance with *Miss. Code Ann. § 11-46-11(2)*”. In *South Regional Medical Center v. Guffy*, 930 So. 2d 1252 (Miss. 2006), this Court ruled that *Miss. Code Ann. § 11-46-11(2)* requires a claimant to disclose all seven (7) categories of information and the failure to provide information of any of the seven statutorily required categories amounts to non-compliance with the notice provisions. MHG contends that the trial court’s application of a strict compliance standard to the notice provisions of *Miss. Code Ann. § 11-46-11(2)* was correct and in accord with the dictates of *Guffy*. Lee acknowledges that she did not provide information as to all seven categories. MHG argues that this constitutes non-compliance with the notice provisions and that the substantial compliance standard does not apply unless there is information relating to all seven categories contained in the notice of claim.

ARGUMENT

This Court reviews a trial court’s grant or denial of a motion for summary judgment or motion to dismiss under a de novo standard. *Monsanto v. Hall*, 912 So. 2d. 134, 136 (Miss. 2005) This Court sits in the same position as the trial court. When interpreting a statute, this

Court reviews such an issue de novo as it is a question of law. *Page v. University of Southern Mississippi*, 878 So. 2d 1003, 1004-1005 (Miss. 2004) This Court reviews errors of law, including the proper application of the Mississippi Tort Claims Act de novo. *South Regional Medical Center v. Guffy*, 930 So. 2d 1252, 1255 (Miss. 2006)

The rule in Mississippi is that summary judgment shall be entered by a trial judge “if the pleadings, depositions, answers to interrogatories and admissions of file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” *Young v. Wendy’s Intern., Inc.*, 840 So. 2d 782 (Miss. App. 2003) The presence of fact issues in the record does not per se entitle a party to avoid summary judgment; the court must be convinced that the factual issue is a material one, one that matters in an outcome determinative sense and the existence of a hundred contested issues of fact will not thwart summary judgment where there is no genuine dispute regarding the material issues of fact. *Johnson v. Baptist Memorial Hospital*, 843 So. 2d 102 (Miss. App. 2003) citing *Simmons v. Thompson Machinery of Mississippi Inc.*, 631 So. 2d 798, 801 (Miss. 1994)

The burden on the movant is clear:

We have stated the party moving for summary judgment has the job of persuading the court, first, that there is no genuine issue of material fact and, second, that on the basis of the facts established, he is entitled to judgment as a matter of law. The movant carries a burden of persuasion, not a burden of proof....[T]he movant has no duty to provide an evidentiary predicate to negate the existence of a material fact as to those issues on which he does not bear the burden of proof at trial. Rather, as to issues where the movant does not bear the burden of proof at trial, he must initially only make a sufficient “informing”, “pointing out”, or “showing” that there is an absence of evidence to support the non-movant’s case.

Hartford Cas. Ins. Co. v. Haliburton Co., 826 So. 2d 1206 (Miss. 2001)

Memorial Hospital at Gulfport is a community hospital, an entity of the state. As such, it is protected by the Mississippi Tort Claims Act (MTCA), *Miss. Code Ann. § 11-46-1(j)*; See *Miss. Code Ann. § 11-46-1 et seq. (2000 as amended)*. The immunity of state and political subdivisions has been waived only to the extent provided in the MTCA. *Miss. Code Ann. § 11-46-5(1)* The remedy provided by the MTCA is the exclusive remedy for any action against a political subdivision in the State of Mississippi, including MHG, a community hospital.

Lee failed to comply with the ninety day notice requirement

Pursuant to *Miss. Code Ann. § 11-46-11(1)*, a party *shall* file a notice of claim with the chief executive officer of the governmental entity ninety days prior to maintaining an action thereon. Notice is required to be served in person or via certified mail upon the chief executive officer of the governmental entity. *Miss. Code Ann. § 11-46-11(1) & (2)*.

Pursuant to *Miss. Code Ann. § 11-46-11(1)*, a plaintiff is required to wait ninety days after giving notice before filing suit. The Mississippi Supreme Court has ruled that the failure to wait ninety days after giving notice to file a lawsuit is grounds for summary judgment. *University of Mississippi Medical Center v. Easterling*, 928 So. 2d 815, 818 (Miss. 2006) In *Easterling*, the Mississippi Supreme Court granted interlocutory appeal to clarify the ninety day notice requirement under the post-1999 section 11-46-11(1). *Id. at 819* In *Easterling*, the Plaintiff's premature infant died on July 8, 2002. On September 7, 2002, the Defendant, UMMC, notified

Easterling that the infant she buried was not hers. *Id. at 816* Without complying with the notice requirements, Easterling filed suit on September 19, 2002. Recognizing her failure to comply, Easterling filed a motion for extension of time to serve process and provided UMMC with notice on January 17, 2003. *Id.* A month later, UMMC was served with process. UMMC filed a motion for summary judgment alleging that Easterling failed to comply with the ninety day notice. *Id. at 817* The trial court denied the motion and instead ordered a ninety day stay of proceedings to allow UMMC to investigate the claims. The Supreme Court granted UMMC's request for interlocutory appeal. The Court ruled that the ninety day notice requirement was mandatory and the failure to comply with the notice requirement meant that the action had to be dismissed. *Id. at 819-820* The Supreme Court reversed the ruling of the trial court and rendered in favor of UMMC. *Id.*

In the present case, the ninety day notice requirement was not met. MHG received the notice on July 28, 2006. (TR. 20) The Complaint was filed on September 28, 2006. (TR. 6) Only sixty-two (62) days had passed before the Plaintiff filed her Complaint. The statute requires ninety (90) days. This Court's ruling in *University of Mississippi Medical Center v. Easterling*, 928 So. 2d 815 (Miss. 2006) did not give the trial court's any leeway in reducing the ninety day notice requirement articulated in *Miss. Code Ann. § 11-46-11(1)*. Applying the mandates of *Easterling*, the case against MHG must be dismissed.

Lee argues that the trial court misread the pronouncements in *Easterling*. (Appellant's Brief, p. 6) Lee contends that the issue in this case is whether or not the Defendant can waive the

ninety day period provided in § 11-46-11 and elect to proceed by sending a written denial of claim to the plaintiff. MHG argues that this Court's holdings in *Easterling* and *South Regional Medical Center v. Guffy*, 930 So. 2d 1252 (Miss. 2006) articulate that the ninety day period contained in *Miss. Code Ann. § 11-46-11(1)* is a "hard-edged, mandatory rule which the Court strictly enforces". *University of Mississippi Medical Center v. Easterling*, 928 So. 2d 815, 820 (Miss. 2006) It is MHG's position that the notice requirement is mandatory and must be satisfied prior to a plaintiff being allowed to institute a tort lawsuit against a governmental entity. *South Regional Medical Center v. Guffy*, 930 So. 2d 1252, 1259 (Miss. 2006) The MTCA on its face does not provide any provision for a governmental entity to waive the ninety day notice requirement.

Lee contends that MHG waived the hard-edged mandatory notice requirement by sending a denial letter to Lee. (Appellant's Brief, p. 8-9) Lee cites the case of *Thornburg v. Magnolia Regional Health Center*, 741 So. 2d 220, 223 (Miss. 1999) to support her contention that "the statutory notice required by the Tort Claims Act does not give rise to the same jurisdictional/due process concerns which arise, for example, in the context of summonses mailed following the filing of a lawsuit." *Thornburg v. Magnolia Regional Health Center*, 741 So. 2d 220, 223 (Miss. 1999) It cannot be overlooked that *Thornburg* was decided utilizing the pre-1999 notice requirements. In the opinion itself, this Court calls attention to the fact that the notice requirements had been amended by the Legislature but that such amendments were effective from and after the passage of the new law and did not apply to the case. *Id. at 221* As such,

Thornburg on its face does not apply to the present case since this case deals with the notice requirements in effect at the time of the *Easterling* decision. Lee is in error in her application of this case to the present case.

Lee asks this Court to rule that, as a matter of statutory construction, a plaintiff should be able to file his or her complaint once he or she receives a denial of claim, regardless of whether ninety days has passed since the political entity has received the notice of claim. (Appellant's Brief, p. 9) Lee is asking this Court to overturn its decision in *Easterling*. Lee argues that the statutory scheme of the MTCA is comparable to Alice in Wonderland. (Appellant's Brief, p. 9) Lee's position is that *Miss. Code Ann. § 11-46-11(3)* allows a claimant to file suit after receiving a denial letter even though the ninety day period in *Miss. Code Ann. § 11-46-11(1)* has not passed. She also contends that the MTCA prevents a plaintiff from filing suit while the statute of limitations keeps running. Lee is incorrect in this assertion.

Miss. Code Ann. § 11-46-11(3) provides the following:

(3) All actions brought under the provisions of this chapter shall be commenced within one (1) year next after the date of the tortious, wrongful or otherwise actionable conduct on which the liability phase of the action is based, and not after; provided, however, that the filing of a notice of claim as required by subsection (1) of this section shall serve to toll the statute of limitations for a period of ninety-five (95) days from the date the chief executive officer of the state agency received the notice of claim, or for one hundred twenty (120) days from the date the chief executive officer or other statutorily designated official of a municipality, county or other political subdivision receives the notice of claim, during which time no action may be maintained by the claimant unless the claimant has received a notice of denial of claim. **After the tolling period has expired, the claimant shall then have an additional ninety (90) days to file any action against the governmental entity served with proper claim notice.** However, should the governmental entity deny any such claim, then the additional ninety (90) days during which the claimant may file an action shall begin to run

upon the claimant's receipt of notice of denial of claim from the governmental entity

Miss. Code Ann. § 11-46-11(3)

The language of *Miss. Code Ann. § 11-46-11(3)* provides a tolling period after receipt of a notice of claim and also provides an additional ninety (90) days after such tolling period expires in order for a claimant to file a complaint. These additional ninety (90) days ensure that the statute of limitations will not run against any claimant who complies with subsection (1) and gives the governmental agency the required ninety (90) day notice prior to instituting litigation. In fact, MHG would argue that the inclusion of the additional ninety (90) day period in subsection (3) illustrates the legislature's intent that the ninety (90) day notice period provided in subsection (1) is mandatory as this Court held in its decisions in *Easterling* and *Guffy*. See *University of Mississippi Medical Center v. Easterling*, 928 So. 2d 815 (Miss. 2006) and *South Regional Medical Center v. Guffy*, 930 So. 2d 1252 (Miss. 2006) Applying the MTCA as suggested by Lee would ignore the ninety (90) day extension provided in subsection (3).

With respect to the governmental entity's denial of a claim, Subsection (3) provides that the additional ninety-five (95) or one hundred twenty (120) tolling period ceases with the receipt of a denial of claim from the entity. It does not provide that the ninety (90) day requirement of Subsection (1) ceases to run. MHG argues that the denial of a claim only effects the tolling period provided in Subsection (3) and not the notice requirement provided in Subsection (1). It is MHG's position that if the legislature intended the denial of a claim to effect the notice requirement in Subsection (1), it would have provided language to that effect. In fact, the

additional ninety (90) days provided to a claimant to file suit as articulated in Subsection (3) supports MHG's contention that the legislature did not intend for a governmental entity to waive the notice requirement in Subsection (1) by providing a denial of a notice of claim. *See Miss. Code Ann. § 11-46-11(1) & (3)* Also, this Court's decision in *Page v. University of Southern Mississippi*, 878 So. 2d 1003 (Miss. 2004) illustrates how the notice requirements can be complied with within the statute of limitations provided by the MTCA.

Lee's failure to comply with the ninety (90) day notice requirement is fatal to her case. The notice requirement is a hard edged mandatory rule and is jurisdictional. The trial court's grant of summary judgment should be affirmed.

Lee failed to comply with the notice of claim provisions of Miss. Code Ann. § 11-46-11(2)

In this case, the notice failed to substantially comply with *Miss. Code Ann. § 11-46-11(2)*. Pursuant to *Miss. Code Ann. § 11-46-11(2)*, there are seven required categories of information which must be included in the notice provided to the governmental entity. *South Central Regional Medical Center v. Guffy*, 930 So. 2d 1252, 1257-1258 (Miss. 2006) The seven required categories are as follows: 1) the circumstances which brought about the injury; 2) the extent of the injury; 3) the time and place the injury occurred; 4) the names of all persons known to be involved; 5) the amount of money damages sought; 6) the residence of the party making the claim at the time of the injury; and 7) the claimant's residence at the time of filing the notice. *South Central Regional Medical Center v. Guffy*, 930 So. 2d 1252, 1257 (Miss. 2006) In *Guffy*, the Mississippi Supreme Court clarified what is required to be submitted in the notice of claim. The Court mandated that "the failure to provide *any* of the seven statutorily required categories

of information falls short of the statutory requirement and amounts to non-compliance with *Miss. Code Ann. § 11-46-11(2)*. *Id. at 1258* The Court ruled that the requirements of *Miss. Code Ann. § 11-46-11(2)* mandatory and that it is reversible error for a trial court not to dismiss an action where the party failed to comply with the notice provisions. *Id.* Lee acknowledges that her notice of claim did not contain information regarding all seven (7) statutorily required categories. (Appellant's Brief, p. 11)

The trial court was correct in finding that Lee's notice of claim did not comply with the requirements of *Miss. Code Ann. § 11-46-11(2)*. In the instant case, the notice of claim failed to comply with *Miss. Code Ann. § 11-46-11(2)*. The trial court found that the notice failed to provide information required by the seven statutorily required categories. The notice provided by Lee did not contain the names of all persons known to be involved, the amount of money damages sought, the residence of the party making the claim at the time of the injury, and the claimant's residence at the time of filing the notice. (TR. 53-54, Appellant's Brief, p. 11) Holding that the failure of Lee to include all the required categories of information constituted a failure to comply with the notice requirements of the MTCA, the trial court correctly applied the dictates of *Guffy*. *South Central Regional Medical Center v. Guffy*, 930 So. 2d 1252, 1257-1258 (Miss. 2006) It is MHG's contention that the failure to provide the statutory notice as required by the MTCA deprives the trial court of subject matter jurisdiction over this cause.

Lee's arguments that substantial compliance applies is misplaced. Before applying a substantial compliance standard, MHG contends that a notice of claim must contain information regarding each of the seven (7) categories. If the notice of claim contains information relating to

each of the seven (7) categories, then the trial court uses the substantial compliance standard to evaluate if the information provided is substantial enough to be in compliance with the statute. The provision of the information in each of the seven categories in the first place is evaluated with a strict compliance standard as mandated by this Court in its decision in *Guffy*. *South Central Regional Medical Center v. Guffy*, 930 So. 2d 1252, 1257-1258 (Miss. 2006)

It cannot be overlooked that several of the cases relied upon by Lee to support her substantial compliance arguments - namely, *Fairley v. George County*, 871 So. 2d 713 (Miss. 2004), *Carr v. Town of Shubuta*, 733 So. 2d 261 (Miss. 1999), *Reeves ex rel Rouse v. Randall*, 729 So. 2d 1237 (Miss. 1998) and *McNair v. Univ. of Miss. Medical Center*, 742 So. 2d 1078 (Miss. 1999) - have been clarified by name in this Court's opinion in *South Central Regional Medical Center v. Guffy*, 930 So. 2d 1252, 1257-1258 (Miss. 2006). Specifically, this Court held:

"The wording, 'substantial compliance' with the requirements of Miss. Code Ann. § 11-46-11(2), contained in many of this Court's opinions regarding the application of Miss. Code Ann. § 11-46-11(2) causes confusion and needs to be addressed by this Court today in order to provide direction and clarity to the courts and the bar. See e.g., *Fairley*, 871 So. 2d at 716; *Gale v. Thomas*, 759 So. 2d at 1158; *McNair v. Univ. Miss. Med. Ctr.*, 742 So. 2d at 1080; *Carr v. Town of Shubuta*, 733 So. 2d at 263; *Reaves ex rel. Rouse v. Randall*, 729 So. 2d at 1240.

The confusion has arisen in the discussion of Miss. Code Ann. § 11-46-11(2), as to how much information is required by this Court under each of the seven categories to comply with Miss. Code Ann. § 11-46-11(2). As a practical example, the first category requires notice of the "circumstances which brought about the injury". In order to comply with this requirement, the notice need not disclose every single fact, figure and detail, but rather the substantial details, in order to comply with the requirements of Miss. Code Ann. § 11-46-11(2). But, the failure to provide *any* of the seven

statutorily required categories of information falls short of the statutory requirement and amounts to non-compliance with Miss. Code Ann. § 11-46-11(2).

South Central Regional Medical Center v. Guffy, 930 So. 2d 1252, 1258 (Miss. 2006)

It is clear from this Court's dictates in *Guffy*, that the Court was clarifying the application of the substantial compliance standard and clarifying its rulings in those cases spelled out above. Strict compliance is mandated to determine if information from all seven (7) statutorily required categories and, if information is provided relating to seven categories, substantial compliance is mandated to determine whether the information provided complies with the requirements of *Miss. Code Ann. § 11-46-11(2)*.

Lee acknowledges that her notice of claim failed to contain any information regarding the claimant's address at the time of the incident, the claimant's address at the time of the claim and the amount of money damages sought. (Appellant's Brief, p. 11) It is Lee's contention that these omissions have been addressed by the *Fairley*, *Carr*, *Reaves* and *McNair* decisions and this Court has held that the notices substantially complied with the MTCA without this information. MHG contends that this Court's ruling in *Guffy* made all seven categories of information a requirement in the notice of claim. It is MHG's position that the failure to provide any of the seven statutorily required categories of information falls short of the statutory requirement and amounts to non-compliance with *Miss. Code Ann. § 11-46-11(2)*. *Guffy*, 930 So. 2d at 1258 MHG disagrees with Lee's contention that *Guffy* only applies to cases where a claimant fails to serve a notice of claim. It is MHG's position that this Court meant what it said in *Guffy* when it ruled that failing to provide information of all seven (7) statutorily required categories constitutes

non-compliance with the dictates of the MTCA. The trial court was correct in this case when it ruled that “if any category lacks information, the *Guffy* decision very plainly directs that this Court does not even reach the issue of substantial compliance.” (TR. 53)

MHG is entitled to a dismissal with prejudice in this case. The statute of limitations has passed on the Plaintiffs’ claims. As provided in *Miss. Code Ann. § 11-46-11(3)*, the statute of limitations is one year. The statute can only be tolled as provided in *Miss. Code Ann. § 11-46-11(3)* when the Plaintiffs provide notice as required in *Miss. Code Ann. § 11-46-11(1) & (2)*. See also *Page v. University of Southern Mississippi*, 878 So. 2d 1003 (Miss. 2004) Lee’s failure to comply with the statutory mandates of the MTCA has caused the statute of limitations to lapse as to all claims against MHG.

CONCLUSION

The trial court was correct in dismissing the case against MHG. Lee failed to comply with the ninety day notice requirement as mandated in *Miss. Code Ann. § 11-46-11(1)*. This failure constitutes non-compliance with the dictates of the MTCA and requires dismissal of the Complaint. In addition, Lee failed to provide a notice of claim in compliance with *Miss. Code Ann. § 11-46-11(2)*. The failure to provide the seven required categories of information in the notice of claim constitutes non-compliance with the notice provisions of the MTCA. The notice of claim at issue in this suit fails to provide all seven required categories and thus there has been no compliance with the MTCA.


The trial court's application of the ninety day notice requirement of *Miss. Code Ann. § 11-46-11(1)* as a hard-edged, mandatory rule to be strictly enforced was in compliance with the dictates of *University of Mississippi Medical Center v. Easterling*, 928 So. 2d 815 (Miss. 2006). In addition, the trial court's application of a strict compliance standard instead of a substantial compliance standard to Lee's failure to provide seven statutorily required categories of information in the notice of claim was the correct interpretation and application of this Court's mandates articulated in *South Central Regional Medical Center v. Guffy*, 930 So. 2d 1252 (Miss. 2006). The failure of the Plaintiff to comply with the statutory mandates of the MTCA has caused the statute of limitations to lapse as to all claims against MHG and the trial court was correct in dismissing all claims against it with prejudice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have served via US mail, postage prepaid, a copy of the above Brief for Appellee Memorial Hospital at Gulfport to the following:

Robert W. Smith, Esq.
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Hon. Lisa P. Dodson
Circuit Court Judge
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So certified this the 28th day of March 2008.



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CERTIFICATE OF SERVICE

I do hereby certify that I have this day forwarded via US mail, postage prepaid, one (1) original and three (3) copies of the above Brief for Appellee Memorial Hospital at Gulfport to the Clerk of the Supreme Court.

So certified this the 28th day of March 2008.



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