IN THE COURT OF APPEALS FOR THE STATE OF MISSISSIPPI

NO. 2007-CA-02190

HORACE A. RYALS — **APPELLANT**

VERSUS

PHILLIP BERTUCCI, TRI-COUNTY EYE CLINIC, JOHN FINCH, D.O., MEMORIAL HOSPITAL AT GULFPORT AND JOHN DOES 1 through 5 — **APPELLEES**

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record for the Appellee, John Finch, D.O., certifies that the following persons and/or entities 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. Appellant, Horace A. Ryals

2. Appellees, Phillip Bertucci, M.D., Tri-County Eye Clinic, and John Finch, D.O.

3. Honorable Stephen Simpson, formerly Circuit Court Judge for the Second District and currently Director of the Department of Public Safety

4. Counsel for Appellant: L. Christopher Breard, Esquire

5. Counsel for Appellees: William Whitfield, Esquire, for Appellees, Phillip Bertucci and Tri-County Eye Clinic

   Thomas Musselman, Esquire and Brett K. Williams, Esquire, for Appellee, John Finch, D.O.

THOMAS L. MUSSELMAN
BRETT K. WILLIAMS
Counsel for Appellee, John Finch, D.O.

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STATEMENT OF THE ISSUE

I. THE TRIAL COURT PROPERLY GRANTED APPELLEE'S, JOHN FINCH, D.O., MOTION FOR A DIRECTED VERDICT AS THE APPELLANT, HORACE A. RYALS, FAILED TO PRODUCE TESTIMONY FROM A QUALIFIED MEDICAL EXPERT THAT ANY BREACH OF THE APPLICABLE STANDARD OF CARE PROXIMATELY CAUSED AN INJURY TO MR. RYALS.

STATEMENT OF THE CASE

Nature of the Case and Disposition Below

This matter commenced upon the filing of a Complaint in the First Judicial District of the Circuit Court of Harrison County, Mississippi, on December 31, 2002, by Horace A. Ryals. Mr. Ryals alleged negligence on the part of Phillip Bertucci, M.D., his clinic, Tri-County Eye Clinic, John Finch, D.O., an emergency department physician at Memorial Hospital at Gulfport, Memorial Hospital at Gulfport and John Does 1 through 5, relating to emergency treatment he received at Memorial Hospital at Gulfport on May 28, 2002, and later at Tri-County Eye Clinic. No John Doe defendants were ever identified and thus are not a part of this appeal. Defendant, Memorial Hospital at Gulfport, was voluntarily dismissed by the Plaintiff and is not a part of this appeal.

The matter proceeded to trial on August 21, 2006, in the Circuit Court for the First Judicial District of Harrison County, Mississippi, the Honorable Stephen Simpson presiding. Plaintiff-Appellant produced an expert ophthalmology witness, James Sutton, M.D., to testify as to the relevant issues of the claims made by Mr. Ryals against both Dr. Bertucci and Dr. Finch. At the close of Plaintiff-Appellant's case-in-chief, Judge Simpson granted the Appellees' motions for directed verdict based upon his review of the testimony and applicable case law.

Plaintiff-Appellant filed a motion for reconsideration or for a new trial which was denied by the trial court. Plaintiff-Appellant filed the instant appeal with the sole issue for determination being the grant of the directed verdict by the trial court.

Statement of Facts

Plaintiff, Horace Ryals, appeared at the emergency department of Memorial Hospital at Gulfport on the evening of May 28, 2002, seeking treatment for facial injuries. Mr. Ryals was

attempting to remove a portion of a dock by pulling it with his truck when the rope he had attached to the dock broke. The rope rebounded, struck the rear window of his pickup truck and sprayed glass shards into his face and eyes. *[Tr-719-24.]*

Mr. Ryals was seen by Dr. John Finch in the emergency department. Dr. Finch performed the initial history and physical examination, ordered x-rays and contacted Dr. Phillip Bertucci for an ophthalmology consultation. Dr. Bertucci and Dr. Finch discussed the case and treatment by telephone. Mr. Ryals was treated, released and told to see Dr. Bertucci the next morning.

Dr. Bertucci examined Mr. Ryals the next morning and referred him to Ochsner's Clinic in New Orleans for further treatment for his eye injuries. Mr. Ryals underwent surgery on both eyes at Ochsner's and suffered a retinal detachment of his right eye during the surgery. Mr. Ryals has scarring on the cornea of his left eye.

Mr. Ryals filed suit alleging medical negligence against Dr. Finch and others. Plaintiff produced one expert witness, an ophthalmologist, at the trial of this cause. Dr. James Sutton testified that, in his opinion, there was a breakdown in communication between Dr. Finch and Dr. Bertucci that he believed was a breach of the standard of care. However, Dr. Sutton never testified that any breach of an applicable standard of care proximately caused an injury to Mr. Ryals. In fact, Judge Simpson noted from the bench that he specifically searched the trial transcript for testimony which would satisfy the requirement that the Plaintiff produce evidence on the element of proximate causation.*[Tr-805-06; 817; 849-52.]* There simply was no such testimony.

Dr. Sutton was pointedly and repeatedly questioned about the causation issue. At no time did Dr. Sutton ever opine that any act or omission by Dr. Finch proximately caused an injury to Mr. Ryals. One of the issues raised by the Plaintiff through Dr. Sutton was the fact that no CT was ordered for Mr. Ryals. Plaintiff's counsel asked Dr. Sutton if a CT scan would be required when the

plain film x-ray was deemed negative. Dr. Sutton responded that it was his personal preference to order a CT rather than a plain film x-ray. *[Tr-546-47.]* Dr. Sutton never testified that the failure to order a CT scan was a breach of any standard of care applicable to an emergency department physician such as Dr. Finch. Likewise, there was no testimony that the failure to order a CT scan proximately caused an injury to Mr. Ryals.

The Plaintiff asked Dr. Sutton if any failure to timely diagnose and close Mr. Ryals' injury caused any permanent injury. Dr. Sutton replied that Mr. Ryals has a scar on the cornea of his left eye where the injury occurred. Dr. Sutton was asked:

> Q. Is that scar, in your opinion based upon a reasonable degree of medical certainty, due to any delay?
>
> A. I've had scars like this that we've closed immediately. The quicker you take care of these sort of injuries, typically the better the result. A laceration like that is going to leave a scar on the cornea.

[Tr-557.]

Plaintiff also asked about the hyphema and whether there was additional bleeding which may have caused damage:

> Q. Now, in terms of the hyphema which we have described in the emergency room and later, is that evidence of additional damage?
>
> A. Well, I think when Andy got to Ochsner, they described the eye, the anterior chamber being completely full of blood. So there was continued bleeding at least in the anterior chamber. We're not able to know how much extra bleeding there may or may not have been in the back of the eye.

[Tr-572.]

Dr. Sutton was asked if he had an opinion whether or not prompt closure of the open globe injury to Mr. Ryals' right eye would have made a substantial difference in the outcome. Dr. Sutton stated that he believes that the standard of care requires open globe injuries to be closed immediately

but that the question was "somewhat hypothetical." He further testified, "I mean, what would the result have been? I mean, we don't know." *[Tr-582.]* Dr. Sutton was asked if any delay in closing the open globe injury "substantially complicated the surgery that was performed at Ochsner?" Dr. Sutton replied that "once an eye gets to that misshapen, disfigured, disformed shape it makes surgery significantly more difficult, not impossible, but it just makes it more tedious." *[Tr-590.]* Dr. Sutton never testified that prompt closure of an open globe wound would have made a substantial difference in the medical outcome in Mr. Ryals' case.

Mr. Ryals' claim is that he lost the vision in his right eye due to the delay in diagnosis and treatment of an open globe injury caused by the glass fragment. Plaintiff quizzed Dr. Sutton about the reason for the retinal detachment suffered by Mr. Ryals. Dr. Sutton's testimony regarding the retinal detachment was::

Q. I'm really getting to the point also of the retinal detachment that occurred during surgery. Do you have any opinion as to whether or not that was a result of the delay or partially caused by the delay?

A. I have some thoughts as to how that retinal detachment may have occurred.

Q. What's your opinion in that regard?

A. It's interesting that the retinal detachment which is accurately described in the operative note from Ochsner does not describe the retinal detachment being in the area of the injury. It's not where the glass went in. It's not where we closed the open globe. It's around the inferior temporal edge, at least according to the operative report where the infusion came in. Remember, we talked about when you take the jelly out of the eye, you have to have to run fluid in.
When most of us dictate operative reports, it's not like reading prose. I mean, when you dictate an operative report usually every word, every statement, every sentence has a very specific meaning. There's a line on page two of the operative report from Ochsner specifically addresses the notion that that infusion cannula, the little tube that brings the fresh saline into the eye that they weren't able to see it. It's interesting that the retinal detachment was down around the cannula according to the report and not around where the glass went in the eye.

Q. That doesn't mean they did anything wrong in the surgery, does it?

A. No. They did absolutely everything that they could to save the eye.

Q. Just a complication?

A. It's a known potential complication of doing retinal surgery that when you place that infusion cannula, if you can't see the tip, and they clearly state we could not see the tip, the end of the cannula, when you turn that fluid on, if that tip happens to be under the retina, the retina's going to come off.

[Tr-591-92.]

Counsel for co-Defendants, Dr. Bertucci and Tri-County Eye Clinic, quizzed Dr. Sutton specifically about the issue of proximate causation:

Q. Are you aware of any damage that was done to this patient's eye, this patient being Mr. Ryals, any damage that was done to his eye given the mechanism of sight that you can say to a reasonable degree of medical probability didn't occur at the time of the trauma?

A. There's a lot of parts of that question. I'm not sure that I follow exactly what you're asking me.

Q. Why can't he see today in the right eye?

A. Why can't he see today in the right eye. Well, we spent all morning talking about the injury that he received and the care that he received after the injury and the end result of both of these two components has left him with a [sic] eye that's blind.

[Tr-616.]

Q. Now, can you say to a reasonable degree of medical probability that the scarring and the damage that was done to the patient's macular area was not due to the blunt force trauma that occurred to him on May 28 of 2002?

A. No.

[Tr-620.]

Dr. Sutton also testified that Mr. Ryals suffered from a pre-existing medical condition that made him more susceptible to a poor medical outcome:

Q. All right. How about disease? Are you aware of any preexisting medical condition that related to this particular patient?

A. Possibly.

Q. Possibly?

A. Possibly.

Q. Do you know what the condition of cystic macular edema is?

A. It's cystoid. Yes.

Q. Do you know what that is?

A. Yes, I do.

Q. What is that?

A. Swelling of the macula.

Q. Do you know whether Mr. Ryals had a problem with that?

A. Yes, I do.

Q. How do you know that?

A. I had the chance to look over some medical records from Chris Hogan's office where he had examined Mr. Ryals' eye before the accident happened. I think it was possibly in 2002. He was concerned with some swelling in the retina.
He had some visual field testing that showed what to me looks like possible retinitis pigmentosa. He's got some significant peripheral field loss on two separate visual field tests.

* * *

Q. Did Mr. Ryals have a normal right eye before this accident?

A. Those tests would indicate that there was a problem with Andy's retinas in both eyes before this accident.

Q. Before this accident?

A. Yes, sir.

Q. So an intraocular foreign body and trauma didn't help things, did it?

A. No, sir, they didn't.

Q. And when he gets involved in blunt force trauma already having the kind of condition that he's got, then that makes him more susceptible to a poor visual outcome, doesn't it?

A. That would be my expectation.

[Tr-637-39.]

Specifically as to Dr. Finch, Dr. Sutton testified that the standard of care applicable to Dr. Finch would not necessarily have been breached if no open globe injury was revealed through the use of medical equipment.

Q. . . . [A]ssuming, Dr. Sutton, that Dr. Finch utilized the ophthalmoscope as well as the woods lamp in a manner it was supposed to be used and it did not reflect an open globe injury, would that in and of itself be a deviation of the standard of care?

A. No.

[Tr-672-73.]

Dr. Sutton also testified that he would defer to an emergency room doctor to determine the standard of care applicable to an emergency department physician.

Q. If you look at page 130, that's the question I'm asking. And I'll state it just like I did at your deposition. Would you defer to the emergency room physician with respect to the standard of care as to whether or not a CT scan should have been ordered. Your answer is what?

A. I would defer to an emergency room physician to be able to determine what the standard of care is for the practice of emergency room medicine.

[Tr-673-74.]

SUMMARY OF THE ARGUMENT

A plaintiff is required by Mississippi law to produce qualified expert testimony to prevail on a claim of medical negligence. Mr. Ryals produced no qualified expert testimony that a breach of any standard of care proximately caused an injury. The trial court correctly granted Dr. Finch's motion for a directed verdict based upon the total lack of proof of proximate causation and damages related to any breach of an applicable standard of care by the Defendant, Dr. Finch.

ARGUMENT

Standard of Review

Mississippi Rule of Civil Procedure 50 "is a device for the court to enforce the rules of law by taking away from the jury cases in which the facts are sufficiently clear that the law requires a particular result." *M.R.C.P. 50 cmt.* Rule 50(a) requires the trial court to take away from the jury and grant a directed verdict if any verdict other than the one directed would be erroneous as a matter of law. *M.R.C.P. 50 cmt.; McKinzie v. Coon,* 656 So.2d 134, 137 (Miss. 1995). The comment to rule 50 instructs the trial court to look solely to the testimony of the party opposing the motion. "[I]f such testimony, along with all reasonable inferences which can be drawn therefrom, could support a verdict for that party, the case should not be taken from the jury."*M.R.C.P. 50 cmt.*

The Appellate Court affords *de novo* review to the lower court's grant of a directed verdict. In reviewing the grant of a directed verdict, the Court must "consider whether the evidence in opposition to the motion was of such quality and weight that reasonable and fair-minded jurors in the exercise of impartial judgment could differ as to the verdict." *Collins v. Ringwald,* 502 So.2d

677, 678 (Miss. 1987). If the evidence was so overwhelmingly in favor of the movant that reasonable persons could not have reached a different result, the Appellate Court must affirm the grant of a directed verdict. *Harrison v. McMillan,* 828 So.2d 756, 764(¶ 24) (Miss. 2002). A trial court should submit an issue to the jury only if the evidence creates a question of fact on which reasonable jurors could disagree. *Tucker v. Riverboat Corp. of Mississippi,* 905 So.2d 741(¶ 6) (Miss.Ct.App. 2004).

Argument and Authorities

In the instant matter, the quality and weight of the evidence as to proximate causation, injury and damages produced by the Plaintiff was so deficient that no question of fact existed for a jury to address. Plaintiff's expert witness stated "we don't know" when asked what the outcome of the treatment would have been if an open globe injury had been diagnosed and treated immediately. Plaintiff's expert was asked about the Plaintiff's corneal scarring and whether any delay caused the scarring to be more severe. Plaintiff's expert testified that he had seen such corneal scars on lacerations that had been closed immediately and that a laceration of the nature that Mr. Ryals received would leave a scar. When asked what caused the Plaintiff's retinal detachment and subsequent blindness in his right eye during surgery at Ochsner's, Plaintiff's expert testified that a retinal detachment was a known complication of eye surgery and was not evidence of negligence. Plaintiff's expert also testified that Mr. Ryals suffers from a preexisting medical condition, cystoid macular edema, that would predispose him to a less favorable outcome of any eye surgery. There was no testimony by a qualified medical expert that Mr. Ryals suffered an injury proximately caused by an act or omission committed by Dr. Finch. Without such testimony, a motion for a directed verdict is properly granted.

Plaintiff seeks to parse words to construct favorable expert testimony where no such testimony exists. The trial court stated on the record on numerous occasions that it carefully reviewed the record for any testimony of sufficient quality to meet the Plaintiff's burden of making a jury question as to proximate causation. The case law is replete with instances of medical experts testifying that other treatment should have been given, however, the key testimony which is required is a statement by a qualified medical expert who testifies that but for the alleged negligent act or omission the plaintiff would have had a better than fifty percent chance of a substantially better outcome. *Harris v. Shields,* 568 So.2d 269, 274 (Miss. 1990)(*citing Ladner v. Campbell,* 151 So.2d 882, 889 (Miss. 1987)). Plaintiff's expert witness never testified that, absent any specified negligent act or omission, Mr. Ryals would have had a better than fifty percent chance of a substantially better outcome. Without such testimony, the trial court properly directed a verdict in Dr. Finch's favor.

In a strikingly similar recent case, the Supreme Court addressed the issue of the sufficiency of an expert's testimony on causation. In *Hubbard v. Wansley,*954 So.2d 951 (Miss. 2007), the plaintiff appealed the grant of summary judgment on behalf of the physician defendant based upon the failure to produce sufficient expert testimony on causation. The expert was asked in deposition:

> Q. Are you able to tell us or at the trial of this case tell a jury what would be the difference in her today had she received what you felt she should have received in the emergency room versus how she is now?
>
> A. No.
>
> Q. Why not?
>
> A. Because, as I just testified, this could have happened with optimum medical care. I'm saying "this" being her current neurological picture.

Id., at 965.

Compared with the testimony of Dr. Sutton at the instant trial, there is virtually no difference. When Dr. Sutton was asked about the scar on the cornea of Mr. Ryals' left eye:

> Q. Is that scar, in your opinion based upon a reasonable degree of medical certainty, due to any delay?
>
> A. I've had scars like this that we've closed immediately. The quicker you take care of these sort of injuries, typically the better the result. A laceration like that is going to leave a scar on the cornea.

[Tr-557.]

Clearly, Dr. Sutton testified that the laceration received by Mr. Ryals when the glass shards exploded into his face caused the scar rather than any "delay" in treatment.

Dr. Sutton was asked whether any delay increased the damage to Mr. Ryals' eyes. Dr. Sutton testified that the surgery the following day at Ochsner's would make the "surgery significantly more difficult, not impossible, but it just makes it more tedious." *[Tr-590.]* Dr. Sutton never explained how a "more tedious" surgery was related to the alleged lack of care in the emergency department. In fact, Dr. Sutton never explained how a less "tedious" surgery would have improved Mr. Ryals' chances of a significantly better outcome. Without testimony on the proximate causation element, Plaintiff fails to make a question of fact for presentation to the jury.

The medical expert in *Hubbard* was questioned about the issue of causation:

> Q. In terms of a reasonable medical probability can you in good faith say that there would have been a substantial improvement in her condition?
>
> A. I think that would be extremely difficult to answer. I mean, I've already testified to the fact that it would - that she was not given the opportunity. And so by not being given an opportunity, I guess we'll never know.

Hubbard, 954 So.2d at 965.

Likewise, Dr. Sutton was questioned as to causation in the instant matter:

> Q. Do you have any opinion based upon a reasonable degree of medical probability

whether or not rigid shielding of that eye, prompt closure of that open globe injury and maintaining the integrity of the eyeball with no pressure would have in fact made a substantial difference in his outcome?

A. I do.

Q. What's that opinion?

A. . . .

So the question is somewhat hypothetical. Had he gotten it closed that night, that night in the hospital at Gulfport Memorial [sic], they had taken him into the operating room, closed the globe the next morning, called a retina specialist, whoever and said, I've got this guy, closed his open globe last night, the globe's intact, I need you to evaluate him for the removal of this foreign body. That's the way – I mean, what would the result have been? I mean, we don't know.

[Tr-581-82.]

The testimony given by Dr. Sutton is strikingly similar to the testimony by the medical expert in *Hubbard* which was found to be deficient as to the element of proximate cause.

The *Hubbard* decision also points out that the medical expert cannot merely state that treatment would have created a greater than fifty percent chance of a reduced injury. The Court stated that a conclusory assertion on the issue of causation was insufficient to create a jury question. The Court stated that specific facts and medical analysis are required to substantiate the Plaintiff's claims that there would have been a greater than fifty percent chance of a substantially better outcome.

Likewise, Dr. Sutton's testimony cannot create a genuine issue of material fact to present to the jury without testimony on the specific facts and medical analysis of how a substantially better outcome would have resulted from the treatment he advocates. There simply was no such testimony. In fact, Dr. Sutton admitted that Mr. Ryals suffers from a pre-existing condition, cystoid macular edema, which predisposes him to a poor outcome regardless of the treatment provided. *[Tr-637-39.]* In addition, Dr. Sutton was unequivocal when asked whether he could testify to a reasonable medical

probability that the scarring and damage done to Mr. Ryals' macular area was not due to the blunt force trauma of the initial accident. Dr. Sutton's reply was clear: "No." *[Tr-620.]*

Dr. Sutton testified that the retinal detachment occurred at Ochsner's during surgery. He never testified that the alleged "delay" in treatment resulted in a retinal detachment. In fact, Dr. Sutton testified that the retinal detachment was a "known potential complication of doing retinal surgery" that does not indicate that anything was done incorrectly during the surgery. *[Tr-591-92.]* Plaintiff argues that "[i]f you have more blood and can not see the tip of the cannula, clearly you can have this problem occur. (Tr.592)." *Appellant's Brief, p. 24.* Nowhere in Dr. Sutton's testimony does he indicate the reason for the retinal detachment was "more blood." In fact, Dr. Sutton testified exactly opposite: "We're not able to know how much extra bleeding there may or may not have been in the back of the eye."*[Tr-572.]*

Dr. Sutton was also asked directly why Mr. Ryals cannot see out of his right eye. Dr. Sutton responded that they had "spent all morning talking about the injury that he received and the care that he received after the injury and the end result of both of these two components has left him with a [sic] eye that's blind." *[Tr-616.]* Dr. Sutton never stated whether "the care he received" meant the Ochsner surgery which resulted in the retinal detachment that he testified was a "known potential complication" and not evidence of medical negligence. Clearly, the retinal detachment is the reason Mr. Ryals is blind in his right eye.

More importantly, Dr. Sutton never testified that "the care he received" related to an issue of proximate cause relating to Plaintiff's claims of medical negligence. A mere statement alluding to "the care he received" is insufficient to raise a question of fact for the jury without testimony including specific facts and medical analysis on how a substantially better outcome would have resulted absent a specifically identified alleged negligent act or omission.

Dr. Sutton never testified that any breach of an applicable standard of care by Dr. Finch proximately caused an injury to Mr. Ryals. Dr. Sutton testified that he would defer to an emergency department physician, such as Dr. Finch, to determine whether a CT scan was required to meet the applicable standard of care. Dr. Sutton also stated that there would be no breach of the applicable standard of care if the equipment used by Dr. Finch did not reveal an open globe injury. Judge Simpson noted from the bench that he carefully searched the trial transcript for testimony which would satisfy the requirement that the Plaintiff produce evidence on the element of proximate causation.*[Tr-805-06; 817; 849-52.]* There simply was no such testimony. There was no genuine issue of material fact to present to the jury.

Plaintiff raised an issue in his Motion for a New Trial alleging that the trial court "erred in pressuring the parties to complete their case by Friday under threat of a mistrial. This threat loomed through the middle of the testimony of Plaintiff's expert on Thursday, causing concern amongst the parties and Plaintiff, including disruption of Plaintiff's presentation through his expert witness." *Plaintiff's Motion for New Trial; R-1539.* This issue was not raised in the hearing on the Plaintiff's Motion for New Trial and only merited one line in Plaintiff's Appellant's Brief. *Appellant's Brief, p. 30.* However, the record does not contain any proof that the Plaintiff was impacted due to the "disruptive nature of the court." *Id.* In fact, when discussing the matter of calling the jury in on Saturday of the Memorial Day weekend, Plaintiff's counsel stated: "Obviously I don't want to go forward on Saturday, but I'm not going to file a motion for mistrial." *[Tr-715.]*

The motion for mistrial was raised by the Defendants' attorneys who believed that it would be prejudicial to their clients as the jury would resent working on a holiday weekend to hear the defense portion of the matter. Obviously, this never became an issue as the case did not go into the holiday weekend. Regardless, the Plaintiff never complained of being pressured to complete its case,

did not raise the issue at the hearing on his Motion for New Trial and failed to offer any authority in his Appellant's brief. There is no merit to Plaintiff's argument that his case was impacted due to the "disruptive nature of the court."

Plaintiff argues that failure to document a medical record as Plaintiff prefers it to have been documented should be equated to spoliation of evidence. The case and statute cited by Plaintiff to support this extreme position are inapposite to the argument. Plaintiff offers no authority for this position and it is not supported by the law.

CONCLUSION

The Plaintiff failed to produce such evidence that proves the elements of a claim for medical negligence, specifically the elements of proximate causation and damages. As the Plaintiff has produced no qualified medical testimony on the required elements of his claim of medical negligence, the trial court's ruling granting Dr. Finch's motion for directed verdict must be affirmed.

Respectfully submitted,

JOHN FINCH, D.O.

BY: _____

THOMAS L. MUSSELMAN, ESQ.
BRETT K. WILLIAMS, ESQ.

CERTIFICATE OF SERVICE

I, the undersigned attorney, of the firm of Wilkinson, Williams, Kinard, Smith & Edwards, do hereby certify that I have served by U.S. Mail, postage prepaid, a true and correct copy of the above and foregoing **Appellee's Brief of John Finch, D.O.** to:

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THIS, the 21st day of August, 2008.

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