IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

RICHARD MARSHALL — APPELLANT

V. — NO. 2007-CA-00148

BURGER KING, SYDRAN, THE WORLEY COMPANIES AND JOHN DOES — APPELLEE

BRIEF OF THE APPELLANT

JOY R JACKSON, [redacted]
P.O. Box 945
115 Chicago St.
Tallulah, LA 71284
Telephone: 318-574-5695

Counsel for Appellant

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

RICHARD MARSHALL	**APPELLANT**
V.	**NO. 2007-CA-00148**
BURGER KING, SYDRAN, THE WORLEY COMPANIES AND JOHN DOES	**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 this court may evaluate possible disqualifications or recusal.

1. Richard Marshall
2. Burger King
3. Sydran
4. The Worley Companies
5. Brian Hyneman, Attorney for Burger King
6. Honorable Frank Vollor, Circuit Court Judge

This the 6th day of November 2007.

Respectfully Submitted,

JOY R. JACKSON
P.O. Box 945
Tallulah, LA 71284
Phone: (318) 574-5695
Fax: (318) 574-5662
[redacted]

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

RICHARD MARSHALL	**APPELLANT**
V.	**NO. 2007-CA-00148**
BURGER KING, SYDRAN, THE WORLEY COMPANIES AND JOHN DOES	**APPELLEE**

BRIEF OF THE APPELLANT

STATEMENT OF THE CASE

The suit in this case was filed by the Appellant, Richard Marshall on April 1, 2005, based on a slip and fall at Burger King Restaurant located at Halls Ferry Road, Vicksburg, Mississippi. The Notice of Discovery was filed on June 6, 2005. The scheduling order was signed on October 3, 2005, by the circuit judge and was filed on October 5, 2005. A motion to dismiss for failure to prosecute was filed by Appellee, Burger King on October 7, 2005. A hearing was held on February 3, 2006, Burger King's motion to dismiss for failure to prosecute was denied and Marshall was given fifteen (15) days to comply with the court order to answer discovery. Marshall furnished a medical release to Burger King within the time frame given by the court. Burger King filed a motion to dismiss based on the interrogatories not being signed and sworn by Marshall on October 27, 2006. A hearing was held on this motion on November 8, 2006. Marshall's case was dismissed on November 15, 2006, without prejudice. Marshall's

motion to reinstate the case was filed on December 12, 2006. The hearing was initially set for December 19, 2006, and the court continued the hearing to January 12, 2007. At this hearing the court denied the motion to reinstate the case.

STATEMENT OF FACTS

The suit in this case was filed by the Appellant, Richard Marshall on April 1, 2005. The Notice of Discovery was filed on June 6, 2005. The scheduling order was signed on October 3, 2005, by the circuit judge and was filed on October 5, 2005. A motion to dismiss for failure to prosecute was filed by the Appellant, Burger King on October 7, 2005. A hearing was held on February 3, 2006, Burger King's motion to dismiss for failure to prosecute was denied and Marshall was given fifteen (15) days to comply with the court order. Marshall furnished medical bills, a medical report and, through mistake, interrogatories that were not sworn to Burger King at the hearing to dismiss. T. 4. Marshall furnished an unrestricted medical release to Burger King within the time frame given by the court and Burger King confirmed that a medical release signed by Marshall was received during the court's ordered time frame. T. 9. Burger King used this medical release to obtain Marshall's medical records. After obtaining the medical records Burger King asked for depositions and Marshall agreed. Depositions were initially set for May 2006, Burger King requested a continuance and Marshall agreed. T. 12. The Court set a third setting for trial on November 13, 2006. Burger King sent dates to Marshall for depositions of Marshall's witnesses that were during and after the week beginning November 13, 2006. Burger King verbally agreed to a continuance due to the fact that both parties agreed to set depositions after November 13, 2006, which was the third setting for a trial on the merits. T.12. Marshall agreed to get the lay witnesses to the depositions without Burger King needing to issue subpoenas. During the process of scheduling depositions for December 2006, Burger King filed a motion to dismiss, which was directly against Burger King's verbal agreement with Marshall to continue the third

trial setting scheduled for November 13, 2006. T. 13. The court heard this motion on November 8, 2006, and dismissed the case. Marshall's case was dismissed on November 15, 2006, without prejudice. T.17. Marshall's motion to reinstate the case was filed on December 12, 2006. The hearing was initially set for December 19, 2006, and the court continued the hearing to January 12, 2007. Marshall scheduled and was prepared to have the hearing on his motion during the same term of court as Burger King's motion to dismiss; however, due to the Court's continuance the hearing was not heard during said term of court. T. 26, 27. During this hearing Burger King admitted it had all of the records from the doctor's listed in Marshall's list of experts. T. 29. During this hearing the court denied the motion to reinstate the case. Marshall filed this appeal.

STATEMENT OF THE ISSUES

ISSUE I. WHETHER THE SANCTION OF DISMISSAL IS TOO HARSH WHEN A PARTY MISTAKENLY DOES NOT SUBMIT SWORN INTERROGATORIES PURSUANT TO A COURT ORDER.

ISSUE II. WHETHER A DISMISSAL WITHOUT PREJUDICE WOULD REQUIRE A JUDGE TO REINSTATE A CASE WHEN THERE IS NOT ANY OTHER OPTION BY THE PLAINTIFF TO REINSTITUTE THE CASE; THEREFORE, RESULTING IN A DISMISSAL WITH PREJUDICE.

SUMMARY OF THE ARGUMENT

I. WHETHER THE SANCTION OF DISMISSAL IS TOO HARSH WHEN A PARTY MISTAKENLY DOES NOT SUBMIT SIGNED INTERROGATORIES PURSUANT TO A COURT ORDER.

Marshall's case was dismissed by the Court due to Marshall not providing sworn responses to Burger King's Interrogatories. The case was involuntarily dismissed without prejudice under violation of the rules of discovery pursuant to Rule 41, Miss.R.Civ.P.

Marshall provided an unrestricted medical release to Burger King which Burger King used to obtain numerous medical records including, but not limited to, all of the medical records from each of the experts listed by Marshall in its list of experts.

Burger King's counsel stated, "The Plaintiff did provide us with executed authorizations which we gave and sent to a lot of medical providers in Louisiana." T. 9.

Burger King's counsel further stated, "There were three doctors listed. We did get those records from them..." T. 29.

Marshall never intended to claim any injuries that were not covered by the experts listed in Marshall's list of experts.

Counsel for Marshall stated, "So he has admitted he has the medical records from every doctor I listed and those are the only doctors we would intend to use." T. 29.

The Court chose to ignore the fact that Burger King's counsel stated in the motion to dismiss for failure to submit sworn interrogatories that he did not have all of the medical records. However, at the hearing on the motion to reinstate he stated he did have

all of the medical records from the experts listed, which would clearly cover the injuries claimed by Marshall.

Burger King never claimed that Marshall was intentionally attempting to deceive or to mislead Burger King in any way. Burger King never stated that it was prejudiced in its preparation for trial. Burger King was not preparing for trial on November 13, 2006, due to the fact it had given Marshall deposition dates that were to occur during and after the week of November 13, 2006, which was the third setting for a trial on the merits. Burger King also verbally agreed to a joint continuance.

Marshall's counsel stated "they set depositions in May. They canceled them. They asked me to – would I postpone them. I agreed to do that. I said that was fine. Then we got into setting up depositions again. I was sent some dates. We verbally agreed that we could do a joint motion to continue; it would be your word on whether or not we could get it, but we would have a better chance if we jointly did that. I was sent dates that occurred during next week and after next week, which would – even though it was verbal, I was thinking we had both agreed that we would do a joint motion to continue. I don't understand how you send me deposition dates on the week of a third setting of the trial and after that and then say you're not going to sign a joint motion to continue." T. 12.

Burger King never contradicted these facts. Marshall clearly was cooperating fully with discovery and Burger King and the court were well aware of this fact. Marshall did not change any information in the interrogatories; therefore, there would be no prejudice. Burger King clearly did not intend to proceed to trial on November 13, 2006.

"A trial court's dismissal of a cause of action is reviewed for any abuse of discretion. When this Court reviews a decision that is within the trial court's discretion, it first asks if the court below applied the correct legal standard. If no error exists there, then we will uphold the decision unless we have a definite and firm conviction that the court below committed a clear error of judgment in the conclusion it reached upon weighing of relevant factors. The power to dismiss is inherent in any court of law or equity, being a means necessary to orderly expedition of justice and the court's control of its own docket. The exercise of that power should be limited to the most extreme circumstances." Smith v. Tougaloo College, 805 So. 2d 633, 640 (Miss. Ct. App. 2002)

"The following factors are the basis for evaluating the appropriateness of dismissal as a sanction for discovery violations:

First, dismissal is authorized only when the failure to comply with the court's order results from willfulness or bad faith, and not from the inability to comply. Dismissal is proper only in a situation where the deterrent value of Rule 37 cannot be substantially achieved by the use of less drastic sanctions. Another consideration is whether the other party's preparation for trial was substantially prejudiced. Finally, dismissal may be inappropriate when neglect is plainly attributable to an attorney rather than a blameless client, or when a party's simple negligence is grounded in confusion or sincere misunderstanding of the court's orders." Smith at 640 citing Wood v. Biloxi Pub. Sch. Dist., 757 So. 2d 190, 192 (Miss. 2000); Tinnon v. Martin, 716 So. 2d 604, 611 (Miss. 1998); and Gilbert v. Wal-Mart Stores, Inc., 749 So. 2d 361, 364 (Miss. Ct. App. 1999); Pierce v. Heritage Properties, Inc., 688 So. 2d 1385, 1389 (Miss. 1997).

Marshall's counsel stated, "It was nothing – no intent on my part or my client's part not to give them information...The information would not change. I think they waived any objection when they proceeded to go along with depositions. The subpoena duces tecum for the medical records, we haven't hidden anything from them, and I gave them medical billing." T. 12.

A medical release which gave access to all of Burger King's medical records in the case and even medical information that was not related to the case definitively shows Marshall was not trying to mislead Burger King. Burger King waived any right to ask for sanctions when they were clearly participating in discovery with Marshall and could have deposed Marshall, Marshall's lay and expert witnesses in May 2006, but Burger King postponed the depositions. Therefore, Burger King cannot claim that Marshall should be sanctioned for an oversight.

Burger King knew that dismissal was not proper in that defense counsel stated, "I believe the case law – of course, it's up to the Court as far as sanctions go. Dismissal is one of them, but there are other options." T. 17. Burger King mentioned other options for sanctions because Burger King knew that Marshall was not attempting to deceive or mislead as to his claims in the suit.

The Court's dismissal would operate the same as a dismissal with prejudice due to the fact that the statute of limitations had run pertaining to an original filing of the petition in the case in question. The court abused its discretion as again the Court never stated Marshall was intentionally and willfully violating its order because the facts clearly showed Marshall was very cooperative in discovery. This is because the Court was aware that Marshall was not engaging in improper discovery conduct.

Burger King's counsel stated, "...although the order states it was without prejudice, it was dismissed after the statute of limitations had run. Once that happens it becomes a final order of dismissal. Under 60(b)...and the case law cited even under 41(b) states that the Court should look at lesser sanctions." T. 22.

The court never stated that it believed that Marshall was intentionally and willfully violating its order.

"The Fifth Circuit has applied several considerations to determine whether a district court has abused its discretion under Fed. R. Civ. P. 37(b)(2)(C) by dismissing with prejudice: First, dismissal is authorized only when the failure to comply with the court's order results from willfulness or bad faith, and not from the inability to comply. Dismissal is proper only in situation where the deterrent value of Rule 37 cannot be substantially achieved by the use of less drastic sanctions. Another consideration is whether the other party's preparation for trial was substantially prejudiced. Finally, dismissal may be inappropriate when neglect is plainly attributable to an attorney rather than a blameless client, or when a party's simple negligence is grounded in confusion or sincere misunderstanding of the court's orders." Pierce v. Heritage Props., 688 So. 2d 1385, 1389 (Miss. 1997) citing Batson v. Neal Spelce Associates, 765 F.2d 511, 514 (5th Cir. 1985) (citations omitted).

Marshall's counsel stated, "...it was an oversight that the – not getting Mr. Marshall to sign..." T. 10.

Taylor v. GMC, 717 So. 2d 747 (Miss. 1998), states that dismissed cases under Rule 41, Miss.R.Civ.P, may be reinstituted except in extreme situations. Specifically, "Unless otherwise specifically ordered by the court, an involuntary dismissal under Rule

41(b) ordinarily operates as an adjudication upon the merits and is with prejudice...However, past Mississippi Practice has tempered this harsh result by allowing dismissed cases to be reinstituted, except in extreme circumstances." Taylor at 748 citing Ross v. Milner, 12 So. 2d 917, 918 (Miss. 1943).

In the present case Marshall's case was dismissed without prejudice; therefore, case law would provide that the court should reinstate the case. Marshall has sworn responses to Burger King's Interrogatories and did offer them at the hearing on this matter.

Rule 60(b) Miss.R.Civ.P., would not apply to Marshall's case under the portion of the law cited by Burger King due to the fact the court dismissed Marshall's case without prejudice, which would allow for the reinstatement of the case by the court. However, Rule 60(b) allows that a case may be reinstated within a reasonable time, but not longer than six (6) months after judgment.

"The standard of review when a trial court institutes sanctions for discovery abuses is "whether the trial court abused its discretion in its decision." The Court will affirm unless there is a "'definite and firm conviction that the court below committed a clear error of judgment in the conclusion it reached upon weighing of relevant factors.'" Id. at 1136 and cases cited therein...The purpose of the rules of discovery is to prevent trial by ambush or surprise." Kinard v. Morgan, 679 So. 2d 623, 625, 626 (Miss. 1996) citing Cooper v. State Farm Fire & Cas. Co., 568 So. 2d 687, 692 (Miss. 1990) (quoting Brown v. Arlen Management Corp., 663 F.2d 575, 580 (C.A. Tex. 1981)); and Terrain Enterprises, Inc. v. Mockbee, 654 So. 2d 1122, 1133 (Miss. 1995).

Burger King's argument under Rule 59(e), Miss.R.Civ.P., is not applicable to the

present case as Marshall did not ask the court to alter or amend the judgment. The judgment was that Marshall's case be dismissed as an involuntary dismissal under Rule 41; however, the dismissal was without prejudice which would allow Marshall's case to be reinstated by the court.

Burger King's arguments would apply to judgments where a case was dismissed with prejudice. Clearly, the court was aware that reinstatement would be proper when it signed a judgment dismissing without prejudice.

To not reinstate Marshall's case would be against the interests of justice, and the penalty was too harsh for Marshall's unintentional mistake to submit sworn answers to Burger King's Interrogatories. Burger King waited approximately nine (9) months before filing a motion to dismiss due to lack of sworn responses to Burger King's Interrogatories. Marshall did provide answers to the Interrogatories. Burger King set up depositions and cancelled the same depositions. Marshall cooperated with Burger King and was attempting to set up Burger King's requested depositions in Louisiana when Burger King, after verbally agreeing to a continuance, filed a Motion to Dismiss without any warning to Marshall.

Professional courtesies should be extended by both sides when Marshall was consistently extending professional courtesies to Burger King.

In referencing Rule 41, Miss.R.Civ.P., the Court in Morrison v. Guaranty Mortgage & Trust Co., 199 So. 110, 115 (Miss 1941) stated, "The statute is intended to promote the administration of justice and to reduce expense. It is not for the purpose of hindering or defeating the administration of justice."

The administration of justice was not served by the District Court dismissing Marshall's case which in effect was a dismissal with prejudice because there is no other option to reinstate the case.

"There was no claim of prejudice or injury to the Defendant by reason of the delay, if there was any delay (the issues were not completely joined until a few days before the filing of the answers). There was no attempt to force the Appellant to trial without the information requested. The motion to dismiss gave no reason for dismissal except the alleged delay in answering. Counsel had been agreeing with each other as to matters of procedure. Counsel for the Appellant had waived his right to complain of delays by the Appellee." Peoples Bank v. D'Lo Royalties, Inc., 206 So 2d 836, 837 (Miss. 1968)

"Dismissal is drastic punishment and should not be invoked except where the conduct of the party has been so deliberately careless as to call for drastic action. In view of the course of conduct between the attorneys, the fact that there is no evidence of such deliberate carelessness as to require drastic action, the fact that there is no evidence of prejudice or harm done Appellee, and the fact that justice could have been administered on the facts with no long delay compel us to hold that there was an abuse of discretion when the case was dismissed with prejudice. We reverse and remand this case so that a trial on the facts may be had." Peoples Bank, at 837 citing Williams v. Whitfield, 163 So.2d 688 (Miss. 1964).

Marshall's case was dismissed without prejudice; therefore, the law would dictate that Marshall's case be reinstated. Also, Marshall was cooperating with Burger King in discovery. Burger King asked for depositions and Marshall agreed to a postponement

when Burger King requested this. Burger King wanted to reset depositions during the time of the dismissal and during the third trial setting. Based on these actions Burger King waived its right to request sanctions. Burger King also verbally agreed to a continuance.

"This Court reviews the granting of sanctions for abuse of discretion, including those sanction rulings which result in the entry of default judgment. Generally, in the context of Rule 37 sanctions, a district court abuses its discretion when it makes a mistake of fact or law. However, where a district court awards default judgment as a discovery sanction, two criteria must be met. (... the criteria to be used when reviewing a district court's dismissal of a claim as a Rule 37 sanction). First, the penalized party's discovery violation must be willful. Also, the drastic measure is only to be employed where a lesser sanction would not substantially achieve the desired deterrent effect. The reviewing court may also consider whether the discovery violation prejudiced the opposing party's preparation for trial, and whether the client was blameless in the violation. Here, Claimants-Appellants do not dispute the willfulness of their violation of the court's order, nor do they explicitly argue that a lesser sanction could have manufactured the appropriate level of deterrence." United States v. 49,000 Currency, 330 F.3d 371, 376 (5th Cir. 2003) citing Smith v. Smith, 145 F.3d 335, 344 (5th Cir. 1998); Tollett v. City of Kemah, 285 F.3d 357 (5th Cir. 2002); and Batson v. Neal Spelce Associates, Inc., 765 F.2d 511, 514 (5th Cir. 1985) (citing National Hockey League v. Metro Hockey Club, Inc., 427 U.S. 639, 640, 49 L. Ed. 2d 747, 96 S. Ct. 2778 (1976); Jones v. Louisiana State Bar Association, 602 F.2d 94, 96 (5th Cir. 1979) (per curiam); and Marshall v. Segona, 621 F.2d 763, 768 (5th Cir. 1980)).

There was no prejudice to Burger King at trial as Burger King verbally agreed to a joint continuance due to its wanting to reset depositions. Burger King and the court never accused Marshall of willful discovery violations. The fact that the interrogatories were not sworn was obviously an oversight by Marshall's Counsel.

"We review remedies for discovery violations imposed by a district court for abuse of discretion. In exercising its discretion, the district court "should consider factors such as the reasons why disclosure was not made, the prejudice to the opposing party, the feasibility of rectifying that prejudice by granting a continuance, and other relevant circumstances." The district court "should impose the least severe sanction that will accomplish the desired result - prompt and full compliance with the court's discovery orders."" United States v. Katz, 178 F.3d 368, 372 (5th Cir. 1999) citing United States v. Bentley, 875 F.2d 1114, 1118 (5th Cir. 1989); and United States v. Sarcinelli, 667 F.2d 5, 7 (5th Cir. Unit B, 1982).

"The defendants observe that we have written that "while perhaps relevant to the type of sanction imposed, a party need not always be prejudiced by its opponent's discovery abuses prior to the imposition of sanctions." We see no inconsistency between this statement and the statement in Coane that to justify dismissal, "the misconduct must substantially prejudice the opposing party." Simply put, while lesser sanctions may be imposed without a showing of prejudice, more severe sanctions are justified only if the opposing party has suffered some palpable prejudice. Since dismissal is one of the harshest sanctions that a district court can impose, we require a showing of substantial prejudice before such a penalty is warranted. In contrast, the sanctions that we have approved without a showing of prejudice have been among the least harsh in the

spectrum of available possibilities. In Chilcutt, the district court's sanction was to establish certain facts against the government. See Fed.R.Civ.P. 37(b)(2)(A). We affirmed the imposition of this penalty although there was no showing that the opposing party had been prejudiced by the government's discovery abuses because the sanction imposed was "one of the least harsh sanctions available to courts under Rule 37(b)." FDIC v. Conner, 20 F.3d 1376, 1381 (5th Cir. 1994) citing Chilcutt v. United States, 4 F.3d 1313, 1320, 1324 (5th Cir.1993); and Coane v. Ferrara Pan Candy Co., 898 F.2d 1030, 1032 (5th Cir.1990).

II. WHETHER A DISMISSAL WITHOUT PREJUDICE WOULD REQUIRE A JUDGE TO REINSTATE A CASE WHEN THERE IS NOT ANY OTHER OPTION BY THE APPELLANT TO REINSTITUTE THE CASE; THEREFORE, RESULTING IN A DISMISSAL WITH PREJUDICE.

The Court was aware that Marshall had no other option to reinstate the case and still chose not to reinstate the case which is in essence a dismissal with prejudice. The sanction is too harsh and offends the interest of justice. Marshall did not willfully or consistently violate a court order. It was simply a mistake on the part of Marshall's Counsel.

The court asked during the hearing to dismiss, "So what are you asking of the Court? Are you asking the Court to dismiss it, or are you asking the Court to --...limit them to that -- what they produced?" T.16.

The Court asked this because it was aware that sanctions were not warranted and definitely the facts did not warrant dismissal. As case law states the exclusion of evidence in a case should be a last resort in sanctions when there is no improper conduct, but simply a mistake was made; therefore, dismissal would definitely not be warranted.

"...exclusion of evidence is a last resort. Every reasonable alternative means of assuring the elimination of any prejudice to the moving party and a proper sanction against the offending party should be explored before ordering exclusion. In the imposition of sanction [s], the trial court has considerable discretion in matters pertaining to discovery and its orders will not be disturbed in the absence of abuse of discretion." Prestridge v. City of Petal, 841 So. 2d 1048, 1061 (Miss. 2003) citing McCollum v. Franklin, 608 So. 2d 692, 694 (Miss.1992); and Kilpatrick v. Mississippi Baptist Medical

Ctr., 461 So. 2d 765, 767 (Miss.1984).

CONCLUSION

The District Court dismissed Marshall's case without prejudice as a sanction for violation of a discovery order with the following facts:

1. The lack of sworn responses to Burger King's interrogatories was an oversight;
2. Marshall was cooperating fully with discovery in agreeing to postpone depositions in May 2006 at Burger King's request;
3. Burger King was not preparing for trial as it had verbally agreed to a joint continuance with Marshall;
4. Burger King set deposition dates during and after the week of the November 13, 2006, which was the third trial setting;
5. Burger King was not substantially prejudiced for trial; and
6. The sanction was too harsh and unwarranted.

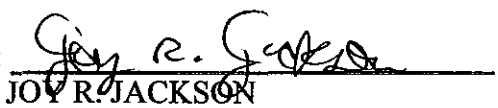
Burger King was provided Marshall's medical release, which gave Burger King unlimited access to Marshall's medical records. Upon granting unlimited access to Marshall's medical records there was nothing else to hide from Burger King as Marshall was claiming damages for injuries he sustained. Said injuries were completely disclosed in the medical records. The trial court's ruling dismissing Marshall's case and refusing to reinstate the case when there is no other option available to Marshall to reinstate his case is in effect a dismissal with prejudice which is too harsh for the facts of the case.

"Furthermore, this Court has previously reversed the ruling of a trial court, which dismissed a case with prejudice after the plaintiff failed to answer questions under oath after being instructed to do so by the trial court. The Court held that dismissals should be granted only when less drastic alternatives have been considered and such lesser

sanctions would not serve the best interest of justice. The Court also stated that dismissal with prejudice is "an extreme and harsh sanction that deprives a litigant of the opportunity to pursue his claim, and any dismissals with prejudice are reserved for the most egregious cases." In light of Wallace, we find that the dismissal of Plaintiffs' case is too harsh a result." Dinet v. Gavagnie, 948 So. 2d 1281, 1285 (Miss. 2007) citing Wallace v. Jones, 572 So.2d 371, 376, 377 (Miss. 1990).

The sanction of dismissal by the trial court is an abuse of its discretion. This Court must reverse the ruling of the trial court in dismissing Marshall's case and refusing to reinstate when there was no other option to Marshall to reinstate the case.

Respectfully Submitted,

BY: 

JOY R. JACKSON
P.O. Box 945
Tallulah, LA 71284
(318) 574-5695
[redacted]
Attorney for Marshall

CERTIFICATE OF SERVICE

I, Joy R. Jackson, Counsel for Appellant, do hereby certify that I have caused to be mailed via United States Postal Service, First Class postage prepaid a true and correct copy of the above and foregoing **BRIEF OF THE APPELLANT** to the following:

Honorable Frank G. Vollor
Circuit Court Judge
P.O. Box 351
Vicksburg, MS 39181-0351

Brian Hyneman
Hickman, Goza & Spragins, PLLC
Post Office Drawer 668
Oxford, Mississippi 38655

This 6th day of November, 2007.

Joy R. Jackson
P.O. Box 945
Tallulah, LA 71284
(318) 574-5695
[redacted]
Counsel for Appellant