

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

**NO. 2008-TS-00130**

**LORETTA MILYANOVICH**

**PLAINTIFF/APPELLANT**

**VERSUS**

**DOUGLAS E. FEELEY**

**DEFENDANT/APPELLEE**

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Appeal  
from Jackson County Circuit Court

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**BRIEF OF THE APPELLEE**

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**CERTIFICATE OF INTERESTED PERSONS**

I, H. Benjamin Mullen, do, pursuant to the provisions of Mississippi Rule of Appellate Federal Rule of Appellate Procedure 28(a)(1), hereby certify that the following listed persons and entities have an interest in the outcome of this case. These representations are made in order that the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Loretta Milyanovich (Plaintiff/Appellant)
2. Danielle K. Brewer (counsel for Plaintiff/Appellant)
3. Harvey Barton (counsel for Plaintiff)
4. Douglas E. Feeley (Defendant/Appellee)
5. H. Benjamin Mullen (counsel for Defendant/Appellee)
6. Jessica B. McNeel (counsel for Defendant/Appellee)
7. Karlon J. Eckert (Co-Defendant)
8. Thomas Y. Page (counsel for Co-Defendant Eckert)
9. Faith R. Hill (counsel for Co-Defendant Eckert)
10. Farm Bureau through Claim Representative James Corley (insurer for Defendant/Appellee)

11. Met-Life (insurer for Co-Defendant Eckert)

12. The Honorable Robert P. Krebs (Jackson County Circuit Court Judge)

SO CERTIFIED, this the 13<sup>th</sup> day of August, 2008.

  
\_\_\_\_\_  
H. BENJAMIN MULLEN

### **STATEMENT CONCERNING ORAL ARGUMENT**

Appellee does not feel that oral argument is necessary in this matter. However, should this Court require oral argument, Appellee would like to be heard.

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### **STATEMENT OF THE ISSUE**

The Appellee, Douglas E. Feeley (hereinafter "Feeley"), submits this Statement of the Issue as a more concise version of the issue on appeal:

Whether the trial Court abused its discretion in granting Feeley's Motion to Dismiss and denying Milyanovich's Motion for Additional Time to Serve Process.

## **STATEMENT OF THE CASE**

### **A.**

#### **Nature of the Case, Proceedings and Disposition**

This lawsuit began when the Appellant, Milyanovich, filed her Complaint on February 28, 2007, two (2) days before the expiration of the statute of limitations, against Feeley and Eckert alleging damages resulting from a motor vehicle accident that occurred between Plaintiff and Defendants on March 2, 2004. C.P.4. A summons was issued by the Jackson County Circuit Clerk on March 1, 2007, and directed to Feeley who was identified at an address shown on the summons as "2056 Bass Drive, Vancleave, MS 39565." C.P.8. The return for the summons issued to Feeley indicated that a private process server was unable to deliver copies to said person within Jackson County, and on April 16, 2007, he attempted to effectuate service of process through substitute service by leaving a copy of the summons and complaint with Feeley's father, Thomas Feeley at the Vancleave address indicated on the face of the summons. C.P.20. The private process server further indicated that he mailed first class mail, postage prepaid, a copy of the summons and complaint to the 2056 Bass Drive, Vancleave, MS 39565 address. C.P.20.

On August 10, 2007, Feeley specially appeared through counsel to file his Motion to Dismiss pursuant to Rules 4(h) and 12(b)(4) and (5). C.P.10. In his Motion to Dismiss, Feeley challenged the timeliness of service of process, sufficiency of process and sufficiency of service of process alleging that C.P.10. First, Feeley asserted that the Bass Drive address was his parents' address, and he had not resided at that address since 2002. C.P.11. Moreover, Feeley asserted that he had lived with his godparents in Bogalusa, Louisiana since 2002 when was



sixteen (16) years old, and he was residing in Louisiana at the time of the motor vehicle accident and at the time the private process server attempted to effectuate service of process through substitute service on April 16, 2007. C.P.11. Further, Thomas Feeley, Feeley's father, informed the private process server at the time he delivered the summons to him that Feeley did not live at that address; however, the process server asked Thomas Feeley to deliver the summons to the Defendant anyway. C.P. 23. Additionally, on April 16, 2007, Feeley was an unmarried infant having been born on July 23, 1986, but over the age of 12 years which pursuant to Rule 4(d)(2)(A) requires that perfection of service on an unmarried infant over the age of 12 years, requires a copy of the summons and complaint must be delivered to the infant and to his parent or guardian with whom he lives. Feeley asserted that this was not done in this case, and process and service of process was therefore insufficient. C.P.11. Finally, Feeley asserted that more than 120 days had elapsed since suit was filed with no further attempt at proper service of process on him.

A hearing was held on Feeley's Motion to Dismiss on October 11, 2007 , and on October 15, 2007, the Circuit Court of Jackson County entered an Order granting Feeley's motion for reasons set forth in Feeley's motion and based on Miss.R.Civ.P.4(h) for failure to serve process on Feeley within 120 days from the date of filing of the Complaint and for insufficiency of process and insufficiency of service of process pursuant to Miss.R.Civ.P. 12(b)(4) and (5). C.P.66. The Order entered on October 11, 2007, denied Milyanovich's motion for additional time to serve process on Feeley.

On October 24, 2007, Milyanovich filed a Rule 59 Motion to Reconsider the Order entered by the Jackson County Circuit Court on October 11, 2007, granting Feeley's Motion to

Dismiss. C.P.60. Feeley filed his Response in Opposition to Milyanovich's Rule 59 Motion to Reconsider on November 13, 2007. C.P.111. A hearing was held on Milyanovich's Motion to Reconsider on December 13, 2007, and on December 17, 2007, the Circuit Court of Jackson County entered an Order denying and overruling Milyanovich's Motion to Reconsider Order Granting Motion to Dismiss and Judgment thereon. It is from these rulings that Milyanovich takes this appeal.

**B.**

**Statement of the Facts**

This case arises out of an automobile accident that occurred on March 2, 2004, involving the Plaintiff, LORETTA MILYANOVICH (hereinafter "Milyanovich"), Defendant, DOUGLAS E. FEELEY (hereinafter "Feeley"), and Co-Defendant, KAREN J. ECKERT (hereinafter "Eckert"). Suit was filed by Milyanovich two (2) days before the stature of limitations expired. At the time of the accident in question, a Mississippi Uniform Accident Report was prepared listing Feeley's date of birth as "07/23/1986." C.P. 33. The Accident Report also listed the address indicated on Feeley's Mississippi driver's license "2056 Bass Drive, Vancleave, MS." C.P. 33. There is no disputing the fact Feeley was a minor of (17) eighteen years old at the time of the accident. Moreover, there is no disputing the fact that Feeley was a minor of (20) twenty years old at the time in which the private process service attempted to serve process on him via substitue service in April of 2007.

Additionally, Feeley did not reside with his biological parents at the address listed on his driver's license. Instead, he had, since 2002, lived full-time with his godparents in Bogalusa, Louisiana where he was living at the time of the accident and at the time the private process

server attempted to serve him at his parents' Vancleave address. On April 16, 2007, a private process server attempted to serve process on Feeley by leaving a copy of the summons and complaint with Feeley's father, Douglas E. Feeley, despite Mr. Feeley's protests that his son did not live there. C.P. 23. Unfettered, the process server attempted to serve process on Feeley via substitute service when he requested that Mr. Feeley pass the summons and complaint along to his son. C.P. 23. Moreover, the process server attempted to perfect service when he later mailed a second copy of the summons and complaint to the 2056 Bass Drive address, despite the fact that Feeley did not reside at that address.

Despite the fact that Feeley was living in Bogalusa, Louisiana at the time of the accident and at the time in which service of process was attempted on him, Milyanovich never attempted to properly serve Feeley in the manner necessitated for a minor as clearly outlined in Rule 4(d)(2)(A).

### **SUMMARY OF THE ARGUMENT**

This case involves a motor vehicle negligence cause of action as pled in the original complaint filed herein. Therefore, the time for filing suit is controlled by Miss. Code Ann. §15-1-49 which provides a three (3) year statute of limitation. Since this accident occurred on March 2, 2004, Milyanovich had until March 2, 2007, in which to file suit. While Milyanovich did file suit within that time, she failed to perfect service of process on Feeley within 120-day prescribed for effecting service of process after the filing of the Complaint. As was clearly indicated on the Mississippi Uniform Accident Report, Feeley's date of birth is July, 23, 1986, therefore there was no disputing the fact that he was 17 years old at the time of the accident and 20 years old at the time in which the private process service attempted to serve process on him, a minor pursuant to Mississippi law at all relevant times during the pendency of this litigation. Therefore, Milyanovich had 120 days from the date of filing her Complaint to perfect service of process on Feeley. This was not done. The Jackson County Circuit Court, after reviewing all of the relevant evidence, correctly applied Miss.R.Civ.P.4(h) and dismissed the case. Finally, the Jackson County Circuit Court correctly denied Plaintiff's requests for additional time to serve process because the request was not timely made.

## ARGUMENT AND CITATION OF AUTHORITY

### I.

**The trial court was correct in granting the Defendant's Motion to Dismiss due to Plaintiff's failure to properly effect service of process upon the then-minor Defendant pursuant to Miss. R. Civ. P. 4(d)(2)(A).**

Rule 4(d)(2)(A) of the Mississippi Rules of Civil Procedure provides:

**Summons and Complaint: Person to Be Served.** Service by sheriff or process server **shall** be made as follows: [U]pon an unmarried infant by delivering a copy of the summons and complaint to any one of the following: the infant's mother, father, legal guardian (of either the person or the estate), or the person having care of such infant or with whom he lives, **and if the infant be 12 years of age or older, by delivering a copy of the summons and complaint to both the infant and the appropriate person as designated above.**

Miss. R. Civ. P. 4(d)(2)(A) (emphasis added). This Court in interpreting this rule has consistently held that no jurisdiction can be had over the person of an infant, except by the issuance and service of process, in the manner required by [Mississippi] statute. See, e.g. Parker v. Smith, 117 So. 249 (Miss. 1928); Price v. Crone, 44 Miss. 571 (Miss. 1870). In Mississippi, an "infant" is defined as any person under the age of 21 years. Miss. Code Ann. §1-3-21(1972). Moreover, it is generally held that an infant can neither acknowledge or waive process required by law, and court has no jurisdiction of person until process has been served upon [the] minor and his parents, or persons standing loco parentis; notice to parents may be waived by them, but not process on the minor. In Interest of Edwards, 298 So.2d 703 (Miss. 1974). Finally, if the infant be not legally served with process, the appearance of his solicitor, although employed by him, will not bind the infant. Hardy v. McClellan, 53 Miss. 512 (Miss. 1876).

The Parker case, *supra*, decidedly set forth how Rule 4(d)(2)(A) would be applied and

interpreted. In that case, the minor was not served with process, and the appellant argued on appeal from justice court to the Circuit Court of Bolivar County that the minor having appeared in person before the justice court, became subject to the jurisdiction thereof, and such appearance would cure any defect in process. Parker, 117 So. 249 at 250. The circuit court dismissed the action for failure to have jurisdiction over the minor, and conceding that this rule is applicable to adults not under disability, it could have no application to minors. Id. On appeal to the Mississippi Supreme Court, that Court affirmed the lower court's decision holding that an infant can waive none of his rights; that no jurisdiction can be had over the person of an infant, except by issuance and service of process in the manner required by our statute. Id. That court additionally held that a mere reading of the summons to him was not complying with the statute; instead, it was necessary that a copy of the summons be delivered to [the minor]. Id.

In the case at bar, Feeley was a minor at the time that Milyanovich filed her lawsuit. He was born on July 23, 1986, which placed him over the age of 12 years as of February 28, 2007. Mississippi R. Civ. P. 4(d)(2)(A) requires that a minor over the age of 12 years be served personally in addition to service on his parent or guardian. It is undisputed that the Uniform Traffic Report, clearly lists Feeley's date of birth as July 23, 1986. The fact that the Plaintiff and her counsel had a copy of the police accident report which clearly showed the Defendant's date of birth, and a simple calculation would have revealed that he was under the age of 21 years which is considered an infant, or minor, in the State of Mississippi. Miss. Code Ann. §1-3-21. Yet, despite this knowledge, Plaintiff's counsel made absolutely no effort to effect process on this, then-minor, Defendant in compliance with the Mississippi Rules of Civil Procedure. Therefore, Milyanovich has no justifiable excuse for failing to properly follow the procedure so

clearly laid out in Mississippi Rule 4(d)(2)(A) for service of process on an unmarried minor.

On April 16, 2007, Milyanovich's private process server sought to effect service of process on Feeley by serving Feeley at his parents' address of 2056 Bass Drive, Vancleave, Mississippi. However, the Defendant's father's affidavit clearly attests that he informed the process server that the Defendant did not live at that address, and that he had been a resident of Bogalusa, Louisiana since 2002. Despite Thomas Feeley's announcement, the process server left a copy of the summons and complaint with the Defendant's father and requested he pass same on to his son. Moreover, Thomas Feeley's affidavit further avows that he did not give the summons and complaint to his son.

The fact that the process server attempted to effect substitute service on the Defendant's father with whom the Defendant did not live by leaving only one copy of the summons and complaint clearly indicates that the process server had no appreciation for the age of the Defendant nor did he realize that the Defendant remained under the disability of infancy. Moreover, the process server attempted to perfect process by mailing, postage prepaid a copy of the summons and complaint to the Defendant's parents address. However, service was never obtained on the Defendant and process was certainly not perfected. In short, Feeley did not reside with his father at the address listed as 2056 Bass Drive, Vancleave, Mississippi; therefore, he would not qualify as a person over the age of 16 who resided at the address along with the Defendant with whom substitute service could be made. Second and more importantly, pursuant to Rule 4(d)(2)(A) Feeley, an unmarried infant over the age of 12, had to have been served process in addition to his father, mother or legal guardian. This was simply not done even in light of the process server learning of Feeley's place of residence. Milyanovich made no further

attempt to effect service of process on Feeley.

As the affidavit of the Defendant indicates, he had been living with his godparents in Bogalusa, Louisiana since 2002. Assuming arguendo that Feeley did not reside in Louisiana, which he did, Milyanovich blatantly failed to comply with Rule 4(d)(2)(A). In order to effect process the Plaintiff would have had to serve Feeley in addition to serving his mother, father or guardian. This was simply never done or even attempted. As plaintiff's co-counsel conceded in his argument on Plaintiff's Motion to Reconsider before the Circuit Court of Jackson County , the process server, if he had looked at the accident report, would have been made aware that the Defendant was under the disability of infancy. C.P. 80. Moreover, in Plaintiff's Motion to Reconsider, it is clearly written, "First, undersigned counsel admits that the attorney assigned to this case did not realize that Defendant Feeley was a minor under Mississippi law and did not serve him as a minor under Mississippi Rule of Civil Procedure 4(d)(2)(A)." C.P. 71. Therefore, there is no question that Plaintiff never attempted to properly serve Feeley in the manner prescribed in Rule 4(d)(2)(A). As such, both the process and the service of process are defective within the meaning of Rules 12(b)(4) and 12(b)(5). That is the reason that the Circuit Court of Jackson County dismissed this action coupled with Plaintiff's failure to follow Miss. R. Civ. P. 4(h).

Moreover, with respect to the Plaintiff's contention that Louisiana substantive law should control the determination as to whether or not the Defendant should be treated as an adult, Plaintiff's argument is again misplaced. Mississippi follows the "most significant relationship" test to determine choice of law questions. Zurich American Ins. Co. v. Goodwin, 920 So.2d 427, 435 (Miss.2006); Boardman v. United Serv. Automobile Ass'n, 470 So.2d 1024 (Miss. 1985). In



particular as to tort actions, Mississippi considers the following factors:

- (a) the place where the injury occurred;
- (b) the place where the conduct causing the injury occurred;
- (c) the domicile, residence, nationality, place of incorporation and place of business of the parties;
- (d) the place where the relationship of the parties, if any, is center.

Powe v. Roy Anderson Construction Co., 910 So.2d 1197, 1201 (Ct. App. Miss. 2005). There is no question that the Plaintiff's case is one sounding in tort. The subject accident occurred in Mississippi, all of the parties involved in the accident except this Defendant were residents of Mississippi, and there is no relationship between the parties. Therefore, the state with the most significant relationship to this matter is Mississippi, and Mississippi law, including its proclamation of which persons constitute minors, controls this case. All persons are entitled to the equal protections of the laws of the State of Mississippi regardless of their residency. U.S. Const. Amend. XIV, Section 1. Therefore, this Defendant is well within his rights to seek the protection of Mississippi law regarding his status as a minor, and in fact, under the United States Constitution, Mississippi must afford him that protection. This Court properly found this Defendant to be a minor pursuant to Mississippi law. Counsel for the Plaintiff, knowing Mississippi law with regard to the service of process on minors, by her own admission, simply failed to follow Miss. R. Civ. P. 4 (d)(2)(A) for effecting that service.

Finally, in the case at bar Milyanovich contends that Feeley did not raise the issue of insufficiency of process, thus the motion to dismiss should have been denied. This simply is not correct. As the affidavits of both Feeley and his father, Douglas Feeley, indicate, Feeley was

never served process in the case at bar. C.P. 21-23. Thus, the Circuit Court of Jackson County did not have jurisdiction over Feeley, and as such he was not operating under a time limit in which to raise his Rule 12(b) defenses. This failure to follow Rule 4 on the part of Milyanovich is fatal to any argument against Feeley's Motion to Dismiss pursuant to Rule 12(b)(4) and (5). Further, Milyanovich misperceives Miss. R. Civ. P. 12(h). Since Feeley was never properly served, there was no time within which Feeley had to file his motion to dismiss. Therefore, Milyanovich's contention that Feeley did not timely file his motion to dismiss within 30 days is misplaced and simply wrong for that reason and because Miss. R. Civ. P. 12(h) does not contain a 30 day limitation anyway.

## II.

**The trial court correctly granted Feeley's motion to dismiss because the plaintiff did not effect service of process within the 120-day time period prescribed by Rule 4(h) nor did the plaintiff file a motion for extension of time within the 120-day period to show good cause as to why process was not effected within the time allowed by Rule 4(h).**

Rule 4(h) of the Mississippi Rules of Civil Procedure provides:

**Summons: Time Limit for Service.** If a service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint and the party on whose behalf such service was required cannot show good cause why such service was not made within that period, the action **shall** be dismissed as to that defendant without prejudice upon the court's own initiative with notice to such party or upon motion.

Miss. R. Civ. P. 4(h) (emphasis added). This Court, in interpreting this rule has consistently held that, absent a showing of good cause, dismissal will be affirmed. See e.g. Mitchell v. Brown, 835 So.2d 110, 111-12 (Ct. App. Miss. 2003); Young v. Hooker, 753 So.2d 456, 462 (Ct. App.

Miss. 1999); Bang v. Pittman, 749 So.2d 47,52 (Miss. 1999); Watters v. Stripling, 675 So.2d 1242, 1243-44 (Miss. 1996).

The Watters case, *supra*, decidedly set forth how Rule 4(h) would be applied. In that case, the plaintiffs withheld serving the defendant until well after the expiration of the 120 days following the filing of the original complaint. Watters, 675 So.2d at 1243. At neither the trial court nor the appellate level did the plaintiffs demonstrate good cause as to why service was not timely effected. Id. Quoting from a federal case interpreting the federal counterpart to Rule 4(h), the Supreme Court of Mississippi held:

If a plaintiff fails to serve the defendant properly within 120 days of filing the complaint, upon a motion of the defendant or *sua sponte* by the court with notice to the plaintiff, the action shall be dismissed without prejudice unless the plaintiff shows good cause for failure to complete service. To establish “good cause” the plaintiff must demonstrate “at least as much as would be required to show excusable neglect, as to which simple inadvertence or mistake of counsel or ignorance of the rules usually does not suffice.” Systems Signs Supplies v. United States Department of Justice, 903 F.2d 1011, 1013 (5<sup>th</sup> Cir. 1990). Peters v. United States, 9 F.3d 344, 345 (5<sup>th</sup> Cir. 1993).

Watters, 675 So.2d at 1243. This Court determined that dismissal of the case was proper, and further found that the mere fact that the statute of limitations had expired and the case could not be refiled was of no consequence. Id. at 1244.

In the Bang case, *supra*, this Court held that “[a] plaintiff must be diligent in serving process if he is to show good cause in failing to serve process within 120 days.” Bang, 749 So.2d at 52. There, the plaintiff did not begin to attempt to serve the defendant until 117 days after the filing of the complaint. Id. at 51. The process server was unsuccessful in serving the summons

within the 120-day period since he had only given himself three (3) days of that period in which to complete the process. Id. at 52. Upon the defendant's motion to dismiss, the trial court dismissed the case. Id. This Court stated, in affirming the dismissal, "[s]imply put, Bang knew where to find Pittman and failed to serve him during the 120 day period." Id. (edit by author).

Additionally, addressing the issue of good cause, the Court of Appeals of Mississippi affirmed a chancellor's finding of the lack of good cause in Young, supra. In that case, the plaintiff, a judgment creditor, failed to serve the defendant within 120 days on a complaint to renew a judgment. Young, 753 So.2d at 460. The plaintiff claimed that he was unable to locate the defendant and asserted this as his "good cause." Id. at 458-59. The chancellor, on the hearing on the motion to dismiss, found that the plaintiff either knew the defendant's whereabouts or that his whereabouts were easily ascertainable, and that therefore no good cause existed for failing to timely serve process. Id. At 461-62. The Court of Appeals affirmed.

Finally, the Court of Appeals held that an extension of time to serve process may be granted only when the motion is made before the expiration of the 120-day period See e.g. Kingston v. Splash Pools of Mississippi, Inc., 956 So.2d 1062, 1063 (Miss. Ct. App. 2007); Mitchell v. Brown, 835 So.2d 110, 112 (Ct. App. Miss. 2003). If no such motion is made within that time, and process is not effected, the case must be dismissed. Mitchell, 835 So.2d at 112.

In the case at bar, Milyanovich did request an extension of time to serve process on the Defendant, Eckert, but not Feeley. Milyanovich failed to sufficiently serve process much less perfect service of process on Feeley within the 120-day period prescribed for service of process on an unmarried infant following the filing of the Complaint. Therefore, the time to properly serve Feeley expired on June 18, 2007. Clearly Milyanovich did not comply with Miss. R. Civ.

P. 4(h) since she did not serve Feeley properly within 120 days of filing her complaint. Additionally, no extension of time to serve process was requested within the 120-day period. Feeley did not live at the address where the process was attempted, and this fact was made known to the process server. Moreover, Milyanovich incorrectly argues in her brief that “good cause does not require that a request for an extension of time be made before the expiration of the 120-day time period.” This is simply incorrect. As the Court of Appeals held in Mitchell, a motion for additional time shall be made within the 120 days prescribed for service of process, and if the motion is not made and process is not effected, the case must be dismissed. Mitchell, 835 So.2d at 112. In the case at bar, this simply was not done. A motion was not made within the 120-day period prescribed for service of process, and service of process was not effected. Therefore, the trial court correctly denied plaintiff’s motion for an extension of time to serve process.

## CONCLUSION

Based on the evidence presented in the Jackson County Circuit Court, there is not one shred of evidence that Milyanovich had any good cause or excusable neglect for her failure to effect service of process as clearly prescribed in Rule 4(d)(2)(A). She clearly did not follow Rule 4 of the Mississippi Rules of Civil Procedure. She did cause the Jackson County Circuit Clerk to issue a summons. However, she never attempted to effect proper service on the infant Defendant. When Feeley filed his Motion to Dismiss, Milyanovich claimed that Defendant was attempting to evade process. However, this in no way accounts for the fact that Plaintiff failed to follow the steps required to effect service of process on an infant Defendant who is above the age of 12. Nonetheless, Milyanovich clearly failed to effect service of process on Feeley within the 120-day period following the filing of a Complaint as prescribed by Mississippi law. This clearly violates Mississippi Rule of Civil Procedure 4(h), and being that this rule requires dismissal of an action when such a violation occurs, the trial court properly dismissed the case on this ground.

Had Milyanovich simply exercised diligence and followed the rules mandated for service of an infant Defendant above the age of 12, this matter would be proceeding differently. But, since she did not follow the rules and was not diligent, Feeley, following Miss. R. Civ. P. 12(b)(6) properly filed his Motion to Dismiss and the Court following Mis. R. Civ. P. 4(h) properly dismissed the case.

The Order of Dismissal should be affirmed along with the Order denying Milyanovich's Motion to Reconsider.

Respectfully submitted,

BRYAN, NELSON, SCHROEDER,  
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Attorneys for Defendant/Appellee

BY: 

H. BENJAMIN MULLEN

**CERTIFICATE OF SERVICE**

I, **H. BENJAMIN MULLEN**, attorney for Defendant/Appellee, **DOUGLAS E.**

**FEELEY**, do hereby certify that I have this day mailed by United States Mail, postage prepaid, a true and correct copy of the above and foregoing **Appellees' Brief** along with an electronic version of same to:

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The Honorable Robert P. Krebs  
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**THIS** the 15<sup>th</sup> day of August, 2008.

  
\_\_\_\_\_  
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