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REQUEST FOR ORAL ARUGMENT

Milyanovich requests oral argument as she feels it will be helpful to the Court. In particular, it can help the Court determine, in part, the intentional evasion on the part of Feeley. Moreover, the Court would have the opportunity to determine Feeley's counsel's part, if any, in Feeley's evasive tactics as discussed in both the Initial Brief and herein.

ARGUMENT

A. Standard of Review

As referenced in the Initial Brief, the standard of review regarding whether the circuit court erred in granting Feeley's motion to dismiss when it "involves the interpretation of legal principles . . . is de novo, or plenary" and the court will "reverse where it finds the trial court in error." Long, et al. v. Memorial Hospital at Gulfport, et al., 969 So.2d 35, 38 (Miss. 2007) (citations omitted). Moreover, " a decision to grant or deny an extension of time based upon a question of law will be reviewed de novo." Holmes v. Coast Transit Auth., 815 So.2d 1183, 1185 (Miss. 2002) (citation omitted).

B. Feeley did not timely raise the issue of insufficiency of process, thus the motion to dismiss should have been denied

As discussed in the Initial Brief, Feeley's Motion to Dismiss should have been denied because of his undue delay in filing the Motion. In the Appellee Brief, Feeley argues that the Motion for Extension of Time should have been made within the 120 days for service of process. Because, according to Feeley, it was not, then the Motion for extension of time cannot be granted.

At the same time, however, Feeley argues that he did not have to timely raise the insufficiency of process argument. Apparently, Feeley argues that a defendant can sit back, do nothing, wait until the 120 days has expired, then come forward arguing insufficiency of process. That way, a plaintiff could never "timely" argue for an extension of time.

That is, quite frankly, exactly the type of subversive tactic that demonstrates that Milyanovich is entitled to an extension of time – demonstrating again Feeley's evasion and why Milyanovich has demonstrated good cause.

C. **Feeley should not be allowed to claim Mississippi's Minority Protection while claiming the domiciliary of Louisiana, and, as a adult, service was proper**

In the Appellee's Brief, Feeley argues that following the proper choice of law analysis, that Mississippi law would apply. Of course, as discussed herein and in the Initial Brief, even if Mississippi law were applied to the issue of whether Feeley was an "unmarried infant", Feeley would not qualify as an unmarried infant because, by his own affidavit, Feeley should be treated as an emancipated minor and thus an adult. However, in determining whether Feeley is an "unmarried infant" the state with the "most significant relationship" to that determination would certainly be his place of residence. And, according to Feeley, that is Louisiana. Thus, when determining sufficiency of process, the question is whether Feeley, an adult, was served with process, and he was. See generally, Frierson v. Williams, 57 Miss. 451 (1879) ("The law of the domicile as to majority or minority governs . . ..").

D. **Feeley is not a "minor" under Mississippi law because he is emancipated, and, as a adult, service was proper**

Feeley, in his brief, argues that the determination of whether Feeley was an "unmarried infant" should be based on Mississippi law. However, as discussed in the Initial Brief, the determination is not whether Feeley is a "minor" or "infant" but an "unmarried infant." First, it is important to note that there was no evidence ever presented below that Feeley was "unmarried." Not once in his Affidavit did Feeley assert he has not been married. He simply argues that he was under the age of twenty-one (21).

And, when determining whether someone is an "unmarried infant" it is certainly appropriate to look to the laws in Chancery. As discussed in the Initial Brief, an emancipated minor would be served as an adult and Feeley qualified as emancipated under § 93-11-65(8)(d).

However, he may also qualify as an adult under § 93-11-65(8)(b) – if he "marries." The circuit court erred because it never considered or determined whether Feeley was an emancipated minor and therefore not an "unmarried infant."

E. "Minor" status is irrelevant for purposes of non-resident service and, as a result, service was proper

Not once in his brief does Feeley address the issue that minor status is wholly irrelevant when determining the service on a non-resident. Again, it is clear under Mississippi's Non-resident Motor Vehicle Statute, Mississippi Code Annotated § 13-3-63 (2007), that a non-resident's status as an adult or a minor is irrelevant for purposes of service of process. See generally, Adams v. Belt, 136 Miss. 511, 100 So. 191 (1924). This is fundamental to the argument presented below – namely that Feeley cannot claim the residency of Louisiana to avoid service and yet claim the protections of Mississippi law given to "unmarried infants" in the State of Mississippi. If a resident of Louisiana as claimed in his own sworn Affidavit, then his age is irrelevant. The issue becomes whether he was properly served under Mississippi's Non-resident Motor Vehicle Statute. He was. However, at a minimum, good cause was demonstrated why Milyanovich, a Mississippi resident, should be given an extension of time to serve Feeley, a Louisiana resident who worked here in Mississippi (while allegedly living in Louisiana) traveling on our roads and injuring a Mississippi citizen, and one who has repeatedly attempted to evade service.

F. If service was insufficient, Milyanovich demonstrated good cause why Feeley was not served within the 120-day time period – Feeley's own efforts to evade process

It is noteworthy that not once in his brief does Feeley assert that he did not (and is still not) attempt to evade service or that he did not engage in misleading conduct. Not once does

Feeley address the fact that he violated Mississippi law by holding a Mississippi driver's licence when not a resident of our State. Not once does Feeley address the fact that he violated Mississippi law by registering vehicles to a residence where he does not reside. Not once in his brief does Feeley address the fact that he lied to the police by providing a false address when, as a Louisiana resident, he chose to drive on the roads of the State of Mississippi, and negligently injure of its citizens. Feeley's only argument is that Milyanovich did not request additional time to serve process within 120 days, therefore she loses. As discussed herein, that is not the case. Good cause can be demonstrated after the 120 days has expired, and it is the exact standard applied once the 120 days has expired. See Kingston v. Splash Pools of Mississippi, Inc., 956 So. 2d 1062 (Miss. Ct. App. 2007).

However, Feeley does not address the fact that both he and his counsel intentionally sat by and waited eighty-six (86) days after his answer was due, waiting for the 120 deadline to pass, to assert an insufficiency. Quite frankly, Feeley's counsel assisted and continued Feeley's deception and evasive tactics by failing to assert insufficiency any sooner. In fact, just in case Feeley lost his Motion, Feeley made certain to continue his evasive tactics by not once – to this very date – providing evidence of his residence. All he states is that he lives somewhere in "Bogalousa, Louisiana" with some unidentified "godparents."

Feeley's deception and intentional evasion of process – his misleading conduct – is laid out in the Initial Brief. Not once does Feeley assert that the did not try to evade process. It is clear he did. As discussed, it is for that reason that the court erred in granting Feeley's Motion to Dismiss and denying Milyanovich's Motion to Reconsider.

G. Good Cause does not required that a request for an extension of time be made before the expiration of the 120-day time period

As referenced previously, Feeley does not once argue or assert that he was not evading process. Instead, he asserts that "good cause" can only be found where a motion for extension of time was brought prior to the expiration of the 120-day time period. As discussed in the Initial Brief, Feeley is misreading this Court's rulings. The case of Kingston v. Splash Pools of Mississippi, Inc., 956 So. 2d 1062 (Miss. Ct. App. 2007), makes this clear. In fact, most of the cases cited by Feeley make this clear. In Mitchell v. Brown, 835 So.2d 110 (Miss. Ct. App. 2003), the Court noted that the exception to the requirements of Rule 4(h) is "a showing of good cause." Id. at 112. In Young v. Hooker, 753 So.2d 456 (Miss. Ct. App. 1999), the Court stated that if the 120 days runs and there was no service that the statute of limitations period runs "***unless*** the complainant shows good cause for the delay." Id. at 460 (emphasis added). In Bang v. Pittman, 749 So.2d 47 (Miss. 1999) (overruled in part by Cross Creek Productions v. Scafidi, 911 So.2d 958 (Miss. 2005)), cited by Feeley, the Court states, in pertinent part: "Because of the failure to serve Pittman within the 120 days, Bang was required to show good cause why Pittman was not timely served." Id. at 51 (citing Watters v. Stripling, 675 So.2d 1242, 1243 (Miss. 1996)).

It is important to note that unlike the plaintiffs in Bang, Milyanovich did not wait until close to the expiration of the 120 days to perfect service. The Complaint was filed on February 28, 2007. Service was made on April 16, 2007. Milyanovich had until June 28, 2007 to perfect service. Instead, in this case, it was Feeley that delayed, intentionally waiting until the expiration of the 120 days, to bring forth an argument that he was not properly served. In fact, in the Watters case, in dissent, a Justice stated: "this Court is encouraging defendants who have actually

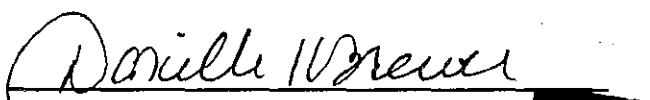
been served later than 120 days after the complaint was filed to intentionally delay in moving to dismiss the complaint until expiration of the applicable status of limitations." Watters, 675 So.2d at 1244-45. To allow the ruling to stand in this case, the Court would be encouraging defendants – who are attempting to evade service of process – to further attempt to evade process by hiding residency, then to use the Mississippi courts to help in their evasion scheme and wait until both 120 days and the statute of limitations have passed to contest service. The misleading conduct of Feeley (and his father) is clear and the decision of the lower court should be reversed.

CONCLUSION

WHEREFORE, PREMISES CONSIDERED, the Appellant, LORETTA MILYANOVICH, respectfully submits that the Court should reverse the decision of the lower court, deem service invalid, and require the Appellee, DOUGLAS E. FEELEY, to answer the Complaint and further, award the Appellant all costs, including but not limited to attorneys' fees, associated with defending the Motion to Dismiss and this Appeal.

Respectfully submitted,

LOCOCO & LOCOCO, P.A.
Attorneys for Appellant, Loretta Milyanovich



DANIELLE K. BREWER, ESQ., MSB#[redacted]

CERTIFICATE OF SERVICE

I, Danielle K. Brewer, do hereby certify that I have this day forwarded, via first class mail, postage prepaid, a true and correct copy of the above and foregoing Appellant's Reply Brief to:

1. H. Benjamin Mullen, at his usual mail address of Bryan, Nelson, Schroeder, Castigliola & Banahan, 1103 Jackson Ave., Pascagoula, MS 39568;
2. Thomas Y. Page and Faith R. Hill, at their ususal mailing address of Page Kruger & Holland, P.A., P.O. Box 1163, Jackson, MS 39215-1163;
3. W. Harvey Barton at his usual mailing address of 3007 Magnolia St., Pascagoula, MS 39567; and
4. The Honorable Robert P. Krebs, Circuit Court Judge, P.O. Box 998, Pascagoula, MS 39568.

THIS the 28th day of August, 2008.

Danielle K. Brewer

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