

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

NO. 2008-TS-00130

**Appealed from Jackson County Circuit Court
Cause Number CI-2007-00,034(1)**

LORETTA MILYANOVICH

APPELLANT

VERSUS

DOUGLAS E. FEELEY

APPELLEE

**NOTICE OF CORRECTION TO CERTIFICATE
OF SERVICE ON APPELLANT'S INITIAL BRIEF**

COMES NOW, Loretta Milyanovich, Appellant, in the above styled and numbered cause, by and through its attorneys of record, LoCoco & LoCoco, P.A., and respectfully gives notice that the Appellant's Initial Brief and Appellant's Record Excerpts was served on the Trial Court Judge on July 25, 2008.

Respectfully submitted,

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


DANIELLE K. BREWER, MSB# 

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:

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 usual 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 25th day of July, 2008.


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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or judges of the Court of Appeals may evaluate possible disqualifications or recusal.

1. Danielle K. Brewer, Esq., Mississippi Bar No. 102099, LoCoco & LoCoco, P.A., Attorney for Appellant, 10243 Central Ave., D'Iberville, Mississippi, 39540.
2. Harvey Barton, Esq., Mississippi Bar No. 2104, Law Office of W. Harvey Barton, 3007 Magnolia St., Pascagoula, MS 39567.
3. Loretta Milyanovich, Appellant, 16301 Lake Drive East, Vancleave, MS 39565.
4. H. Benjamin Mullen, Esq., Mississippi Bar No. 9077, Bryan, Nelson, Schroeder, Castigliola & Banahan, Attorney for Appellee, 1103 Jackson, Ave., Pascagoula, MS 39568-1529.
5. Douglas E. Feeley, Appellee, 2056 Bass Dr., Vancleave, MS 39565.
6. Thomas Y. Page, Esq., Mississippi Bar No. 3985, Page Krugar & Holland, P.A., Attorney for Co-Defendant Eckert, 10 Canebrake Blvd., Ste. 200, Jackson, MS 39232.
7. Faith R. Hill, Esq., Mississippi Bar No. 100101, Page Krugar & Holland, P.A., Attorney for Co-Defendant Eckert, 10 Canebrake Blvd., Ste. 200, Jackson, MS 39232.

8. Karlon J. Eckert, Defendant, 6720 Frank Griffin Rd., Moss Point, MS 39563.

9. The Honorable Robert P. Krebs, Circuit Court Judge, P.O. Box 998, Pascagoula, MS 39568.

10. Farm Bureau, James Corley, Insurer for Appellee Feeley, 11327 Highway 49, Gulfport, MS 39503.

11. Met-Life, Ramona Nystrom, Insurer for Defendant Eckert and Appellant Milyanovich, 701 Forest Point Circle, Ste. A., Charlotte, NC 28273.

SO CERTIFIED, this the 10th day of July, 2008.


DANIELLE K. BREWER, ESQ., MSB# 102099

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STATEMENT OF ISSUES

- I. Whether the lower court erred in granting Feeley's Motion to Dismiss.
- II. Whether the lower court erred in denying Milyanovich's Motion to Reconsider.

STATEMENT OF THE CASE

A. Nature of the case:

The Appellant (plaintiff), Loretta Milyanovich, sued Appellant (co-defendant), Douglas E. Feeley, and (co-defendant) Karlton J. Eckert for injuries she sustained in a motor vehicle accident that occurred on March 2, 2004, in Jackson County, Mississippi. (Compl., R. at 000004 - 000007).

B. Course of the proceedings:

The Complaint was filed on February 28, 2007. (Compl., R. at 000004 - 000007). The case against Appellee, Douglas E. Feeley, was dismissed on October 15, 2007 by the Honorable Robert P. Krebs. (J., R. at 000066). The case against co-defendant, Karlton J. Eckert, is active and remains pending in the Circuit Court of Jackson County. (Docket, R. at 000001-000003). Currently, discovery is ongoing. Id. A trial date has not yet been requested or set. Id.

C. Disposition of the case:

On October 15, 2007 Judge Krebs entered a Judgment of Dismissal Without Prejudice as to the Appellant, Douglas E. Feeley, and Order Denying Plaintiff's Motion for Additional Time to Serve Process on Douglas E. Feeley. (J., R. at 000066). Then, on December 17, 2007, Judge Krebs entered an Order denying the Plaintiff's Rule 59 Motion to Reconsider Order Granting Motion to Dismiss and Judgment Thereon. (Order, R. at 000116). This is an appeal from both rulings. (N. of Appeal, R. at 000117).

D. Statement of facts:

On March 2, 2004, the Appellant, Loretta Milyanovich ("Milyanovich"), was traveling in her vehicle northbound on Highway 613 in Moss Point, Jackson County Mississippi. (Police Rep., R. at 000032; Compl., R. at 000004 - 000007). Appellee, Douglas E. Feeley ("Feeley"),

was traveling in his vehicle southbound on Highway 613. Id. Feeley admitted to the police that he was chasing a suspected shoplifter from his workplace at the time, a Fred's store also on Highway 613. Id. Feeley was speeding according to witnesses, and there was evidence in the road of a long skid mark. Id. at 000032-33. Feeley was estimated to be traveling at 60 miles per hour. Id. Defendant, Karlon J. Eckert ("Eckert"), was traveling in his vehicle westbound on Rosa St., which intersected Highway 613. Id. at 000032. Eckert, who failed to yield, was crossing the southbound lane of traffic when Feeley, traveling at an excessive speed, then struck Eckert's vehicle pushing into the path of Milyanovich, causing personal injury to Milyanovich. Id. Milyanovich committed no negligence and did not contribute in anyway to the accident as she was simply driving her vehicle in her lane of traffic. (Police Rep., R. at 000032).

At the time of March 2, 2004 accident, Feeley was 17 years old, nearly 18. (Aff. of Feeley, R. at 000021). The car Feeley was driving at the time of the accident, a 1985 Mercury Grand Marquis, was owned by him. (MS Motor Veh. Registr., R. at 000040-41; Police Rep., R. at 000034). That vehicle was registered in the State of Mississippi and was registered at 2056 Bass Dr., Vancleave, MS 39565. (MS Motor Veh. Registr., R. at 000040-41). Similarly, at the time of the accident, March 2, 2004, Feeley held a State of Mississippi Driver's License listing his residence as 2056 Bass Dr., Vancleave, MS 39565. (Police Rep., R. at 000033).

On February 28, 2007, Milyanovich filed her Complaint against both Feeley and Eckert. (Compl., R. at 000004 - 000007). On April 16, 2007, Milyanovich served Feeley with process at 2056 Bass Dr., Vancleave, MS 39565 by serving Feeley's father, Thomas Feeley. (Proof of Service, R. at 000018-20). At the time of service, April 16, 2007, Feeley was twenty (20) years old, only three (3) months shy of his twenty-first (21st) birthday. (Aff. of Feeley, R. at 000021). At the time of service on April 16, 2007, Feeley had renewed his Mississippi Drivers' Licence

and again listed his residential address as 2056 Bass Dr., Vancleave, MS 39565. (Driver License Record, R. at 000101). Similarly, although Feeley had a new vehicle other than the one involved in the accident, at the time of service on April 16, 2007, Feeley owned a 1992 Chevrolet truck and registered it with the State of Mississippi at 2056 Bass Dr., Vancleave, MS 39565. (MS Motor Veh. Registr., R. at 000044-45). After serving Feeley's father at what clearly appeared to be Feeley's residence, the process server mailed a copy to Feeley's residence. (Proof of Service, R. at 000018-20). Feeley's father, Thomas Feeley, accepted the service from the process server not once advising the process server that Feeley did not reside there. (Opp'n to Mot. To Dismiss, R. at 000026). In fact, Feeley's father was "willing to receive" the Summons and Complaint. (Proof of Service, R. at 000087). More specifically, Thomas Feeley "specifically confirmed" with the process server that Feeley did live at the Bass Drive address, that he was only out of town for a while and that he would be sure to give Feeley the Summons and Complaint when he returned home. (Aff. of Thomas Feeley, R. at 000088). Thus, at the time of service, Milyanovich's counsel believed service was perfected by serving Thomas Feeley at the address that Feeley had represented through his Driver's Licence and Vehicle Registration was his current address. However, admittedly, Feeley was technically not served as a "minor" under Mississippi Rule of Civil Procedure 4(d)(2)(A). While Milyanovich is certain that Feeley received a copy of the Summons and Complaint within the time for service, that Summons and Complaint were not "delivered" directly to him by the process server. Rather, Feeley received a copy in the mail and, it can reasonably be presumed, from his father, Thomas Feeley. However, again, Milyanovich's counsel believed service was perfected on Feeley.

Unfortunately, however, service had not yet been perfected on the other Defendant, Eckert, and on June 14, 2007, Milyanovich moved for an extension of time to serve only Eckert,

demonstrating good cause for the extension. (Docket, R. at 000001). That request was granted on June 25, 2007. (Docket, R. at 000001). Only Eckert was included in the extension request because service was believed to be made on Feeley.

With service on April 16, 2007, Feeley's response was due on May 16, 2007. However, no response was filed within the time required by law. (Docket, R. at 1). Thus, there was no defense time raised for lack of jurisdiction over the person or insufficiency of process, or insufficiency of service of process, as required by Rule 12(h), Mississippi Rules of Civil Procedure. Instead, Feeley intentionally waited to respond to the Complaint. Milyanovich's counsel had made efforts to resolve the case without moving for a default, perhaps too patiently.

Finally, on or about August 10, 2007, after waiting more than 120 days since the filing of the Complaint and after the Statute of Limitations had passed, Feeley filed his Motion to Dismiss. (Mot. to Dismiss, R. at 000010-24). In short, in his Motion to Dismiss Feeley argues that he is an unmarried infant under the Rules and he was not delivered a copy of the Summons and Complaint. Id. at 000011. In support, Feeley submits an affidavit stating that (1) he has resided in "Bogalusa, Louisiana, since [he] was 16 years old"; (2) the only exception is "the first few months of 2005"; that he has not lived at 2056 Bass Drive, Vancleave, Mississippi "since 2002"; and that he was "never served with any process or pleadings." Id. at 000022.

Milyanovich responded by filing an Opposition and a Supplement in Support. (Opp'n, R. at 000025-46; Supp., R. at 000048-58). In the Opposition, Milyanovich pointed out that (1) service was made on Feeley's father and by mail upon Feeley at what Feeley represented to the State of Mississippi on more than one occasion was his residential address; (2) Feeley unduly delayed bringing the insufficiency of process argument under Rule 12(h), and it should be deemed waived; and (3) because both Feeley and his father blatantly lied in support the Motion, and

given the overwhelming evidence as to Feeley's proper residence, the Court should permit discovery on the issue of Feeley's residence and service matters. Id. In particular, because Feeley was blatantly untruthful in the Affidavit [clearly he lived in Mississippi during the year of the automobile accident when he worked at the Fred's store], the entire Affidavit – including the assertion that he was not served – should be disregarded. Id. Additionally, Milyanovich argued that if service was in some way improper, that Milyanovich demonstrated good cause for an extension of the service deadline. Id.

Feeley filed a Reply (Reply, R. at 000060-64). Feeley argued that Milyanovich's request for an extension of the service deadline was untimely. Id. Further, Feeley argues that because he was a minor under Mississippi law (though allegedly living in Louisiana) he should receive the benefit of Mississippi law on that and he should have been delivered a copy in addition to one to his father. Id.

On October 11, 2007, the fully briefed Motion was heard (Tr. Vol. 1, p. 3-12). At the hearing, the court heard argument from counsel, then issued its ruling. Id. The court granted the Motion to Dismiss. Id. In follow-up to its ruling, the court issued a Judgment of Dismissal on October 16, 2007. (J., R. at 000066).

In part, because at the hearing there was only a brief explanation for the oral decision, in particular the decision to deny an extension of time for service (Tr. Vol. I, p. 12), and because the October 16, 2007 Judgment was silent as to the reasoning behind the decision (J., R. at 000066), on October 24, 2007 Milyanovich filed her Motion to Reconsider. (Mot. to Reconsider, R. at 000067-109). Again, Feeley filed a response (Resp., R. at 000111-000114) and the matter was heard. (Tr. Vol. I, p. 12-21). On December 13, 2007, the court heard argument from counsel and issued its ruling. Id. Again, at the hearing the ruling was announced, with no explanation (Tr.

Vol. I, p. 21), and the Order denying the Motion to Reconsider was likewise silent. (Order, R. at 000116). This appeal follows. (Not. of Appeal, R. at 000117).

SUMMARY OF THE ARGUMENT

Initially, Feeley's Motion to Dismiss should not have been granted because his argument for insufficiency of process was not raised timely. Regardless, his Motion to Dismiss had no merit because Feeley cannot claim minority protection under Mississippi law while claiming the domiciliary of Louisiana where he is an adult. Similarly, under Mississippi law Feeley was emancipated and was not entitled to minority protection under Mississippi law because, as an emancipated adult, he was properly served. Moreover, "minor" status is irrelevant for purposes of non-residence service.

Regardless, even if service is deemed insufficient, Milyanovich demonstrated good cause for the failure to serve Feeley and should have been given more time to cure any insufficiency. A plaintiff can demonstrate good case even though the 120-day time period expired before asking for more time to cure any alleged deficiency. Because of the good cause demonstrated, namely, Feeley's own subterfuge and evasion, the complaint should not have been dismissed.

ARGUMENT

A. Standard of Review

Whether the circuit court erred in granting defendant's motion to dismiss because the plaintiff did show good cause why process was not served within time allowed by Rule 4(h) when based upon a precept of law, is "plenary"; otherwise, it is an abuse-of-discretion standard. Bennett v. McCaffrey, 937 So. 2d 11, 15 (Miss. 2006).

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

Feeley's Motion to Dismiss should have been denied because of his undue delay in filing the Motion. A defense of lack of jurisdiction over the person or insufficiency of process is waived because it should have been raised in the responsive pleading due thirty (30) days after service. See generally, Rule 12(h), Mississippi Rules of Civil Procedure. In this case, and as discussed further herein, Feeley, knowing of the lawsuit because of communications between his counsel and Milyanovich's counsel, because of communications between his insurer and Milyanovich's counsel, and because of the clear service on his father and service on him as discussed further herein, intentionally waited approximately 86 days after his answer was due, to file his Motion to Dismiss. This was an intentional delay so that it would put Milyanovich beyond the 120 days required for service and presumably give Milyanovich no opportunity to correct any alleged deficiencies. Ironically, Feeley wants to hold Milyanovich to a 120 day deadline, yet he has no deadline of his own. Feeley's Motion to Dimiss was untimely and it should have been denied as such.

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

Feeley argues that service was invalid because he is a minor under Mississippi law and therefore personal service was required. It would be a gross abuse of process however, to allow Feeley to claim he is domiciled in Louisiana and therefore service is invalid, and at the same time claim that he should receive the protections of Mississippi minority status. Under Louisiana law, Feeley attained the age of majority at 18. See LA Civ. Code Art. 29. (R. at 000089-91). While procedural rules of Mississippi apply, substantive issues such as a person's status as an adult or

minor are governed by the state of domicile. According to Feeley's sworn affidavit, he is domiciled in Louisiana. Thus, Mississippi should treat Feeley as an adult for purposes of service of process.

Once treated as an adult, Milyanovich would have shown service was proper via substitute service. Because, at a minimum, Milyanovich demonstrated that although Feeley claimed he was domiciled in Louisiana, Feeley was also a resident of 2056 Bass Dr., Vancleave, MS 39565. That was demonstrated by the fact that at the time of the accident in 2004, he held a Mississippi driver's license, and owned a car registered to that address. (MS Motor Veh. Registr., R. at 000040-41; Police Rep., R. at 000033). Moreover, at the time of service it was clearly shown that Feeley had renewed his Mississippi license (Driver License Record, R. at 000101) and had another vehicle also registered in Mississippi to 2056 Bass Dr., Vancleave, MS 39565. (MS Motor Veh. Registr., R. at 000044-45). Also, Thomas Feeley "specifically confirmed" with the process server that Feeley did live at the Bass Drive address, that he was only out of town for a while and that he would be sure to give Feeley the Summons and Complaint when he returned home. (Aff. of Thomas Feeley, R. at 000088). Thus, service was properly made on Feeley, an adult domiciled in Louisiana but also residing in Mississippi.

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

Again, Feeley argues that service was invalid because he is a minor under Mississippi law and therefore personal service was required. However, Feeley, who at the time of service was twenty (20) years old, only three (3) months shy of his twenty-first (21st) birthday, should not have been considered a minor, but should have been considered an adult. The comments to Rule 4(d)(2)(A) specifically state: "This rule is not intended to depart from the basic concepts of

traditional Mississippi practice which must still be followed.” In support of that comment, it states: “See: section 232, Griffith, Mississippi Chancery Practice.”

Rule 4 certainly contemplates an emancipated minor as it makes a distinction between an unmarried infant and someone other than an unmarried infant. Quite frankly, a married infant would be served as an adult for purposes of service of process. Certainly, an emancipated minor would be served as an adult. Mississippi Code Annotated § 93-11-65 (2007) addresses the emancipation of minors. As the comments to Rule 4 reference chancery practice when dealing with the issue of minors, it should come as no surprise that you should turn to chancery law when determining minor status. Under § 93-11-65(8)(d), a court may determine that emancipation occurs when the child: “Voluntarily moves from the home of the custodial parent or guardian, establishes independent living arrangements, obtains full-time employment and discontinues educational endeavors prior to attaining the age of twenty-one (21) years.”

In this case, according to his own affidavit, Feeley voluntarily moved from the home of his custodial parent at the age of 16, he moved into the home of his godparents in Louisiana, he became domiciled in Louisiana where he attained the age of majority at the age of 18. Therefore, the court erred in failing to determine the validity of service because Milyanovich demonstrated that Feeley was an emancipated minor, thus, again, for the reasons previously asserted, substitute service was valid.

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

Under Mississippi’s Non-resident Motor Vehicle Statute, Mississippi Code Annotated § 13-3-63 (2007), a non-resident’s status as an adult or a minor is irrelevant for purposes of service of process. Under § 13-3-63, service of process upon a non-resident may be obtained by service

upon the Secretary of State, who will then mail a copy of such process to the non-resident defendant at his or her last known address. Furthermore, service of process under Section 13-3-63 shall have the same force and effect as if the non-resident defendant had been personally served with such process within the State of Mississippi. See Miss. Code Ann. § 13-3-63.

In this case, Feeley claims to be domiciled in Louisiana. If so, minor status is irrelevant. Quite frankly, the way service on Feeley was made, Feeley received more notice than he would have under § 13-3-63. The Mississippi Secretary of State would have mailed a copy of the Summons and Complaint to the last known address. Even if a minor. In this case, that last known address was 2056 Bass Dr., Vancleave, MS 39565. Here, service was personally made at that address on Feeley's father, Thomas Feeley and a copy was mailed to the last known address. Feeley is simply trying to pick and choose when and which Mississippi law applies to him and when and which Mississippi law does not apply to him. Under Mississippi's Non-resident Motor Vehicle Statute service was proper.

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

If service is deemed invalid, Milyanovich demonstrated to the court below good cause why Feeley was not served within the 120-day time period. It is worth mentioning that the underlying case against Feeley has virtually clear liability. Feeley was driving at a "very high rate of speed" when the accident occurred. (Police Rep., R. at 000032). Feeley admitted to the police that he was chasing a suspected shoplifter from his workplace at the time, a Fred's store also on Highway 613. Id. The officer observed a long skid mark in the road, approximately 150 feet. Id. at 000032-33. Feeley was estimated to be traveling at 60 miles per hour. Id. at 000034. Moreover, there is no reasonable possibility whatsoever that Milyanovich can be found

comparatively at fault in any way. In contrast, Feeley showed a wanton and reckless disregard for the safety of Milyanovich and other drivers on Highway 613 by pursuing “vigilante justice” and exceeding the lawful speed limit.

Feeley then began his intentional deception. First, he provides the Moss Point police officer at the scene with a Mississippi Driver’s License indicating he resided at 2056 Bass Dr., Vancleave, MS 39565. (Police Rep., R. at 000033). Of course, in his “sworn” Affidavit he claims that at the time of the accident, and since 2002, he was a resident of Bogalusa, Louisiana – approximately 117 miles from his Vancleave, MS address. (Aff. of Feeley, R. at 000021). Of course, that would mean that Feeley had to commute to his job at the Fred’s dollar store approximately 234 miles each day in his 1985 Mercury Grand Marquis he worked. Either Feeley was intentionally lying to the police and lying to the State of Mississippi to obtain the license or he intentionally lied to the court in his Affidavit, which, incidentally, was notarized in Jackson County Mississippi. Moreover, at the time of the accident, he was driving a car, a 1985 Mercury Grand Marquis, owned by him and registered in the State of Mississippi at 2056 Bass Dr., Vancleave, MS 39565. (MS Motor Veh. Registr., R. at 000040-41; Police Rep., R. at 000034).

Feeley’s deception continued because prior to the service date of April 16, 2007, Feeley had renewed his Mississippi Drivers’ Licence and again listed his residential address as 2056 Bass Dr., Vancleave, MS 39565. (Driver License Record, R. at 000101). Similarly, although Feeley had a new vehicle other than the one involved in the accident, prior to the service date and at the time of service on April 16, 2007, Feeley owned a 1992 Chevrolet truck and registered it with the State of Mississippi at 2056 Bass Dr., Vancleave, MS 39565. (MS Motor Veh. Registr., R. at 000044-45).

Feeley then assisted the aide of his father, Thomas Feeley, to continue his deception.

Feeley's father, Thomas Feeley, accepted the service from the process server not once advising the process server that Feeley did not reside there. (Opp'n to Mot. To Dismiss, R. at 000026). In fact, Feeley's father was "willing to receive" the Summons and Complaint. (Proof of Service, R. at 000087). More specifically, Thomas Feeley "specifically confirmed" with the process server that Feeley did live at the Bass Drive address, that he was only out of town for a while and that he would be sure to give Feeley the Summons and Complaint when he returned home. (Aff. Of Thomas Feeley, R. at 000088). It was only later, when trying to help his son avoid a lawsuit, even though his son was clearly liable and caused injury to Milyanovich, that Thomas Feeley claimed that Feeley "has been a residence of Bogalusa, Louisiana, since 2002" and that Feeley "does not and has not lived at this address since 2002." (Aff. of Thomas Feeley, R. at 000023). Of course, like Feeley, Thomas Feeley does not explain why he would allow his son to use his address to deceive the State of Mississippi by having 2 driver's licences at that address and having 2 cars owned by Feeley registered to that address.

Of course, rather than attempting the default immediately, Milyanovich's counsel tried to allow Feeley's counsel time to respond. Instead of coming forward timely, Feeley (and counsel) intentionally waited until after 120 days had passed, and well beyond the time required, to allege insufficiency of process. Of course, Feeley continued his subterfuge by only asserting that he resided in "Bogalusa, Louisiana" with "godparents" without providing his purported correct address. Feeley would not do that because he was evading service and using Mississippi counsel to aide him in his evasion.

Milyanovich's counsel then aggressively investigated to find Feeley in "Bogalusa, Louisiana" and could only find him at "2056 Bass Dr., Vancleave, MS 39565." (R. at 000028; R. at 000048). Feeley either admitted that he has violated sections 63-1-19 and 27-19-57 of the

Mississippi Code, and therefore has misrepresented his domicile to the State of Mississippi, the Moss Point Police, and Milyanovich's counsel for the past five years, when he is actually a Louisiana resident, or he is a domiciliary of Mississippi who has perjured himself before a court of Mississippi. Feeley cannot claim domicile in Louisiana for the purpose of evading process without admitting that he has violated the law of the State of Mississippi. Either way, equity and justice should hold that a Defendant should not stand to benefit from his intentional misdeeds. At a minimum, Milyanovich demonstrated good cause why service was not made within 120 days and more time should have been allowed. Allowing the Judgment to stand in favor of dismissal of this action would impose a manifest injustice upon the plaintiff in this case and in similar cases in the future.

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

If service is deemed invalid, and Milyanovich is required to show good cause – which has been done – it does not required a motion for extension of time to be made prior to the expiration of the 120-day time period. First, as already discussed, if service on Feeley was invalid, Milyanovich demonstrated good cause for the failure to serve Feeley.

Feeley asserted below that there was no good cause because any motion to extend the time in which to serve process must be made before the expiration of the 120 day time period for service. (Reply, R. at 000062). Feeley cited as support Kingston v. Splash Pools of Mississippi, Inc., 956 So.2d 1062, 1063, ¶8 (Miss. Ct. App. 2007); Mitchell v. Brown, 835 So.2d 110, 112, ¶10 (Miss. Ct. App. 2003). However, contrary to Feeley's interpretation of Kingston v. Splash Pools of Mississippi, Inc., 956 So. 2d 1062 (Miss. Ct. App. 2007) and Mitchell v. Brown, 835 So. 2d 110 (Miss. Ct. App. 2003), even though Milyanovich did not timely file a Motion for

Extension of Time to Effect Service, she may still show good cause for failure to serve pursuant to M.R.C.P. 4(h). Specifically, in Kingston the Court noted that a plaintiff could still prove good cause pursuant to M.R.C.P. 4(h), even though no motion for extension was filed. Thus, although the Court noted that a Motion for Extension of Time should be filed within the 120-day period, the Court of Appeals then approved the lower court's further analysis to determine whether 'good cause' had been shown. Even though the Court found that no good cause was shown in that case, the specific statement in Kingston regarding the 120-day requirement is that:

If the plaintiff is unable to locate or serve the defendant within that time frame, the plaintiff has several options from which to proceed. The plaintiff may request additional time in which to file, dismiss and re-file the claim, OR demonstrate to the court good cause as to why the defendant was not properly served within the time allowed.

See Kingston, 956 So. 2d 1062 at P8 and P15 (*emphasis added*).

Further, in Kingston, the Court noted that good cause is to be found when the failure to complete service is a result of the conduct of a third person, for instance, where the defendant has evaded service of the process OR engaged in misleading conduct. Clearly here, Feeley and his father have engaged in misleading conduct and misrepresented Feeley's true domicile in an attempt to evade service of process. Feeley attempts to claim a minority disability allowed in Mississippi, while knowing that he is a Louisiana residence above the age of 18 and is an adult under Louisiana law. Further, he has continued his misrepresentations and misleading conduct by retaining a valid Mississippi license, never reporting his change of address and continuing to register cars in Mississippi as recently as November 2006.

As the law abhors a forfeiture, and despises a liar, Milyanovich has shown that

good cause for an extension of time to serve pursuant to Mississippi Rule of Civil Procedure 4(h) exists, as shown herein. Allowing the ruling to stand, and the Complaint to be dismissed, would mean that a totally blameless plaintiff would be penalized because the statute of limitations has run. If this happens, a vigilante defendant engaged in reckless driving, who endangered the lives of many citizens of our state, and who has misrepresented his place of domicile in an attempt to evade service of process will never be brought into court to face the consequences of his reckless actions. Further, the court would be allowing Feeley to claim the BENEFIT and PROTECTION of this state's laws regarding minority status when he claims to live in a state where he is deemed to be an ADULT, and where his status as an adult would be irrelevant under our Non-resident Motor Vehicle Statute.

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,

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Milyanovich



DANIELLE K. BREWER, ESQ., MSB# 

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 Initial 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 usual mailing address of Page
Kruger & Holland, P.A., P.O. Box 1163, Jackson, MS 39215-1163; and
3. W. Harvey Barton at his usual mailing address of 3007 Magnolia St.,
Pascagoula, MS 39567.

THIS the ^{4th}10 day of July, 2008.


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