

**IN THE SUPREME COURT OF MISSISSIPPI**

**MARY SCAGGS**

**APPELLANT**

**VERSUS**

**NO: 2008-CA-00983**

**GCPH-GP, INC.**

**APPELLEE**

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Appeal from the Circuit Court of Harrison County, Mississippi

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**BRIEF OF APPELLANT**

**ORAL ARGUMENT NOT REQUESTED**

WOODROW W. PRINGLE, III  
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**CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel of record for Appellant 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:

**Circuit Court Judge:**

HONORABLE JERRY O. TERRY  
Circuit Court Judge  
P. O. Box 1461  
Gulfport, MS 39502

**Appellant:**

MARY SCAGGS  
14447 Rhonda Court  
Gulfport, MS 39503

**Appellee:**

GARDEN PARK MEDICAL CENTER  
GCPH-GP, INC.  
15200 Community Road  
Gulfport, MS 39503

**Attorney for Appellant:**

WOODROW W. PRINGLE, III  
Attorney at Law  
2217 Pass Road  
Gulfport, MS 39501

**Attorney for Appellee:**

WILLIAM E. WHITFIELD, III  
Bryant, Dukes & Blakeslee, PLLC  
P. O. Box 10  
Gulfport, MS 39502

**RESPECTFULLY SUBMITTED**, this the 22 day of December, 2008

  
\_\_\_\_\_  
WOODROW W. PRINGLE, III

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**TABLE OF AUTHORITIES**

**Cases Cited:**

*Mieger v. Pearl River County, Mississippi*  
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*Sarris v. Smith*  
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**Statutes Cited:**

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**STATEMENT REGARDING ORAL ARGUMENT**

The Appellant does not request oral argument.

**STATEMENT OF ISSUES**

1. The trial court erred in granting the Motion to Dismiss.

### STATEMENT OF THE CASE

The original Complaint was filed April 12, 2004, relating to an incident which occurred March 14, 2002. The original Defendant was Garden Park Medical Center. Garden Park filed a Motion to Dismiss on May 7, 2004, alleging the Ms. Scaggs had improperly named Garden Park Medical Center as the Defendant. The Circuit Court found the statute of limitations had expired and dismissed the Complaint on April 29, 2005. Ms. Scaggs appealed and on June 15, 2006, the Mississippi Supreme Court reversed and found that her time to file suit was extended 60 days beyond the two year anniversary of the incident. The case was remanded for further proceedings.

Once remanded, Garden Park filed a renewed Motion to Dismiss alleging insufficiency of process upon the proper party. The Circuit Court denied the Motion and granted Ms. Scaggs leave to amend her Complaint. She filed an Amended Complaint September 12, 2007. GPCH-GP, Inc., doing business as Garden Park Medical Center was named as Defendant. GPCH-GP, Inc., filed a Motion to Dismiss the Complaint again arguing insufficiency of process and that the statute of limitations had expired.

May 22, 2008, the Circuit Court granted the Motion. Notice of Appeal was filed and the matter is now presently before this Court.



## STATEMENT OF FACTS

Garden Park Medical Center is a medical facility located in Harrison County, Mississippi. On March 14, 2002, Mary Scaggs was undergoing preoperative procedures. Mary attempted to climb onto a table, the table moved causing Mary to fall and land in the sitting position. Mary injured her knee, back and neck.

April 12, 2004, Mary filed her Complaint in the Circuit Court of the First Judicial District of Harrison County, Mississippi. She alleged as a result of the negligence of Garden Park she was injured and was entitled to damages.

After Mary's Complaint was filed Garden Park filed a Motion to Dismiss May 7, 2004, alleging that Garden Park Medical Center was the improper Defendant. After hearing, the Circuit Court found the statute of limitations had expired and dismissed Mary's Complaint April 29, 2005. Mary appealed and on June 15, 2006, the Mississippi Supreme Court reversed the dismissal and found that Mary's time to file suite was extended 60 days beyond the two year anniversary of the incident. Therefore, Mary's original suit was timely filed.

After remand to the Circuit Court, Garden Park filed a renewed Motion to Dismiss on the grounds of insufficiency of process due to the improper defendant being named and failure to attach a certificate of expert consultation. Following a hearing, the Circuit Court denied the Motion and granted Mary leave to amend her Complaint. Mary filed an Amended Complaint September 12, 2007, naming GPCH-GP, Inc., as the proper Defendant and alleging the same facts as alleged in the original Complaint.

GPCH-GP, Inc. filed another Motion to Dismiss.

During the hearing to dismiss, the Court found that the statute of limitations expired May 13, 2004. Mary filed her Amended Complaint September 12, 2007. According to the Circuit

Court, Mary's Amended Complaint is time barred and should be dismissed unless it relates back to the original Complaint.

At the hearing on the Motion to Dismiss the Amended Complaint, Appellee stated that it did not dispute that the claims asserted in the Amended Complaint arose out of the conduct, transaction or occurrence attempted to be set forth in the original pleading. GPCH-GP, Inc. further stated that it did not dispute that it received such notice on the institution of the action that it will not be prejudiced in maintaining a defense.

The Circuit Court found that it appears Mary knew that Garden Park Medical Center was not the proper party Defendant. There was no mistake as to Garden Park Medical Center's identity and that the Amended Complaint does not relate back to the original Complaint and should be dismissed as time barred.

### SUMMARY OF THE ARGUMENT

Mississippi Rules of Civil Procedure 15 provides in pertinent part the following:

- (a) A party may amend a pleading only by leave of court or upon written consent of the adverse party; leave shall be freely given when justice so requires.
- (b)
- (c) Relation back of amendments. Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by Rule 4 (h) for service of the summons and complaint, the party to be brought in by amendment (1) has received such notice of the institution of the action that the party will not be prejudiced and maintain the party's defense on the merits and; (2) knew or should have known, that, but for mistake concerning the identity of the proper party, the action would have been brought against the party.

The Circuit Court properly followed the Rule when it granted Mary leave to amend her Complaint in September, 2007, to name the proper party Defendant. On January 8, 2008, the Court of Appeals decided *Mieger v. Pearl River County, Mississippi*, 986 So.2d 1025 (Miss. 2008). Even though it was decided after the Circuit Judge granted leave to amend, this case supports the proposition that the original Order allowing the Second Amended Complaint in September 2007, was correct and that the Plaintiff has a right to proceed in this cause.

## ARGUMENT

The decision before the Court is not dependent on resolution of any factual dispute which should be submitted to a finder of fact. Therefore, the question before the Court is one of law, which is reviewed *de novo*. *Sarris v. Smith*, 782 So.2d 721 (Miss. 2001).

The Circuit Judge found that the filing of the Second Amended Complaint pursuant to his September 2007, Order allowing the amendment did not relate back to the date of the original Complaint. (There is no question that the original Complaint was filed within the time allowed by the statute of limitation.) The Court apparently relies upon the argument that counsel for Mary knew or should have known the proper defendant's name at the time the original Complaint was filed.

The cases decided by this Court make no such distinction and the distinction relied upon by Circuit Judge was incorrect. In *Mieger*, supra, a complaint was filed against the Pearl River County Sheriff's Department. Pursuant to the previous decisions of this Court, no such entity existed and the original Complaint should have been filed against Pearl River County. The Circuit Judge dismissed the Complaint due to the fact that the incorrect party was named and denied Plaintiff's attempt to amend her Complaint. The Court of Appeals reversed finding Rule 15 was applicable and the amendment should have been allowed and the Complaint should not have been dismissed. *Mieger* found that the notice of claim letter forwarded to the Clerk of the Board of Supervisors was before the expiration of the statute of limitations and because the County had proper notice, the Circuit Court erred in dismissing that cause.

In the case before the Court, not only was the Chief Operating Officer of Garden Park Medical Center served with a Summons when the original Complaint was filed, but Garden Park Hospital also received notice letters prior to suit being filed. This Court in the earlier appeal filed

in this cause, determined that the cause was filed within the statute of limitations. Pursuant to *Mieger*, the Circuit Court was correct in September 2007 when he allowed Plaintiff to amend her Complaint and was incorrect when he essentially reversed his ruling and dismissed the Complaint.

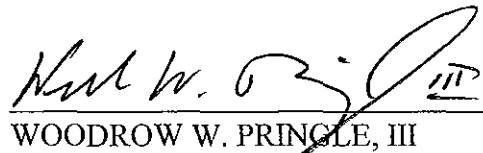
### CONCLUSION

The Circuit Judge erred in dismissing this cause. The Circuit Judge granted Mary leave to amend her Complaint in September 2007. Pursuant to this Order, she amended her Complaint and served process upon the Appellee. Pursuant to the holding in *Mieger*, supra, the Circuit Judge erred and this cause should be reversed and remanded for further proceedings.

**RESPECTFULLY SUBMITTED**, this the 22 day of Dec., 2008.

MARY SCAGGS

BY:

  
WOODROW W. PRINGLE, III

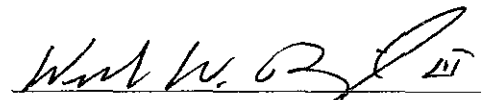
**CERTIFICATE OF SERVICE**

I, WOODROW W. PRINGLE, III, certify that I have this date forwarded by United States Mail, postage prepaid, a true and correct copy of the above and foregoing BRIEF OF APPELLANT, postage prepaid, to the following at their usual mailing address:

Hon. Jerry O. Terry  
Circuit Court Judge  
P. O. Box 1461  
Gulfport, MS 39502

William E. Whitfield, III, Esq.  
Attorney at Law  
P. O. Box 10  
Gulfport, MS 39502

**SO CERTIFIED** this the 22 day of December, 2008.

  
WOODROW W. PRINGLE, III

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