

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI
NO. 2008-CA-01173-COA**

**JAMES K. TRIPLETT, AS THE ADMINISTRATOR OF
THE ESTATE OF JEAN B. TRIPLETT, DECEASED AND
ANDREW MAXWELL TRIPLETT**

**APPELLANTS/CROSS
APPELLEES**

VS.

**RIVER REGION MEDICAL CORPORATION;
JOHN ADAMS, M.D.; PATTY STONE, CRNA;
AND JOHN AND JANE DOES 1-20**

**APPELLEES/CROSS
APPELLANTS**

REPLY BRIEF OF APPELLEES/CROSS APPELLANTS

APPEAL FROM THE CIRCUIT COURT OF WARREN COUNTY

**R.E. PARKER, JR., MSB [REDACTED]
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ATTORNEYS FOR APPELLEES/CROSS APPELLANTS

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CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record certifies that the following persons have an interest in the outcome of this case:

1. James K. Triplett, Plaintiff
2. John T. Givens, Esquire
Timothy W. Porter, Esquire
Patrick C. Malouf, Esquire
Porter & Malouf, PA
Counsel for Plaintiff
3. Andrew Maxwell Triplett, Plaintiff
4. Estate of Jean B. Triplett, Plaintiff
5. R.E. Parker, Jr., Esquire
Penny B. Lawson, Esquire
Varner, Parker & Sessums, P.A.
Counsel for Defendants
6. John Adams, M. D., Defendant
7. Patty Stone, Certified Nurse Anesthetist, Defendant
8. River Region Medical Corporation d/b/a River Region Medical Center, Defendant
9. Lamar McMillin, M.D., Employee of Defendant River Region Medical Corporation

10. William Porter, M.D., Defendant - Dismissed

11. Gladys Howard, R.N., Defendant - Dismissed

This the 7th day of July, 2010.



PENNY B. LAWSON
Attorney for Appellees/Cross Appellants

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STATEMENT OF THE ISSUES

I.

Whether the Appellee is barred from arguing their cross appeal for failure to file a notice of cross appeal.

II.

Whether the trial court committed reversible error in denial of Defendants' issue VIII of their motion in limine.

STATEMENT OF THE CASE

The Defendants did in fact, properly file a Cross Notice of Appeal with the Circuit Clerk of Warren County, Mississippi on July 3, 2008. (CR 6:800)(Addendum "A"). Therefore, the Court should hear the cross appeal of the Defendants.

In the trial of this matter, Defendants filed a Motion in Limine requesting the court to exclude those amounts which were not paid on behalf of plaintiff but where in fact, write-off amounts of the medical bills. Initially, the trial judge granted the motion but on reconsideration, denied the motion. The Defendants properly filed a Cross Notice of Appeal concerning this issue.

SUMMARY OF ARGUMENT

The Defendants properly filed a Cross Notice of Appeal pursuant to M.R.A.P Rule 4(d) within the allowed time limits and therefore, should be heard.

The trial court committed reversible error when it granted the Plaintiffs' Motion for Reconsideration on the issue of medicare payments in that it allowed the Plaintiffs to seek damages they had never actually incurred. Further, these write-off amounts statutorily barred this Defendant from ever seeking payment from the Plaintiff. Any amount which the plaintiff does not incur or that is not paid for by a third party should not be considered as a collateral source. (Emphasis added).

ARGUMENT

WHETHER THE APPELLEE IS BARRED FROM ARGUING THEIR CROSS APPEAL FOR FAILURE TO FILE A NOTICE OF CROSS APPEAL.

Pursuant to M.R.A.P. Rule 4(a) an appeal or cross-appeal should be filed within 30 days after the date of entry of the judgment. Further, under M.R.A.P. Rule 4(d) the time for appeal for all parties runs from the entry of the order disposing of the last such motion outstanding. Following the trial of this matter, Plaintiffs filed a Motion for Judgement Not Withstanding the Verdict or in the Alternative for New Trial.

The order denying the motion was entered on June 17, 2008, giving the Defendants 30 days in which to file an appeal. On July 3, 2008, the Defendants filed their Cross Notice of Appeal pursuant to M.R.A.P. Rule 4 and therefore, should be heard by this Court.

WHETHER THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY ALLOWING THE TOTAL AMOUNT OF MEDICAL BILLS INCURRED INTO EVIDENCE.

In the Appellant's reply, they refer to the long recognized "collateral source rule." The rule states that "compensation or indemnity for the loss received by plaintiff from a collateral source, wholly independent of the wrongdoer, as from insurance, cannot be set up by the latter in mitigation or reduction of damages...." *Brandon HMA, Inc. v. Bradshaw*, 809 So.2d 611, 618 (Miss. 2001); citing *Coker v. Five-Two Taxi Serv., Inc.*, 211 Miss. 820, 826, 52 So.2d 356, 357 (Miss. 1951) (citing 25 C.J.S. *Damages* §99). The Appellee completely agrees with the application of the collateral source rule but, only where it applies to any payment made by or on behalf of the plaintiff. (Emphasis added). Here, there was no payment of any kind, nor was the Defendant allowed to seek reimbursement for the amounts in which they were required to statutorily write-off.

Allowing a plaintiff to recover funds which they never legally incurred, nor that anyone ever paid on their behalf should not be considered a collateral source. The whole premise behind damages is to make the plaintiff whole. Here, based on the Appellant's argument, essentially you should make the plaintiff whole and then some.

Finally, there is a clear distinction between this case and *Brandon*, there, the court in its analysis, clearly relied upon the fact that the hospital in that matter, was attempting to recover the written off medical bills from the plaintiff. In the case at hand, this Appellee never has, nor will it ever, attempt to recoup the written off amounts from the Appellants. Appellee is statutorily barred from ever attempting to recover those amounts from the Appellants.


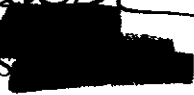
CONCLUSION

The collateral source rule should only apply to those amounts wherein someone other than the plaintiff paid the medical expenses on their behalf. To allow the Appellants to receive more damages than they incurred is unjust enrichment. Appellees would submit that it was reversible error for the medicare write-offs to be presented to the jury as a damage to the Appellant under the collateral source rule.

Respectfully submitted,

River Region Medical Corporation;
John Adams, M.D.; Patty Stone, CRNA

By:


R.E. PARKER, JR., MSP
PENNY B. LAWSON, MS 

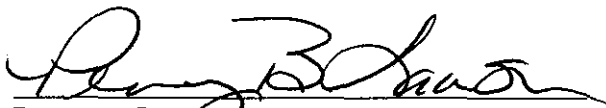
CERTIFICATE OF SERVICE

I, Penny B. Lawson, one of the attorneys for River Region Medical Corporation, John Adams, M.D., and Patty Stone, CRNA, do hereby certify that I have this day mailed, postage prepaid, by United States Mail, hand-delivered, or via facsimile, a true and correct copy of the above and foregoing document to the following counsel of record:

John T. Givens, Esquire
Timothy W. Porter, Esquire
Patrick C. Malouf, Esquire
Porter & Malouf, PA
Post Office Box 12768
Jackson, Mississippi 39236-2768

Hon. James R. Chaney, Jr.
Warren County Circuit Court
Post Office Box 351
Vicksburg, Mississippi 39180-0351

This the 7th day of July, 2010.


Penny B. Lawson

ADDENDUM "A"

IN THE CIRCUIT COURT OF WARREN COUNTY, MISSISSIPPI

JEAN B. TRIPLETT

PLAINTIFF

VS.

CIVIL ACTION NO. 06,0054-CI

RIVER REGION HEALTH CENTER; WILLIAM C.
PORTER, JR., M.D.; JOHN ADAMS, M.D.; P. STONE,
NURSE ANESTHETIST; GLADYS HOWARD, R.N.;
AND JOHN AND JANE DOES 1-20

DEFENDANTS

CROSS NOTICE OF APPEAL

BY THIS NOTICE, the Defendants, River Region Medical Corporation, John Adams, M.D., and Patty Stone, CRNA, Cross Appeal to the Supreme Court of Mississippi against James Gay Triplett, as the Administrator of the Estate of Jean B. Triplett, deceased and Andrew Maxwell Triplett with regards to the Court's denying their Motion in Liminie, particularly and more specifically stated issue VIII of their Motion in Liminie regarding the Plaintiffs seeking damages and medical bills for the total amount rather than the amount paid by Medicare, said Judge entered an oral argument prior to trial on or about May 9th through May 20, 2008, said Final Judgment having not been entered in this cause until May 20, 2008, and the denial of Plaintiff's Motion for Judgment Not Withstanding the Verdict or in the Alternative for New Trial entered on June 17, 2008.

DATED this the 3rd day of July, 2008.

RESPECTFULLY SUBMITTED,

RIVER REGION MEDICAL CORPORATION,
JOHN ADAMS, M.D. AND PATTY STONE,
CRNA

FILED

JUL 03 2008

SHELLY ASHLEY-PALMERTREE, CIRCUIT CLERK

BY D.C.

BY:
R. E. PARKER, JR., MSB NO.
LEE D. THAMES, JR., MSB NO.

OF COUNSEL:

VARNER, PARKER & SESSUMS, P.A.
1110 Jackson Street
Post Office Box 1237
Vicksburg, Mississippi 39181-1237
Telephone: 601/638-8741
Facsimile: 601/638-8666

CERTIFICATE OF SERVICE

I, Lee D. Thames, Jr., attorney for Defendant, River Region Medical Corporation, do hereby certify that I have this day mailed, postage prepaid, by United States Mail, via facsimile and/or hand-delivered a true and correct copy of the above and foregoing document to the following counsel of record:

John T. Givens, Esq.
Timothy W. Porter, Esq.
Patrick C. Malouf, Esq.
Kimberly A. Courtney, Esq.
Porter & Malouf, PA
PO Box 12768
Jackson MS 39236-2768

Hon. Frank G. Vollar
Circuit Court Judge
Warren County Courthouse
Vicksburg, MS 39180

ATTORNEY FOR THE PLAINTIFFS

This the 3rd day of July, 2008.


LEE D. THAMES, JR.