IN THE SUPREME COURT OF MISSISSIPPI

No. 2009-CA-00158

SCOTT PRINGLE, AS NEXT
FRIEND AND LEGAL GUARDIAN
OF S. W. PRINGLE, A MINOR — APPELLANT

V.

JAMES J. KRAMER, M.D.,
KRAMHEARST BEHAVIORAL
INSTITUTE, LLC., AND
BRENTWOOD BEHAVIORAL
HEALTHCARE, LLC. — APPELLEES

**ON APPEAL FROM THE CIRCUIT COURT OF
RANKIN COUNTY, MISSISSIPPI**

BRIEF OF APPELLEE, BRENTWOOD BEHAVIORAL HEALTHCARE, LLC

NO ORAL ARGUMENT REQUESTED

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record 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 the Supreme Court and/or the judges of the Mississippi Court of Appeals may evaluate possible disqualification and/or recusal.

1. The Plaintiff, S.W. Pringle, is the minor daughter of the decedent, Lisa Pringle.
2. Scott Pringle is the next friend and natural guardian of S.W. Pringle, a minor.
3. Attorneys for the Plaintiff are Shirley Payne and Dennis L. Horn, Horn & Payne, PLLC.
4. The Defendant, James J. Kramer, M.D., and his attorneys Robert S. Addison and John A. Waits, Daniel, Coker, Horton & Bell, P.A.
5. The Defendant, Kramhearst Behavioral Institute, LLC, and its attorneys Robert S. Addison and John A. Waits, Daniel, Coker, Horton & Bell, P.A.
6. The Defendant, Brentwood Behavioral Healthcare, LLC, and its attorney David Lee Gladden, Jr., Scott, Sullivan, Streetman & Fox, P.C.

7. Honorable Samac S. Richardson, Circuit Court Judge.

Respectfully submitted,

David Lee Gladden, Jr., One of the
Attorneys of Record for Brentwood
Behavioral Healthcare, LLC

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I. Whether the trial court was correct in holding that the plaintiff's lawsuit is barred by the two (2) year statute of limitations governing medical malpractice actions set forth in *Miss. Code Ann.* § 15-1-36(2)?

II. Whether the trial court was correct in holding that the Savings Clause for Minors set forth in *Miss. Code Ann.* §15-1-59 did not apply in this case?

III. This Court should affirm the trial court's dismissal of Plaintiff's *Complaint* for all the reasons stated herein. However, should this Court reverse the trial court's dismissal, the case should be remanded to the Circuit Court of Rankin County to proceed under the guidelines of the Mississippi Medical Malpractice Tort Reform Act.

STATEMENT OF THE CASE

A. NATURE OF THE CASE

Lisa Pringle died on February 28, 2003. (R. at 10.) The lawsuit that is currently on appeal arises out of a medical negligence wrongful death action that was filed on February 7, 2008, in the Circuit Court of Rankin County, Mississippi by the Plaintiff, against the Defendants, Brentwood Behavioral Healthcare, LLC, James J. Kramer, M.D., individually and as a representative of Kramhearst Behavioral Institute, LLC. (R. at 9-12.) Plaintiff's Complaint is untimely and barred by the two (2) year statute of limitations governing medical malpractice actions. See *Miss. Code Ann.* § 15-1-36(2).

B. COURSE OF PROCEEDINGS

This case comes before this Honorable Court on appeal for the second time, this time from the Circuit Court of Rankin County, Mississippi. The first Complaint filed by Scott Pringle, as next friend and legal guardian of S.W. Pringle, was filed in the Circuit Court of Madison County, Mississippi on August 31, 2004, the day before the "Tort Reform" laws went into effect. (R. at 6-9.) Also on August 31, 2004, the Plaintiff mailed his first written notice to the Defendants informing them of the potential litigation in an effort to comply with the notice provisions of *Miss. Code Ann.* §15-1-36(15). Defendants moved for a dismissal of Plaintiff's *Complaint* and the Circuit Court of Madison County dismissed Plaintiff's Complaint as a matter of law as it did not comply with *Miss. Code Ann.* § 15-1-36(15). (R. at 167-171.)

On July 29, 2005, and prior to the Circuit Court of Madison County's entry of its order dismissing Plaintiff's first Complaint, the Plaintiff filed a second Complaint in the Circuit Court of Rankin County, Mississippi, alleging medical malpractice, naming the same parties as the first-filed Madison County case and containing the exact same language and causes of action as

the *Complaint* in the first-filed Madison County case. (R. at 110-113.)

On August 3, 2005, the Circuit Court of Madison County dismissed the first-filed Madison County Complaint, without prejudice, on the grounds that the Plaintiff had not given the Defendants the required sixty (60) days notice prior to filing his lawsuit. (R. at 114-115.) On August 8, 2005, the Plaintiff filed his Notice of Appeal with the Mississippi Supreme Court appealing the trial court's order dismissing the first-filed Madison County suit. (R. at 116-117.)

The following day, August 9, 2005, the Plaintiff filed a third Complaint in the Circuit Court of Rankin County, alleging medical malpractice, naming the same parties as the first-filed Madison County case and the second-filed Rankin County case, and containing the exact same language and causes of action as the first-filed Madison County Complaint and the second-filed Rankin County Complaint. (R. at 118-121.)

On February 6, 2006, while the first-filed Madison County case was on appeal to the Mississippi Supreme Court, the Defendants filed a Motion to Dismiss the two Rankin County suits on the grounds that the Plaintiff had not abandoned his Madison County suit, had perfected an appeal of the Madison County suit, and was still actively pursuing the prosecution of same giving the Madison County Court exclusive jurisdiction over the Rankin County suits. (R. at 122-124.)

On February 8, 2007, the Mississippi Supreme Court rendered its *per curiam affirmance* of the Madison County trial court's dismissal of the Madison County suit. (R. at 125.) Thereafter, the Plaintiff did not petition for rehearing. On January 10, 2008, the Rankin County trial judge entered an order dismissing the two Rankin County suits under the doctrine of priority jurisdiction rendering both Rankin County cases null and void. (R. at 126.) The Court reasoned

that Plaintiff should not be allowed to pursue three suits, all of which involve the same parties and arise out of the same facts and dismissed the two Rankin County suits. No appeals were filed regarding the dismissals of the second-filed and third-filed Rankin County suits.

Approximately one (1) year after the Supreme Court entered its order, on February 7, 2008, Plaintiff filed a fourth suit, in the Circuit Court of Rankin County, naming the same parties and containing the exact same language and causes of action as the first-filed Madison County Complaint and the second and third-filed Rankin County Complaints. (R. at 9-12.) Thereafter, Defendants moved for a dismissal of Plaintiff's Complaint on the grounds that it was barred by the two (2) year statute of limitations governing medical malpractice actions which is set forth in *Miss. Code Ann.* §15-1-36(2). (R. at 21-26.) The Circuit Court of Rankin County granted *Defendants' Motion to Dismiss* on December 29, 2008. (R. at 167-171.) Plaintiff timely effected his appeal on January 22, 2009. (R. at 276-277.)

C. STATEMENT OF THE FACTS

For a number of years prior to Lisa Pringle's death on February 28, 2003, she suffered from a number of behavioral disorders, including post-traumatic stress disorder and chemical dependancy. During her lifetime, Lisa Pringle had been treated by a number of different physicians and behavioral institutions for her ongoing problems. In fact, Dr. James J. Kramer, one of the Co-Defendants in this case, was one of the physicians who had, prior to her death, treated Lisa Pringle for her problems. Lisa Pringle had also been treated at a number of facilities including, but not limited to, Kramhearst Behavioral Institute, LLC, and Brentwood Behavioral Health Care, LLC ("Brentwood"), both of which were named as Defendants in the lawsuit.

On February 28, 2003, after her third admission to Brentwood, Lisa Pringle was found

deceased in her room by employees of Brentwood. Immediately after her death, an investigation ensued by the Flowood Police Department and Rankin County Sheriff's Department in an attempt to determine the cause of her death. During its investigation, the Sheriff's Department discovered several pills hidden in the lining of one of Lisa Pringle's bras. Lisa Pringle's death was initially determined accidental; however, her death certificate was amended several times to ultimately include drug overdose.

The following is a brief time line of events applicable to this appeal:

2-YEAR STATUTE OF LIMITATIONS - 730 DAYS

1) On February 28, 2003, Lisa Pringle died and Plaintiff's two (2) year statute of limitations begins to run (365days x 2= 730 days);

2) 549 days later on August 31, 2004, notice was mailed to the Defendants and the first Madison County lawsuit was filed arguably tolling the Plaintiff's two-year statute of limitations during pendency of the lawsuit. (Giving the benefit of the doubt to the Plaintiff and adding an additional sixty (60) days of tolling pursuant to *Miss. Code Ann.* §15-1-36(2), the statute of limitations would total 790 days);

3) On August 3, 2005, the first-filed Madison County lawsuit was dismissed and the statute of limitations began to run again;

4) 5 days later on August 8, 2005, the Plaintiff filed his Notice of Appeal relating to the first-filed Madison County lawsuit staying the running of the statute of limitations (549 + 5 = 554 days had run thus far);

5) On February 8, 2007, the Supreme Court affirmed the dismissal of the first-filed Madison County lawsuit starting the running of the statute of limitations;

6) Giving the Plaintiff the benefit of the two (2) year statute of limitations plus the sixty (60) day tolling period allowed by statute upon providing notice to the Defendants pursuant to *Miss. Code Ann.* § 15-1-36(2) (790 days - 554 days = 236 days), 236 days remained on the statute of limitations which expired on October 3, 2007;

7) Plaintiff filed the instant lawsuit on February 7, 2008, more than four (4) months after the statute of limitations had expired.

STATEMENT REGARDING ORAL ARGUMENT

The issues in this matter have been fully briefed by the parties. Accordingly, Appellee asserts that an oral argument on the merits of this case will not aid or assist this Honorable Court in making its determination.

SUMMARY OF ARGUMENT

The lower court's Order granting *Defendant's Motion to Dismiss* should be affirmed as Plaintiff failed to timely file his lawsuit prior to the expiration of the two (2) year statute of limitations governing medical malpractice actions. See *Miss. Code Ann.* § 15-1-36(2). Plaintiff argues that his lawsuit is not barred by the statute of limitations as the general savings statute set forth in *Miss. Code Ann.* § 15-1-69 applies. Plaintiff cites to a number of cases that address the applicability of the general savings statute, however, none of these cases apply to the facts in this case. Plaintiff further argues that Mississippi's savings clause for minors set forth in *Miss. Code Ann.* § 15-1-59 applies. Plaintiff again cites to a number of cases that address the applicability of the savings clause for minors, however, none of these cases apply to the facts in this case. For the reasons set forth below, the lower court's dismissal of Plaintiff's *Complaint* as being untimely and not subject to the general savings statute or savings clause for minors should be affirmed.

ARGUMENT

I. THE TRIAL COURT WAS CORRECT IN HOLDING THAT THE PLAINTIFF'S LAWSUIT IS BARRED BY THE TWO (2) YEAR STATUTE OF LIMITATIONS GOVERNING MEDICAL MALPRACTICE ACTIONS SET FORTH IN MISS. CODE ANN. § 15-1-36(2)

Plaintiff's argument that this case is one which falls under the Mississippi general savings statute, *Miss. Code Ann.* § 15-1-69, is simply without merit. Plaintiff argues in his brief that the prior Court's dismissal of his first-filed Complaint was a dismissal as a "matter of form". In so arguing, Plaintiff cites to a recent Mississippi Supreme Court opinion, *Marshall v. Kansas City Southern Railways Co.*, 7 So.3d 210 (Miss. 2009). However, Plaintiff's reliance upon *Marshall* is misplaced. In *Marshall*, a van driven by Lucy Shepard collided with a Kansas City Southern Railway Company ("KCS") train. *Id.* at 211. Shepard died as a result of the accident, while Phyllis

McKee, a passenger in Shepard's van, survived. *Id.* Ten (10) days after the accident, Shepard's beneficiaries filed a wrongful-death action against KCS and the train crew in the Circuit Court of Scott County. *Id.* McKee filed a separate negligence action against KCS and the train crew in another Mississippi jurisdiction. *Id.* See *McKee v. Kansas City Southern Railroad Co.*, 281 F.3d 1279 (5th Cir. 2001). KCS removed the first case to the United States District Court for the Southern District of Mississippi, claiming the train crew was fraudulently joined to defeat diversity jurisdiction. *Id.* The Beneficiaries responded with a motion to remand, which was denied. *Id.* The district court found that the train crew was fraudulently joined to defeat diversity jurisdiction, and it dismissed the train crew from the action. The Beneficiaries then filed an interlocutory appeal to contest the order denying their motion to remand. *Id.* The Fifth Circuit Court of Appeals dismissed the interlocutory appeal as premature. *Id.*

Meanwhile, the *McKee* case also was removed to federal court and assigned to the same district court judge. *McKee v. Kansas City Southern Railroad Co.*, 358 F.3d 329 (5th Cir. 2004). In *McKee*, the district court dismissed the train crew as being fraudulently joined. *Id.* Thereafter, the *McKee* case went to trial and a jury returned a verdict in favor of KCS. *Id.* Upon learning of the *McKee* verdict, the Beneficiaries in the Shepard case filed a motion for entry of final judgment in favor of KCS under Rule 54 of the Federal Rules of Civil Procedure. *Id.* KCS did not oppose entry of final judgment but argued the motion should be granted under Rule 41(a)(2). *Id.* at 212. The district court entered an order of dismissal and entry of final judgment referring to Rule 41(a)(2) of the Federal Rules of Civil Procedure but did not specify whether the judgment was with or without prejudice. *Id.*

The Beneficiaries again appealed the order denying their motion to remand and the Fifth

Circuit concluded the dismissal was without prejudice pursuant to Rule 41(a)(2), and thus, it lacked jurisdiction to hear the appeal. *Id.* The Beneficiaries then re-filed their wrongful-death action in the Circuit Court of Scott County naming KCS and the train crew as defendants and asserting virtually the same claims as before. *Id.* The case was removed to federal court based on diversity jurisdiction and fraudulent joinder. *Id.* In response, the Beneficiaries filed a motion to remand, which was granted by a different district judge. *Id.* at 212-213. Upon remand to state court, KCS and the train crew sought dismissal based on the statute of limitations and the trial court entered an order of dismissal with prejudice. *Id.* The Beneficiaries appealed, and the Court of Appeals affirmed. *Id.* The Supreme Court granted certiorari.

The Supreme Court in *Marshall* determined that the statute of limitations for all claims began to run July 10, 1998, when Shepard was fatally injured in the train collision. *Id.* The Court noted that the Beneficiaries filed their complaint ten days later on July 20, 1998, well within the three-year statute of limitations. *Id.* However, their Complaint was dismissed on September 30, 2003, and final judgment was entered more than five years after the cause of action accrued. *Id.* The Supreme Court stated that a voluntary dismissal without prejudice does not deprive the defendant of any defense he may be entitled to make to the new suit, nor confer any new right or advantage on the complainant (plaintiff), and hence it will not have the effect of excepting from the period prescribed by the statute of limitations, the time during which that suit was pending. *Id.* at 213-214. The Supreme Court went on to state that the statute of limitations for the Beneficiaries' claims has run unless saved pursuant to *Miss. Code Ann.* § 15-1-69 of the Mississippi Code. *Id.* at 214. This same law applies in our case.

The Mississippi Supreme Court then went on to address *Miss. Code Ann.* § 15-1-69 and

stated that the general savings statute applies to those cases where the plaintiff has been defeated by some matter not affecting the merits, some defect or informality, which the plaintiff can remedy or avoid by a new process, the statute shall not prevent him from doing so, provided he follows it promptly, by suit within a year. *Id.* As in this case, at issue in *Marshall* was whether the dismissal entered by the district court was a dismissal as a "matter of form." *Marshall v. Kansas City Southern Railways Co.*, 7 So.3d 210 (Miss. 2009). The Supreme Court held that the order of dismissal and entry of final judgment was a matter of form under *Miss. Code Ann.* § 15-1-69, as the dismissal was based on the district court's lack of subject matter jurisdiction. *Id.* However, *Marshall* is clearly distinguishable from the facts in our case and Plaintiff cites no other case supporting his position.

In our case, the lower's court's dismissal of the Plaintiff's first filed Madison County case was not a dismissal as a "matter of form", but rather it was a dismissal as a "matter of law."

Miss. Code Ann. § 15-1-69 states in part that:

> "if in any action, duly commenced within the time allowed, the writ shall be abated, or the action otherwise avoided or defeated, by the death of any party thereto, or for any matter of form, or if, after judgment for the Plaintiff shall be reversed on appeal, the Plaintiff may commence a new action for the same cause, at any time within one year of the abatement or other determination of the original suit, or after reversal of the judgment therein, and his executor or administrator may, in case of the Plaintiff's death, commence such new action, within the said one year."

In order for Plaintiff to seek protection under *Miss. Code Ann.* § 15-1-69, the dismissal of his original *Complaint* had to be dismissed as a "matter of form." A dismissal for failure to properly give notice to the Defendant in writing sixty (60) days prior to filing suit as required by *Miss. Code Ann.* § 15-1-36(15) does not constitute a dismissal as a "matter of form," but rather, a matter of law.

It is well settled law that "[n]o action based upon the health care provider's professional negligence may be begun unless the defendant has been given at least sixty (60) days prior written

notice of the intention to begin the action. *Miss. Code Ann.* § 15-1-36(15). It is undisputed that Plaintiff failed to comply with state law in failing to comply with this statutory requirement prior to filing his original *Complaint* in this matter. The Madison County Circuit Court was correct in dismissing Plaintiff's first-filed Complaint as a matter of law. See *Owens v. Mai*, 891 So.2d 220 (Miss. 2005) (holding dismissal of an action for failure to serve process as required by Rule 4 of the *Mississippi Rules of Civil Procedure* is not a matter of form for the purposes of the savings statute; *Jackpot Mississippi Riverboat, Inc. v. Smith*, 874 So.2d 959 (Miss. 2004) (holding dismissal of a stale case is not a dismissal as a "matter of form," within the meaning of limitations savings statute allowing new action to be filed within one year of dismissal); *W.T. Raleigh v. Barnes*, 109 So. 8 (Miss. 1926) (holding order dismissing suit which was begun before it was bared by limitations, with nothing indicating it was mere abatement, or that dismissal was for any matter of form, held not to bring case within code 1906, §3116 (Hemingway's Code, §2480), authorizing new action within one year thereafter). *Miss. Code Ann.* § 15-1-69 does not apply in this case and Plaintiff's filing of this lawsuit on February 7, 2008 is time barred.

"The purpose of the savings statute is to protect parties who have mistaken the forum in which their causes should be tried; who simply entered the temple of justice by the door on the left, when they should have entered by the door on the right". *Ryan v. Wardlaw*, 382 So. 2d 1078, 1080 (Miss. 1980). That did not happen in this case. In this case, Plaintiff's suit got dismissed, not because he entered the wrong door, but because he tried to beat the tort reform deadline and chose to ignore the sixty (60) day notice rule. Therefore, his case was never "duly commenced" as required by the savings statute and was properly dismissed as a matter of law.

Also, in order to benefit from the savings statute, the plaintiff must have acted in good faith

in filing the first action. "The savings statute, *Miss. Code Ann.* § 15-1-69, is only available when the cause in good faith is erroneously misfiled". *Wertz v. Ingalls*, 790 So. 2d 841, 844 (Miss. 2000). Plaintiff was not acting in good faith by choosing to disregard the sixty (60) day notice mandate. Plaintiff was simply trying to beat the new tort reform laws which went into effect the very next day, September 1, 2004. The lower court agreed and dismissed Plaintiff's *Complaint* which the Supreme Court affirmed. The Plaintiff cited to a number of other cases addressing that dismissals for failure to sixty (60) day notice should be dismissals without prejudice, however, this point is not an issue for this Court as the Trial Court's dismissal of first-filed Madison County case was a dismissal without prejudice.

Since *Miss. Code Ann.* § 15-1-69 does not apply, the most liberal interpretation of the statute of limitations in favor of the Plaintiff in this case would have set the deadline for the Plaintiff to file his lawsuit on or before October 3, 2007. The Plaintiff filed the instant action on February 7, 2008, over four (4) months after the statute of limitations ran. Therefore, Plaintiff's lawsuit is time barred and must be dismissed. Notwithstanding these arguments and the most liberal interpretation of these statutes, Plaintiff's *Complaint* was filed nearly five (5) years after the death of Lisa Pringle and is time barred.

II. THE TRIAL COURT WAS CORRECT IN HOLDING THAT THE SAVINGS CLAUSE FOR MINORS SET FORTH IN MISS. CODE ANN. §15-1-59 DID NOT APPLY IN THIS CASE

Plaintiff further argues that this case is subject to *Miss. Code Ann.* § 15-1-59, the savings clause for minors. Again, Plaintiff's argument is without merit. While the savings clause for minors arguably applies to wrongful death actions, the two statutes (savings and wrongful death) are at odds with one another. The savings clause for minors states:

If any person entitled to bring any of the personal actions mentioned shall, at the time

> at which the cause of action accrued, be under the disability of infancy or unsoundsness of mind, he may bring the actions within the times in this chapter respectively limited, after his disability shall be removed as provided by law. However, the saving in favor of persons under disability of unsoundness of mind shall never extend longer than twenty-one (21) years.

Miss. Code Ann. § 15-1-59. At odds with this language is that of the wrongful death statute which reads in relevant part:

> The action for such damages may be brought **in the name of the personal representative of the deceased person or unborn quick child for the benefit of all persons entitled under the law to recover**, or by widow for the death of the wife, or by the parent for the death of a child or unborn quick child, **or in the name of a child, or in the of a child for the death of a parent**, or by a brother for the death of a sister, or by a sister for death of a brother, or by a sister for the death of a sister, or a brother for a death of a brother, or **all parties interested may join in the suit, and there shall be but one (1) suit for the same death which shall ensue for the benefit of all parties concerned**, but the determination of such suit shall not bar another action unless it be decided on the merits.

Miss. Code Ann. §11-7-13 (emphasis added). The contrast of two statutes was recognized and discussed at length by the Mississippi Supreme Court in *Curry v. Turner*, 832 So.2d 508 (Miss. 2002). In *Curry*, the Court examined the language of the two statutes and specifically the wrongful death statute's requirement that there be only one suit for recovery. The Court conceived a scenario where the savings clause for minors would allow plaintiffs of majority age to file suit within the statute of limitations and another group of plaintiffs under the protection of the savings clause for minors to file suit after their disability was removed. *Id.* At 516. Such a scenario would be in opposition with the "one suit" requirement of the wrongful death statute.

The Court attempted to reconcile the two statutes in its analysis and further stated:

> The wrongful death statute also provides that a suit can be brought in the name of the personal representative of the deceased on behalf of all, not just persons of majority age. All parties concerned are allowed to join this suit. The wrongful death statute assumes the minor children of a deceased will be represented by the deceased's personal representative or represented separately. **They would still be required to join in the single action for damage** and allowed to share in any award gained by

another beneficiary.

Id. (emphasis added). While expressing that the two statutes are "at irreconcilable odds with one another where there exists a person qualified under the wrongful death statute to bring suit" the Court held that where such a qualified person exists, the savings clause for minors would not apply to the wrongful death action and the applicable statute of limitations would not be tolled. "A common sense reading of the wrongful death statute indicates the statute of limitations runs against both the personal representative of the deceased and the deceased's children." *Id.* at 517. Said another way, "[t]he existence of a person qualified to sue on behalf of all negates the need for a savings." *Anderson v. R & D Foods, Inc.*, 913 So.2d 394, 399 (Miss.App. 2005).

In the instant matter, at the time of Lisa Pringle's death there was a qualified person to bring suit on behalf of the minor child, namely the Plaintiff. Evidence of his status as a person existing and qualified to bring suit under the wrongful death statute is his commencement of this action. See *Id.* The Plaintiff argues that he was not married to the Plaintiff's mother at the time of her death, having been divorced from the mother in March of 1999. As such, he was not entitled to bring this lawsuit on behalf of the decedent's surviving minor child and the savings clause for minors would apply and protect the Plaintiff in this case. Again, the Plaintiff is simply mistaken in his interpretation of the law in Mississippi. There is no requirement that the personal representative of the minor child be married to the decedent at the time of death. As the natural father of the decedent's surviving minor child, he would have standing to bring this lawsuit on behalf of his daughter as evidenced by his filing of the lawsuit. In accordance with the wrongful death statute, the savings clause for minors, and the holding by the Mississippi Supreme Court in *Curry*, the savings clause for minors is inapplicable to this matter and Plaintiff's argument on this issue must fail.

III. THIS COURT SHOULD AFFIRM THE TRIAL COURT'S DISMISSAL OF PLAINTIFF'S COMPLAINT FOR ALL THE REASONS STATED HEREIN. HOWEVER, SHOULD THIS COURT REVERSE THE TRIAL COURT'S DISMISSAL, THE CASE SHOULD BE REMANDED TO THE CIRCUIT COURT OF RANKIN COUNTY TO PROCEED UNDER THE GUIDELINES OF THE MISSISSIPPI MEDICAL MALPRACTICE TORT REFORM ACT

Plaintiff argues that applying the savings statute to the original case requires that this action be resumed in Madison County, along with the opportunity for the Plaintiff to pursue her wrongful death action for economic and non-economic damages as if the case were timely and properly filed prior to the imposition of the Mississippi Medical Malpractice Tort Reform Act. Plaintiff does not rely on any case cited by the Mississippi Supreme Court or the Mississippi Court of Appeals in support of his position, rather he relies on a case filed in Ohio and a case filed in Oklahoma to bolster his argument. Not only is Plaintiff's argument disingenuous, it ignores this Honorable Court's prior ruling on February 8, 2007 in *Scott Pringle, as next friend and legal guardian of S.W. Pringle, a minor, v. James J. Kramer, M.D., Kramhearst Behavioral Institute, LLC, and Brentwood Behavioral Healthcare, LLC,* Supreme Court Case #2005-CA-01594-SCT, holding that Plaintiff's first-filed Madison County Complaint was filed in violation of *Miss. Code Ann.* § 15-1-36(15). If this Honorable Court reversed the lower court's dismissal of the fourth-filed Rankin County case, it should order this case back to the Circuit Court of Rankin County to be governed by all aspects of the Mississippi Medical Malpractice Tort Reform Act. This holding would be consistent with this Honorable Court's prior ruling stated above.

CONCLUSION

Simply put, Plaintiff has failed to come forward with any evidence that the Complaint he filed on February 7, 2008 for the death of Lisa Pringle on February 28, 2003 is timely. The dismissal of the original action by the Circuit Court of Madison County on August 3, 2005, was not a dismissal as a "matter of form" and therefore the savings statute found in *Miss. Code Ann.* §15-1-69 is not

applicable. Furthermore, for the reasons stated above the savings clause for minors statute found in *Miss. Code Ann.* § 15-1-59 is also not applicable. As such, Plaintiff's filing of the current lawsuit is time barred and the Trial Court's dismissal was proper and should be affirmed.

Respectfully submitted, this the 14th day of August, 2009.

BRENTWOOD BEHAVIORAL HEALTHCARE, A LOUISIANA LIMITED LIABILITY COMPANY, DEFENDANT

BY: _____

DAVID LEE GLADDEN, JR., ONE OF COUNSEL OF RECORD FOR SAID DEFENDANT

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CERTIFICATE OF SERVICE

I, David Lee Gladden, Jr., one of the counsel of record for Defendant, **BRENTWOOD BEHAVIORAL HEALTHCARE, A LOUISIANA LIMITED LIABILITY COMPANY, (INCORRECTLY NAMED BRENTWOOD BEHAVIORAL HEALTHCARE, LLC),** do hereby certify that I have this date caused to be delivered, **via United States Mail, postage prepaid,** a true and correct copy of the above and foregoing Brief of Appellee, Brentwood Behavioral Healthcare, LLC to the following:

Honorable Samac S. Richardson
Rankin County Circuit Court Judge
Post Office Box 1885
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This the 14th day of August, 2009.

DAVID LEE GLADDEN, JR.