IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI
NO. 2010-CA-01676

FRANKLIN WINFIELD **APPELLANT**

V.

BRANDON HMA, INC. et al. **APPELLEES**

I. CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record for the Appellee, S. Blair Faulkner, M.D., 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 Court of Appeals may evaluate possible disqualification or recusal.

1. Franklin Winfield, Appellant;

2. Jerry L. Mills, John P. Scanlon, and Carolyn B. Mills, with the law firm of Pyle, Mills, Dye & Pittman, counsel for Appellant;

3. S. Blair Faulkner, M.D., Appellee;

4. Chris J. Walker and John L. Hinkle, IV, with the law firm of Markow Walker, P.A., counsel for Appellee, S. Blair Faulkner, M.D.;

5. Norwood Smith, M.D., Appellee;

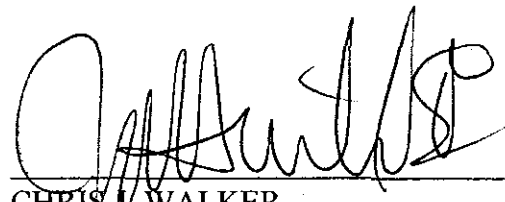
6. Whitman B. Johnson, III, and Eric R. Price, with the law firm of Currie Johnson Griffin Gaines & Myers, P.A., counsel for Appellee, Norwood Smith, M.D.;

7. Health Management Associates, Inc., Appellee;

8. Brandon, HMA, Inc., Appellee;

9. Kim Bishop, R.N., Appellee;

10. Stephen P. Kruger and T.L. "Smith" Boykin, III, with the law firm of Page, Kruger & Holland, P.A., counsel for Appellees, Health Management Associates, Inc.; Brandon HMA, Inc.; and Kim Bishop, R.N.



CHRIS J. WALKER
JOHN L. HINKLE, IV
Attorneys of Record for Appellee,
S. Blair Faulkner, M.D.

II. TABLE OF CONTENTS

III. TABLE OF AUTHORITIES

CASES

STATUTES

IV. STATEMENT OF THE CASE

On April 10, 2003, Dr. Faulkner performed a surgical procedure to remove a catheter utilized for chemotherapy from Winfield's chest (**R., AT 305**). Winfield was administered local anesthesia prior to surgery (**R., AT 489**). No sedation medications were administered by Dr. Faulkner or any nurse which would have affected Winfield's mental status, ability to listen, understand, or otherwise communicate at the time of the removal procedure **(R., AT 489**). During the course of the procedure, it was discovered that a piece of the catheter had fractured off inside Winfield's chest (**R., at 489**). The retained piece of the catheter was discussed with Dr. Norwood Smith, an interventional radiologist, and it was felt that the catheter was similar to a pacemaker lead and likely would not lead to any problems (**R., AT 490**). On that very day, April 10, 2003, Dr. Faulkner discussed the retained catheter piece with Winfield. (**R., AT 341, 490**).

Again, on that same day, April 10, 2003, another medical provider, Nurse Bishop, also discussed the retained catheter piece with Winfield who acknowledged that he understood and confirmed agreement with the decision to let the catheter piece remain (**R., AT 343**).

Several years later, Winfield alleges that he began having health problems including severe chest pain, shortness of breath, nausea and vomiting (**R., AT 306**). During an admission to Central Mississippi Medical Center ("CMMC") in January 2007, he discussed the retained catheter piece with physicians at CMMC and was told that the catheter was not the source of his problems (**R., AT 348, 361**). In February 2007, Winfield was seen at the University of Mississippi Medical Center ("UMC"), and Dr. Banker determined that the catheter piece could be a potential problem in the future and removed it (**R., AT 395-396**).

On January 29, 2008, almost five (5) years after the initial surgery, Winfield sent a Notice

of Claim letter to Dr. Faulkner (**R., AT 41**). On January 16, 2009, Winfield filed suit against Dr. Faulkner, along with Crossgates River Oaks Hospital f/d/b/a Rankin Medical Center; Health Management Associates, Inc.; Norwood Smith, M.D.; and Kim Bishop, R.N. (**R., AT 18-30**). On May 4, 2009, Winfield filed an Amended Complaint (**R., AT 150-63**). On February 8, 2010, Winfield filed a Motion for Partial Summary Judgment (**R., AT 258-269**). On February 25, 2010, the trial court entered an Agreed Order Allowing Limited Discovery on Statute of Limitations (**R., AT 283-85**). On April 20, 2010, Dr. Smith filed a Cross Motion for Summary Judgment (**R., AT 292-332**). Dr. Faulkner joined in Dr. Smith's Motion (**R., AT 333-34**). On April 27, 2010, Health Management Associates, Inc.; Brandon HMA, Inc.; and Kim Bishop, R.N. filed their Cross Motion for Summary Judgment (**R., AT 335-67**). Their Motion was also joined in by Dr. Faulkner (**R., AT 368-69**). On September 13, 2010, the trial court entered its "Opinion and Order" granting summary judgment on behalf of Dr. Faulkner (**R., AT 501-504**).

V. SUMMARY OF THE ARGUMENT

Winfield underwent removal of a catheter utilized for chemotherapy on April 10, 2003. During the course of the port removal performed by Dr. Faulkner, a piece of the catheter port broke off inside Winfield's chest. After a discussion between Dr. Smith and Dr. Faulker, it was felt that leaving the catheter piece in place was not likely to result in any problems for Winfield. The medical records from April 10, 2003, reflect that this recommendation was discussed with Winfield by both Dr. Faulkner and Nurse Bishop and accepted by Winfield. The fact that the medical records reflect these conversations is indisputable, and Winfield has provided no evidence whatsoever that the medical records were falsified or altered in any way. Winfield served a Notice of Claim on Dr. Faulkner on January 29, 2008, almost five (5) years after the procedure at issue.

In order to avoid the unequivocal expiration of the statute of limitations provided by MISS. CODE ANN. §15-1-36, Winfield argues that the "discovery rule" applies. Despite the documented conversations reflected in the medical records and the affidavit provided by Dr. Faulkner, Winfield contends that he never had a conversation with either Dr. Faulker or Nurse Bishop on April 10, 2003. Winfield maintains this stance despite his acknowledgement that virtually all of the information contained in the medical records of April 10, 2003 is accurate (save for the notations regarding conversations about the catheter piece). He maintains that he did not have these conversations despite the fact that he recalls virtually nothing about the events of April 10, 2003 (again, save for the fact that the conversations did not occur).

MISS CODE ANN. §15-1-36 provides that the two (2) year statute of limitations in medical cases runs from the date on which the alleged act, omission or neglect shall or with reasonable diligence might have been first known or discovered. Further, in regard to foreign objects,

§15-1-36(2)(a) provides that the statute of limitations begins to run at the time at which the foreign object is, or with reasonable diligence should have been, first known or discovered to be in the patient's body.

Winfield attempts to create a fact issue by contending that he did not have the conversations that are clearly documented in the medical records. However, his specious position is so blatantly contradicted by the record that no reasonable jury could believe it, and this version should be disregarded for purposes of ruling on the motion for summary judgment. As the record and the affidavit of Dr. Faulker clearly reflect that Winfield was advised of the presence of the retained catheter piece on April 10, 2003, he failed to timely pursue his claim against Dr. Faulker, and his claim is now barred by the applicable statute of limitations.

VI. ARGUMENT

A. STANDARD OF REVIEW

The Mississippi Supreme Court employs a de novo standard of review to a grant of summary judgment by the lower court. ***Short v. Columbus Rubber & Gasket Co.***, 535 So. 2d 61, 63 (Miss. 1988). In employing a de novo standard of review, the Court considers all the evidentiary matters presented to the lower court, admissions in pleadings, answers to interrogatories, depositions, affidavits, etc. ***Aetna Casualty & Sur. Co. v. Berry***, 669 So. 2d 56, 70 (Miss. 1996). Evidentiary matters are observed in a light most favorable to the nonmoving party. ***Palmer v. Biloxi Reg'l Med. Ctr., Inc.***, 564 So. 2d 1346, 1354 (Miss. 1990). When any triable issues of fact exist, this Court will reverse the lower court's grant of summary judgment. Likewise, when there is an absence of any triable issues of fact, the lower court's grant of summary judgment will be affirmed. ***Mid-Delta Home Health, Inc. v. Miss. Ass'n for Home Care***, 822 So. 2d 336, 339-40 (Miss. Ct. App. 2002).

The Mississippi Court of Appeals has also stated that once the party moving for summary judgment has shown an absence of a genuine issue of material fact, the "burden of rebuttal falls upon the [nonmoving] party to produce specific facts showing that there is a genuine material issue for trial. The [nonmoving] party's claim must be supported by more than a mere scintilla of colorable evidence; it must be evidence upon which a fair-minded jury could return a favorable verdict. Bare assertions are not enough to avoid summary judgment, and the nonmovant may not rest upon the allegations in her pleadings." ***Lott v. Harris D. Purvis & BRJ, Inc.***, 2 So. 3d 789, 792 (Miss. Ct. App. 2009).

Finally, the Mississippi Supreme Court, in ***Duckworth v. Warren***, 10 So. 3d 433, 438 (Miss. 2009), stated that "[w]hen opposing parties tell two different stories, one of which is so

blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment" (citing ***Scott v. Harris***, 550 U.S. 372, 380-81 (2007)).

B. THE "DISCOVERY RULE"

There is no dispute among the parties that the applicable statute of limitations in this case is MISS. CODE ANN. §15-1-36. MISS CODE ANN. §15-1-36(2) provides:

> For any claim accruing on or after July 1, 1998, and except as otherwise provided in this section, no claim in tort may be brought against a licensed physician, osteopath, dentist, hospital, institution for the aged or infirm, nurse, pharmacist, podiatrist, optometrist or chiropractor for injuries or wrongful death arising out of the course of medical, surgical or other professional services unless it is filed within two (2) years from the date the alleged act, omission or neglect shall or with reasonable diligence might have been first known or discovered, and, except as described in paragraphs (a) and (b) of this subsection, in no event more than seven (7) years after the alleged act, omission or neglect occurred.

Additionally, as Winfield's claim involves a foreign object, MISS. CODE ANN. §15-1-36(2)(a) provides:

> In the event a foreign object introduced during a surgical or medical procedure has been left in a patient's body, the cause of action shall be deemed to have accrued at, and not before, the time at which the foreign object is, or with reasonable diligence should have been, first known or discovered to be in the patient's body.

There is no dispute that Winfield filed his claim outside of the enumerated two (2) year statute of limitations. However, Winfield, in an effort to revive his action, argues that the "discovery rule" applied to toll the running of the statute of limitations.

In examining MISS CODE ANN. §15-1-36(2), it provides that the statute of limitations runs two (2) years from the date that the alleged, act or omission was known or reasonably should have been discovered. While Winfield readily acknowledges that the "discovery rule" prevented

the statute of limitations from running **"until the act of neglect was first known or discovered"**, he goes on to state that he could not have known of the harm or damage caused by the fractured piece of the catheter port left inside his body (**R., AT 402**). As a result, Winfield argues that the statute of limitations was tolled until he discovered "the damage and injury to him" (**R., 402-403**).

However, the difference in the discovery of an injury versus the discovery of the alleged negligence are two very different things and have different implications on the running of the statute of limitations. This stark difference is clearly illustrated in the case of ***Sutherland v. Estate of Ritter***, 959 So. 2d 1004 (Miss. 2007).

In ***Sutherland***, the defendant prescribed Zyprexa to the plaintiff. ***Id.*** at 1005. The plaintiff alleged that he suffered side effects in the form of tardive dyskinesia syndrome, and the defendant was negligent in prescribing the drug to him. ***Id.*** at 1006. However, at the time of filing his complaint, the plaintiff was beyond the two (2) year statute of limitations. ***Id.*** at 1006-1007. The plaintiff alleged that his injury was latent, and the "discovery rule" should apply. ***Id.*** at 1007. The Court noted the confusion between the tolling provisions of §15-1-49 and §15-1-36. Whereas §15-1-49 focused on when the plaintiff discovered or should have discovered the "latent injury or disease", the discovery rule for medical negligence cases

> does not center on a latent injury, but rather on 'the date the alleged, act, omission or neglect shall with reasonable diligence might have been first known or discovered.' Thus, in medical negligence cases, we must focus our inquiry on when a plaintiff, exercising reasonable diligence, should have first discovered the negligence, rather than the injury ... although a hidden or unseen injury might very well serve to trigger the discovery rule and toll the statute of limitations, it is not the because the injury itself is hidden or unknown, but rather because the negligence which caused the injury is unknown.

Id. at 1008.

Additionally, in ***Jackson Clinic for Women, P.A. v. Henley***, 965 So. 2d 643, 644 (Miss. 2007), the plaintiff was admitted to the clinic of the defendant complaining of abdominal pain during her pregnancy. She was sent home. ***Id.*** On the same day, she was admitted to the hospital due to back pain. ***Id.*** The following day, it was discovered that her baby had died in the womb due to sepsis. ***Id.*** Additionally, the plaintiff was diagnosed with mid-gut volvulus and had ninety percent of her small intestine removed. ***Id.*** While in the hospital, the plaintiff discussed with her sister, a physician, that something had been wrong. ***Id.*** Subsequently, the plaintiff retained an attorney, who, after consultation with expert, determined that no negligence had occurred. ***Id.*** at 645-46. The plaintiff eventually consulted with another attorney who ultimately filed suit outside of the two year statute of limitations. ***Id.*** at 646-47. The plaintiff alleged that the discovery rule applied because she did not find out that negligent conduct had occurred until she was seen at the Mayo Clinic almost two years after the injury. ***Id.*** at 649. The Court, following ***Sutherland***, found that the plaintiff was aware that "some type of negligence" had occurred while she was in the hospital when she talked with her sister, the physician. ***Id.*** at 650. As such, the statute of limitations began to run on that date, and her claim was barred by the applicable two year statute of limitations. ***Id.***

As illustrated by the above cases, the focus in medical malpractice cases is not on the injury itself; rather, the focus is on when the negligent act was or should have been discovered.

Additionally, since we are dealing with a foreign object, we must also examine the specific language of MISS. CODE ANN. §15-1-36(2)(a). §15-1-36(2)(a) provides that Winfield's cause of action would have accrued at the time at which the retained catheter piece "with reasonable diligence should have been, first known or discovered to be in the patient's body." Nowhere in the language of §15-1-36(2)(a) does it articulate anything about knowledge of an

"injury" being necessary for the statute to run. Rather, the plain language of statute specifically provides that all that is necessary for the statute of limitations to begin running is that Winfield was aware of the presence of the foreign object in his body.

The only case Winfield cites regarding the analysis of the "discovery rule", as it applies to a foreign body, was ***Williams v. Kilgore***, 618 So. 2d 51 (Miss. 1992). Winfield contends that ***Kilgore*** stands for the proposition that a plaintiff must (1) discover that the foreign object had been left in her body, and (2) was causing her pain and infections (**WINFIELD'S BRIEF, AT 16**). However, this is an incorrect reading of ***Kilgore***.

In ***Kilgore***, the Court noted that while the plaintiff had been notified that a needle broke off in the course of her biopsy procedure, **she was reassured that it had been removed during surgery**. ***Id.*** at 52. Specifically, the Court noted that the plaintiff "was not aware that the negligent act complained of - - failure to remove the offending object - - had even occurred." ***Id.*** at 55. Of further significance, the Court acknowledged that "[t]here was **no** evidence that any of her physicians had knowledge of the negligent act prior to 1972, when the presence of the needle was first indicated in her medical records, **much less that this information was ever communicated to her**" (emphasis added). ***Id.***

The facts of ***Kilgore*** stand in stark contrast to the case at bar. While the plaintiff in ***Kilgore*** was reassured by her physicians that the foreign body had been removed, it is abundantly clear from the medical records that the retained catheter piece was discussed with Winfield at the time of his hospitalization on April 10, 2003. In fact, the "Report of Operation" dated April 10, 2003 explicitly states "The residual piece was discussed with the patient" (**R., AT 301**). Further, the "Nurses Note" dated April 10, 2003 and signed by Nurse Bishop expressly

states that it was explained to Winfield that a piece of the catheter port had fractured off, and it was determined that the piece should be left in place (**R., AT 303**). Additionally, the records state that Winfield understood, confirmed agreement and consented to the decision that the catheter fragment remain (**R., AT 303**). Finally, this conversation between Dr. Faulkner and Winfield was again confirmed by the affidavit of Dr. Faulkner (**R., AT 490**).

Interestingly, while acknowledging the notations regarding the conversations contained in the medical records, the Plaintiff asserts that he had no recollection whatsoever that this information was ever actually conveyed to him (**R., AT 307**). However, Winfield's inability to recall details from the day of surgery are not limited to the discussion of the catheter piece. In fact, Winfield seemingly could not recall anything at all about the events of April 10, 2003.

Q: Do you recall any conversations with your mother at the hospital before the surgery?

A: Before the surgery?

Q: Yes.

A: No.

Q: Do you recall any conversations with your mother after the surgery?

A: Not really, no.

Q: Do you recall calling any family or friends before the surgery to let them know you were - - or having any conversations with any family or friends before the surgery?

A: I don't recall any.

Q: Do you recall any conversations with family or friends after the surgery?

A: No, I don't recall any.

****

Q: Do you remember talking with Dr. Faulkner before surgery?

A: No, I don't remember taking to him.

Q: Do you remember talking to the nurse before surgery?

A: No.

Q: Do you remember talking with Dr. Faulker after the surgery?

A: No.

Q: Do you remember talking to the nurse after the surgery?

A: No.

Q: Do you remember talking to anybody from the hospital after the surgery?

A: Not that I can recall.

(R., AT 346, 312-13).

The lack of recall is particularly puzzling since Dr. Faulkner specifically stated in his Affidavit that "[t]here were no sedation medications administered by me or any nurse to Franklin B. Winfield which would have affected his mental status or his ability to listen, understand and otherwise communicate at the time of the port removal procedure" **(R., AT 453)**.

Further, Winfield readily acknowledged in his deposition that essentially everything else was correct in the medical records, save for the conversations with Dr. Faulkner and Nurse Bishop. He agreed that he had a 100% good understanding of the pre-procedure instructions, that he had nothing to eat since midnight, that he was not in pain before the procedure, that he was in the room with his family right before the procedure, that he had a consent form signed, that his port site was not bothersome, that he was laid on his back for the procedure, that the head of the

bed was down, that he was covered with blankets, and that Dr. Faulkner was at his bedside (**R. AT 325-29**).

However, Winfield specifically admitted in his deposition that just because he did not recall any conversations about the catheter piece did not mean that the conversations did not happen.

Q: I'm saying that the part where they said they told me - -

A: Is not correct?

Q: Just because you don't recall it doesn't mean they didn't do it does it?

A: It doesn't mean they did it either.

Q: No, sir. But would you answer my question? Just because you don't recall it doesn't mean that they didn't tell you that, does it?

A: No, it doesn't mean that.

Q: And you'd agree with me, sir, that those records were made on the day that this procedure was done, wouldn't you?

A: Yes.

(**R., AT 356**). Further, he later stated that while he did not recall the conversations happening, he was "pretty sure" that they did not happen.

Q: Of the catheter. He dictated that day, "The residual piece was discussed with the patient." My question to you is, are you sitting here under oath telling us that that is not true?

A: I don't recall him discussing that the piece broke off in me.

Q: All right. You don't recall it, but you're not saying it didn't happen, are you?

A: I'm pretty sure that it didn't happen.

(**R., AT 319**). Despite the admission that the conversations could have happened, and despite the

admission that he may just not have recalled the conversations, Winfield later revised his testimony to indicate that the notations in the record were untrue (**R., AT 320**).

All of Winfield's confused and convoluted testimony stands in contrast to the fact that the records reflect that Winfield was conscious and alert and agreed that virtually everything in the record was accurate. Despite all of these uncontroverted facts, he denied any recollection of being told both by Dr. Faulkner and Nurse Bishop that he had a retained piece of the catheter. Winfield contends that because he said he was not told about the retained catheter piece, and Dr. Faulkner contends he was, this is enough of an issue of fact sufficient to warrant denial of summary judgment (**WINFIELD'S BRIEF, AT 15**).

However, in order for summary judgment to have been inappropriate, it is not enough that there just be a issue of fact present. Rather, there must be a **genuine** issue of material fact. The Mississippi Court of Appeals has stated "To determine if an issue of material fact is genuine, we must then decide whether 'the evidence is such that a reasonable jury could return a verdict for the nonmoving party.'" ***Murphree v. Federal Ins. Co.***, 707 So. 2d 523, 529 (Miss. 1997). While Winfield is generally correct that two (2) different versions of events can be sufficient to create a genuine issue of material fact, this is not always the case. Specifically, the Mississippi Supreme Court, in ***Duckworth v. Warren***, 10 So. 3d 433, 438 (Miss. 2009), stated that "[w]hen opposing parties tell two different stories, one of which is so blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment" (citing ***Scott v. Harris***, 550 U.S. 372, 380-81 (2007)). **See also *Taylor v. Town of Dekalb***, 2009 U.S. Dist. LEXIS 51743 at *10-11 (S.D. Miss. 2009).

While it does not appear that the Mississippi Supreme Court has spoken directly to this

particular scenario, other jurisdictions have held that summary judgment is appropriate where the medical records directly contradict a plaintiff's allegations. **See *White v. State of Georgia***, 380 Fed. Appx. 796, 798 (11th Cir. 2010); ***Anderson v. McCaleb***, 2011 U.S. Dist. LEXIS 14878 at *23 (E.D. TX February 15, 2011); ***Smith v. United States***, 2010 U.S. Dist. LEXIS 89391 at *11 (S.D. TX August 30, 2010); ***Cameron v. Rantz***, 2010 U.S. Dist. LEXIS 59878 at *6 (D. MT June 16, 2010); ***Brown v. Jeanty***, 2009 U.S. Dist. LEXIS 126155 at *23 (S.D. N.Y. July 23, 2009); ***Ayala v. C.M.S.***, 2008 U.S. Dist LEXIS 50692 at *5 (S.D. N.J. July 2, 2008); ***Valenzuela v. Smith***, U.S. Dist. LEXIS 6078 at *11 (E.D. Cal. February 16, 2006).

In the case at bar, Winfield attempts to create a fact issue regarding whether he was told about the retained catheter piece on April 10, 2003. However, his recollection, or lack thereof, is so overwhelmingly contradicted by the record that it fails to create a genuine issue of material fact for a jury. This contradiction was noted by the trial judge in his "Order and Opinion". While the trial court acknowledged that Winfield testified that he was not told about the catheter piece (**R., AT 502**), the "Report of Operation stated that the "residual piece was discussed with patient ... it was felt the risk was close to 0 and the catheter would not be retrievable by radiographic means and it should be left in place" (**R., AT 503**). Further, the trial court noted that the nurse's notes reflected the conversation between Dr. Faulkner and Winfield as well, and that Winfield understood and confirmed his agreement verbally (**R., AT 503**). Finally, the trial court noted that Dr. Faulkner's affidavit also confirmed that the catheter piece was discussed with Winfield on April 10, 2003 (**R., AT 503**). The trial court concluded that, based on the "Report of Operation", the nurse's notes, and the affidavit of Dr. Faulkner, Winfield was placed on constructive notice since the date of the initial procedure, April 10, 2003, and the statute of limitations began to run on said date (**R., AT 503**).

Clearly, the trial court rejected Winfield's implausible version of events based on the clearly documented medical records that were further supported by the affidavit of Dr. Faulkner. Given that the record reflects that Winfield was told about the catheter piece on April 10, 2003, he was placed on notice of the retained foreign object, and the statute of limitations began to run on said date. As such, the statute of limitations had run when he ultimately served his Notice of Claim letter and filed his subsequent Complaint against Dr. Faulkner.

VII. CONCLUSION

Winfield has failed to establish any reason for reversal of the trial court's ruling in favor of Dr. Faulker. The medical records are unequivocal that Winfield was notified of the retained catheter piece at the time of his surgery, April 10, 2003. This is further supported by the affidavit of Dr. Faulker. Other than the unsubstantiated and frankly implausible testimony of Winfield, there is no reason to dispute the validity of the medical records. Indeed, Winfield has offered no proof the records are wrong. Given that Winfield's version of events is so blatantly contradicted by the record that no reasonable jury could believe it, the Court should disregard that version of the facts for purposes of ruling on a motion for summary judgment. Given that the evidence clearly reflects that Winfield was advised of the retention of the catheter piece, the statute of limitations began to run on April 10, 2003. At the time of the filing of his action, the statute of limitations had long since run as to Winfield's claims against Dr. Faulkner. Thus, the trial court's ruling should be affirmed.

RESPECTFULLY SUBMITTED, this the 31st day of March, 2011.

S. BLAIR FAULKNER, M.D.

BY: _____
CHRIS J. WALKER
JOHN L. HINKLE, IV

OF COUNSEL:

CHRIS J. WALKER - MSB[redacted]
Markow Walker, P.A.
Post Office Box 13669
Jackson, MS 39236-3669
Telephone: (601) 853-1911
email: cwalker@markowwalker.com

JOHN L. HINKLE, IV - MSB#[redacted]
MARKOW WALKER, P.A.
265 N. LAMAR BLVD., STE. I
Post Office Drawer 50
Oxford, Mississippi 38655
Telephone: (662) 234-9899
email: jhinkle@markowwalker.com

CERTIFICATE OF SERVICE

I do hereby certify that I have this day mailed via United States Mail, postage prepaid, a true and correct copy of the above and foregoing document to:

Jerry L. Mills, Esq.
Carolyn B. Mills, Esq.
John P. Scanlon, Esq.
Pyle, Mills, Dye & Pittman
800 Avery Blvd., N., Ste. 101
Ridgeland, MS 39157
Attorneys for Appellant, Franklin Winfield

Stephen P. Kruger, Esq.
Smith Boykin, Esq.
Page, Kruger & Holland, P.A.
10 Canebrake Blvd., Ste. 200
P.O. Box 1163
Jackson, MS 39215-1163
Counsel for Appellees,
Brandon HMA Inc.; Health Management Associates, Inc.;
Kim Bishop, R.N.

Whitman B. Johnson, III, Esq.
Eric R. Price, Esq.
Currie Johnson Griffin Gaines & Myers
P.O. Box 750
Jackson, MS 39205-0750
Counsel for Appellee, Norwood Smith, M.D.

Honorable William Chapman
Rankin County Circuit Court Judge
P.O. Box 1885
Brandon, MS 39043

This the 31st day of March, 2011.

CHRIS J. WALKER
JOHN L. HINKLE, IV