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2011-CP-00093 E

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 Judges of the Court of Appeals may evaluate possible disqualification or recusal.

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Respectfully submitted,



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STATEMENT OF THE ISSUE

Whether the trial court erred when it entered its Final Judgment of Dismissal dated December 28, 2010.

STATEMENT OF THE CASE

This case arises from a claim for personal injuries filed by the Plaintiff on May 26, 2010. In his lawsuit, Plaintiff, a former railroad employee, was seeking damages pursuant to the Federal Employers Liability Act (FELA), 45 U.S.C. § 51 et seq. The trial court dismissed this case, pursuant to its Final Judgment of Dismissal, entered December 28, 2010. This Final Judgment of Dismissal was agreed to by the attorneys representing the parties. Plaintiff filed his Notice of Appeal on January 18, 2011.

FACTS

The case at bar was dismissed, on December 28, 2010, by Final Judgment of Dismissal. This Final Judgment of Dismissal was agreed to by the attorneys representing both parties. On January 18, 2011, Plaintiff, appearing *pro se*¹, appealed this dismissal. The issue raised by the Plaintiff on appeal is that no “stipulation and order of Dismissal with prejudice” was entered in the trial court. Plaintiff is wrong. The trial court, on December 18, 2010, dismissed the case *sub judice*.

SUMMARY OF THE ARGUMENT

The case at bar was dismissed, with prejudice, on December 28, 2010. Plaintiff has not appealed the merits of this dismissal. In the alternative, there is nothing in the record to support Plaintiff’s claim that the trial court abused its discretion when it entered its Final Judgment of Dismissal dated December 28, 2010.

¹Plaintiff has appeared *pro se* even though no order was entered regarding the withdrawal of his attorneys.

ARGUMENT

A. Standard of Review

The appellate court cannot review the Final Judgment of Dismissal entered by the trial court because Plaintiff did not appeal, on the merits, the trial court's issuance of this final judgment. *Palmer v. Grand Casinos of Mississippi, Inc.*, 744 So.2d 745 (Miss. 1999).

In the alternative, the Plaintiff claims the trial court abused its discretion.

B. There is No Evidence in the Record to Support Plaintiff's Contention that the Trial Court Abused its Discretion

Plaintiff, in his brief, asserts the cost of the record for appeal is not true and correct. *Brief of Appellant* at 4. The Defendant is unclear as to the intent of this issue, and it has no relevance to the claim that the trial court abused its discretion.

Plaintiff next contends that after a lawsuit is filed, the parties must file a stipulation of dismissal with prejudice in the Circuit Court of Jackson County, Mississippi. *Brief of Appellant* at 4. In the case at bar, the trial court, on December 28, 2010, entered its Final Judgment of Dismissal. *R.* at 41 [RE 3]. This Final Judgment of Dismissal ended this case in the trial court. Because the merits of this Final Judgment of Dismissal were not challenged on appeal, this Court may not review this issue. *Palmer v. Grand Casinos of Mississippi, Inc.*, 744 So.2d at 745 - 746 (Miss. 1999).

In the alternative, the Plaintiff appears to complain that the trial court abused its discretion. The record on appeal contains no evidence that the trial court abused its

discretion when it dismissed the case at bar. The only relevant pleading the record contains as to this issue is the Final Judgment of Dismissal. *R.* at 41 [RE 3]. Further, the Final Judgment of Dismissal was agreed to by the attorneys representing both parties. *R.* at 41[RE 3].

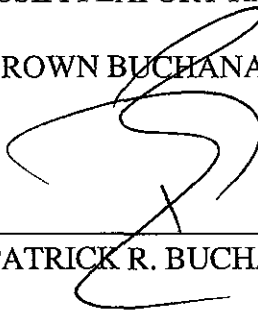
CONCLUSION

The trial court properly dismissed the case at bar. The Plaintiff did not appeal any issue related to the Final Judgment of Dismissal. Further, there is nothing in the record to demonstrate that the trial court abused its discretion when it entered its Final Judgment of Dismissal. Therefore, this Court should affirm the Final Judgment of Dismissal of the trial court.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

I, Patrick R. Buchanan, do hereby certify that I have this day mailed, United States mail, first class postage prepaid, a true and correct copy of the above and foregoing Brief to the following:

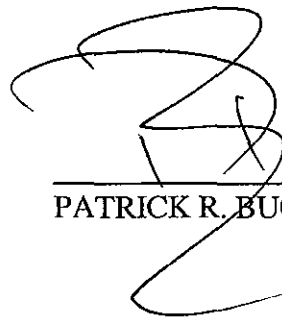
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This the 7th day of July, 2011.

A handwritten signature in black ink, appearing to be 'P. Buchanan', written over a horizontal line.

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