

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

**RONALD H. BRITT, on behalf of
all wrongful death beneficiaries of
Opal A. Britt**

PLAINTIFF

vs.

CIVIL ACTION No.: 3:19-CV-90-HTW-LRA

**MERIT HEALTH CENTRAL also
known as Central Mississippi Medical
Center; AMERICAN MEDICAL
RESPONSE (AMR); UNKNOWN
INDEPENDENT PHARMACY
CONTRACTOR OF WILLOW CREEK
RETIREMENT CENTER; and
DR. TODD FULCHER**

DEFENDANTS

ORDER

BEFORE THIS COURT is Defendant Dr. Todd Fulcher's Renewed Motion to Dismiss, or, in the Alternative, Motion for Summary Judgment [**Docket no. 20**]. By his motion, Dr. Fulcher asks this court once again to dismiss him from this lawsuit due to plaintiff's failure to properly serve process upon him. For cause, Dr. Fulcher says that this court had denied his prior motion to dismiss on the same ground but allowed plaintiff a limited discovery period to ascertain any evidentiary basis for his assertion that he had properly served Dr. Fulcher. According to Dr. Fulcher, plaintiff never conducted such discovery.

Plaintiff responded in opposition, almost three (3) months beyond the date he was required to do so. Plaintiff, moreover, has failed to provide this court with any justification for his failure to respond to Dr. Fulcher's Renewed Motion to Dismiss on time. This court is not inclined to excuse such an extreme lapse.

When this court previously addressed this issue, it found that the parties had not submitted adequate evidentiary support for this court to grant a dismissal. Accordingly, this court had ordered

this lawsuit *sub judice* stayed for sixty (60) days to allow for limited discovery on the issue. The parties have not completed such discovery. Now, this court is in a curious position, the parties have not submitted additional evidentiary basis either in support or opposition.

This court, nonetheless, must address the merits of Dr. Fulcher's Renewed Motion to Dismiss [**Docket no. 20**].

This court finds that plaintiff acted dilatorily in his prosecution of this matter, as evidenced by his extremely late reply in opposition to plaintiff's renewed motion to dismiss. Accordingly, this court must accept Dr. Fulcher's affidavit as unopposed and, as a result, must find plaintiff failed to comply with MISS. CODE § 15-1-36(15)¹. This court, therefore, finds that Dr. Fulcher's Renewed Motion to Dismiss [**Docket no. 20**] should be granted.

IT IS, THEREFORE, ORDERED that Dr. Todd Fulcher's Renewed Motion to Dismiss, or, in the Alternative, Motion for Summary Judgment [Docket no. 20] is hereby GRANTED.

IT IS FURTHER ORDERED that Dr. Todd Fulcher is hereby DISMISSED from this action and the parties are to pay their own costs and attorney fees.

SO ORDERED AND ADJUDGED this the 31st day of August, 2020.

s/ HENRY T. WINGATE
UNITED STATES DISTRICT COURT JUDGE

¹ (15) No 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. No particular form of notice is required, but it shall notify the defendant of the legal basis of the claim and the type of loss sustained, including with specificity the nature of the injuries suffered. If the notice is served within sixty (60) days prior to the expiration of the applicable statute of limitations, the time for the commencement of the action shall be extended sixty (60) days from the service of the notice for said health care providers and others. This subsection shall not be applicable with respect to any defendant whose name is unknown to the plaintiff at the time of filing the complaint and who is identified therein by a fictitious name.
MISS. CODE. ANN. § 15-1-36 (West)