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IN THE
SUPREME COURT OF VIRGINIA
AT RICHMOND

RECORD NO. 030800



JOHN REX PHIPPS,

Appellant,

v.

CECILA RENE LIDDLE,

Appellee.

APPENDIX

Alan K. Caudell
P.O. Box 1367
Galax, Virginia 24333
(276)236-6106
(276)236-1546 (facsimile)
VSE # 26154
Counsel for Appellant

Ronald M. Ayers
John D. Eure
JOHNSON, AYERS &
MATTHEWS
P.O. Box 2200
Roanoke, Virginia 24009
(540)982-3666
Counsel for Appellee

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VIRGINIA: IN THE CIRCUIT COURT OF CARROLL COUNTY

JOHN REX PHIPPS

111 Sunset Drive
Galax, Virginia 24333

Plaintiff

vs.

CECILA RENE LIDDLE

226 Cranberry Road
Galax, Virginia 24333

Defendant

MOTION FOR JUDGMENT

Comes now the Plaintiff, John Rex Phipps, and moves for judgment against the Defendant, Cecila Rene Liddle, on the grounds and in the amount as hereinafter set forth:

I.

On the 4th day of May, 1998, Plaintiff, John Rex Phipps, was operating a vehicle, owned by him, in a lawful and proper manner in an easterly direction on U.S. Route 58 (Stuart Drive) near its intersection with Caldwell Street in the City of Galax, Carroll County, Virginia, and within the jurisdiction of this Court.

II.

At the time and place aforesaid, the Defendant was operating an automobile owned by her in an easterly direction on U.S. Route 58 (Stuart Drive) near its intersection with Caldwell Street in the City of Galax, Carroll County, Virginia, and within the jurisdiction of this Court.

III.

At that time and place, it was the duty of the Defendant to operate her vehicle with reasonable care and with due regard for others using the road, including Plaintiff.

IV.

Notwithstanding said duties, Defendant did then and there carelessly and recklessly operate her vehicle, in that she failed to slow down and stop in response to Plaintiff's braking and brake signal lights, instead causing her vehicle to collide with the rear of the vehicle in which Plaintiff was traveling with great force and violence, and knocking Plaintiff's vehicle into the vehicle in front of him. Defendant was negligent in that she

- (a) operated her vehicle at an excessive rate of speed under the existing circumstances and conditions;
- (b) followed Plaintiff's vehicle too closely;
- (c) failed to observe Plaintiff's signal and yield to it;
- (d) failed to keep a proper lookout;
- (e) failed to keep her vehicle under proper control; and
- (f) operated her vehicle in a reckless manner.

V.


As a direct and proximate result thereof, Plaintiff, John Rex Phipps, was caused to sustain serious and permanent injuries, has been prevented from transacting his business, has suffered and will continue to suffer great pain of body and mind; has sustained permanent disability, deformity, and loss of earning capacity; has incurred and will incur in the future hospital, doctors' bills and related bills in an effort to be cured of said injuries.

WHEREFORE, Plaintiff demands judgment against the Defendant for compensatory damages in the sum of FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00) and his costs in this behalf expended.

Respectfully submitted,

JOHN REX PHIPPS

By Counsel


_____, p.q.
Alan K. Caudell
P. O. Box 1367
Galax, Virginia 24333
276/236-6106
Fax: 276/238-1546

K. CAUDELL
. BOX 1367
41INGTON STREET
VA 24333-1367
NE: 276/236-6106
.E: 276/238-1546

VIRGINIA:

IN THE CIRCUIT COURT OF CARROLL COUNTY

JOHN REX PHIPPS,

Plaintiff

v.

CECILA RENE LIDDLE,

Defendant

RESPONSIVE PLEADING

Case No. CL02000098

MOTION TO QUASH

The defendant, Cecila Rene Liddle, appears specially by counsel solely for the purpose of filing this pleading in response to the plaintiff's motion for judgment and specifically this motion to quash the plaintiff's attempt to serve process on her. In support of her motion, the defendant states:

(1) The defendant presently resides at 216 Cranberry Road, Galax, Virginia and has lived in this residence for approximately 4-5 months.

(2) The plaintiff attempted to serve process on the defendant at the defendant's former address, 226 Cranberry Road, Galax, Virginia.

(3) The process which the plaintiff attempted to serve on the defendant was posted at 226 Cranberry Road, Galax, Virginia, which is not the defendant's residence or usual place of abode within the meaning of applicable law.

(4) Consequently, the plaintiff's attempted service on the defendant is not valid, proper, or effective under applicable law.

Based on the foregoing, the defendant respectfully requests that the Court enter an order granting her motion to quash, quashing the plaintiff's attempted service on her, and granting the defendant such other relief to which she may be entitled pursuant to her motion.

SPECIAL PLEA

Without waiving her aforesaid special appearance and motion to quash, and specifically reserving her right to rely upon the same, the defendant, Cecila Rene Liddle, comes by counsel and for her special plea in response to the plaintiff's motion for judgment states as follows:

(1) The personal injury claim asserted by the plaintiff in this action is identical to the personal injury claim asserted by the plaintiff in an earlier action against this defendant (Case No. CL00-51).

(2) By order of this Court entered on December 15, 2000, the plaintiff's motion for a nonsuit of the earlier action was granted, and that earlier action was dismissed without prejudice pursuant to Virginia Code § 8.01-380, as amended.

(3) The plaintiff has reasserted in this action, which was filed on August 15, 2002, the same personal injury claim which the plaintiff asserted against the defendant in the earlier action (Case No. CL00-51).

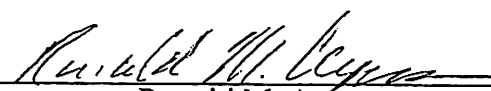
(4) The plaintiff has failed to file in a timely manner the present action, and this action and all claims asserted by the plaintiff against the defendant in this action are thus time-barred by the applicable period of limitations.

(5) The claims and causes of action asserted by the plaintiff in his motion for judgment are otherwise barred under applicable Virginia law.

Based on the foregoing, the defendant respectfully requests that this Court enter an order sustaining her special plea, dismissing with prejudice the plaintiff's action, claims and causes of action asserted against her, and granting the defendant such other relief to which she may be entitled pursuant to her special plea.

Respectfully,

CECILA RENE LIDDLE

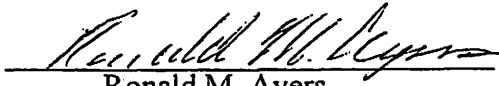
By: 
Ronald M. Ayers
Of Counsel

Johnson, Ayers & Matthews
P. O. Box 2200
Roanoke, Virginia 24009

Counsel for Defendant

CERTIFICATE

I, Ronald M. Ayers, hereby certify that a true copy of the foregoing Responsive Pleading was mailed or delivered to Mr. Alan K. Caudell, P. O. Box 1367, Galax, VA 24333, counsel of record for the plaintiff, this 22nd day of August, 2002.


Ronald M. Ayers

THE THIRTEENTH DAY OF JANUARY IN THE YEAR OF OUR LORD TWO THOUSAND AND THREE.

PRESIDING: HONORABLE DUANE E MINK, JUDGE

VIRGINIA:

IN THE CIRCUIT COURT OF CARROLL COUNTY

JOHN REX PHIPPS,

Plaintiff

v.

CECILA RENE LIDDLE,

Defendant

FINAL ORDER

Case No. CL 02000098

On October 24, 2002, the parties to this action appeared by counsel to present argument on the special plea of limitations filed by the defendant. Prior to the hearing, counsel for the parties filed memoranda in support of their respective positions, and at the hearing, each counsel presented argument. At the request of the Court, after the hearing, counsel for the parties filed additional memoranda, responding to specific questions asked by the Court and set forth in its November 7, 2002 letter to both counsel.

Having duly considered the parties' memoranda, authorities and argument, the Court is of the opinion and concludes that the defendant's special plea of limitations should be sustained. The Court has set forth this ruling and its reasons for the ruling in a letter to counsel dated December 5, 2002.

Based on the foregoing, the Court does hereby ADJUDGE and ORDER that:

- (1) The defendant's special plea of limitations shall be, and it hereby is, sustained;
- (2) This action, filed by the plaintiff on August 15, 2002, is time-barred;
- (3) The Court's letter opinion dated December 5, 2002 shall be, and it hereby is, incorporated in its entirety in this order by this reference;
- (4) This action shall be, and it hereby is, dismissed with prejudice; and
- (5) The Clerk shall strike this action from the active law docket of the Court.

7. 1007 067 PAGE 454
A TRUE COPY
CAROLYN H. HONEYCUTT, CLERK
By Melinda L. Schum Deputy Clerk
Carroll County Circuit Court

The Clerk of this Court is directed to furnish forthwith a certified copy of this final order to counsel of record for each party to this action.

Enter this 13th day of Jan., 2003, WEM

Duane E. Dink
Judge

Seen:

Ronald M. Ayers p.d.
Ronald M. Ayers
John D. Eure
Johnson, Ayers & Matthews
P. O. Box 2200
Roanoke, Virginia 24009
540-767-2000
540-982-1552(fax)

Seen and objected to for the reasons set forth in the memoranda filed with the Court on behalf of the plaintiff:

Alan K. Caudell p.q.
Alan K. Caudell
P. O. Box 1367
Galax, VA 24333

TWENTY-SEVENTH JUDICIAL CIRCUIT
OF VIRGINIA

DUANE E. MINK, JUDGE
MUNICIPAL BUILDING
619 SECOND STREET
RADFORD, VIRGINIA 24141
TELEPHONE (540) 731-3611
FACSIMILE (540) 731-5044



COMMONWEALTH OF VIRGINIA

CIRCUIT COURT FOR THE COUNTIES OF:
BLAND, CARROLL, FLOYD, GILES,
GRAYSON, MONTGOMERY, PULASKI AND WYTHE

CIRCUIT COURT FOR THE CITIES OF:
GALAX AND RADFORD

December 5, 2002

Mr. Alan K. Caudell
Attorney at Law
P. O. Box 1367
Galax, Virginia 24333

Mr. John D. Eure
Johnson, Ayers & Matthews
Attorneys at Law
Suite 300, First Campbell Square
210 First Street, S.W.
Roanoke, Virginia 24011-1606

Re: Phipps v. Liddle
File No. 2002-98 - Circuit Court of Carroll County

Gentlemen:

Please be advised that I have received and given due consideration to the memorandums filed in the above referenced case.

The only issue in the case is whether or not the current action filed on behalf of the plaintiff, John Rex Phipps, is barred by the statute of limitations.

There is no conflict in the facts in this case. The accident occurred on May 4, 1998. The original suit was filed on May 2, 2000, and was nonsuited pursuant to an order entered by the Circuit Court of Carroll County on December 15, 2000. The defendant appealed the matter to the Supreme Court and the trial court's order was affirmed by the Supreme Court of Virginia on March 1, 2002. The current action was recommenced on August 15, 2002.

After giving due consideration to your memorandums, plus the independent research

Mr. Alan K. Caudell
Mr. John D. Eure
Page 2
December 5, 2002

conducted by the undersigned, the Court is of the opinion that the defendant's position is well taken. Once the plaintiff was granted a voluntary nonsuit he had six months in which to refile his action pursuant to Section 8.01-229E, 3. The Court finds that the noting and granting of the appeal did not stay the running of the statute of limitations and it was incumbent upon plaintiff to reinstitute his action within the six month period following the entry of the order of nonsuit, even though the defendant chose to appeal the Court's ruling. This Court, nor the appellate court at any time stayed the effect of the Circuit Court nonsuit order of December 15, 2000.

Accordingly, the Court finds that the current action is barred by the statute of limitations and the Court sustains the defendant's special plea. Therefore, the current action shall be dismissed.

I request that Mr. Eure prepare an appropriate order and forward the same to Mr. Caudell for his endorsement and by him to the Court for entry.

I appreciate the time and effort each of you spent on the excellent memorandums which you furnished the Court.

With best regards.

Yours very truly,


Duane E. Mink

DEM:nc

**IN THE
SUPREME COURT OF VIRGINIA
AT RICHMOND**

RECORD NO. 030800

JOHN REX PHIPPS,

Appellant,

v.

CECILA RENE LIDDLE,

Appellee.

ASSIGNMENTS OF ERROR

The trial court erred in sustaining defendant's special plea of limitations and dismissing the motion for judgment because:

The timely filing of this action was governed by §8.01-229(E)(3). Pursuant to §8.01-229(E)(3), the filing of the first action tolled the statute of limitations. It remained tolled until six months after the first action was ended by the Supreme Court on March 1, 2002. Therefore, this action was timely filed and the plea of limitations should not have been sustained.

COMMONWEALTH OF VIRGINIA

MAY - 5 2000

46-0021-441

DW



NOTICE OF MOTION FOR JUDGMENT

Case No. CL00-51

Carroll County

Circuit Court

605 Pine Street, Hillsville, VA 24343
ADDRESS

TO:

Cecila Rene Liddle

226 Cranberry Road

Galax, VA 24333

You are hereby notified that unless within twenty-one (21) days after service of the notice of Motion for Judgment on you, response is made by filing in the clerk's office of this court a pleading in writing, in proper legal form, judgment may be entered against you by default.

Done in the name of the Commonwealth of Virginia.

May 2, 2000
DATE

Carolyn H. Honeycutt

Clerk

by Melinda G. Upchurch
DEPUTY CLERK

A TRUE COPY

CAROLYN H. HONEYCUTT, CLERK

By Melinda G. Upchurch Deputy Clerk
Carroll County Circuit Court

VIRGINIA: IN THE CIRCUIT COURT OF CARROLL COUNTY

JOHN REX PHIPPS
111 Sunset Drive
Galax, Virginia 24333

Plaintiff

vs.

CECILA RENE LIDDLE
226 Cranberry Road
Galax, Virginia 24333

Defendant

VALIDATE CASE PAPERS
RCPT : 00000003598
DATE : 05/02/00 TIME: 15:24
CASE : 035CL00000051-00
ACCT : PHIPPS, JOHN REX
AMT. : \$196.00

MOTION FOR JUDGMENT

Comes now the Plaintiff, John Rex Phipps, and moves for judgment against the Defendant, Cecila Rene Liddle, on the grounds and in the amount as hereinafter set forth:

I.

On the 4th day of May, 1998, Plaintiff, John Rex Phipps, was operating a vehicle, owned by him, in a lawful and proper manner in an easterly direction on U.S. Route 58 (Stuart Drive) near its intersection with Caldwell Street in the City of Galax, Carroll County, Virginia, and within the jurisdiction of this Court.

II.

At the time and place aforesaid, the Defendant was operating an automobile owned by her in an easterly direction on U.S. Route 58 (Stuart Drive) near its intersection with Caldwell Street in the City of Galax, Carroll County, Virginia, and within the jurisdiction of this Court.

III.

At that time and place, it was the duty of the Defendant to operate her vehicle with reasonable care and with due regard for others using the road, including Plaintiff.

A TRUE COPY

CAROLYN H. HONEYCUTT, CLERK

By Melinda L. Spivey Deputy Clerk
Carroll County Circuit Court

IV.

Notwithstanding said duties, Defendant did then and there carelessly and recklessly operate her vehicle, in that she failed to slow down and stop in response to Plaintiff's braking and brake signal lights, instead causing her vehicle to collide with the rear of the vehicle in which Plaintiff was travelling with great force and violence, and knocking Plaintiff's vehicle into the vehicle in front of him. Defendant was negligent in that she

(a) operated her vehicle at an excessive rate of speed under the existing circumstances and conditions;

(b) followed Plaintiff's vehicle too closely;

(c) failed to observe Plaintiff's signal and yield to it;

(d) failed to keep a proper lookout;

(e) failed to keep her vehicle under proper control; and

(f) operated her vehicle in a reckless manner.

V.


As a direct and proximate result thereof, Plaintiff, John Rex Phipps, was caused to sustain serious and permanent injuries, has been prevented from transacting his business, has suffered and will continue to suffer great pain of body and mind; has sustained permanent disability, deformity, and loss of earning capacity; has incurred and will incur in the future hospital, doctors' bills and related bills in an effort to be cured of said injuries.

WHEREFORE, Plaintiff demands judgment against the Defendant for compensatory damages in the sum of FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00) and his costs in this behalf expended.

Respectfully submitted,

JOHN REX PHIPPS

By Counsel

 , p.q.
Alan K. Caudell
CAUDELL & BEDSAUL
P. O. Box 1367
Galax, Virginia 24333
540/236-6106
Fax: 540/238-1546

VIRGINIA: IN THE CIRCUIT COURT OF CARROLL COUNTY ON FRIDAY THE
FIFTEENTH DAY OF DECEMBER IN THE YEAR OF OUR LORD TWO THOUSAND.

PRESIDING: HONORABLE DUANE E. MINK, JUDGE

VIRGINIA:

IN THE CIRCUIT COURT OF CARROLL COUNTY

JOHN REX PHIPPS,

Plaintiff

v.

CECILA RENE LIDDLE,

Defendant

ORDER

Case No. CL 00-52

On December 4, 2000, the plaintiff appeared by counsel and the defendant's counsel participated by telephone for a hearing on the defendant's request for the entry of an order dismissing this action with prejudice, and on the plaintiff's motion for a nonsuit of this action.

Counsel for the defendant tendered a final order, which the Court has marked filed but has not entered, and proffered to the Court (1) that this Court entered an order on October 5, 2000, ruling that the plaintiff must pay to the defendant the sum of \$250.00 pursuant to Supreme Court of Virginia Rule 4:12 and other applicable Virginia law if the plaintiff failed to respond to the defendant's discovery requests by October 2, 2000, and further ruling that the plaintiff's action "shall be dismissed with prejudice" if the plaintiff failed to respond to the defendant's discovery requests by November 2, 2000, with the Court finding the sanction of dismissal to be appropriate in accordance with Rule 4:12 and other applicable Virginia law; (2) that the plaintiff failed to respond to the defendant's discovery requests either by October 2, 2000 or by November 2, 2000; (3) that the defendant's counsel wrote to the plaintiff's counsel on November 6, 2000, with

a copy to the Clerk of this Court, a letter enclosing a proposed final order dismissing this action with prejudice and requesting that counsel for the plaintiff endorse it and forward it to this Court for entry; (4) that the plaintiff's counsel did not respond to the request of the defendant's counsel, did not tender the order for entry, and did not respond to the defendant's discovery requests; (5) that the plaintiff's counsel requested a hearing regarding entry of the order and the defendant's counsel set a hearing before the Court for 10:00 a.m. on December 4, 2000, for the purpose of presenting the parties' respective positions regarding the proposed order which the defendant's counsel had mailed to the plaintiff's counsel on November 6, 2000; (6) that the defendant's counsel confirmed this December 4, 2000 hearing date by letter to the plaintiff's counsel dated November 27, 2000, with a copy to this Court; (7) and that the motion for nonsuit was filed by the plaintiff on or about November 29, 2000. Counsel for the defendant argued that under Virginia Code § 8.01-380 and the decisions of the Supreme Court of Virginia interpreting that statute, the motion for a nonsuit comes too late, because this action had "been submitted to the Court for decision" within the meaning of that statute; and that the Court should deny the plaintiff's motion for nonsuit and enter the proposed final order dismissing the plaintiff's action with prejudice in accordance with the Court's earlier October 5, 2000 order.

The plaintiff's attorney proffered to the Court (1) that the plaintiff is elderly and not able to drive; (2) that the plaintiff

and his wife are presently in Charleston, South Carolina, where the plaintiff's wife is under treatment in a health care facility; (3) that the only person who is able to drive the plaintiff from Charleston, South Carolina to the plaintiff's home in Carroll County, Virginia, is the plaintiff's daughter; (4) that some time after November 2, 2000, the plaintiff's daughter was in a motor vehicle accident in which she suffered a severe injury to one of her legs, preventing her from being able to drive; (5) that the plaintiff's counsel has contacted his client on several occasions to have him return to Carroll County for the purpose of preparing discovery responses, but the plaintiff has not yet returned to Carroll County for that purpose; (6) and that the plaintiff's counsel believes it is necessary for him to work directly with the plaintiff in preparing responses to the defendant's discovery. The plaintiff's counsel argued that his motion for nonsuit had not been filed too late under applicable Virginia law; that the plaintiff has not previously taken a nonsuit in this action; and that the plaintiff has an absolute right to a nonsuit under Code § 8.01-380, as amended.

Having duly considered the argument, representations and proffers of counsel for both parties, the Court finds that the plaintiff has not served on the defendant's counsel responses to the defendant's discovery requests; but the Court concludes that the plaintiff's motion for nonsuit is not too late under § 8.01-380 or the decisions of the Supreme Court of Virginia interpreting that statute, and consequently, that the plaintiff's motion for

nonsuit should be granted. Accordingly, the Court does hereby ADJUDGE and ORDER that:

1. The final order tendered by the defendant, dismissing with prejudice the plaintiff's action, shall be, and it hereby is, marked "filed" with the other papers relating to this action, but the Court shall not enter that order, as requested by the defendant;
2. The plaintiff's motion for nonsuit shall be, and it hereby is, granted; and
3. This action shall be, and it hereby is, dismissed without prejudice pursuant to Code § 8.01-380.

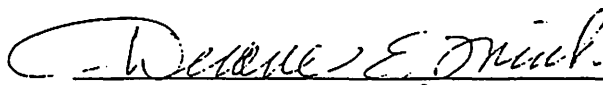
The defendant, by counsel, duly objected to these rulings of the Court on the grounds (1) that the Court had already ruled that the plaintiff's action "shall be dismissed" upon the plaintiff's failure to comply with the Court's October 5, 2000 order requiring service on the defendant's counsel of discovery responses not later than November 2, 2000; (2) that the plaintiff undisputedly did not serve the requested discovery responses within the time allowed; (3) that to avoid the dismissal of his action with prejudice pursuant to the October 5, 2000 order, the plaintiff had to file his motion for nonsuit before November 2, 2000; (4) that the plaintiff did not file his motion for nonsuit until on or about November 29, 2000, which date was after the November 2, 2000 deadline had passed, after the defendant's counsel had mailed a letter to the plaintiff's counsel (with a copy to the Clerk of this Court) on November 6, requesting endorsement of the proposed

final order dismissing with prejudice the plaintiff's action pursuant to the October 5, 2000 order, and after the defendant's counsel, by letter dated November 27, 2000 to the plaintiff's counsel, with a copy to the Court, confirmed the December 4, 2000 hearing for presentation of the proposed final order, which hearing had been requested by the plaintiff's counsel; and (5) that the plaintiff's motion for nonsuit was filed too late under Code § 8.01-380 and applicable decisions interpreting that statute.

The defendant, by counsel, then raised with the Court the \$250.00 sanction imposed by the Court's October 5, 2000 order for the plaintiff's failure to serve discovery by October 2, 2000. Having heard the representations and argument of counsel concerning this monetary sanction, the Court does hereby ADJUDGE and ORDER that the plaintiff shall pay to the defendant, by check payable to Johnson, Ayers & Matthews, the sum of \$250.00 within 15 days after the date of this order.

The Clerk of this Court is directed to strike this case from the active law docket of this Court and to furnish forthwith a certified copy of this order to counsel of record for each party to this action.

Enter this 15th day of Dec, 2000



Judge

Seen:

Alan K. Caudell p.g.
Alan K. Caudell
Caudell & Bedsaul
P. O. Box 1367
Galax, VA 24333

Seen and objected to on the grounds set
forth above:

Ronald M. Ayers p.d.
Ronald M. Ayers
Johnson, Ayers & Matthews
P. O. Box 2200
Roanoke, Virginia 24009
540-982-3666
540-982-1552 (fax)

A TRUE COPY
CAROLYN H. HONEYCUTT, CLERK
By Melinda Upchurch Deputy Clerk
Carroll County Circuit Court

VIRGINIA:

*In the Supreme Court of Virginia held at the Supreme Court Building in the
City of Richmond on* Friday *the* 1st *day of* March, 2002.

Cecila Rene Liddle,

Appellant,

against Record No. 010614
 Circuit Court No. CL 00-52

John Rex Phipps,

Appellee.

Upon an appeal from a
judgment rendered by the Circuit
Court of Carroll County on the
15th day of December, 2000.

For reasons stated in writing and filed with the record,
the Court is of opinion that there is no error in the judgment
appealed from. Accordingly, the judgment is affirmed. The
appellant shall pay to the appellee thirty dollars damages.

This order shall be certified to the said circuit court.

A Copy,

Teste:

FILED CARROLL COUNTY
CIRCUIT COURT CLERK
MAR 22 PM 3:37
[Signature]
Clerk

A TRUE COPY
CAROLYN H. HONEYCUTT, CLERK
By *Melinda L. [Signature]* Deputy Clerk
Carroll County Circuit Court

VIRGINIA: IN THE CIRCUIT COURT OF CARROLL COUNTY

JOHN REX PHIPPS,

Plaintiff,

VS.

CECILA RENE LIDDLE,

Defendant.

AT LAW NO. 02-98
STATEMENT OF FACTS

There is no transcript to be filed in this appeal, and all incidents of this action relevant to the appeal are in the Circuit Court file, all in compliance with Rule 5A:6 of the Rules of the Supreme Court of Virginia.


Plaintiff's cause of action for personal injuries arises out of an automobile accident which occurred on May 4, 1998, in Carroll County, Virginia.

Plaintiff filed his original motion for judgment in the Carroll County Circuit Court (CL00-51) on May 2, 2000 (the prior action). By Order entered December 15, 2000, the Circuit Court entered a voluntary nonsuit on motion of the plaintiff.

On January 10, 2001, defendant appealed the ruling of the Carroll County Circuit Court. The Supreme Court awarded a writ granting an appeal in the prior action on June 1, 2001. By its Order dated March 1, 2002, the Supreme Court affirmed the judgment of the Carroll County Circuit Court and certified the same to the Carroll County Circuit Court.

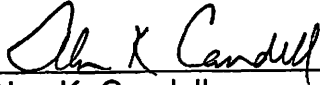
On August 15, 2002, plaintiff filed his motion for judgment in the Carroll County Circuit Court. Defendant filed a special plea of the statute of limitations. In its Final Order entered January 13, 2003, the Carroll County Circuit Court sustained defendant's plea of the statute of limitations, from which action plaintiff appeals.

CERTIFIED BY THE COURT TO BE AN
ACCURATE STATEMENT OF THE FACTS
AND PROCEEDINGS IN THIS ACTION THIS
27th DAY OF March, 2003.


JUDGE

BOOK 67 PAGE 734

I ASK FOR THIS:



, p.q.

Alan K. Caudell
P. O. Box 1367
Galax, Virginia 24333
276/236-6106
Fax: 276/238-1546
VSB# 26154

SEEN:



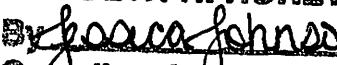
, p.d.

Ronald M. Ayers
John D. Eure
JOHNSON, AYERS & MATTHEWS
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Roanoke, Virginia 24009
540/767-2000
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24

ALAN K. CAUDELL
P. O. BOX 1367
WASHINGTON STREET
GALAX, VA 24333-1367
PHONE: 276/236-6106
FAX: 276/238-1546

BOOK 67 PAGE 735

A TRUE COPY
CAROLYN H. HONEYCUTT, CLERK
By  Deputy Clerk
Carroll County Circuit Court

CERTIFICATE

Pursuant to Rule 5:32 and Rule 5:26(d) of the Rules of the Supreme Court of Virginia, counsel for appellant certifies as follows:

1. Appellant is John Rex Phipps, 111 Sunset Drive, Galax, Virginia 24333.
2. Counsel for Appellant is Alan K. Caudell, 104 Washington St., P.O. Box 1367, Galax, Virginia 24333, 276/236-6106, Fax 276/238-1546.
3. Appellee is Cecila Rene Liddle.
4. Counsel for Appellee are Ronald M. Ayers and John D. Eure, JOHNSON, AYERS & MATTHEWS, P. O. Box 2200, Roanoke, Virginia 24009, 540/767-2000, Fax 540/982-1552.
5. Three copies of the foregoing appendix were mailed to Ronald M. Ayers and John D. Eure, JOHNSON, AYERS & MATTHEWS, P. O. Box 2200, Roanoke, Virginia 24009, Counsel of record for Appellee, the only opposing counsel, and twenty copies of the foregoing appendix were mailed to the Clerk of the Supreme Court of Virginia, 5th Floor, Supreme Court Building, 100 N. 9th St., Richmond, Virginia 23219.

Given under my hand this 2nd day of September, 2003.


Alan K. Caudell