

Taasheana Quinn and S.M.,

Plaintiffs,

versus

Maurice Miller,

Defendant.

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Civil Action H-12-2181

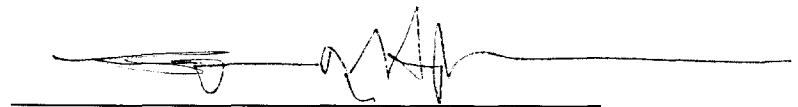
Opinion on Partial Dismissal

1. On October 21, 2010, Taasheana Quinn sued Maurice Miller for injuries to her and her child from a car accident on November 7, 2008. On April 29, 2011, Judge Nancy Atlas dismissed the case without prejudice for deficient service of process. She appealed.
3. Besides appealing, Quinn sued Miller a second time on April 29, 2011 — the same day the appeal was filed. Judge Melinda Harmon dismissed that suit as duplicative on February 29, 2012.
4. On July 2, 2012, the court of appeals affirmed the dismissal of the first case.
5. In Texas, the statute of limitations for a personal injury claim is two years.
6. On July 19, 2012 — two weeks after losing the appeal — Quinn sued Miller for the third time, arguing that the limitations period was tolled by the two earlier suits.
6. Because the two earlier cases were dismissed without prejudice, the statute of limitations was not tolled.¹

¹4 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1056 (3rd ed. 2002) (discussing Fed. R. Civ. P. 3 and 4(m)).

7. Quinn also argues that Judge Atlas reserved her right to sue irrespective of the limitations period; however, neither her opinion nor the judgments from April 29, 2011, or of the court of appeals on July 2, 2012, mentions anything about Quinn having reserved her opportunity to sue later. The concept that a defaulting plaintiff can reserve a right to do anything is peculiar; she either has an opportunity in common with other litigants or she does not. She does not.
8. Even assuming Judge Atlas had reserved Quinn's rights, it is within the province of this court to decide whether to allow recommencement.²
9. Quinn's claims on her own behalf will be dismissed with prejudice because they are barred by the statute of limitations. Through all of this, Quinn had counsel.
10. The claims of S.M. will proceed.

Signed on October 8, 2012, at Houston, Texas.



Lynn N. Hughes
United States District Judge

² *Id.*