

02/07/03 “See News Release 007 for any concurrences and/or dissents.”

SUPREME COURT OF LOUISIANA

No. 02-CC-2576

JIMMY BARNETT

VERSUS

LOUISIANA STATE UNIVERSITY MEDICAL CENTER–SHREVEPORT

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL, SECOND
CIRCUIT, PARISH OF CADDO**

CALOGERO, Chief Justice, dissents from the action.

The provision of La. Code Civ. Proc. art. 1672 authorizing dismissal of a party’s action without prejudice is a serious imposition upon a litigant’s constitutional right of access to the courts, and should thus be enforced only if the statute clearly and unequivocally commands that result. In this case, we have a litigant who indeed requested service upon defendant within the 90-day time period prescribed by article 1201(C), but who mistakenly requested that defendant be served through an incorrect agent. There is no absence of a request for service; therefore, article 1672(C) does not apply to mandate an involuntary dismissal of plaintiff’s action, and the judgment of the district court should be affirmed. Even if plaintiff’s requested service was improper under article 1672(C), however, plaintiff’s suit should not be altogether dismissed by this court. Rather, the action should be remanded to the district court to give plaintiff the opportunity to show good cause why service could not be requested upon the proper agent, as is required by article 1672(C).