IN THE COURT OF APPEALS OF TENNESSEE

JENKINS DENTAL ARTS, INC.) C/A NO. 03A01-9606-CV-00184) BRADLEY COUNTY CIRCUIT COURT Plaintiff-Appellant, v. **FILED** ACE CODENT, ZAHN DENTAL COMPANY, INC., and HENRY SCHEIN, INC., June 9, 1997 Defendants, Cecil Crowson, Jr. **Appellate Court Clerk** and ACECODENT INCORPORATED) HONORABLE EARLE G. MURPHY, Defendant-Appellee.) JUDGE

OPINION AND ORDER

On September 23, 1996, we filed our opinion in this case. The Supreme Court granted the appellant's application for permission to appeal and remanded this matter to us by order entered May 5, 1997. We were directed by that court to reconsider this case in light of the Supreme Court's opinion in **Cobb v. Beier**, S/C No. 03S01-9610-CV-00106 (Supreme Court at Knoxville, April 28, 1997).

In view of the Supreme Court's decision in *Cobb*, we find and hold that the motion of Acecodent Incorporated to dismiss this appeal because of the failure of the appellant to serve a copy of the notice of appeal on the clerk of this court is not well taken and it is accordingly DENIED. To the extent our earlier opinion, and the judgment filed pursuant to it, find and hold otherwise, they are, to that extent, vacated and held for naught.

We adhere to the remainder of our earlier opinion, which held that the trial court erred in dismissing the

appellant's complaint. Therefore, we now hold, pursuant to Rule 36, T.R.A.P., that the judgment of the trial court in this case is erroneous, and hereby vacate same and remand this case to the trial court for further proceedings not inconsistent with this order.

Our earlier opinion and judgment as to the costs on appeal are also vacated and held for naught. We re-tax the costs on appeal to the appellee.

IT IS SO ORDERED.

ENTER:

Charles D. Susano, Jr., J.

Houston M. Goddard, J.

Don T. McMurray, J.