

IN THE SUPREME COURT OF MISSISSIPPI

No. 2006-CA-01337

WANZA MCGUFFIE

APPELLANT

VS.

RAY HERRINGTON AND  
JO ANN HERRINGTON

DEFENDANTS

APPEAL FROM THE CIRCUIT COURT OF LINCOLN COUNTY

APPELLANT'S PRINCIPAL BRIEF

ORAL ARGUMENT NOT REQUESTED

Clarence McDonald Leland  
CLARENCE MCDONALD LELAND, LTD.  
200 Town Square, Suite A  
P.O. Box 1466  
Brandon, Mississippi 39043  
MB# [REDACTED]

## **TABLE OF CONTENTS**

TABLE OF CONTENTS .....	ii
CERTIFICATE OF INTERESTED PARTIES .....	vi
TABLE OF AUTHORITIES .....	v
STATEMENT OF THE ISSUES .....	1
STATEMENT OF THE CASE .....	2
(A)    Procedural History .....	2
(B)    Facts .....	2
SUMMARY OF THE ARGUMENT .....	3
ARGUMENT .....	3
I.        THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT WITHOUT GIVING PLAINTIFF TEN DAYS NOTICE TO ALLOW FOR FILING OF AFFIDAVITS OR ALLOWING A HEARING ON THE MERITS AS SET FOR M.R.C.P. 56(c) WHICH ALLOWS PLAINTIFF UNTIL THE DAY PRIOR TO THE DAY OF THE HEARING TO SERVE AFFIDAVITS .....	3
Standard of Review .....	4
II.      THE TRIAL COURT ERRED AS A MATTER OF LAW IN RULING THAT THERE ARE NO GENUINE ISSUES FOR TRIAL ON ANY OF PLAINTIFF'S SIX CLAIMS.	6
A.        False Imprisonment and False Arrest .....	6
B.        Negligent Infliction of Emotional Distress .....	7
C.        Intentional Infliction of Emotional Distress .....	8
D.        Civil Conspiracy .....	8
E.        Malicious Prosecution .....	9
F.        Negligence .....	11
III.     CONCLUSION .....	12

CERTIFICATE OF FILING AND SERVICE .....	13
ADDENDUM - MISSISSIPPI STATUES AND REGULATIONS .....	14

### CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record hereby certifies that the following listed persons have an interest in the outcome of this case. The representations are made in order that the justices of the Supreme Court and the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. The Plaintiff and Appellant, Ms. Wanza McGuffie of Lincoln County, Mississippi.
2. Ms. McGuffie's attorney: Clarence McDonald Leland, Brandon, Mississippi.
3. The Defendants, Ray and Jo Ann Herrington of Lincoln County, Mississippi.
4. The Herrington's attorney: W. Brady Kellum, Brookhaven, Mississippi.

Respectfully Submitted,

  
Clarence McDonald Leland

## **TABLE OF AUTHORITIES**

### **CASES:**

<i>Adams v. U.S. Homecrafters, Inc.</i> , 744 So.d 736 (¶ 17) (Miss. 1999) . . . . .	7, 8
<i>Air Comfort Sys., Inc. v. Honeywell</i> , 760 So.2d 43(¶ 19) (Miss. Ct. App. 2000) . . . . .	7
<i>Benjamin v. Hooper Electric Supply Co.</i> , 568 So.2d 1182 (Miss. 1990) . . . . .	10
<i>Burkes v. Fred's Stores of Tennessee, Inc.</i> , 768 So.2d 325(¶ 7) (Miss.Ct.App. 2000) . . . . .	4
<i>C &amp; C Trucking Co. v. Smith</i> , 612 So.2d 1092 (Miss. 1992) . . . . .	10
<i>Croke v. Southgate Sewer District</i> , 857 So.2d 774(¶ 10) (Miss. 2003) . . . . .	5
<i>Dailey v. Methodist Medical Center</i> , 790 So.2d 903(¶3, 15, 23) (Miss.Ct.App. 2001) . . . . .	4, 5
<i>Harris v. Mississippi Valley State University</i> , 873 So.2d 970(¶ 22) (Miss. 2004) . . . . .	9
<i>Heigle v. Heigle</i> , 771 So.2d 341(¶ 8) (Miss. 2000) . . . . .	4
<i>Junior Food Stores, Inc. v. Rice</i> , 671 So.2d 67 (Miss. 1996) . . . . .	9, 10, 11
<i>Koerner v. Crittenden</i> , 635 So.2d 833 (Miss. 1994). . . . .	5
<i>Levens v. Campbell</i> , 733 So.2d 753(¶ 32) (Miss. 1999) . . . . .	8
<i>Partin v. North Mississippi Medical Center</i> , 929 So.2d 924(¶37) (Miss. App. 2005) . . . . .	4, 5
<i>Strong v. Nicholson</i> , 580 So.2d 1288, 1294 (Miss. 1991) . . . . .	12
<i>Thornhill v. Wilson</i> , 504 So.2d 1205 (Miss. 1987) . . . . .	6
<i>Wallace v. Thornton</i> , 672 So.2d 724 (Miss. 1996) . . . . .	6
<i>Williamson ex rel. Williamson v. Keith</i> , 786 So.2d 390(¶ 10) (Miss. 2001) . . . . .	4, 7

### **STATUTES:**

Mississippi Code Annotated Section 15-1-49 . . . . .	7
------------------------------------------------------	---

### **RULES:**

Mississippi Rules of Civil Procedure Rule 56 . . . . .	1, 3, 4, 5, 6
Mississippi Rules of Civil Procedure Rule 78 . . . . .	5

## STATEMENT OF THE ISSUES

This is a case arising from defendants bringing various criminal and civil charges against the plaintiff. These charges arose after defendant's brother and brother-in-law had a stroke while participating in a Halloween hay ride with Wanza McGuffie who he was dating at the time. When the stroke occurred, Sedgie Herrington, Ray Herrington's brother, asked the plaintiff, Wanza McGuffie, to keep his truck and his wallet until he got out of the hospital. Plaintiff agreed to keep his property as requested. Sometime thereafter, defendants instituted various civil and criminal cases against the plaintiff, all of which terminated in her favor, the last of which was tried to a verdict on July 9, 2003. The plaintiff filed the instant suit on July 8, 2004, and timely served defendants. The circuit court granted summary judgment on all of plaintiff's claims, without a hearing or notice, one day before the circuit judge resigned from office. The issues are:

- I. Was summary judgment proper on plaintiff's claims without allowing a hearing on the merits as M.R.C.P. 56(c) allows plaintiff until the day prior to the day of the hearing to serve affidavits.
- II. Was summary judgment proper as to plaintiff's claims for:
  - A. False Imprisonment and False Arrest
  - B. Negligent Infliction Of Emotional Distress
  - C. Intentional Infliction Of Emotional Distress
  - D. Civil Conspiracy
  - E. Malicious Prosecution
  - F. Negligence

## STATEMENT OF THE CASE

### **(A) Procedural History**

On July 8, 2004, Ms. McGuffie filed her complaint false imprisonment and false arrest, negligent infliction of emotional distress, intentional infliction of emotional distress, civil conspiracy, malicious prosecution, and negligence before the Lincoln County Circuit Court. (R.6) She named as defendants Ray Herrington and his wife, Jo Ann Herrington. (R.6)

Ms. McGuffie alleged, *inter alia*, that Ray Herrington and his wife, Jo Ann Herrington, filed various charges against Wanza McGuffie, who was dating Ray's brother Sedgie Herrington at the time, in order to gain control of Sedgie's truck and personal property. (R.6-9) The last of the cases was disposed on July 9, 2003, at trial, resulting in a not guilty verdict on the charge of petty larceny. (R. 78)

Defendants filed a motion for summary judgment on May 1, 2006, alleging that the statute of limitations had run on all of plaintiff's claims because they all arose out of the filing of charges against the plaintiff. (R. 40) The circuit court granted summary judgment, not on the statute of limitations questions, in fact ruling that the statute of limitations had not run on the false imprisonment, false arrest and malicious prosecution, but ruling that the plaintiff had provided no specific facts or filed any affidavits showing that there was a genuine issue for trial. (R. 78-81) No hearing was held before summary judgment was granted and no notice was given of a pending ruling.

### **(B) FACTS**

On October 31, 2002, Sedgie Herrington suffered a stroke. (R. 42) Sedgie Herrington requested that Ms. McGuffie keep his things until he got out of the hospital. (R. 55) The Herringtons wanted to prosecute Ms. McGuffie for having possession of Sedgie's things even

though Sedgie asked Ms. McGuffie to keep them for him until he got out of the hospital. (R. 55)

Ms. McGuffie was called to Judge Judy Martin's office due to warrants she said were on her desk which were based on charges that had been filed against Ms. McGuffie by Ray Herrington. (R. 55) Jo Ann Herrington was present with her husband on that day. (Id.) The Herringtons acted without checking with the persons who were at the hay ride to see if Sedgie asked Ms. McGuffie to keep his things. (R. 55)

Ms. McGuffie was held in Judge Judy Martin's office and was not free to leave. (R. 55) Ms. McGuffie was not locked up in jail and did not go to prison but was held against her will in Judge Judy Martin's office. (R. 56) Ms. McGuffie suffered emotional distress as a result of defendants' acts. (R. 55) Ms. McGuffie had numerous criminal charges and civil actions filed against her by Ray Herrington (R. 7) Ms. McGuffie ultimately prevailed on all of the charges, the final one being tried to a verdict of not guilty on July 9, 2004. (R. 78) The trial judge so ruled. (R. 78)

### **SUMMARY OF THE ARGUMENT**

The trial court erred as a matter of law in ruling that there are no genuine issues for trial on any of plaintiff's six claims without giving plaintiff ten days notice or a hearing on the merits which would have allowed plaintiff to file affidavits until the day before the hearing pursuant to M.R.C.P. 56(c).

### **ARGUMENT**

- I. The trial court erred in granting summary judgment without giving plaintiff ten days notice to allow for filing of affidavits or allowing a hearing on the merits as set forth M.R.C.P. 56(c) which allows plaintiff until the day prior to the day of the hearing to serve affidavits.**



## Standard of Review

The appellate standard for reviewing the grant or denial of summary judgment is the same standard as that of the trial court under Rule 56(c) of the Mississippi Rules of Civil Procedure. The Court employs a de novo standard of review of the lower court's grant or denial of summary judgment and examines all the evidentiary matters before it including admissions in the pleadings, answers to interrogatories, depositions, affidavits, etc. The evidence must be viewed in the light most favorable to the party against whom the motion has been made, in this case the plaintiff. *Partin v. North Mississippi Medical Center*, 929 So.2d 924(¶37) (Miss. App. 2005)

If there is no genuine issue of material fact and, the moving party is entitled to judgment as a matter of law, summary judgment should be entered in his favor. If there is a genuine issue of material fact, the motion should be denied. Issues of fact sufficient to require denial of a motion for summary judgment are present where one party swears to one version of the matter in issue and another says the opposite. *Heigle v. Heigle*, 771 So.2d 341, 345(¶ 8) (Miss. 2000)

In addition, the burden of demonstrating that no genuine issue of fact exists is on the moving party. That is, in this case, the plaintiff should be given the benefit of the doubt. *Williamson ex rel. Williamson v. Keith*, 786 So.2d 390, 393(¶ 10) (Miss. 2001) (quoting *Heigle v. Heigle*, 771 So.2d 341, 345(¶ 8) (Miss. 2000)). The non-moving party, here the plaintiff, must be given the benefit of all favorable inferences that may reasonably be drawn from the evidence. *Dailey v. Methodist Medical Center*, 790 So.2d 903, 915-16(¶ 15) (Miss.Ct.App. 2001).

Motions for summary judgment should be viewed with a skeptical eye, and in questionable cases, the trial court should deny the motion. *Dailey*, 790 So.2d at 907 (¶ 3); *Burkes v. Fred's Stores of Tennessee, Inc.*, 768 So.2d 325, 328(¶ 7) (Miss.Ct.App. 2000). All the

non-moving party need do in order to defeat a motion for summary judgment is to establish a genuine issue of material fact. *Dailey*, 790 So.2d at 918(¶ 23). The plaintiff in this case does not have to *prove* all of the elements of its case in order to survive a pre-trial, summary judgment motion. The non-moving party only has to demonstrate that there are genuine issues of material fact. *Id.*

Rule 56(c) of the Mississippi Rules of Civil Procedure provides for service of motions at least ten days prior to the hearing and further, that affidavits by the adverse party may be served prior to the day of the hearing. *Koerner v. Crittenden*, 635 So.2d 833 (Miss. 1994). When the trial court granted summary judgment without notice, it deprived plaintiff of her right under Rule 56(c) to serve opposing affidavits up until the day before the hearing. Had plaintiff been notified of a date on which this cause was to be decided, she would have filed an affidavit from a handwriting expert whose opinion is that the power of attorney from Sedgie Herrington was not signed by him and affidavits setting forth alleged other facts not in the record.

The Mississippi Supreme Court has said that granting of summary judgment without a hearing is error due to the finality of summary judgment. *Croke v. Southgate Sewer District*, 857 So.2d 774(¶ 10) (Miss. 2003). Rule 78 of the M.R.C.P. was amended effective April 17, 2003 to allow courts, by rule to provide for determination of motions seeking final judgment without oral hearing. owever the 14<sup>th</sup> Circuit Court District has no published local rule to allow such a determination without a hearing. See M.R.C.P. Local Rules. “Moreover, our case law on this subject clearly says that the notice and hearing requirements of Rule 56 are to be strictly enforced.” *Partin v. North Mississippi Medical Center*, 929 So.2d 924(¶37) (Miss. App. 2005). The circuit judge was not authorized to grant summary judgment without a hearing under the rules.

**II. The trial court erred as a matter of law in ruling that there are no genuine issues for trial on any of plaintiff's six claims.**

A summary judgment may be entered only "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue of *material* fact and that the moving party is entitled to a judgment as a matter of law." M.R.C.P. 56(c) (emphasis added). The plaintiff listed nine disputed material facts in her response to defendant's motion for summary judgment. (R. 62) along with her response that the defendant had waived any statute of limitations issue by not having pled that defense in their answer.(R 61). Plaintiff's contentions concerning her claims are set for in her answers to interrogatories. (R. 55) There were material issues in dispute which preclude summary judgment.

**A. False Imprisonment and False Arrest**

The Mississippi Supreme Court has said that false imprisonment is an intentional tort comprised of two elements: (1) detention of the plaintiff; and (2) that such a detention was unlawful. *Wallace v. Thornton*, 672 So.2d 724, 727 (Miss. 1996). The second element turns on whether, looking at the totality of the circumstances, the actions of the defendant were "objectively reasonable in their nature, purpose, extent and duration." *Thornhill v. Wilson*, 504 So.2d 1205, 1208 (Miss. 1987).

Wanza McGuffie was held in Judge Judy Martin's office (R. 55) on November 12, 2002 without a warrant having been issued. (R. 58) Plaintiff's sworn interrogatories state that she was held in Judge Judy Martin's office and was not free to leave. Judge Martin told her that there were warrants on her desk. Judge Martin posted deputy Danny Pepper inside her office door. (R. 55)

Summary judgment on this claim is not proper as the record shows that the sworn affidavit of Judge Judy Martin says that Wanza McGuffie was free to leave and the sworn interrogatories of Wanza McGuffie say she was not free to leave. Where one party swears to one version of the matter in issue and another swears to the opposite, issues of fact sufficient to require denial of summary judgment are obviously present. *Williamson* (§ 10). Judge Martin told Ms. McGuffie that there were warrants on her desk based on charges that were filed by Ray Herrington (R. 55) Judge Martin swears by affidavit that there were no warrants and that Ms. McGuffie was there voluntarily in lieu of the warrants being issued. (R. 58) Again, one person swearing to a material fact and another swearing to the opposite precludes summary judgment. *Williamson* (§ 10). Summary judgment on the issue of false imprisonment and false arrest is inappropriate.

**B. Negligent Infliction of Emotional Distress**

The second of plaintiff's claims involves negligent infliction of emotional distress wherein plaintiff swears that she suffered emotional distress and that her reputation has been damaged by the actions of Ray Herrington and Jo Ann Herrington in that they negligently failed to determine if she was asked by Sedgie Herrington to keep his property until he was out of the hospital. (R. 55) Ms. McGuffie gives witnesses names that the defendants should have contacted had they not been negligent. (R. 55) The trial court ruled that the nature of the incident caused by the Defendants establishes that emotional distress to Plaintiff would be foreseeable. (R. 80)

The statute of limitations on negligent infliction of emotional distress is three years pursuant to the "catch all statute" of Miss. Code Ann. § 15-1-49. *Air Comfort Sys., Inc. v. Honeywell*, 760 So.2d 43(§ 19) (Miss. Ct. App. 2000). Summary Judgment on the question of negligent infliction of emotional distress is not proper as there is a jury question of negligence.

### **C. Intentional Infliction of Emotional Distress**

The third claim that the plaintiff makes is intentional infliction of emotional distress. In *Adams v. U.S. Homecrafters, Inc.*, 744 So.2d 736 (¶ 17) (Miss. 1999), the Mississippi Supreme Court held that where you have intentional conduct or conduct which was unintentional yet with foreseeable results, as the circuit court ruled in this case, “the nature of the incident caused by Defendants establishes that emotional distress to Plaintiff would be foreseeable” and damages would be recoverable without a showing of bodily injury.

The evidence of emotional distress is uncontroverted as Wanza McGuffie said in her interrogatories “I suffered emotionally and my reputation has been damaged.” (R. 55) “The Herringtons were intentional in filing criminal charges that inflicted emotional distress on me. (R. 55) “The Herringtons wanted to prosecute me for having possession of Sedgie’s things, even though Sedgie requested that I keep his things until he got out of the hospital.” (R. 55) In cases of intentional infliction of emotional distress such as this, where the defendants’ conduct was malicious, intentional, or outrageous, the plaintiff need present no further proof of physical injury. *Adams* at 743 (¶ 17).

Summary judgment on the claim of intentional infliction of emotional distress is not warranted because of the foreseeability of the harm and the intentional nature of defendants’ conduct as a jury question exists.

### **D. Civil Conspiracy**

A civil conspiracy has been termed as “a combination of persons for the purpose of accomplishing an unlawful purpose or a lawful purpose unlawfully” *Levens v. Campbell*, 733 So.2d 753, 761(¶ 32) (Miss 1999). The evidence is uncontroverted that Ray Herrington and Jo Ann Herrington were in Judge Judy Martin’s office with Judge Martin, a deputy and Wanza

McGuffie. (R. 58) There is evidence of false arrest and false imprisonment as set forth above and there is evidence that Ray Herrington and Jo Ann Herrington are responsible for, as the circuit court opined, that the incident was caused by the defendants and that damages were foreseeable.

(R. 80) The agreement between Ray Herrington and Jo Ann Herrington can be proven by indirect and circumstantial evidence since there is rarely direct evidence of an agreement to conspire. *Harris v. Mississippi Valley State University*, 873 So.2d 970 (¶ 22) (Miss. 2004).

Since the conclusion that a conspiracy exists is often based upon inferences that may fairly be drawn from the behavior of the alleged conspirators, summary judgment is usually inappropriate.

*Id.* at 980-981 (¶ 22).

Summary Judgment on the claim of civil conspiracy is not appropriate as there is a jury question as to the existence of the conspiracy.

#### **E. Malicious Prosecution**

Charges were brought against Wanza McGuffie by Ray Herrington for the purpose of securing control of Sedgie Herrington's truck and personal property which Ms. McGuffie was holding for Sedgie at his request following his stroke. (R. 55) There were various civil and criminal charges filed against the plaintiff, all of which were ultimately resolved in her favor, concluding with a trial on the charges of petty larceny which ended in a not guilty verdict. (R. 7, 54-55, 78)

The elements of a malicious prosecution claim are :

- (1) the institution or continuation of original judicial proceedings, either criminal or civil;
- (2) by, or at the instance of the defendants;
- (3) the termination of such proceeding in plaintiff's favor;

- (4) malice in instituting the proceedings;
- (5) want of probable cause for the proceedings; and
- (6) suffering of damages as a result of the action or prosecution complained of. *Junior Food Stores, Inc. v. Rice*, 671 So.2d 67 (Miss. 1996).

In the case at bar, Ray Herrington instituted or caused several proceedings to be had against Wanza McGuffie in order to secure possession of Sedgie Herrington's truck and personal property, without checking with the witnesses who were present at the hay ride to determine if Sedgie asked that Ms. McGuffie keep his truck for him until he got out of the hospital. (R. 55) These proceeding were terminated in plaintiff's favor, the last being tried to a not guilty verdict on July 9, 2003. (R. 78) Wanza McGuffie was damaged as a result of the filing of these actions. (R. 55)

Malice is used in an artificial and legal sense and is applied to prosecutions instituted primarily for a purpose other than that of bringing an offender to justice. *Benjamin v. Hooper Electronic Supply Co.*, 568 So.2d 1182 (Miss. 1990). Malice may be proved by circumstantial evidence or the jury may infer malice from the facts of the case. The absence of probable cause for the prosecution is circumstantial evidence of malice. Malice may be inferred from a finding that the defendants acted in reckless disregard of another person's rights, as here where the defendants failed to ascertain that Sedgie Herrington had asked Ms. McGuffie to keep his truck and personal property until he got out of the hospital (R. 55), *C & C Trucking Co. v. Smith*, 612 So.2d 1092, 1100 (Miss. 1992).

The question of malice is a question of fact and it is to be determined by the jury unless only one conclusion may be reasonably drawn from the evidence. *Id.* at 1100. Probable cause requires the honest belief in the guilt of the person accused and reasonable ground for such

belief. A malicious prosecution plaintiff, Ms. McGuffie, has the burden of showing lack of probable cause, proof of lack of probable cause on any one element of the crime charged is sufficient to establish this element of the tort. *Id.* When facts and reasonable inferences are in dispute the issue is a jury question and it is within their province to determine and not one for the court. *Junior Food Stores, Inc. v. Rice*, 671 So.2d 67 (Miss. 1996).

The Mississippi Supreme Court has stated that “where a reasonable person would investigate further before instituting a proceeding, the failure to do so is an absence of probable cause. *Id.* at 74. To determine whether a reasonable person would have inquired of the witnesses before filing charges against Ms. McGuffie the proof available to the Herringtons should be looked at. In answers to interrogatories, it is clear that there were many people present when Sedgie Herrington asked the plaintiff to keep his truck and personal property until he got out of the hospital. (R. 55)

Summary judgment on the claim of malicious prosecution is not warranted as there are genuine issues of material fact in dispute on the elements of malicious prosecution.

#### **F. Negligence**

The plaintiff's sixth claim was for negligence in failing to investigate the circumstances surrounding why Ms. McGuffie had possession of Sedgie Herrington's truck and personal property. Ms. McGuffie's claim was that there were numerous witnesses who were there when Sedgie Herrington asked her to take care of his truck and personal property until he got out of the hospital. In her answers to interrogatories the plaintiff gave names and phone numbers of witnesses at the hay ride who could have told the Herrington's about Sedgie Herrington's wishes in relation to his truck and his personal property. (R. 55) However, defendants filed various civil and criminal charges without trying to find out why Ms. McGuffie



had possession of the truck and personal property.

Our Supreme Court has said that a malicious prosecution probable cause analysis resembles negligence law analysis, that is the conduct of a reasonable man under the circumstances, and does not differ essentially from the determination of negligence. The court should determine whether upon the appearances presented to the defendant, a reasonable person would have instituted the proceeding. *Strong v. Nicholson*, 580 So.2d 1288, 1294 (Miss. 1991). There appears to be no Mississippi case law on point on the negligence issue as the law does seem to wrap the negligence claims in with the malicious prosecution claim.

### III. Conclusion

There are genuine issues of material fact in dispute which preclude summary judgment. It is error for the trial court to grant summary judgment without notice and a hearing as set forth in M.R.C.P. 56(c).

Respectfully submitted,

WANZA MCGUFFIE

  
CLARENCE MCDONALD LELAND

CLARENCE MCDONALD LELAND  
MSB# [REDACTED]  
C. M. Leland, Ltd.  
Post Office Box 1466  
Brandon, Mississippi 39043  
(601)825-7978


**CERTIFICATE OF SERVICE**

The undersigned counsel of record certifies that true and correct copies of the above and foregoing Principal Brief have been filed with the Clerk and deposited into the United States mail, first class postage prepaid, to the following addresses:

D. Michael Smith, Esq.  
P. O. Box 549  
McComb, Mississippi 39648-0549

W. Brady Kellems, Esq.  
Post Office Box 1406  
Brookhaven, Mississippi 39602-1406

SO CERTIFIED, this the 1<sup>st</sup> day of January, 2007.

  
\_\_\_\_\_  
Clarence McDonald Leland

ADDENDUM  
MISSISSIPPI STATUES AND REGULATIONS

**Mississippi Rules Of Civil Procedure****Mississippi Rules Of Civil Procedure**  
**CHAPTER VII. JUDGMENT****RULE 56. SUMMARY JUDGMENT**

(a) *For claimant.* A party seeking to recover upon a claim, counter-claim, or cross-claim, or to obtain a declaratory judgment may, at any time after the expiration of thirty days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

(b) *For defending party.* A party against whom a claim, counter-claim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

(c) *Motion and proceedings thereon.* The motion shall be served at least ten days before the time fixed for the hearing. The adverse party prior to the day of the hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone, although there is a genuine issue as to the amount of damages.

(d) *Case not fully adjudicated on motion.* If on motion under this rule judgment is not rendered on the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) *Form of affidavits; further testimony; defense required.* Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matter stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleadings, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

(f) *When affidavits are unavailable.* Should it appear from the

affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such order as is just.

(g) *Affidavits made in bad faith.* Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

(h) *Costs to prevailing party when summary judgment denied.* If summary judgment is denied the court shall award to the prevailing party the reasonable expenses incurred in attending the hearing of the motion and may, if it finds that the motion is without reasonable cause, award attorneys' fees.

Copyright © 2007 [Loislaw.com](http://www.loislaw.com), Inc. All Rights Reserved

## Mississippi Rules Of Civil Procedure

- ☐ Mississippi Rules Of Civil Procedure
- ☐ CHAPTER X. COURTS AND CLERKS

### RULE 78. MOTION PRACTICE

Each court shall establish procedures for the prompt dispatch of business, at which motions requiring notice and hearing may be heard and disposed of; but the judge at any time or place and on such notice, if any, as he considers reasonable may make orders for the advancement, conduct, and hearing of actions.

To expedite its business, the court may make provision by rule or order for the submission and determination of motions without oral hearing upon brief written statements of reasons in support and opposition.

(Amended effective March 1, 1989; amended effective April 17, 2003 to allow the courts, by rule to provide for determination of motions seeking final judgment without oral argument.)

Copyright © 2007 [Loislaw.com](http://www.loislaw.com), Inc. All Rights Reserved

## Mississippi Code of 1972

- ☐ Mississippi Code of 1972
- ☐ TITLE 15 LIMITATIONS OF ACTIONS AND PREVENTION OF FRAUDS
- ☐ CHAPTER 1 Limitation of Actions

§ 15-1-49. Limitations applicable to actions not otherwise specifically provided for.

(1) All actions for which no other period of limitation is prescribed shall be commenced within three (3) years next after the cause of such action accrued, and not after.

(2) In actions for which no other period of limitation is prescribed and which involve latent injury or disease, the cause of action does not accrue until the plaintiff has discovered, or by reasonable diligence should have discovered, the injury.

(3) The provisions of subsection (2) of this section shall apply to all pending and subsequently filed actions.

SOURCES: Laws, 1989, Ch. 311, § 3; 1990, Ch. 348, § 1, eff from and after passage (approved March 12, 1990).

Copyright © 2007 [Loislaw.com](http://www.loislaw.com), Inc. All Rights Reserved