

IN THE SUPREME COURT OF MISSISSIPPI  
COURT OF APPEALS OF THE STATE OF MISSISSIPPI

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SUPREME COURT #2006-CA-01570

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APPELLANT, LISA STEPHENS

V.

APPELLEE, SHANNON MILLER

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APPELLANT'S BRIEF

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Tommy D. Cadle  
Kenneth E. Floyd, II  
Attorneys for the Appellant

IN THE SUPREME COURT OF MISSISSIPPI  
COURT OF APPEALS OF THE STATE OF MISSISSIPPI

LISA STEPHENS

APPELLANT

VS.

NO. 2006F-CA-01570

SHANNON MILLER

APPELLEE



CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certified that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Honorable Justices of this Court may evaluate possible disqualification or recusal:

1. Lisa Stephens, Appellant
2. Honorable Emily M. Parker, Counsel for Appellee on Appeal
3. Honorable Tommy D. Cadle, Counsel for Appellant on Appeal
4. Honorable Sharion Aycock, Circuit Court Judge

WITNESS my signature on this the 20 day of March, 2007.

ATTORNEY FOR APPELLANT

  
\_\_\_\_\_  
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### STATEMENT OF ISSUES

1. Whether or not the Defendant Miller was negligent in the supervision of her four year old daughter, Cambria Thompson, and that the child's acts were reasonably foreseeable.
2. Whether or not Plaintiff was an invitee and whether or not Defendant Miller afforded Plaintiff Stephens the degree of care due to an invitee.

## STATEMENT OF THE CASE

On July 19, 2004, Shannon Miller visited her hairdresser, Lisa Stephens, at Stephens' Salon in Mantachie, Mississippi, to have her four year old daughter, Cambria Thompson's hair cut. After Ms. Stephens had cut Cambria's hair, and the parties were leaving, she offered to help Ms. Miller secure Cambria in the Miller minivan to which Miller acquiesced. As Ms. Stephens was reaching for the safety belt, Cambria pushed the button to automatically close the side door to the van. This action by the minor child caused the instantaneous closure of the door on Ms. Stephens' leg region, causing injury to her left side. Cambria was four years old at the time.

The Lower Court granted Miller's Motion for Summary Judgment, no findings of fact or conclusions of law were provided.

### SUMMARY OF THE ARGUMENT

The Lower Court committed reversible error in sustaining Miller's Motion for Summary Judgment. Miller's argument in her Motion for Summary Judgment alleged that it should be granted due to the lack of proof of her negligence which contributed to Stephens' injuries. Miller alleges that the child's act of engaging the automatic door was not foreseeable by Miller, and therefore, negligence could not be conferred on her. The standard for granting summary judgment requires that the proof be considered in the light most favorable to Stephens, the Court ignored the proof offered by Stephens in her response.

The negligent act of the minor is clearly and undisputedly the cause of the injury to Stephens. Miller admitted in her responsive answer the allegations of Stephens' fourth numbered paragraph which alleged: (RE 1-9)

"That on or about the 19<sup>th</sup> day of July, 2004, Plaintiff (Stephens) was engaged in assisting the Defendant (Miller) in securing her minor infant child, Cambria, in a car seat in Defendant's vehicle, a minivan."

Miller is admittedly present when the incident occurred and was also admittedly engaged in securing the minor child in the safety harness of her car seat, this being a statutory requirement for the transportation of minor children. Due to the obvious fact that Miller had arrived at the business location of Stephens, it can be supposed that Miller was familiar with harnessing the minor child in said car seat and was doubtlessly familiar with the difficulties of such an endeavor. That Stephens

submitted an affidavit as an attachment to her response to the motion for Summary Judgment outlining the conversation taking place between herself and Miller at the time of the incident, when Miller admitted that the minor child had a fascination with engaging the door button of the minivan. (RE 10-14). This admission, in and of itself, reveals that Miller knew of the child's fascination with the button and inclination to push it, yet she took no action to prevent this from happening. It can be imputed to Miller that as a licensed driver of the subject vehicle, that she was familiar with its operation, both on the road and as to its accommodations to passengers. That the side passenger door to a minivan is unquestionably a formidable object, and by her admission in her answer, Miller acknowledges that Stephens was in a position to be injured if the door was engaged.

That Miller's acceptance of Stephens' offer to assist in restraining the child, places her in the category of an invitee, and that she should be afforded the standard of care due such status.



## ARGUMENT

### I.

WHETHER OR NOT THE DEFENDANT MILLER WAS NEGLIGENT IN THE SUPERVISION OF HER FOUR YEAR OLD DAUGHTER, CAMBRIA THOMPSON, AND THAT THE CHILD'S ACTS WERE REASONABLY FORESEEABLE.

That Miller is undisputedly the biological mother and custodial parent of the minor, Cambria Thompson, then age four. That Miller arrived at the business location of Stephens by way of minivan with Cambria secured in a car seat. It can be assumed by these facts that Miller was in charge of and in control of Cambria. Stephens alleges in her Complaint that as the parties were leaving her business location and she was assisting Miller, that the minor child engaged the side passenger button and that same struck Stephens on the butt.

In Stephens' response, she filed an Affidavit outlining the reaction of Miller to her being struck "Cambria likes to show people how the door opens and closes." This admission alone offers proof of the existence of genuine issues as to material fact.

In her motion, Miller relied on Williamson v. Daniels, 748 So.2d 754 (Miss. 1999), which held that parents assume liability for their children under the common law. That parents have a duty to take the measures to supervise and control their children to protect others from acts of their children that are reasonably foreseeable. Stephens would submit that the statement of Miller at the time of the incident is

sufficient to establish the fact that Miller had knowledge of the child's propensity to engage the door button.

Miller also relies on the unadopted Restatement (Second) of Torts §316 (1965) that states:

"A parent is under a duty to exercise reasonable care so to control his minor child as to prevent it from intentionally harming others or from so conducting itself as to create an unreasonable risk of bodily harm to them, if the parent

(a) knows or has reason to know that he has the ability to control his child, and

(b) knows or should know of the necessity and opportunity for exercising such control."

Stephens' affidavit completely refutes Miller's reliance on the above in support of her position and offers proof that the contrary was true, and that Miller was not entitled to summary judgment.

## II.

WHETHER OR NOT PLAINTIFF WAS AN INVITEE AND  
WHETHER OR NOT DEFENDANT MILLER AFFORDED  
PLAINTIFF STEPHENS THE DEGREE OF CARE ENTITLED TO  
AN INVITEE.

Stephens would submit to the Court that she was an invitee due to Miller's acceptance of her offer to assist in restraining Cambria in her car seat as the parties left Stephens' place of business. It is a well-established fact that a property owner owes the highest duty to an invitee. In this instance, Miller, being the owner or

controller of the minivan, owed Stephens this high duty. By allowing Cambria to act impulsively and engage the side door of the minivan, she breached that duty.

The description set forth in Little by Little v. Bell, 719 So.2d 757 (Miss. 1998), of an invitee, appears to fit Stephens exactly, “[A]n invitee enters the property of another in response to an express or implied invitation of the owner or occupant for the mutual advantage or benefit of the parties involved.” Here, Stephens made an offer to assist, which was impliedly accepted, placing her in the category of invitee and due this higher degree of care. Stephens was clearly an invitee, the duty was breached, and she was injured, and remains injured.

## CONCLUSION

Stephens would submit to the Court that her offer of assistance to Miller to help secure Cambria, which was accepted by Miller, placed her in the category of invitee. That Miller owed her the highest duty of care and that she, for whatever reason, neglected that duty and allowed her mischievous four year old to engage the side van door and injure Stephens. No good deed goes unpunished.

Stephens is entitled to her day in Court to offer the proof that she set out in her Affidavit (RE 10-14), if it be believed by the trier of fact, then Miller is negligent in her failure to control Cambria, guilty of negligent supervision, and has violated the duty owed to Stephens as an invitee. That the grant of Miller's Motion for Summary Judgment should be set aside.

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APPELLEE

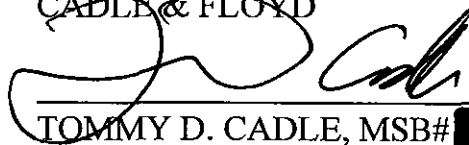
CERTIFICATE OF MAILING

THIS is to certify that I, Tommy D. Cadle, attorney for Appellant, have this day mailed by United States mail, postage prepaid, the original and three copies of the Appellant's Brief to the Honorable Betty W. Sephton, Clerk, Supreme Court of Mississippi at the address of said Court, Post Office Box 249, Jackson, Mississippi, 39205-0249.

THIS the 02 day of March, 2007.

Respectfully submitted,

CADLE & FLOYD

A handwritten signature in black ink, appearing to read 'Tommy D. Cadle', is written over a horizontal line.

TOMMY D. CADLE, MSB# [REDACTED]

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CERTIFICATE OF SERVICE

I, TOMMY D. CADLE, the attorney for the Appellant, do hereby certify that I have this day served a true and correct copy of the Appellant's Brief, by placing said copy in the United States Mail, postage prepaid, addressed to the following:

Honorable Emily M. Parker  
Webb, Sanders & Williams, P.L.L.C  
Post Office Box 496  
Tupelo, MS 38802

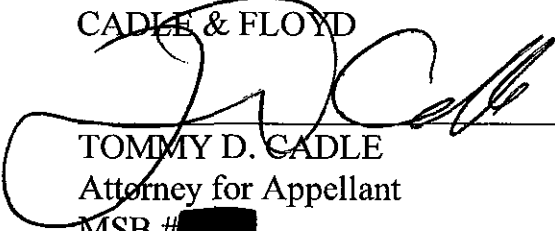
Honorable Sharion Aycock  
Circuit Judge  
Post Office Drawer 1100  
Tupelo, MS 38802

Ms. Betty W. Sephton  
Supreme Court of Mississippi Clerk  
Post Office Box 249  
Jackson, MS 39205-0249

DATED, this, the 22 day of March, 2007.

Respectfully submitted,

CADLE & FLOYD

  
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