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IN THE SUPREME COURT OF MISSISSIPPI

**TERRY FARMER AND WIFE
BRENDA FARMER**

APPELLANTS

VERSUS

CASE NO. 2006-CA-01659

RICHARD RICHARDSON

FILED

APPELLEE

APR 09 2007

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REPLY BRIEF OF APPELLANTS

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APPELLANTS' REPLY TO APPELLEE'S REBUTTAL

PROPOSITION I

Just as there is no required time period for malice to form to prove deliberate design in a murder case, Brown v. State, 768 So2d 312 (Miss. App. 1999) there is no set time for a fact situation to change in a civil action. The Appellee has suggested that the Farmers are estopped from presenting Terry Farmer's cause of action for battery because his father, Clyde Farmer, was overruled through arbitration. The Plaintiffs' case revolves around a separate cause of action that occurred five (5) to ten (10) minutes later on the same afternoon. Terry Farmer was inside the mobile home videoing Richard Richardson's malicious trespassing on his property. When Plaintiffs' father, Clyde Farmer, got into a fight with Appellee, Terry Farmer came out to break up the mela. Richardson hit Terry Farmer and a whole new ballgame began. Whether Clyde Farmer was aggressor or victim does not estopp Terry Farmer from presenting evidence of his fact situation, which is independent of Clyde Farmer's fight. Richard Richardson cites Hogan v. Buckingham ex rel Buckingham, 730 So2d 15 (Miss.1998) as authority, however, that case is a double-edged sword. While establishing certain criteria for collateral estoppel the Court was specific that the doctrine of res judicata and collateral estopped do not bind 3rd party who had no connection to a prior action rendered therein.

When the Chancellor granted Summary Judgment, the Plaintiffs were denied their opportunity to give evidence supporting Terry Farmer's separate action. A finding of Summary Judgment by a lower Court is reviewed de novo by the Supreme Court of

Mississippi, and all evidence is received most favorably to the opposing party.

Heigle v. Heigle, 771 So2d 341 (Miss. 2000)

Collateral Estoppel is not favored and should never be viewed as anything other than an unusual exception to the general rule that all questions of fact should be litigated completely. Mayor and Board of Alderman, City of Ocean Springs v. Homebuilders Association of Miss., Inc., et al, 932 So2d 44 (Miss. 2006) While two of the four factors necessary for developing an estoppel argument may have been present, that was not enough. The identity of the subject matter and the identity of the cause of action are totally separate and independent of the Clyde Farmer claim.

Terry Farmer was attacked and injured trying to drag his father away from the fight. Although little time passed between incidents, they are totally separate and distinct. In a criminal action, each separate act of embezzlement from the same fund were considered and charged as five (5) separate occasions regardless of the time frame. Taylor v. State, 754 So2d 598 (Miss. App. 2000) In a civil action for libel and slander, each repetition of slanderous words is a distinct cause of action and as such must be treated as separate causes. Ladner v. Arrington, 374 So2d 831 (Miss. 1979). Terry Farmer's incident, although immediately after his father's, constituted a whole new and separate cause of action.

APPELLANTS' REPLY TO APPELLEE'S REBUTTAL

PROPOSITION II

In his argument against Proposition II of Appellants' brief, Richard Richardson says Terry Farmer's case fails because he was in violation of a certain contract, which is not in evidence, or included in Appellee's Motion to Modify Record pursuant to Rule 10(F) of the Mississippi Rules of Appellate Procedure. However, with or without such a document, Plaintiffs Farmer would submit to the Court that the Appellee chose his forum and sought to prosecute rather than sue for breach of contract and by such action is himself estopped from asserting a remedy on appeal, which Richardson chose to avoid at trial level. This constitutes abuse of process, which Richard Richardson has continually claimed against the Farmers. Franklin Collection Services, Inc., v. Stewart, 863 So2d 925 (Miss. 2003)

Appellee Richardson makes much ado about the Plaintiff being convicted in Justice Court, prior to his appeal to Circuit Court. Such action is no vindication of Richardson. Benjamin v. Hooper Electronic Supply Co., Inc., 568 So2d 1182 (Miss. 1990) Factor No. 3 of the six required elements to establish the tort of malicious prosecution is the termination of such proceedings in the Plaintiffs' favor. In the light most favorable to the non-moving party, the Farmers, the Court must consider that Richard Richardson could have sued for breach of contract civilly and by choosing to prosecute obviously exhibited malice on Appellee's part.

A Lamar County Circuit Court jury acquitted Terry Farmer, but by being forced to hire an attorney and miss a rotation of his employment, Plaintiff suffered significant

damages, which he is entitled to sue for collection of.

Richard Richardson attempts to confuse the issue concerning the Farmer's water lines that legitimately crossed the Richardson property. The West Lamar Water Association, like all such organizations, requires easements from all adjacent property owners whose property would be crossed or even touched by said Association's lines. The easements were between Ben Davis, Richard Richardson and West Lamar Water Association. Ben Davis was the predecessor in title to the Farmer. The water lines were there before the Farmers and Appellee had no right to cut the lines or stop the Farmer's usage of same. The Farmers subsequently were forced to drill a well until the permanent injunction was entered December 30, 2004. (RE 10-12) After that time Richardson finally acquiesced and agreed for the water to be hooked back up across his land to the Farmers. However, the Farmers had to pay for all new pipes from their house to the public road.

Brenda Farmer has a viable cause of action for intentional infliction of emotional distress. Richard Richardson has threatened her life on at least three (3) occasions and he continually harassed and threatened Brenda Farmer over an extended period even after the Court issued the injunction (RE 10-12) The history of the Justice Court complaints indicates wrongful conduct that persisted and was repeated over an extended period of time. Hendrix v. City of Yazoo City, 911 F. 2nd 1102 (5th Cir. 1990) Under the ruling of Stevens v. Lake, 615So2d 1177 (Miss. 1993) Richard Richardson's actions amount to a continuing tort for which he should be liable not only for Brenda Farmer's special

damages, but also punitive damages for his wanton conduct. None of these issues have been litigated. Appellants maintain they have four (4) valid causes of action to present to the Court, however, so far Terry and Brenda Farmer have been denied their day in Court. The Honorable Chancellor, in granting Summary Judgment, declared all issues between the parties had been presented. However, even if the Court ruled Terry Farmer's damage suit for personal injuries was res judicata because of the arbitration decision in his dad's case, there are three (3) more separate and distinct causes of action that under Article 3 § 14 of the Miss. Constitution of 1890, the Farmers are entitled to a de novo hearing on.

CONCLUSION

When a moving party is entitled to Summary Judgment as a matter of law those cases are usually “cut and dried.” However, in the case at bar, as in most appeals from Summary Judgment, where factual situations are the root of the argument this Court’s de novo review of the evidence is difficult because of the limited amount of documentation and no testimony to review. Both sides’ arguments suggest what should have happened, but the problem stems from noting being before this Court except a few Chancery Court Orders and a long history of charges and counter-charges in Justice Court. Most of those stem from arguments over location of fences and cutting off utility services. However, none of this was ever litigated.

The Farmers have four (4), but under any set of circumstances, three (3) genuine factual disputes with Richard Richardson on which they have never been granted due process. What Appellants are asking this Court is for a reversal of the Judgment granting Summary Judgment and one hearing on all the counts of their Amended Complaint.

CERTIFICATE OF SERVICE

I, William L. Ducker, do hereby certify that I have this date forwarded, via United States Mail, postage prepaid, an original and three (3) copies of the above and foregoing Reply Brief of Appellants along with a 3½ floppy disc to:

Honorable Clerk of the Supreme Court
State of Mississippi
P. O. Box 249
Jackson, MS 39205

One (1) copy was mailed postage prepaid to:

Judge James H. C. Thomas, Jr.
P. O. Box 807
Hattiesburg, MS 39403

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WITNESS MY SIGNATURE this, the 9th day of April, A. D., 2007.


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