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

NO. 2006-CA-01726

LYNNETTE CRISS — APPELLANT

VERSUS

LIPSCOMB OIL COMPANY, INC. — APPELLEES

BRIEF OF APPELLANT, LYNNETTE CRISS

Appeal from the Circuit Court of
Bolivar County, Mississippi

ATTORNEYS FOR APPELLANT:
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I. CERTIFICATE OF INTERESTED PERSONS

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

1. Lynnette Criss, Appellant
2. Lipscomb Oil Company, Inc., Appellee
3. James C. Patton, Jr., Esq., Attorney for Appellant
4. Andrew N. Alexander Esq., Attorney for Appellee Lipscomb Oil Company, Inc.
5. Honorable Albert B. Smith, III, Circuit Court Judge, Bolivar County, Mississippi

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IV. STATEMENT OF ISSUES

Appellant, Lynnette Criss, states that the only issue before this Court is:

A. Whether the Circuit Court erred in awarding the Appellee's Lipscomb Oil Company, Inc. Summary Judgment based upon an incorrect application of the proper legal standard for the facts sub judice i.e. Was there enough evidence produced on the part of the Lynnette Criss to create a jury issue that Lipscomb was responsible for Criss's injuries from a fall on the wet floor in Lipscomb's women's restroom created by the "leaking faucet" in said restroom irregardless of notice of the floor's condition when Lynnette Criss fail.

V. STATEMENT OF THE CASE

Lynnettee Criss's claim arose on September 13, 2003; a Complaint was filed herein alleging that Lipscomb Oil Company, Inc.'s women's restroom was negligently maintained and not in a reasonably safe condition. As a result of the Lipscomb's negligence Lynnette Criss suffered injury.

The Trial Court herein granted Summary Judgment to Lipscomb on August 30, 2006 on the basis that Criss failed to prove that Lipscomb or its employees had actual knowledge of the wet bathroom floor Criss fell on. Further, the Trial Court found that Criss failed to prove that the wet floor existed for a sufficient period of time to establish constructive knowledge of such condition. Finally, the Trial Court mistakenly found that Criss fell to prove Lipscomb caused the wet floor by affirmative action on it or its employees part.

Lynnette Criss appeals from the Summary Judgment of the Lower Court and seeks reversal of the same.

VI. STATEMENT OF FACTS

Appellant, Lynnette Criss ("Criss") fell on the Appellee, Lipscomb Oil Company, Inc.'s ("Lipscomb") premises on September 13, 2003. The Circuit Court of the Second Judicial District of Bolivar County, Mississippi, granted Summary Judgment to Lipscomb on August 30, 2006. As referenced in said Order granting Lipscomb's Summary Judgment, the lower court did not concern itself with the issue of whether or not the fall occurred and whether Criss was injured or suffered damage; but, the trial court, in fact, assumed the fall occurred and Criss suffered damages. (T. 133).

The parties agree that Lipscomb's employee Valarie Jones went to the subject restroom after she heard the noise from the area and found a "leaking faucet under the sink..." (T. 121).

Jones remembered "looking and seeing" that the "leaking faucet" was dripping on the floor. (T. 121 @ lines 20-23). Jones also remembered Lipscomb had problems with leaks in both (mens and womens') bathrooms at the store where Jones worked. (T. 123). Finally, Jones acknowledged that even though she had cleaned and inspected the subject restroom approximately thirty (30) minutes before Ms. Criss's fall. In the mean time, the store had customers "in and out that used the bathrooms." (T. 125) Clearly, one must assume that the laboratory was being used.

The facts of the subject case presented for consideration for this appeal obviously are quite simple and very limited. The facts set out hereinabove are the only facts relevant to a

determination of whether or not Lipscomb should have been granted Summary Judgment in the subject civil action. Both Appellant and Appellee's arguments can be fully developed through the statements of facts set out herein.

VII. ARGUMENT

Appellant Lynnette Criss would show that the Appellee Lipscomb and the trial court have correctively set out in the afore said Order Granting Summary Judgment that Summary Judgment is only appropriate where there will be no remaining issues or genuine issues of material fact and when all evidence is viewed in the light most favorable to the non-moving party, then the Court has no choice but to award the moving party a judgment as a matter of law. *Brown v. Credit Center, Inc.*, 444 So. 2d 353 (Miss 1983); *Aetna Casualty & Sur. Co. v. Berry*, 669 So.2d 56 (Miss. 1996).

In this case Lynnette Criss submits that the lower court committed error because she produced evidence that created a genuine issue of material fact. Actually, Appellant submits that the lower court recognized the critical facts presented by Criss, but applied those fact to the law in the wrong case. The lower court follows *Douglas v Great Atlantic and Pacific Tea Company*, 405 So. 2d 107 (Miss. 1981) and found that Lipscomb had to have notice of the dangerous wet bathroom floor to hold Lipscomb liable. Respectfully, Criss submits that the lower court was mistaken in its reliance on Douglas and that the appropriate precedent to apply to the case at bar is *Drennan v. Kroger Company*, 672 So. 2d 1168 (Miss. 1996).

In Drennan, that this Court pointed out that Kroger's contention was that Douglas should have been followed that the directed verdict in favor of Kroger was proper. In Drennan, the Mississippi Supreme Court overturned the decision of the lower Court and distinguished it's decision from the Douglas decision. The Court furhter referenced *Munford*

Inc. v Flemming; 597 So. 2d 1282 (Miss. 1992) which also distinguished Drennan.

In Douglas the Court pointed out that in Drennan there was never any proof of problems with the freezer in question; where as, in Drennan and Munford, as well as the case at bar, there was evidence of significant prior problems, and the failure on the part of the premises owner in all such examples to fix or repair ongoing problems, such as leaky faucet (pipe) under a sink in the case obviates a notice requirement and over comes a requirement of affirmative action.

Clearly, the case at bar is analogous to Drennan than to Douglas, Also, it is interesting that this Court apparently attempted to get away from the harsh ruling in Douglas that allows premises owners to ignore correcting a long standing problem and deny injured patrons damages that they may suffer as a result of the premises owners failure to act.

VIII. CONCLUSION

Appellant Criss's argument is very simple, the lower court erred; as such, Appellant Lynnette Criss urges this Court to set aside the Summary Judgment granted by the lower court and order this civil action to proceed to trial in the Circuit Court of the Second Judicial District of Bolivar County, Mississippi.

Respectfully submitted,
LYNNETTE CRISS

By:_____
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IX. CERTIFICATE OF SERVICE

I, James C. Patton, Jr., attorney for Appellant, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the foregoing pleading to:

Andrew N. Alexander, III, Esq.
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Honorable Albert B. Smith, III
Bolivar County Circuit Court Judge
P.O. Box
Cleveland, MS 38732

This the ___ day of_____, 2007.

_____
JAMES C. PATTON, JR.