

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2006-CA-01947

MARVIN BROWN

APPELLANT

VS.

**JULIAN JONES, M.D.; SCOTT SMITH, M.D.;
JENNIFER BROWN, NURSE; SOUTHWEST
MISSISSIPPI REGIONAL MEDICAL CENTER**

APPELLEES

**ON APPEAL FROM THE
CIRCUIT COURT OF PIKE COUNTY, MISSISSIPPI**

**BRIEF OF APPELLEE,
JENNIFER BROWN**

ORAL ARGUMENT NOT REQUESTED

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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 justices of the Supreme Court may evaluate possible disqualification or recusal.

1. The Honorable Michael M. Taylor, Circuit Court Judge, Pike County, Mississippi
2. Marvin Brown, Appellant
3. Isaac K. Brown, Jr., Attorney for Appellant
4. Suzanne G. Keys, Attorney for Appellant
5. Southwest Mississippi Regional Medical Center, Appellee
6. R. Mark Hodges, Attorney for Appellee
7. Mark J. Goldberg, Attorney for Appellee
8. Jennifer Brown, Appellee
9. James P. Streetman, III, Attorney for Appellee
10. Matthew A. Taylor, Attorney for Appellee

This, the 2nd day of July, 2007.



JAMES P. STREETMAN, III MSB #7973
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Attorneys of record for Appellee
Jennifer Brown

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STATEMENT OF THE CASE

I. Nature of the Case and Course of Proceedings in the Court Below

This is a medical malpractice action arising from the care and treatment provided to the Plaintiff, Marvin Brown, at Southwest Mississippi Regional Medical Center (“Southwest”) in March and April of 2002. Southwest is a Community Hospital created and existing pursuant to Mississippi Code Annotated § 41-13-15. As such, Southwest is considered a “political subdivision,” and in turn a “governmental entity,” and any lawsuits brought against it are subject to the requirements of the Mississippi Tort Claims Act, Mississippi Code Annotated § 11-46-1 *et seq.* (“MTCA”). *See* Miss. Code Ann. § 11-46-1 (g), (i). Defendant, Jennifer Brown, was a nursing student at the University of Southern Mississippi, College of Nursing, participating in a clinical field assignment at Southwest during all relevant times in the *Complaint* and was considered an “employee” at that time under the provisions of the MTCA. *See* Miss. Code Ann. § 11-46-1(f). Therefore both Defendants are Torts Claims Act entities and this entire action is subject to the provisions of 11-46-1, *et seq.*¹

On August 23, 2006, Southwest filed its Motion for Summary Judgment for Plaintiff's failure to comply with the MTCA's ninety-day notice of claim provision by filing suit only five days after submitting his Notice of Claim. ²(C.P. 30-31). Plaintiff responded to Southwest's Motion for Summary Judgment on October 13, 2006. (C.P. 54). Southwest's Motion for Summary Judgment was brought on for hearing before the Honorable Michael M. Taylor on October 16, 2006. Upon

¹

For the purpose of the instant appeal, Plaintiff concedes that both Defendants are Torts Claim Act entities and that the action was subject to the provisions of Miss. Code Ann. § 11-46-1, *et seq.* *See Brief of Appellant* at 4.

²

Throughout this Brief, this Defendant adopts the citations contained in the Brief of Appellee, Southwest Mississippi Regional Medical Center. Citations to the lower court's papers will be cited as “C.P.” Citations to the transcripts from the hearing will be cited as “T.R.”

argument of counsel regarding the application of this Court's decision in *Univ. of Miss. Med. Ctr. v. Easterling*, 928 So.2d 815 (Miss. 2006), Judge Taylor granted the Motion for Summary Judgment on the grounds that the plaintiff failed to comply with the MTCA (T.R. 12). The Court entered its Final Order and Judgment of Dismissal with Prejudice as to Southwest on October 23, 2006. (C.P. 77).

Plaintiff filed a Motion to Reconsider Southwest's Motion for Summary Judgment on October 25, 2006. (C.P. 79). This Defendant filed her Motion for Summary Judgment on October 27, 2006. (C.P. 88). In her Motion, this Defendant argued that Plaintiff failed to wait the requisite ninety (90) days following submission of his notice of claim before filing suit against Southwest as required by the MCTA and his claim against Southwest was therefore rightfully dismissed as a matter of law. Defendant further argued that because she was an employee of Southwest for the purposes of the MTCA at the time of the alleged incident, she should therefore be dismissed as a matter of law as well.³ On November 2, 2006, a hearing on Plaintiff's Motion to Reconsider and this Defendant's Motion for Summary Judgment was held. (T.R. 14). Judge Taylor granted this Defendant's Motion for Summary Judgment on due to Plaintiff's failure to comply with the ninety-day notice of claim provision of the MTCA.

II. Statement of Facts Relevant to the Issues Presented for Review

Mr. Brown presented to Southwest's Emergency Room complaining of migraine headaches and related symptoms on March 31, April 4, April 5, and April 7, of 2002. During his March 31st

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The instant appeal does not set forth separate arguments against the Defendants, rather, Plaintiff asserts that the arguments made against Southwest are identical to the claims made against this Defendant and are asserted against her as well. Brief of Appellant at 4. As this Defendant's status as an employee of Southwest, nor the applicability of the MTCA to her are not at issue on this appeal, this Defendant does not address those issues.

visit, Mr. Brown was treated with an intramuscular injection of Demerol and Phenergan in the area of his right hip/buttocks. Defendant Brown allegedly administered this injection. At the time, Defendant Brown was a nursing student at the University of Southern Mississippi, College of Nursing, participating in a clinical field assignment at Southwest where she was considered an employee.

On December 13, 2002, Plaintiff sent his Notice of Claim to this Defendant. The instant lawsuit was subsequently filed on December 18, 2002.(C.P.3).

SUMMARY OF THE ARGUMENT

The instant appeal does not set forth separate arguments against the Defendants, rather, Plaintiff asserts that the arguments made against Southwest are identical to the claims made against this Defendant and are asserted against her as well. *Brief of Appellant at 4*. Therefore, Plaintiff joins in and incorporates herein all arguments asserted by Southwest in its Brief of Appellee as if set forth fully herein.

Southwest is a Community Hospital created and existing pursuant to Mississippi Code Annotated § 41-13-15. As such, Southwest is considered a “political subdivision,” and in turn a “governmental entity,” and any lawsuits brought against it are subject to the requirements of the MTCA, Mississippi Code Annotated § 11-46-1 *et seq.* See Miss. Code. Ann. § 11-46-1 (g), (i). Defendant, Jennifer Brown, was a nursing student at the University of Southern Mississippi, College of Nursing, participating in a clinical field assignment at Southwest during all relevant times in the *Complaint* and was considered an “employee” at that time under the provisions of the MTCA. See Miss. Code Ann. § 11-46-1(f). Section 11-46-11(1) requires a plaintiff to wait ninety (90) days after filing a notice of claim before bringing suit against a governmental entity. Plaintiff failed to comply with section 11-46-11(1) when he filed suit only five days after submitting his Notice of Claim.

Pursuant to this Court’s holding in *Univ. of Miss. Med. Center v. Easterling*, 978 So.2d 815 (Miss. 2006) a dismissal of Plaintiffs claims is required. The *Easterling* decision was correctly applied by the trial court in this case, and summary judgment should be affirmed.

ARGUMENT

The Trial Court Properly Dismissed Plaintiff's Claims Against Jennifer Brown Due to his Failure to Comply with the MTCA's Ninety day Notice of Claim Requirement

Southwest is a Community Hospital created and existing pursuant to Mississippi Code Annotated § 41-13-15. As such, Southwest is considered a “political subdivision,” and in turn a “governmental entity,” and any lawsuits brought against it are subject to the requirements of the MTCA, Mississippi Code Annotated § 11-46-1 *et seq.* See *Miss. Code. Ann.* § 11-46-1 (g), (i). Defendant, Jennifer Brown, was a nursing student at the University of Southern Mississippi, College of Nursing, participating in a clinical field assignment at Southwest during all relevant times in the *Complaint* and was considered an “employee” at that time under the provisions of the MTCA. See *Miss. Code Ann.* § 11-46-1(f). Section 11-46-11(1) requires a plaintiff to wait ninety (90) days after filing a notice of claim before bringing suit against a governmental entity. As this Defendant was an employee of Southwest, she was entitled to the protections, limitations and immunities of the MTCA, and thus, Plaintiff was required to wait ninety days after submitting his notice of claim to this Defendant.

Pursuant to *University of Mississippi Medical Center v. Easterling*, 928 So.2d 815, 820 (Miss. 2006), a plaintiff must wait the requisite ninety days before filing suit under the MTCA. There, this court held that “strict compliance” is required with the MTCA ninety day waiting period. *Id.* This Court’s holding in *Easterling* overruled its prior decisions which established that a plaintiff’s failure to wait ninety-days only entitled a defendant to seek a stay of proceedings. *Id.* (overruling *City of Pascagoula v. Tomlinson*, 741 So.2d 224 (Miss. 1999); *Jackson v. City of Booneville*, 738 So.2d 1241 (Miss. 1999); *Leflore County v. Givens*, 754 So.2d 1223 (Miss. 2000); *Jackson v. City of Wiggins*, 760 So.2d 694 (Miss. 2000); *Jones ex. rel Jones v. Miss Sch. For the*

Blind, 758 So.2d 428 (Miss. 2000); *Williams v. Clay County*, 861 So.2d 953 (Miss. 2003). No holdings of this Court have overruled the strict compliance standard of *Easterling*.

In *South Central Regional Medical Center v. Guffy*, 930 So.2d 1252, 1259, this court reaffirmed its strict compliance standard pronounced in *Easterling*. There, this Court stated that the MTCA specifically requires a plaintiff to wait ninety days following the submission of notice prior to bringing suit against a governmental entity. *Id.* at 1259. As an employee of Southwest, this Defendant is entitled to the same protections under the MTCA. Therefore dismissal of Plaintiff's claims was required.

CONCLUSION

Plaintiff failed to comply with the MTCA's ninety-day notice of claim provision when he filed suit against Jennifer Brown only five (5) days after submitting his Notice of Claim. Plaintiff's failure to comply with Miss. Code Ann. § 11-46-11(1) requires a dismissal of all claims against said Defendant.

CERTIFICATE OF SERVICE

I, Matthew A. Taylor, one of the counsel of record for, **JENNIFER BROWN**, hereby certify that I have this date caused to be mailed, via United States mail, postage prepaid, a true and correct copy of the above and foregoing *Brief of Appellee* to the following:


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