

THE SUPREME COURT OF MISSISSIPPI

CASE NO. 2007-CA-00071

ROBIN LEE VO

APPELLANT

VERSUS

HANCOCK COUNTY, MISSISSIPPI

APPELLEE

**CIVIL APPEAL FROM THE
CIRCUIT COURT OF HANCOCK COUNTY, MISSISSIPPI**

BRIEF OF APPELLANT, ROBIN LEE VO

ORAL ARGUMENT REQUESTED

Counsel for Appellant

CHAD P. YOUNGBLOOD, LA BAR # [REDACTED]

Admitted pro hac vice, MS Bar [REDACTED]

7611 Maple Street, Suite C

New Orleans, Louisiana 70118

Telephone: 504.864.0111

Telecopier: 504.864.0009

MICHAEL E. COX, MS BAR# [REDACTED]

MICHAEL E. COX & ASSOCIATES

Post Office Box 4908

Biloxi, Mississippi 39535

Telephone: 228.388.2626

Telecopier: 228.388.2594

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ROBIN LEE VO

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HANCOCK COUNTY, MISSISSIPPI

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CERTIFICATE OF INTERESTED PERSONS

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

Chad P. Youngblood, Esq.
Pro hac vice
Attorney for Plaintiff/Appellant, Robin Lee Vo

Michael E. Cox, Esq.
Michael E. Cox & Associates
Local Counsel for Plaintiff/Appellant, Robin Lee Vo

Walter W. Dukes, Esq.
Dukes, Dukes, Keating & Faneca, P.A.
Attorneys for Hancock County, Mississippi, Defendant/Appellee

Robin Lee Vo, Plaintiff

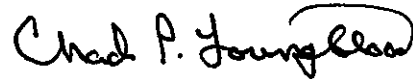
Hancock County, Mississippi, Defendant

The Hon. Stephen B. Simpson
Circuit Court Judge, Hancock County

Christopher M. Russell
Hancock County Sheriff's Deputy

Tim L. Fields, Esq.
Louisiana Counsel for Plaintiff/Appellant Robin Lee Vo

THIS the 9th day of July, 2007.

A handwritten signature in cursive script that reads "Chad P. Youngblood". The signature is written in dark ink and is positioned above a horizontal line.

Chad P. Youngblood, Attorney of Record,
pro hac vice, for Robin Lee Vo
Plaintiff/Appellant

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STATEMENT REGARDING ORAL ARGUMENT

While the briefs of the parties no doubt contain adequate information and argument from which the court can render the appropriate decision in this cause, the issue of immunity under the Mississippi Tort Claims Act has produced various conflicting holdings from various similar fact patterns. Likewise, the facts in dispute leading up to this decision, as well as the many reasons discovery has not gone forward, require special attention and description by counsel.

By way of this case, the Mississippi Supreme Court will clarify the issue of immunity as it relates to "reckless disregard". The Mississippi Supreme Court will also instruct counsel as to the appropriate amount of discovery required before summary judgment can be appropriate. Consequently, given the importance of the issues, this is a case in which oral argument should be heard.

STATEMENT OF THE ISSUES

Three issues are presented for appeal.

1. The trial court was in error in granting the defendant's (appellee) motion for summary judgment;
2. That the defendant (appellee) failed to meet the burden of showing that no genuine issue of material fact existed in this case;
3. That the trial court was in error in failing to view the evidence in the light most favorable to the plaintiff (appellant), the non-moving party;
4. That the trial court erred in finding that the defendant (appellee) was entitled to summary judgment as a matter of law; and
5. That the trial court erred in finding that, as a matter of law, a police officer's failure to look before backing up was mere negligence and not reckless disregard.

STATEMENT OF THE CASE

1. Procedural History.

On or about July 6, 2004, Robin Lee Vo (Vo) brought suit against Hancock County, Mississippi (hereinafter "Hancock County") alleging reckless disregard in the actions of Hancock County Sheriff's Deputy Christopher M. Russell (Deputy Russell), which resulted in a collision, injuring the plaintiff. (R.3-7). Litigation proceeded until October 17, 2005, when the defendant opposed plaintiff's Louisiana counsel's Motion to Enroll Pro Hac Vice, while simultaneously moving the Court to require plaintiff and her counsel to execute affidavits pursuant to § 97-9-11 et. seq., of the Mississippi Code, Annotated, (Supp. 1998). On or about January 12, 2006, defendant moved for a hearing on plaintiff's motion to enroll pro hac vice. A hearing on that matter was held on January 27, 2006, wherein the Court denied plaintiff's motion to enroll pro hac vice. The Court also denied defendant's motion to require plaintiff and her counsel to execute affidavits. During the limited time that litigation proceeded a small amount of discovery was conducted, including the deposition of plaintiff Vo. (R.276-327). The deposition of Deputy Russell, although sought, was never had. (Exhibit "A") On May 8, 2006, defendant Hancock County filed its motion for summary judgment and memorandum in support thereof. (R.202-234). Plaintiff Vo filed her opposition to Hancock County's summary judgment. (R.235-264). On December 7, 2006, the Circuit Court of Hancock County issued its judgment, granting defendant's motion for summary judgment. (R.265-266). It is from that judgment that plaintiff Robin Lee Vo now takes this appeal.

2. Facts.

On or about July 8, 2003, Hancock County Sheriff's Deputy Christopher M. Russell – without first looking for oncoming traffic - backed his vehicle from a parking space into traffic at 10 Bay Park Drive, where it intersects with Longfellow Road in Bay St. Louis, Mississippi. (R.217-228), (R.234). The resultant collision between Deputy Russell's vehicle and the vehicle of plaintiff Robin Vo, caused significant damage and injury to Vo. Plaintiff Vo incurred more than \$40,000.00 in medical costs from her injuries. (R.118-142). Due to the limited amount of discovery completed in this matter, it is unclear if Deputy Russell was in the course and scope of his employment, or whether he was on a frolic and detour. Plaintiff was never given the opportunity to depose Deputy Russell.

Plaintiff filed her Complaint on July 6, 2004, alleging that Deputy Russell's failure to observe and failure to attempt to observe oncoming traffic, constituted reckless disregard for the safety and wellbeing of the citizens of Hancock County. Subsequently the trial court dismissed her claim after granting defendant's motion for summary judgment.

SUMMARY OF THE ARGUMENT

The trial court should not have granted defendant Hancock County's motion for summary judgment. Mississippi courts have long held that summary judgment should be viewed with great skepticism. Mississippi courts have also stated, that with regard to summary judgment, the evidence should be viewed in a light most favorable to the non-moving party. Should there be an error in judging the disputed facts, Mississippi Courts maintain it is better to err on the side of denying the motion, and thus allowing all facts and allegations to come to light.

The trial court erred in granting Hancock County's motion for summary judgment where discovery had hardly commenced. The only discovery completed in this matter, is the deposition of plaintiff Robin Lee Vo, which was more a character ambush than a fact-finding interrogation. Although it has been sought again and again, the deposition of Hancock County Sheriff's Deputy Christopher Russell has not been allowed by defense counsel. Surly, this summary judgment should not have been granted.

There was hardly enough evidence to make a fair ruling on Hancock County's summary judgment when its own employee who caused the accident was never examined under oath. Indeed Deputy Russell is an officer of the law, but this hardly exempts him from such an examination. His examination is fundamental to the adversarial process.

It is well settled that for a motion for summary judgment to succeed, the moving party must meet the burden to show that there is no disputed issue of material fact. Defendant Hancock County offered nothing to prove that Deputy Russell acted with prudence on any level. Whether to remove him from under the cloud of garden variety

negligence, or that darker cloud of reckless disregard, defendant Hancock County has offered nothing to suggest Deputy Russell acted with any degree of prudence at all.

Additionally, defendant Hancock County has revealed nothing to indicate exactly what Deputy Russell was doing at the time of the incident. Plaintiff has been unable to discover if Deputy Russell was responding to a call, finishing a call, or just simply running an errand. These very important facts have not come to light because Deputy Russell has never submitted to an examination under oath. These facts are key to whether Deputy Russell was in the course and scope of his employment, which in turn is key to determining the degree of prudence with which Deputy Russell should have offered.

There are many unanswered questions to which plaintiff Vo is entitled to have answers. It was error to grant defendant's summary judgment without allowing further discovery. Deputy Russell stated at the scene that the accident was his fault, yet the plaintiff has never had the opportunity to question him about that statement.

This Court has refused summary judgment where a party provides a valid, good faith reason for further discovery. Plaintiff Vo's valid and good faith reason for further discovery is simple: discovery was sought, but never allowed by defense counsel.

Finally, it is Plaintiff's position that when a person backs an automobile out of a parking spot and into oncoming traffic, this alone is reckless disregard. Plaintiff contends it matters not under what circumstances a person would engage in such a dangerous act, it is, nonetheless, reckless disregard. The facts of this case are very similar to several Mississippi Tort Claims Act cases before it, and in many of this Court found reckless disregard.

It was error for the trial court to grant summary judgment without allowing further discovery. It was error for the trial court to grant summary judgment as a matter of law. It was error for the trial court to make a finding that Deputy Russell's lack of prudence was anything less than reckless disregard.

ARGUMENT

I.

THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT WHERE DEFENDANT HANCOCK COUNTY FAILED TO MEET THE EXACTING SUMMARY JUDGMENT STANDARD.

A party seeking summary judgment must meet an exacting standard, and the motion can only be granted where 1) there is no genuine issue of material fact in dispute; and 2) the moving party is entitled to summary judgment as a matter of law. *Mississippi Rule of Civil Procedure* 56(c). A motion for summary judgment lies only when there is no genuine issue of material fact; summary judgment is not a substitute for the trial of disputed fact issues. Accordingly, the court cannot try issues of fact on a Rule 56 motion; it may only determine whether there are issues to be tried. In the present case, the trial court based its findings on facts it found in a light most favorable to the defendant, which is clearly not the way summary judgment is supposed to operate.

In its Judgment, the trial court acknowledges a major disputed issue. That issue is determinative of what level of prudence or disregard with which Deputy Russell acted. The trial court wrote “Vo alleged that the officer failed to look ‘both ways’ before backing out which raises negligence into reckless disregard. A review of the police report only states that the officer looked to the left.” (R.265-266, Judgment of Dismissal). Although it acknowledges this disputed issue, the trial court proceeded to grant the summary judgment.

This Court has consistently held “that in cases involving summary judgment if there is doubt as to whether or not a fact issue exists, it should be resolved in favor of the non-moving party.” *Southerland v. Ritter*, --So.2d---, 2007 WL 1151833 (Miss. 2007), citing *Aetna Casualty & Sur. Co. v. Berry*, 669 So.2d 56, 70 (Miss. 1996), citing *Ratliff v. Ratliff*,

500 So.2d 981, 981 (Miss. 1986). Clearly, the trial court did not follow this long held rule of law in the present case, where there are multiple issues of disputed fact.

II.
**THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT
WHERE PLAINTIFF PRESENTED A VALID, GOOD FAITH REASON
FOR FURTHER DISCOVERY.**

Additional disputed facts that were overlooked include the actual location of the accident, which certainly bears on what level of prudence Deputy Russell should have observed. It is disputed whether the accident occurred in a parking lot or on an open and public roadway. The police report makes this issue clear, yet the defendant's itemization of facts states that the accident occurred in a parking lot. This is certainly an issue that Deputy Russell could have addressed in a deposition.

Defendant also asserted that "The accident report shows that Officer Russell maintained a proper lookout." (R.217-228, defendant's itemization of facts). Plaintiff Vo never had the opportunity to examine Deputy Russell on this disputed and misleading allegation. The police accident report and plaintiff Vo's statement do not support this allegation, and thus, it is certainly a genuine issue of disputed fact.

Defendant asserted that "There is no evidence that Officer Russell acted with reckless disregard." (R.217-228, defendant's itemization of facts). Again, Deputy Russell was never examined on this issue. Plaintiff Vo contends that the fact the accident occurred at all should at least give rise to a legitimate dispute of that issue. Vo was never allowed to determine what Deputy Russell's status was at the time of the incident. It remains unclear if he was on-duty or if he was not.

Mississippi Rule of Civil Procedure 56(f) allows that summary judgment should be avoided if there is a valid, good faith reason for further discovery. The premise of Rule 56(f)

is that completion of needed discovery may aid the court in its determination of whether there is a genuine issue of material fact. *Trotter v. Federal Ins. Co.*, 865 So. 2d 411, 417 (Miss. Ct. App. 2004). The court should refuse summary judgment if the party provides a valid, good faith reason for further discovery.

Plaintiff Vo argued that much needed discovery was not completed in this case and that as such, the case was not appropriate for summary judgment. Plaintiff never had the opportunity to depose Deputy Russell. The facts to be gathered from the deposition of Deputy Russell are crucial to the trier of fact because adversarial questions and answers about his actions, inactions, omissions and commissions related to the operation of his vehicle, are central to the issue of his reckless disregard or his prudence.

Further, the plaintiff never had an opportunity to question Deputy Russell regarding his state of mind at the time of the accident; his intentions and directions at the time of the accident, whether he was responding to an emergency at the time of the accident or how fast he was traveling when he struck plaintiff Vo's vehicle.

The deposition of Deputy Russell was first scheduled June 1, 2005. However, that deposition was not had. The plaintiff Re-Noticed Officer Russell's deposition for June 23, 2005. Before the deposition was taken, plaintiff's counsel indicated that he was withdrawing from the case on May 27, 2005. On June 23, 2005 this court issued the Order allowing the withdrawal. Plaintiff then had to find new Mississippi counsel and did so on July 25, 2005. However that counsel enrolled at that time for the limited purpose of sponsoring Louisiana counsel in an application *pro hac vice*.

In August 2005, Hurricane Katrina struck the Gulf Coast. In the aftermath of Katrina, Plaintiff's Louisiana counsel filed his application *pro hac vice*, which was ultimately denied

in March 2006, but not without first bringing the case to a stand-still during the time that issue was decided and several motions to bloc the *pro hac* application were made by the defendant. Once the *pro hac* motion was denied, defense counsel filed the current Motion for Summary Judgment. All the while, the Plaintiff sought to take the deposition of Deputy Russell as evidenced in correspondence to defense counsel. (Exhibit "A") (The documents attached hereto as Exhibit "A" were originally an exhibit to plaintiff's opposition to summary judgment, however, for a reason unknown to plaintiff/appellant, these documents were not made part of the record.)

Plaintiff does not allege that defense counsel has hidden Deputy Russell. Plaintiff merely alleges that circumstances and procedural matters have prevented the deposition from being had. Indeed, defense counsel also had problems locating Deputy Russell and had to amend its Motion for Summary Judgment and Itemization to include an affidavit by Deputy Russell, only after he was located and tracked down to sign it as late as July 31, 2006.

Because the Plaintiff has not had an opportunity to depose Officer Russell, this case was not appropriate for summary judgment.

**III.
THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT
WHERE PLAINTIFF SHOWED THE DEFENDANT'S ACTIONS WERE IN
RECKLESS DISREGARD FOR THE SAFETY OF OTHERS**

Defendant Hancock County's motion for summary judgment turns on material facts that if believed bring Deputy Russell's actions down to a level of negligence less than reckless disregard. Plaintiff Vo argues that these material facts in controversy are the center of this dispute and that because they are material facts in dispute, they must be left to the trier of fact and cannot be properly disposed of by summary judgment.

Primarily, the defendant argued that Deputy Russell did not act with reckless disregard when he backed out of his parking spot and into a public and busy throughway. However, defendant offers nothing to prove that Deputy Russell acted with prudence. The police report (R.212-213, Police Report) states that Officer Russell looked to his left, but it is silent on whether he also looked to his right. Plaintiff Vo was traveling toward Officer Russell from his right. This fact is material because the level of prudence and caution of Deputy Russell is determinative of whether he acted with reckless disregard.

Incidentally, long before Deputy Russell swore out his affidavit, plaintiff Vo submitted to a recorded statement, under oath, by the defendant's insurance adjuster. In that statement plaintiff Vo said that Deputy Russell failed to look in any direction. She stated that Deputy Russell backed out and into her vehicle without looking. She went on to tell the adjuster; "He didn't look. He even admitted when he got out that it was his fault, he done that. He hadn't looked." (R.247-248, Affidavit of Robin Lee Vo), (R.250-255 the Recorded Statement of Robin Lee Vo)

These two very different accounts of how the incident happened - one by the defendant and one by the plaintiff - certainly shows two things: 1) There is a genuine issue of material fact in dispute, and 2) Deputy Russell should have submitted to a deposition prior to any ruling on defendant Hancock County's motion for summary judgment.

In a case with facts almost exact to this case, the Supreme Court of Mississippi held a deputy in reckless disregard when he looked but failed to obtain a clear view of the throughway into which he backed, whereupon he struck another vehicle and injured the driver. *Maye v. Pearl River County*, 758 So.2d 391 (Miss. 1999). In that case, the court held

that even if the deputy looked, but his view was obstructed, it was reckless disregard for him to continue to back his car where he could not see.

Evidence presented at trial showed [Deputy] Collier backed his car up an incline, blocking traffic turning into the parking lot from the road... Although [Deputy] Collier testified that he checked his mirrors before backing up, he also stated he could not see approaching traffic just by using his mirrors. ...In short, without being able to see, [Deputy] Collier backed up and blocked an entrance... These actions are not the same as just backing out of a parking space as [Deputy] Collier suggests in his brief.

Maye v. Pearl River County, 758 So. 2d 391, 394 (Miss. 1999)

The facts in *Maye* are almost the exact facts of this case, except in *Maye* the deputy *at least attempted to look*, although he acknowledged that looking was not enough. In the case at hand, Deputy Russell cannot even say that he looked to his left *and* to his right. Indeed, the police report and his affidavit do not state that he looked to his right. It was from the right that Plaintiff Vo was traveling, and if he had looked his view would have been unobstructed as there were no cars parked to his right in any of the parking spaces. (R.212-213, Police Report).

In *Maye*, the Court went on to hold; "Collier did not just carelessly back out of a space. With *conscious indifference to the consequences*, he backed out *knowing he could not see what was behind him*. This Court has held 'wantonness is a failure or refusal to exercise any care, while negligence is a failure to exercise due care'" *Id* at 395. emphasis added.

The Court went on to hold:

When Collier backed out of the parking space and up the incline, he did not know what was behind him. He knew he could not see cars coming into the lot and he knew checking his mirrors would not let him see cars

pulling into the lot. ...These actions rise above simple negligence to the level of reckless disregard of the safety and well-being of others. For this reason the County and Collier *are not immune* from suit under the Act. *Maye v. Pearl River County*, 758 So. 2d 391, 395 (Miss. 1999) emphasis added.

If the Court in *Maye* held that looking but failing to have a clear view was indeed reckless disregard on the part of Collier and Pearl River County, then certainly it should follow that it is reckless disregard for Deputy Russell to not even look to his right - the direction the plaintiff was traveling - before he backed out and stuck her vehicle, damaging it and injuring her.

Further, as the Court has held in *Turner*, as to immunity and reckless disregard, it does not matter whether Deputy Russell *intended* to harm plaintiff Vo. The *Turner* Court has held that intent is not an element of reckless disregard. "[T]he circuit court was manifestly in error in requiring Turner to allege or establish that Officer Bradshaw intended to cause harm to Turner. *Turner v. City of Ruleville*, 735 So. 2d 226, 229 (Miss. 1999).

Concluding with the disputed facts, the plaintiff asserts that Deputy Russell failed to maintain a proper lookout by failing to look to his right to observe oncoming traffic and that he failed to exercise due care and that he acted with reckless disregard by backing, without looking in both directions, into a busy public thoroughway. Plaintiff asserts that Deputy Russell's failure to look to his right where he would have had a clear view of oncoming traffic was an even greater act of reckless disregard than those actions of Deputy Collier in the *Maye* case, because at least in *Maye* Deputy Collier attempted look although he could not see.

Further, Plaintiff asserts that Deputy Russell's failure to take precautions prior to backing into a busy public thoroughway (Bay Park Drive) is an even greater act of reckless disregard than that of Deputy Collier where Collier was backing in a parking lot just off a thoroughway as opposed to backing into a thoroughway as Deputy Russell was. Again, the actions of Deputy Russell are far more reckless than the defendant would have us believe based on Deputy Russell's affidavit and based on defendant's interpretation of the Police Report.

As the Mississippi Supreme Court has acknowledged with almost identical facts; "These actions are not the same as just backing out of a parking space as Collier suggests in his brief." *Maye v. Pearl River County*, 758 So. 2d 391, 394 (Miss. 1999)

IV. CONCLUSION

There is no question that Deputy Russell damaged plaintiff Vo's property and injured her person. There is no question as to his fault, as he has admitted to it. The questions are; In which level of negligence did his actions and inactions fall? Was he in the course and scope of his employment? Did he demonstrate any level of prudence or care?

These questions, to this day, remain unanswered because discovery was not allowed to proceed in this matter. For more than three years, this matter has been bogged down with evasive and dilatory actions of Hancock County's very skilled defense counsel. Plaintiff has not been allowed to pursue her claim for having to respond to endless procedural motions and likewise, crucial discovery was never made, after good faith attempts to do so.

Furthermore, defendant Hancock County failed to meet the rigorous summary judgment standards this Honorable Court has upheld time and again. There are clearly many disputed issues of fact that make summary judgment inappropriate.

Finally, if the few facts that were available to the trial court were viewed in a light most favorable to the non-moving party, (plaintiff Vo), then the trial court should not have ruled that Deputy Russell was protected by the Mississippi Tort Claims Act, *Mississippi Code Annotated* § 11-49-9.

For the reasons stated herein, Plaintiff Robin Lee Vo, through her counsel, prays this Honorable Court will reverse the finding so the trial court and will remand this matter for further proceedings.

Respectfully submitted,
ROBIN LEE VO

By: Chad P. Youngblood
CHAD P. YOUNGBLOOD, LA BAR [REDACTED]
Attorney for Robin Lee Vo, pro hac vice

CHAD P. YOUNGBLOOD, LA BAR [REDACTED]
The Law Office of Tim L. Fields
7611 Maple Street, Suite C
New Orleans, Louisiana 70118
Telephone: 504.864.0111
Telecopier: 504.864.0009

Respectfully submitted,

By: Michael E. Cox
MICHAEL E. COX, MS BAR [REDACTED]
Local Counsel for Robin Lee Vo

MICHAEL E. COX, MS BAR [REDACTED]
Michael E. Cox & Associates
Post Office Box 4908
Biloxi, Mississippi 39535
Telephone: 228.388.2626
Telecopier: 228.388.2594

CERTIFICATE OF SERVICE

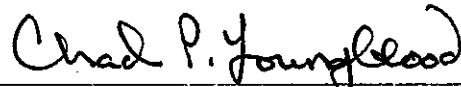
I, Chad P. Youngblood, foreign attorney admitted pro hac vice for plaintiff/appellant Robin Lee Vo, do hereby certify that I have this day sent via facsimile and/or have mailed, via U. S. Mail, postage prepaid, a true and correct copy of the foregoing Brief of Appellants to the following:

Walter W. Dukes, Esq.
14094 Customs Blvd., Suite 100
Gulfport, Mississippi 39503
228-868-1111 vox
228-863-2886 fax

The Hon. Stephen B. Simpson
Circuit Court Judge, Hancock County
Post Office Box 1570
Gulfport, Mississippi 39501

The Hon. Pamela T. Metzler
Hancock County Circuit Clerk
Post Office Box 249
Bay Saint Louis, Mississippi 39520

THIS the 9th day of July, 2007.



Chad P. Youngblood, La. Bar No. 30828
Admitted pro hac vice, Ms. Bar No. 992303

IN THE CIRCUIT COURT OF HANCOCK COUNTY, MISSISSIPPI

ROBIN LEE VO

PLAINTIFF

VERSUS

CAUSE NO. 04-0292

HANCOCK COUNTY, MISSISSIPPI

DEFENDANT

NOTICE OF DEPOSITION OF CHRISTOPHER RUSSELL

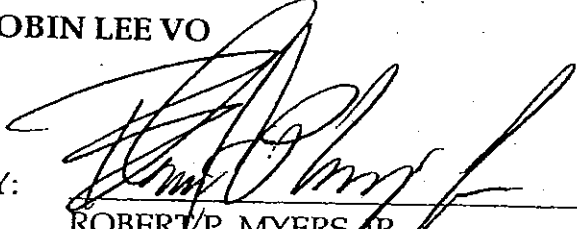
To: Walter W. Dukes, Esquire
Dukes, Dukes, Keating & Faneca, P.A.
Post Office Drawer W
Gulfport, MS 39502

PLEASE TAKE NOTICE that on the 1st day of June, 2005, immediately following the deposition of Robin Vo, the Plaintiff, ROBIN VO will take the deposition of CHRISTOPHER RUSSELL, at the offices of Plaintiff's counsel, Owen & Galloway, P.L.L.C. 1414 25th Avenue, Gulfport, Mississippi. Said oral examination to be recorded stenographically by a court reporter duly authorized to administer oaths. This deposition is being taken for all purposes permissible under the Mississippi Rules of Civil Procedure. You are invited to attend as counsel of record.

Respectfully submitted this the 26th day of April, 2005.

ROBIN LEE VO

BY:


ROBERT P. MYERS, JR.

Appellant's Brief

Exhibit A


(various correspondence)

(various correspondence)

CERTIFICATE OF SERVICE

I, ROBERT P. MYERS, JR., of the law firm of Owen & Galloway, P.L.L.C. hereby certify I have this day hand delivered a true and correct copy of the above and foregoing NOTICE OF DEPOSITION OF CHRISTOPHER RUSSELL to Walter W. Dukes, Esquire, Dukes, Dukes, Keating & Faneca, P.A., Post Office Drawer W, Gulfport, MS 39502.

Dated this the 26th day of April, 2005.


ROBERT P. MYERS, JR.

ROBERT P. MYERS, JR. (Bar No. 9007)
OWEN & GALLOWAY, P.L.L.C.
1414 25TH AVENUE
OWEN BUILDING
POST OFFICE DRAWER 420
GULFPORT, MS 39502-0420
TEL: (228) 868-2821
FAX: (228) 864-6421

IN THE CIRCUIT COURT OF HANCOCK COUNTY, MISSISSIPPI

ROBIN LEE VO

PLAINTIFF

VERSUS

CAUSE NO. 04-0292

HANCOCK COUNTY, MISSISSIPPI

DEFENDANT

RE-NOTICE OF DEPOSITION OF CHRISTOPHER RUSSELL

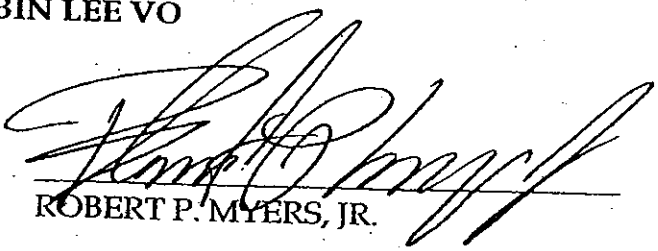
To: Walter W. Dukes, Esquire
Dukes, Dukes, Keating & Faneca, P.A.
Post Office Drawer W
Gulfport, MS 39502

PLEASE TAKE NOTICE that on the 23rd day of June, 2005, immediately following the deposition of Robin Vo, the Plaintiff, ROBIN VO will take the deposition of CHRISTOPHER RUSSELL, at the offices of Plaintiff's counsel, Owen & Galloway, P.L.L.C. 1414 25th Avenue, Gulfport, Mississippi. Said oral examination to be recorded stenographically by a court reporter duly authorized to administer oaths. This deposition is being taken for all purposes permissible under the Mississippi Rules of Civil Procedure. You are invited to attend as counsel of record.

Respectfully submitted this the _____ day of May, 2005.

ROBIN LEE VO

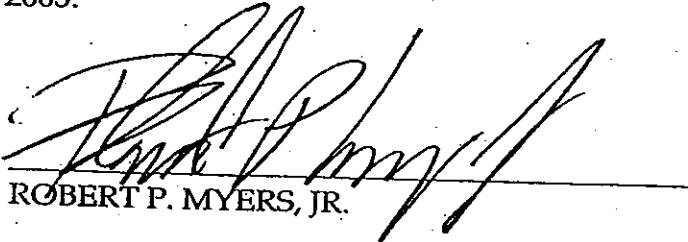
BY:


ROBERT P. MYERS, JR.

CERTIFICATE OF SERVICE

I, ROBERT P. MYERS, JR., of the law firm of Owen & Galloway, P.L.L.C. hereby certify I have this day hand delivered a true and correct copy of the above and foregoing RE-NOTICE OF DEPOSITION OF CHRISTOPHER RUSSELL to Walter W. Dukes, Esquire, Dukes, Dukes, Keating & Faneca, P.A., Post Office Drawer W, Gulfport, MS 39502.

Dated this the ____ day of May, 2005.


ROBERT P. MYERS, JR.

ROBERT P. MYERS, JR. (Bar No. 9007)
OWEN & GALLOWAY, P.L.L.C.
1414 25TH AVENUE
OWEN BUILDING
POST OFFICE DRAWER 420
GULFPORT, MS 39502-0420
TEL: (228) 868-2821
FAX: (228) 864-6421

OWEN & GALLOWAY

P.L.L.C.

Attorneys At Law

Owen Building
1414 26th Avenue
Post Office Drawer 420
Gulfport, MS 39502-0420
Telephone: 228-868-2821
Fax: 228-864-6421 or 228-868-2813
e-mail: ogc@owen-galloway.com
website: www.owen-galloway.com

May 27, 2005

JOE SAM OWEN
JSO@owen-galloway.com
BEN F. GALLOWAY
BFG@owen-galloway.com
ROBERT P. MYERS, JR.
RPM@owen-galloway.com

CHAD P. FAVRE
CPF@owen-galloway.com

Via Facsimile/(504) 864-0009

Tim L. Fields, Esquire
7611 Maple Street, Suite C
New Orleans, LA 70118

Re: *Robin Lee Vo v. Hancock County, Mississippi*
Cause No. 04-0292
Our File No. 9376

Dear Tim:

As you know, the depositions of Ms. Vo and Deputy Christopher Russell were scheduled for June 1st in my office. These depositions have been rescheduled to June 23, 2005, beginning at 9:30 a.m. due a scheduling conflict that has arisen. Enclosed are copies of the Re-Notices of Deposition for Ms. Vo and Deputy Russell.

I attempted to contact Ms. Vo to advise her of this change, however, her phone is temporarily disconnected and as such I have been unable to contact her. By copy of this letter, I am advising Ms. Vo of the schedule change and asking that she contact Michelle in my office to confirm same.

My office will be closed Monday, May 30th in observance of Memorial Day, and I am sure yours is as well. My office will reopen Tuesday, May 31st and I look forward to hearing from Ms. Vo then.

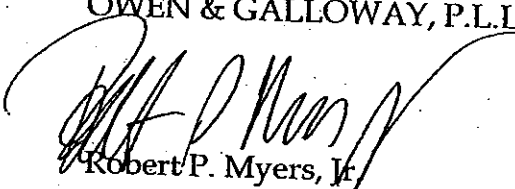
As always, should you have any questions, please do not hesitate to contact me. I hope your extended weekend is a pleasant one.

Tim L. Fields, Esquire
May 27, 2005
Page 2

With kindest personal regards, I remain

Sincerely yours,

OWEN & GALLOWAY, P.L.L.C.



Robert P. Myers, Jr.

RPMJr/mcf

Enclosures

cc: Ms. Robin Vo (w/encl. *Re-Notice of Deposition*)

DUKES, DUKES, KEATING & FANCA, P.A.

14094 CUSTOMS BOULEVARD, SUITE 100
GULFPORT, MISSISSIPPI 39503

WALTER W. DUKES
HUGH D. KEATING
CY FANCA
PHILLIP W. JARRELL
W. EDWARD HATTEN
TRACE D. MCRANEY
SUL OZERDEN*
WILLIAM SYMMES
BOBBY R. LONG

WILLIAM F. DUKES,
(1927 - 2003)

P. O. DRAWER W
GULFPORT, MS 39502

TELEPHONE
228-868-1111

FAX
228-863-2886

November 30, 2005

JE'NELL B. GUSTAFSON**
JASON B. PURVIS
RICH CASSADY
SARAH DEES RIMES
ANGELA M. JONES
DAVID N. DUHE'
HALEY N. BROOM

*also licensed in AL, FL, LA
**also licensed in CA

Tim L. Fields, Esq.
ATTN: Chad Youngblood, Esq.
Attorney at Law
7611 Maple Street, Suite C
New Orleans, LA 70118

RE: *Robin Lee Vo v. Hancock County, Mississippi*
Hancock County Circuit Court Cause No.: 2004-0292
Our File No.: 34.379

Dear Chad:

Per your telephone call to my office, please find enclosed a copy of the transcript of the deposition that was taken of Robin Lee Vo on June 23, 2005. It is our understanding that your office will reimburse our firm for the photocopying of same. 52 pages were copied @ .30 per page for a total of \$15.60.

As to your inquiry about the depositions of Hancock County and Christopher Russell, we have no record of them being taken.

Also, enclosed please find copies of Defendant's Motion to Require the Plaintiffs and Their Attorneys to Execute Affidavits, Defendant's Opposition to Admission of Foreign Attorney *Pro Hac Vice* Pursuant to Rule 46 of the Mississippi Rules of Appellate Procedure, and a copy of the September 8, 2005 Supreme Court Clerk's Notice deeming the Plaintiff's Motion to Enroll as Counsel *Pro Hac Vice* deficient, which I am providing you for your records and review in the event you have not already seen them.

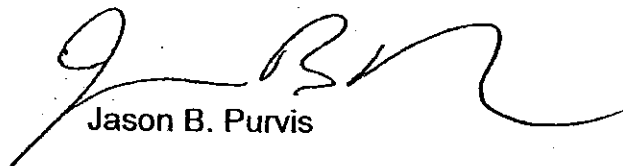
Chad Youngblood, Esq.
November 30, 2005
Page 2

If I can be of any further assistance to you, please do not hesitate to give me a call.

With my kindest regards, I am

Sincerely,

DUKES, DUKES, KEATING & FANCA, P.A.

A handwritten signature in black ink, appearing to read "J B Purvis", with a long horizontal flourish extending to the right.

Jason B. Purvis

JBP/kmm
Enclosures (4)

IN THE CIRCUIT COURT OF HANCOCK COUNTY, MISSISSIPPI

ROBIN LEE VO

PLAINTIFFS

VERSUS

No. 04-292

HANCOCK COUNTY, MISSISSIPPI

DEFENDANTS

JUDGMENT

THIS MATTER came on for hearing on September 25, 2006, on Motion of the Defendant Hancock County, Mississippi for Summary Judgment and the Court heard the argument of the parties and reviewed the evidence, pleadings, and applicable law. Summary Judgment is available to a party where there are no genuine disputes as to any material facts and the moving party is entitled to judgment as a matter of law. Rule 56, *Miss. R. Civ. Proc.* The Defendant Hancock County is entitled to a judgment as a matter of law.

This action arose from a motor vehicle accident that occurred in Hancock County Mississippi. Hancock County Officer Christopher Russell was conducting an investigation when he backed his vehicle from a parked position on Longfellow Road and struck Vo's vehicle. Vo alleged that the officer failed to look "both ways" before backing out which raises negligence into reckless disregard. A review of the police report only states that the officer looked to the left.

This suit alleges tortious conduct by a governmental employee, Hancock County Officer Russell, acting within the course and scope of his employment. Pursuant to *Miss. Code Ann.* § 11-46-1, *et seq.*, governmental entities are immune from alleged tortious conduct by their employees except to the extent immunity is specifically waived. The immunity is waived in claims arising out of any act or omission while engaged in police protection if "the employee acted in reckless disregard for the safety and well-being of any person not engaged in criminal activity at the time of injury..." *Miss. Code Ann.* § 11-46-9(1)(c).


Appellant's Brief

Exhibit B

(Judgment)

FILED

DEC 07 2006


PAMELA THOMAS MEIZLER
CIRCUIT CLERK, HANCOCK CO.
BY  D.C.

When the cause of action arises out of a vehicular accident the standard for liability is reckless disregard, a higher standard than simple or gross negligence. See *Joseph v. City of Moss Point*, 856 So.2d 548 (Miss. Ct. App. 2003); *Mladonado v. Kelly*, 768 So.2d 906, 911 (Miss. 2000); *McGrath v. City of Gautier*, 794 So.2d 983, 987 (Miss. 2001); *Miss. Dep't. of Pub. Safety v. Durn*, 861 So.2d 990, 994 (¶10) (Miss. 2003). This standard "embraces willful or wanton conduct which requires knowingly and intentionally doing a thing or wrongful act." *Id.* at 995 (¶10) (quoting *City of Jackson v. Lipsey*, 834 So.2d 687, 691-92 (¶16) (Miss. 2003)). The plaintiff has the burden of proving 'reckless disregard' by a preponderance of the evidence." *Titus v. Williams*, 844 So.2d 459, 468 (¶37) (Miss. 2003) (citing *Simpson v. City of Pickens*, 761 So.2d 855, 859 (Miss. 2000)). *Willing v. Benz*, 2006 Miss. App. Lexis 873 (Miss. Ct. App. 2006).

Plaintiff bears the burden of establishing that Officer Russell backed into the roadway with reckless disregard. Even if there is a genuine issue of fact as to whether Officer Russell failed to "look both ways", there is nothing which creates an issue of reckless disregard. The facts presented create nothing more than issues of simple negligence and Hancock County and its employee are immune from such claims. It is therefore,

ORDERED AND ADJUDGED that the Motion for Summary Judgment of the Defendant, Hancock County, Mississippi is granted, with final judgment being entered dismissing the action against this Defendant.

SO ORDERED AND ADJUDGED, this the 3rd day of Dec 2006.


STEPHEN B. SIMPSON
CIRCUIT COURT JUDGE

Supreme Court of Mississippi
Court of Appeals of the State of Mississippi
Office of the Clerk

Betty W. Sephton
Post Office Box 249
Jackson, Mississippi 39205-0249
Telephone: (601) 359-3694
Facsimile: (601) 359-2407

(Street Address)
450 High Street
Jackson, Mississippi 39201-1082

e-mail: sctclerk@mssc.state.ms.us

March 21, 2007

Robin Lee Vo

v.

Hancock County, Mississippi

Case # 2007-TS-00071

NOTICE

Pursuant to the directive of the Court, the Verified Application for Admission Pro Hac Vice filed by Attorney Michael E. Cox on behalf of Chad P. Youngblood, Foreign Attorney, is permitted under M.R.A.P. 27 (b) (7), as amended September 30, 2004. Chad P. Youngblood is allowed to appear Pro Hac Vice in this cause.

bws

Betty W. Sephton
CLERK

Appellant's Brief

Exhibit C

(pro hac vice notice)