

MISSISSIPPI COURT OF APPEALS

NO. 2007-CA-00280

GREGORY S. MARTIN

APPELLANT

VERSUS

MISSISSIPPI STATE INSTITUTIONS OF HIGHER LEARNING

APPELLEE

APPELLEE'S BRIEF

ORAL ARGUMENT NOT REQUESTED

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CERTIFICATE OF INTERESTED PARTIES

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 and/or the Judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Gregory Martin, Appellant;
2. Jim Waide, Esq., Attorney for the Appellant;
3. Luther C. Fisher, IV, Esq., Attorney for Appellant;
4. Waide & Associates, P.A., Attorneys for Appellant;
5. Mississippi State Institutions for Higher Learning, Appellee
6. James T. Metz, Esq., Attorney for Appellee;
7. Alan M. Purdie, Esq., Attorney for Appellee;

8. Josh Freeman, Esq., Attorney for Appellee;
9. Purdie & Metz, PLLC, Attorneys for Appellee;

So certified, this the 4th day of February, 2008.

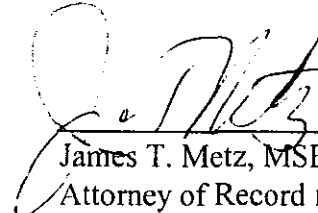


James T. Metz, MSB 
Attorney of Record for Appellee
Mississippi Institutions of Higher
Learning

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STATEMENT OF THE ISSUES

- I. Whether there was substantial evidence to support the jury verdict.

STATEMENT OF THE CASE

A. Statement of the Proceedings

On October 9, 2003, Gregory Martin (hereinafter "Martin") filed a complaint in the Circuit Court of Oktibbeha County seeking to recover actual damages for breach of employment contract. (Clerk's papers, Vol. I, 6-12)

Martin's Complaint named Mississippi State University (hereinafter "University") as the defendant and alleged that his termination was in violation of an employment contract he had with the University. The Complaint further alleged that the University was liable to Martin for the lost income and mental anxiety and stress caused by the termination.

Martin filed his First Amended Complaint on April 6, 2004. The amended complaint named the Board of Trustees of State Institutions of Higher Learning of the State of Mississippi (hereinafter "IHL") as the defendant. (Clerk's papers, Vol. I, 18-25)

On July 10, 2004, IHL's motion for summary judgment was denied. (Clerk's papers, Vol. II, 164-65)

The matter was tried before a jury on January 31 and February 1, 2006. During jury deliberations, the jury sent a note to the Judge asking, "Do we have to give compensation?" (Clerk's papers, Vol. II, 212) No further instructions were given by the court. A verdict was rendered for Martin in the sum of \$10,000.00. (Clerk's papers, Vol. II, 213) A final judgment was entered on February 7, 2006. (Clerk's papers, Vol. II, 214)

IHL filed a Motion for Judgment Notwithstanding the Verdict. (Clerk's papers, Vol. II, 215-17) A hearing was held on the motions on April 6, 2006.

On January 22, 2007, the circuit court granted IHL's Motion for Judgment

Notwithstanding the Verdict and set aside the verdict and judgment.

In granting IHL's Motion, the Court noted that it did not take motions of this nature lightly since our system of justice is founded on the premises of trial by jury. The Court found that the jury's verdict was not based on substantial evidence, but was the result of bias, prejudice, or passion. Further, the Court based this decision in part on the jury's question sent to the Court during their deliberations, inquiring whether or not they could find for the Plaintiff but not award damages. As stated by the trial court, if the Plaintiff had proven its case then the damages should have been fairly straight forward. However, Plaintiff's counsel argued for sympathy during the closing arguments, asking for mercy for a sinner. The great quantum of the evidence from disinterested witnesses was that Gregory Martin struck the student in question with a golf bag to the student's face. Clearly, Martin could not intentionally strike a student under the terms of his employment contract. This action was not done in self-defense nor was an instruction requested at trial which would have allowed the jury to find that he acted in self-defense. Additionally, the jury's award of \$10,000, which in no way corresponds to any damages for mental anguish, stress, or lost wages that Plaintiff was seeking, is an indication of the jury's non-reliance on the evidence presented at trial. (Clerk's papers, Vol. II, 235-37; Appellant's Record Excerpts, Tab 4)

Martin filed a timely notice of appeal on February 12, 2007. (Clerk's papers, Vol. II, 238; Appellant's Record Excerpts, Tab 5)

B. Statement of the Facts

Mr. Martin entered into a contract to coach golf for Mississippi State University. (R. 123) The contract could be terminated at any time for financial exigencies, reductions of programs, malfeasance, inefficiency, contumacious conduct and cause. (R. 124, Clerk's papers,

Vol. I, 10) The contract could also be terminated for any serious violation of any regulation, rule, by-law, policy or constitutional provision of the State of Mississippi. (R. 124, Clerk's papers, Vol. I, 12)

The University had adopted a policy entitled "Guidelines for Employee Conduct", which was a part of Mr. Martin's contract. (R.155, Clerk's papers, Vol. I, 46) The policy allowed termination for (1) discourtesy toward co-workers, students, or the public including committing or threatening physical or verbal abuse of others, (2) Physical altercations, (3) behavior of any nature that discredits the University, including but not limited to, a willful misrepresentation to or on behalf of the University and (4) any other action, behavior, or communication which, as perceived by University officials, adversely affects the University or any sub-unit thereof. (R. 56, Clerk's papers, Vol. I, 46)

On February 1, 2003, the Mississippi State University golf team members were guests of Old Waverly. (R. 137) Carl Sutton, was a student at the University, he had been on the golf team and was still on a scholarship, but had been taken off the team. However, Carl was a member of Old Waverly. (R. 239)

Coach Martin saw Carl Sutton and walked the length of the driving range and said, "Carl Sutton." Carl replied. "Greg Martin." Coach Martin thought Carl was being disrespectful. (R. 139)

Matt Mooney was a member of the University golf team and was at Old Waverly on February 1, 2003 and witnessed the altercation. Matt heard a loud exchange of words between Martin and Carl, which made him uncomfortable. (R. 219) The argument was loud enough that members and guests of Old Waverly also heard it. (R. 219) Matt observed Coach Martin

running down to Carl and they were real close to each other. Matt saw Coach Martin take the golf bag and hit Carl Sutton on the right side of his face and Carl jumped back. (R. 221) Matt Mooney described the altercation as an extremely uncomfortable situation and did not view it as a defensive measure on the part of Coach Martin. (R. 222)

Craig Horrocks testified that he was on the golf team and witnessed the incident between Coach Martin and Carl Sutton. Craig Horrocks heard Martin tell Carl that he was a 85 shooter and that he was stealing money from him, because he was on scholarship and wasn't actually playing for the team; thus, the scholarship wasn't being use. (R. 242)

Craig Horrocks saw Carl give the bag to Coach Martin and Martin hit him on the head with the bag. (R. 243) Craig stated that Carl was hit hard enough by the bag to be knocked backwards. Craig testified that he was embarrassed to be a part of the Mississippi State University golf team that morning. Further, he stated that members and guests of Old Waverly witnessed the event. (R. 243)

Jamie Easley testified that he was a teacher and coach at Calhoun City High School and was a guest at Old Waverly and witnessed the altercation. (R. 249) Coach Easley heard Coach Martin tell Carl that he was not an SEC golfer. You're a hack and you don't belong here. He described that exchange of words as loud and he was only 10 to 20 yards away. (R. 251) Coach Easley stated that being called a hack is an insult to a golfer. Coach Easley testified that he heard cursing from Coach Martin and that some eight or ten members were within hearing of the altercation. He stated that as a coach for the last four years, dealing with students that the incident was inappropriate on Coach Martin's part. (R. 253) Coach Easley state that the Kid was upset and pretty close to tears and a couple kids came up to him and were sympathizing with him. (R.

254) Coach Easley saw Carl hand the bag to Coach Martin and Martin either hit him with it or came real close. (R. 255) Coach Easley testified that he and other members couldn't believe what was going on, especially with a SEC school at Old Waverly. He was embarrassed for Mississippi State University. (R. 256)

Coach Easley testified that in four years of coaching and in his experience as a teacher and a coach, he had never seen a coach conduct himself in the manner in which Coach Martin did toward this player or a teacher conduct themselves in this manner toward a student. (R. 267)

Matt Mooney testified that after the altercation, Coach Martin said, "I'm through. I let him get to me. You know, and I know I shouldn't have." Further, Martin told Mooney that he (Mooney) was his only hope now. (R. 224)

Paul Mock was the head athletic trainer at Mississippi State University. Mr. Mock examined Carl after the incident and observed a bump and redness on his forehead. It was obvious the something had hit Carl in the head. (R. 270-71) Mr. Mock recommended and made arrangements for Carl to be examined at the Oktibbeha County Hospital emergency room with the University taking responsibility for the charges. (R. 273)

Larry Templeton was the Athletic Director and had hired Coach Martin as the golf coach. (R. 286) Mr. Templeton directed that the incident be investigated. Based on the results of the investigation, Mr. Templeton concluded that Coach Martin was discourteous toward co-workers, students, and the public, including committing or threatening physical or verbal abuse of others. He concluded that Carl suffered a physical altercation at the hands of Coach Martin, and Martin's behavior discredited the University. (R. 287) Based on these conclusions, Mr. Templeton recommended termination. (R. 288) The President of the University agreed with the

recommendation of termination. (R. 292)

Coach Martin appealed his termination to a five person appeals panel. The panel consisted of the Dean of Students, an Assistant Vice President, an employee of human resources and two others. The appeals panel agreed with the termination. The Board of Trustees accepted the termination request of the President and Coach Martin was terminated. (R 294)

Plaintiff's attorney argued to the jury, "I don't believe there's a perfect person. And you don't have to take my word for it, because that's what the Bible said: All have sinned and come short of the glory of God. Every person, not one is perfect, not one is perfect." (R. 368) He further argued, "So, I ask you to go back and apply your good common sense. Don't ask Coach Martin to be perfect. Nobody can be perfect." (R. 369)

In deliberations, the jury sent out a note asking, "do we have to give compensation?" The jury was given no further instructions and returned a verdict for plaintiff accessing his damages at \$10,000. (R. 373-74)

SUMMARY OF THE ARGUMENT

The Institutions of Higher Learning did not ask for a perfect man as argued by plaintiff to the jury; however, it did expect its employee to conduct himself pursuant to his contract. The Institutions of Higher Learning expected and demanded its employee to act in a way not to discredit the University and Coach Martin failed miserably.

The overwhelming weight of the evidence demonstrated that Coach Martin showed (1) discourtesy toward co-workers, students, or the public, (2) committed or threatened physical or verbal abuse of others, (3) exhibited behavior that discredited the University, and (4) engaged in physical altercations. Appellant's conduct supported the Institutions of Higher Learning's decision to terminate Coach Martin. Further, the trial judge observed the manner and demeanor of the witnesses and as dictated by case law, his decision should be given great respect; thus, his decision granting a JNOV should be affirmed.

ARGUMENT

Directed verdict and JNOV motions challenge the legal sufficiency of the evidence.

Milburn v. Vinson, 850 So.2d 1219 (Miss. Ct. App. 2002), citing Woodard v. Turnipseed, 784 So. 2d 239 (P13) (Miss. Ct. App. 2000). If, after examining the facts and inferences, the facts and inferences point so overwhelmingly in favor of the movant that no reasonable person could have arrived at a contrary verdict, the motion must be granted. *Id.*; Stubblefield v. Jesco, Inc., 464 So. 2d 47, 54 (Miss. 1984).

“When a verdict is challenged via appeal from denial of a motion JNOV, we have before us the same record that the trial judge had. We see the testimony the trial judge heard. We do not, however, observe the manner and demeanor of the witnesses. We do not smell the smoke of battle. The trial judge’s determination whether, under the standards articulated above, a jury issue has been presented, must per force be given great respect here.” City of Jackson v. Locklar, 431 So. 2d 475, 478-79 (Miss. 1983). Common sense dictates, that the above standard, which was so well stated by the Supreme Court should be observed when a JNOV is granted, as well as denied.

Martin argues that the jury was entitled to believe Martin when he testified that he was simply doing his job to comply with the NCAA rules when he approached Sutton at Old Waverly and told him to turn in his Mississippi State golf bag. Remarkably, he argues that the jury was entitled to believe Martin when he testified he never intended to hit the disobedient student. Further, he argues that the jury was entitled to believe Martin did nothing that would constitute a breach of his contract.

Appellant is basically arguing that the jury has the discretion to ignore the overwhelming evidence in favor of the Institutions of Higher Learning. Martin contends that he never intended

to hit the disobedient student. Obviously, Martin in his brief concedes that he hit Mr. Sutton, but it was ok since he was disobedient and a student.

Mr. Sutton was not a disobedient student, he was a member of Old Waverly and not on campus. Mr. Martin's contract did not allow an alleged student to be hit regardless of intent, whether on campus or not. Further, hitting an individual, whether a student or not, was not the only violation of his contract that he contends that the jury could choose to ignore.

The contract could also be terminated for any serious violation of any regulation, rule, by-law, policy or constitutional provision of the State of Mississippi. (R.124, Clerk's papers, Vol. I, 12)

The University had adopted a policy entitled "Guidelines for Employee Conduct", which was a part of Mr. Martin's contract. (R. 155, Clerk's papers, Vol. I, 46) The policy allowed termination for (1) discourtesy toward co-workers, students, or the public including committing or threatening physical or verbal abuse of others, (2) physical altercations. (3) behavior of any nature that discredits the University, including but not limited to, a willful misrepresentation to or on behalf of the University and (4) any other action, behavior, or communication which, as perceived by University officials, adversely affects the University or any sub-unit thereof. (R. 156, Clerk's papers, Vol. I, 46)

Jamie Easley testified that he was a teacher and coach at Calhoun City High School and was a guest at Ole Waverly and witnessed the altercation. (R. 249) Coach Easley heard Coach Martin tell Carl that he was not an SEC golfer. You're a hack and you don't belong here. He described that exchange of words as loud and he was only 10 to 20 yards away. (R. 251) Coach Easley stated that being called a hack is an insult to a golfer. Coach Easley testified that he heard

cursing from Coach Martin and that some eight or ten Old Waverly members were within hearing of the altercation. He stated that as a coach for the last four years, dealing with students that the incident was inappropriate on Coach Martin's part. (R. 253) Coach Easley stated that the kid was upset and pretty close to tears and a couple kids came up to him and were sympathizing with him. (R. 254) Coach Easley testified that he and other members couldn't believe what was going on, especially with a SEC school at Old Waverly. He was embarrassed for Mississippi State University. (R. 256)

Coach Easley testified that in four years of coaching and in his experience as a teacher and a coach, he had never seen a coach conduct himself in the manner in which Coach Martin did toward this player or a teacher conduct themselves in this manner toward a student. (R. 267)

Matt Mooney was a member of the University golf team and his Coach was Coach Martin. Matt heard a loud exchange of words between Martin and Carl, which made him uncomfortable. (R. 219) The argument was loud enough that members and guests of Old Waverly also heard it. (R. 219) Matt observed Coach Martin running down to Carl and they were real close to each other. Matt saw Coach Martin take the golf bag and hit Carl Sutton on the right side of his face and Carl jumped back. (R. 221) Matt Mooney described the altercation as an extremely uncomfortable situation and did not view it as a defensive measure on the part of Coach Martin. (R. 222)

Craig Horrocks testified that he was on the golf team and witnessed the incident between Coach Martin and Carl Sutton. Craig Horrocks heard Martin tell Carl that he was a 85 shooter and that he was stealing money from him, because he was on scholarship and wasn't actually playing for the team; thus, the scholarship wasn't being use. (R. 242)

Craig Horrocks saw Carl give the bag to Coach Martin and Martin hit him on the head with the bag. (R. 243) Craig stated that Carl was hit hard enough by the bag to be knocked backwards. Craig testified that he was embarrassed to be a part of the Mississippi State University golf team that morning. Further, he stated that members and guests of Old Waverly witnesses the event. (R. 243)

The overwhelming weight of the evidence showed that Coach Martin, an MSU employee, made a spectacle of himself. It cannot be denied that his actions discredited the University. Making matters worse, if possible, his conduct was displayed on Old Waverly, a private golf course, which had invited the MSU team to use its facilities. Old Waverly's reward for extending the favor was an event which drew criticism of the management's decision to allow MSU's participation.

Appellant's contract allowed termination for (1) discourtesy toward co-workers, students, or the public including committing or threatening physical or verbal abuse of others, (2) Physical altercations, (3) behavior of any nature that discredits the University, including but not limited to, a willful misrepresentation to or on behalf of the University and (4) any other action, behavior, or communication which, as perceived by University officials, adversely affects the University or any sub-unit thereof.

Coach Martin testified, "the bag I grazed him, went up his shoulder and grazed him on the side of the head." (R. 171)

Coach Martin further testified as follows:

Q: Isn't it true that after this incident, you went over to Matt Mooney, one of your players, and said, Bubba, I lost it. I'm through. I let him get to me. Do

you agree with that?

Martin: I believe I said that. (R.175)

Its hard to imagine a situation more humiliating for the University. There is no doubt that Coach Martin's actions showed (1) discourtesy toward co-workers, students, or the public, (2) committed or threatened physical or verbal abuse of others, (3) exhibited behavior that discredited the University, and (4) engaged in physical altercations. As dictated by his contract, any one of the above actions required termination. The overwhelming weight of the evidence, as acknowledged by the trial judge, showed that he breached his contract. Indeed, he breached numerous conditions of his contract and his dismissal was in order.

CONCLUSION

The overwhelming weight of the evidence supported the trial judge's decision to grant the appellee a JNOV and that decision should be affirmed.

Respectfully submitted,

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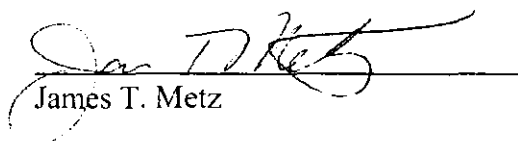
CERTIFICATE OF SERVICE

I, James T. Metz, do hereby certify that I have this day mailed, via United States mail, postage prepaid, a true and correct copy of the above and foregoing Brief of the Appellee:

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Honorable James T. Kitchens, Jr.
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This the 14th day of February, 2008.


James T. Metz