IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

DIANE EVANS — PLAINTIFF/APPELLANT

VS. — No. 2007-CA-00527

BONNIE HODGE — DEFENDANT/APPELLEE

BRIEF OF BONNIE HODGE
APPELLEE

ORAL ARGUMENT NOT REQUESTED

APPEAL FROM THE CIRCUIT COURT
OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

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CERTIFICATE OF INTERESTED PERSONS

In order that the Justices of the Supreme Court and/or the Judges of the Court of Appeals may evaluate possible disqualification or recusal, the undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case:

a. Diane Evans, Appellant;

b. Bonnie Hodge, Appellee;

c. William M. Vines, Esq., Page, Kruger & Holland, P.A., Counsel for Appellee;

d. Alma Walls, Esq., Counsel for Appellant

e. Honorable Swan Yerger, Hinds County Circuit Judge.

This, the 25th day of October, 2007.

WILLIAM M. VINES

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STATEMENT REGARDING ORAL ARGUMENT

Appellee submits that the facts and legal arguments are adequately presented in this brief and appellate record and the decisional process of this Court would not be significantly aided by oral argument. M.R.A.P. 34 (a)(3).

STATEMENT OF THE ISSUES

1. Under Mississippi law, can a residential homeowner be held liable to a plaintiff who slips and falls on the homeowner's front porch when (1) the homeowner did not invite the plaintiff onto the property, (2) the homeowner derived no advantage from the presence of the plaintiff, and (3) the sole reason the plaintiff was on the property was to visit a third party who was on the homeowner's premises?

2. Under Mississippi law, when a plaintiff is invited onto the premises of a residential homeowner by someone other than the homeowner for the sole purpose of visiting someone other than the homeowner, is that plaintiff an invitee or a licensee of the homeowner?

3. Did the lower court err by granting summary judgment in favor of the Defendant/Appellee, Bonnie Hodge, when the undisputed facts are that the Plaintiff/Appellant, Diane Evans, went onto Hodge's property at the invitation of Hodge's sister, Betty Russell, and for the express purpose of visiting Hodge's sister, Betty Russell?

STATEMENT OF THE CASE

A. Course of Proceedings and Disposition in the Court Below

This is an appeal of a summary judgment entered in favor of the Defendant/Appellee, Bonnie Hodge (hereinafter "Hodge"), by Hinds County Circuit Judge Swan Yerger. Hodge moved for summary judgment arguing that at the time of the alleged slip and fall incident, Plaintiff/Appellant, Diane Evans (hereinafter "Evans") was a licensee, not an invitee. (R. 38). Hodge argued that since there was no evidence that Hodge willfully or wantonly injured Evans, she was entitled to judgment as a matter of law. (R. 38). Judge Yerger agreed, and on March 7, 2006, entered an order granting summary judgment in favor of Hodge. (R. 98). A final judgment was entered in favor of Hodge on that same date. (R. 97).

B. Statement of the Facts

This is a premises liability claim in which the Evans seeks damages for alleged bodily injuries allegedly sustained in a slip and fall that occurred on January 2, 2001, at Hodge's residential home in Pocahontas, Mississippi. (R. 49-50). Evans' visit to Hodge's house came about as follows. Evans lived next door to Hodge's sister, Betty Russell (hereinafter "Russell"), on Dryden Street in Jackson. (R. 48). Russell's house burned down and she temporarily moved in with Hodge in Pocahontas while her house was being rebuilt. (R. 49).

Evans testified that Russell had been expecting a check from her insurance company, ostensibly to pay for the damages arising from the fire. (R. 49-50). When the check arrived in the mail, Evans agreed with Russell to bring the check to Russell at Hodge's house. (R. 49-50). Evans testified as follows in her deposition:

> Q: On this day there was an insurance check in the mail that Betty [Russell] had asked you specifically to bring up to her?

A: I told her it was from her insurance and she said that she was expecting a check. Uh-huh. (Affirmative response).

Q: Okay. And was that the only reason you went up there [to Hodge's house]?

A: That's the only reason I went.

Q: Just to take the check?

A: I took the mail. You know, I didn't open her mail so, you know, I couldn't say what it was. I took her mail in, in a bag and gave it to her.

(R. 50).

It is undisputed that Hodge did not invite Evans to her home. Evans was invited to Hodge's home by Russell. In Evans' appellate brief, she states:

> Russell asked Evans to pick up her mail. . . . Evans called Russell and informed her about the letter [from the insurance company] and Russell asked Evans to deliver the letter to her in Pocahontas. Russell told her sister, Hodge, that Evans was coming over to the house to deliver her mail.

Evans' Brief, p. 3.

Later in her brief, Evans states, "[Evans] entered the Hodge residence upon an invitation from Betty Russell." Evans' Brief, p. 11. Thus, it is undisputed that Evans was invited to the Hodge home not by Hodge, but by Russell. There is absolutely no evidence – and Evans does not even allege – that Hodge invited Evans to her home on the date of the incident.

When Evans went to Hodge's house, there was some ice and snow on the ground. On the previous day, January 1, 2001, central Mississippi experienced unusually inclement weather and received a large amount of snow fall. (R. 50). Evans arrived at Hodge's home about 7:30 p.m. and parked in the driveway. (R. 51). Evans noted that there was plenty of snow and ice on the sidewalk leading up to Hodge's side door. (R. 51, 52). Evans testified that she "tipped" over the ice and snow and knocked on Hodge's door. (R. 51).

Evans described her visit to Evans' house as follows:

A: I talked to her [Betty Russell] for a little while, yeah. I sat down back in the back of the bedroom where she was to talk to her for a little while, you know. We just basically was talking about, you know, she was kind of – about the neighborhood and everything.

Q: Did you visit with Bonnie [Hodge] and her husband at all?

A: Well, Bonnie was up front in the den when I came. She was watching TV and she just – I told her why I was there and she told me to go on back, and she didn't never get up. So I came back up – her husband wasn't there. I never saw her husband.

Q: He wasn't there?

A: No.

Q: So she was up front watching TV?

A; Uh-huh. (Affirmative response).

Q: And you knocked on the door, went in, visited with Betty for a while and gave her the mail. How long did you stay at the house?

A: I guess I probably stayed anywhere between 45 minutes and an hour....

* * * * *

Q: And there was no other purpose for your visit other than to visit with Betty and taking her the mail?

A: No other purpose.

(R. 50).

In her brief, Evans has further acknowledged that her sole purpose for visiting the Hodge home was to deliver the mail to Hodge's sister, Betty Russell. Evans states, "Evans went to Hodge's house for the sole purpose of delivering mail to Hodge's twin sister, Betty Russell." Evans' Brief, p. 2. In other words, Evans went to the Hodge home for the specific purpose of benefiting Russell, not Hodge.

Evans testified that after she visited with Russell, she decided to leave. She testified that she went back to the front of the house, called out to Hodge, who was still watching TV, and said "goodbye." (R. 53). Hodge said "goodbye" and told Evans she would get up later and lock the door behind Evans. (R. 53). Evans stepped out onto the sidewalk and shut the door. (R. 60). Evans alleges that as she took her next step to turn around and leave, she slipped on the "welcome mat" and fell. (R. 50, 61).

It is undisputed that the sole purpose of Evans' visit to Hodge's home on the night of the incident was to see Russell and deliver her some mail. (R. 50). Evans was not at Hodge's house to see Hodge; she was there to see Russell. (R. 50). Hodge derived no benefit whatsoever from Evans' presence at her house. (R. 50). The only person to receive any benefit from Evans' visit was Russell, who has not been named as a defendant.

SUMMARY OF THE ARGUMENT

Judge Yerger correctly found that Evans was a licensee at the time of the accident and correctly entered summary judgment in favor of Hodge. The ruling of the lower court should be affirmed.

The Mississippi Supreme Court has held as follows:

> The analysis of a premises liability case proceeds according to three steps. First, it is necessary to determine whether the injured person is an invitee, licensee, or trespasser. Next, the duty owed to the injured person must be determined. The final step is the determination of whether the landowner breached that duty.

Massey v. Tingle, 867 So.2d 235, 239 (Miss. 2004); quoting *Titus v. Williams,* 844 So.2d 459, 467 (Miss. 2003).

If this three part test is applied to the case at bar, it is plainly evident that Evans cannot establish a *prima facie* case against Hodge. In the first place, Evans was merely a licensee of Hodge at the time of the accident, and not an invitee. The Mississippi Supreme Court has held:

> An *invitee* is a person who goes upon the premises of another in answer to the express or implied invitation of the owner or occupant for their mutual advantage... A *licensee* is one who enters upon the property of another for his own convenience, pleasure, or benefit pursuant to the license or implied permission of the owner whereas a *trespasser* is one who enters upon another's premises without license, invitation, or other right.

Corley v. Evans, 835 So. 2d 30, 37 (Miss. 2003).

"In order to create invitee status, there must be a mutually advantageous interaction between the landowner and invitee." *Massey v. Tingle*, 867 So.2d 235, 239 (Miss.2004); citing *Corley v. Evans*, 835 So.2d 30, 37 (Miss. 2003). Hodge derived no benefit whatever from Evans' presence on her property. Evans went to Hodge's house for the sole purpose of delivering mail to Hodge's sister, Betty Russell. While Evans may have been an invitee of Russell, she was

a mere licensee of Hodge since Hodge did not invite Evans onto the property and Hodge derived no benefit from her presence. See *Howze v. Garner*, 928 So. 2d 900 (Miss. 2005); *Corley v. Evans*, 835 So.2d 30, 37 (Miss. 2003).

Evans was, at most, a social guest of Hodge on the night of the accident. The Mississippi Supreme Court has long held that social guests are licensees, not invitees. In *Raney v. Jennings*, 158 So.2d 715, 717 (Miss. 1963), the Court stated, "[t]he relation between host and guest is not that of invitor and invitee, but that of licensor and licensee." While Evans may have been more than a mere social guest of Betty Russell since she was bringing her the mail, it cannot be maintained that Evans was more than a mere social guest of Hodge.

In the present case, it is undisputed that on the evening in question, Evans chose to do her friend, Russell, a favor by bringing her her mail from Jackson. It is undisputed that Evans went to the Hodge home at the invitation of Russell, not Hodge. It is also undisputed that any "advantage" by Evans' visit was gained by Russell, not Hodge, insofar as Evans was delivering mail to Russell, not Hodge. Hodge gained no benefit whatsoever from Evans' visit. Insofar as Hodge derived no benefit from Evans' presence on her property, and insofar as the Mississippi Supreme Court has always held that social guests such as Evans are licensees, not invitees, Hodge submits that Evans was a licensee of Hodge on the night of the incident. There are no facts supporting the theory that Evans was an invitee on the night of the incident.

Under Mississippi law, "landowners owe a duty to licensees to avoid wanton and willful injury to the licensee." *Cook v. Stringer*, 764 So.2d 484, (Miss. App. 2000); citing *Skelton by Roden v. Twin County Rural Elec. Assoc.*, 611 So.2d 931, 936 (Miss. 1992). A homeowner "must have a beneficial interest in a visit in order to impose upon him the duty of using reasonable care in having the premises in a safe condition for the visitor..." *Wright v. Caffey*, 123

So.2d 841, 843 (Miss. 1960). "The guest is permitted to recover only where his injury is the result of active and affirmative negligence of the host." *Cook v. Stringer*, 764 So.2d at 484; citing *Raney v. Jennings*, 158 So.2d 715, 717 (1963).

In the instant case, Judge Yerger was correct in holding that the only legal duty Hodge owed to Evans was the duty to refrain from willfully or wantonly injuring Evans. Judge Yerger was also correct in finding that there is absolutely no evidence – *and the complaint does not even allege* – that Hodge breached the duty to refrain from willfully or wantonly injuring Evans. (R. 4). The facts are undisputed that Evans merely slipped and fell outside Hodge's house. The evidence merely shows that after Hodge let Evans into her house, she (Hodge) sat on the couch watching TV until Evans left. This certainly does not qualify as willful or wanton injury.

The Mississippi Supreme Court has held that on a motion for summary judgment, "the non-moving party must produce specific facts showing that there is a genuine issue of material fact for trial. The non-moving party's claim must be supported by more than a mere scintilla of culpable evidence; it must be evidence upon which a fair minded jury could return a favorable verdict." *Cong Vo Van v. Grand Casinos of Mississippi, Inc.*, 767 So.2d 1014, 1018 (Miss. 2000). Furthermore, "[w]hen a motion for summary judgment is made and supported as provided for in Rule 56, an adverse party may not rest upon the mere allegations or denials of his pleadings, his response must set forth specific facts showing that there is a genuine issue of material facts for trial. If he does not so respond, summary judgment, if appropriate, should be entered against him." *Miller v. Meeks*, 762 So.2d 302, 305 (Miss. 2000) (emphasis added).

Evans was unable to provide the lower court with any facts to defeat summary judgment. Evans was a licensee. The only duty owed to her by Hodge was to refrain from willfully or wantonly injuring her. Evans' alleged injury in no way a resulted from willful or wanton conduct

on the part of Hodge. This was a simple slip and fall with no allegation or evidence of willful or wanton injury. Judge Yerger correctly granted summary judgment to Hodge and this court should affirm.

ARGUMENT

A. EVANS WAS A LICENSEE OF HODGE, NOT AN INVITEE, AT THE TIME OF THE ACCIDENT

The first issue before the Court involves a determination of Evans' legal status at the time of the incident, i.e., whether she was an invitee, a licensee or a trespasser. *Massey v. Tingle*, 867 So.2d 235, 239 (Miss. 2004). The Mississippi Supreme Court has held:

> An *invitee* is a person who goes upon the premises of another in answer to the express or implied invitation of the owner or occupant for their mutual advantage... A *licensee* is one who enters upon the property of another for his own convenience, pleasure, or benefit pursuant to the license or implied permission of the owner whereas a *trespasser* is one who enters upon another's premises without license, invitation, or other right.

Corley v. Evans, 835 So. 2d 30, 37 (Miss. 2003).

In *Daulton v. Miller*, 815 So.2d 1237, 1239 (Miss. App. 2001), the Court of Appeals held that "the differences among the categories focus on the owner and whether that person is receiving an advantage, or just permits the presence of the entrant, or actually opposes the entry."

Hodge submits that Judge Yerger's determination that Evans was a licensee at the time of the accident is the only correct determination that can be made under the undisputed facts of this case, and that his ruling should be affirmed.

1. Evans was a licensee of Hodge because she was invited to the Hodge home by a third party, Betty Russell, and not Hodge

In *Corley v. Evans*, 835 So. 2d 30, 37 (Miss. 2003), the Mississippi Supreme Court defined "invitee" as one who goes upon the premises of another "in answer to the express or implied invitation of the owner or occupant for their mutual advantage." The Court implicitly recognized the principal that if an owner or occupant of premises invites someone onto their property and gains some type of tangible benefit or advantage from that person's presence, then

the invited person has the right to find the premises reasonably safe when he or she arrives. However, if the invited person answers an invitation extended by a *third person* (i.e., someone other than the property owner or occupant against whom recovery is sought) and if the owner is merely informed of the invitation after the invitation is made and accepted, then the invited person does not fall within the definition of "invitee." In that situation, the invited person becomes a "licensee" because he or she is on the premises "pursuant to the license or implied permission of the owner." *Corley,* 835 So. 2d at 37.

In *Corley*, the plaintiff was accidentally shot at a crawfish boil sponsored by Stacy Evans. The shooting took place on a tract of land owned partly by Stacy and partly by her father, James Evans. The plaintiff filed suit against both Stacy and James, alleging he was an invitee of both of them at the time of the shooting. The Mississippi Supreme Court held that as to Stacy, the plaintiff was an invitee because Stacy was the one who invited the plaintiff onto the premises and she was the one who received a $7 admission from plaintiff. *Corley*, 835 So. 2d at 37. The Court held, however, that as to James, the plaintiff was merely a licensee. *Id.* at 39. The Court stated, "[a]s to James, [the plaintiff] was a licensee . . . James derived no benefit from the crawfish boil and was not involved in its promotion or staging." *Id.*

Similarly, in *Howze v. Garner*, 928 So. 2d 900 (Miss. 2005), a homeowner, Garner, allowed his daughter to host a swimming party for children at his house. The swimmers were charged a fee to attend the party. The plaintiffs' minor son attended the party, paid an admission fee, but tragically drowned in the pool. The plaintiffs sued the homeowner, Garner, alleging their minor son was an invitee at the time of the accident. The circuit court granted summary judgment to the homeowner, and the Mississippi Supreme Court affirmed. The Court held that as to the homeowner, the minor was at most a licensee at the time of the accident. The Court

stated, "Garner did not sponsor the party, did not attend, and did not receive any money from the party. [The minor] entered Garner's premises as a licensee." *Howze*, 928 So. 2d at 903.

In the present case, it is undisputed that Evans was not invited onto the Hodge premises by Hodge. (R. 50). Evans was invited onto the premises by Russell, a third party, who was staying temporarily at Hodge's house following the fire at Russell's house. (R. 50). Evans admits that "Russell told her sister, Hodge, that Evans was coming over to the house to deliver her mail." Evans' Brief, p. 3. In the absence of any proof that Hodge, the homeowner against whom recovery is sought, participated in extending the invitation to Evans, Evans cannot be considered in invitee. *Howze v. Garner*, 928 So. 2d 900 (Miss. 2005); *Corley v. Evans*, 835 So. 2d 30, 37 (Miss. 2003).

The cases Evans cites in support of her argument that Evans qualifies as an invitee are easily distinguishable on this point. In *Pinnell v. Bates*, 838 So. 2d 198 (Miss. 2002) and *Hall v. Cagle*, 773 So. 2d 928 (Miss. 2000), it was undisputed that the plaintiffs were invited onto the premises by the homeowner against whom recovery was sought, not a third party. The other cases cited by Evans either involve corporate defendants (as opposed to residential homeowners) or landowners who received admission from the plaintiff. See *Adams v. Fred's Dollar Store of Batesville*, 497 So. 2d 1097 (Miss. 1986) (corporate defendant); *Waller v. Dixieland Food Stores, Inc.*, 492 So. 2d 283 (Miss. 1986) (corporate defendant); *Lucas v. Miss. Housing Authority*, 441 So. 2d 101 (Miss. 1983) (corporate defendant); *Clark v. Moore United Methodist Church*, 538 So. 2d 760 (Miss. 1989) (paying tithes to church rendered plaintiff an invitee); *Goodwin v. Derryberry Co.*, 553 So. 2d 40 (Miss. 1989) (corporate defendant); *F. W. Woolworth Co. v. Stokes*, 191 So. 2d 411 (Miss. 1986) (corporate defendant); *Cowan v. Lakeview Village Condominium Assoc.*, 2005 WL 233555 (Mich. App. 2005) (corporate defendant); *Mayfield v.*

The Hairbender, 903 So. 2d 733 (Miss. 2005) (corporate defendant); *Breland v. Gulfside Casino Partnership*, 736 So. 2d 446 (Miss. App. 1999) (corporate defendant); *Fulton v. Robinson Industries*, 664 So. 2d 170 (Miss. 1995) (corporate defendant).

These cases cited by Evans simply do not apply to the present case. Bonnie Hodge is not a corporate enterprise like Fred's Dollar Store earning profits off customers entering the premises. Neither did she charge Evans admission to enter her premises. Hodge is a residential homeowner who allowed one of her sister's friends, Evans, to come over and deliver her sister a check. Residential homeowners in Mississippi should not be shouldered with the unreasonable burden of ensuring that no one slips and falls on their "welcome mats" in a snowstorm. The Mississippi Supreme Court has never placed such a burden on homeowners. Businesses have the obligation to keep their premises reasonably safe for customers, but our courts have never imposed these same duties upon residential homeowners. Instead, our courts have always recognized the distinctions between the duties imposed on residential homeowners and businesses. In *Pinnell v. Bates*, 838 So.2d 198 (Miss. 2003), the Court observed that abolishing the legal distinctions between private residential homes and businesses would "curtail the unbridled use of private property." *Pinnell*, 838 So.2d at 199. The Court stated:

> Worse still, a jury would have the power to decide whether a homeowner has arranged the living room furniture or maintained his yard in a reasonable manner.... There is no compelling reason to change our time-honored law on premises liability now. The distinctions between licensee and invitee have been developed over many years and are grounded in reality.

Id.

Evans is asking this Court to do precisely what the Court has always declined to do, namely, ignore the fundamental differences between the duties imposed on residential homeowners and businesses. This Court has stated that residential homeowners should not have

to worry about being sued for not "arranging the furniture" or "maintaining the yard" in a reasonable manner. *Pinnell*, 838 So.2d at 199. Against this, however, Evans states in the very first sentence of her brief that this case is about Hodge's "negligent maintenance of the doormat." Evans' Brief, p. 1. This is precisely the kind of claim that the Mississippi Supreme Court has historically held cannot be maintained in Mississippi. This is particularly so when it is undisputed that the homeowner being sued, Hodge, did not even invite the plaintiff onto her property in the first place. Judge Yerger correctly recognized that Evans' claim was fatally flawed and that Hodge was entitled to summary judgment.

2. *Evans was a licensee of Hodge because Hodge derived no advantage from her presence*

To qualify as an "invitee" under Mississippi law, the plaintiff must not only prove that the owner extended an invitation to enter the premises, the plaintiff must go further and prove that the owner derived some type of advantage or benefit from the plaintiff's presence. *Corley v. Evans*, 835 So. 2d 30, 37 (Miss. 2003). The Mississippi Supreme Court has stated, "[i]n order to create invitee status, there must be a mutually advantageous interaction between the landowner and invitee." *Massey v. Tingle*, 867 So.2d 235, 239 (Miss.2004). In the absence of proof of a "mutual advantage" between the plaintiff and the premises owner, the plaintiff does not qualify as an invitee. *Id.*

In the *Corley* and *Howze* cases discussed above, the Mississippi Supreme Court explained that a plaintiff should be classified as an invitee as to a defendant who extends the invitation and receives the benefit from the plaintiff's presence, but the plaintiff should be classified as a licensee as to a defendant who did not extend any invitation and received no benefit from the plaintiff's presence. *Howze*, 928 So. 2d at 903; *Corley*, 835 So. 2d at 39. In the present case, Evans has acknowledged that the sole purpose of her visit to Hodge's house was to deliver mail

to Hodge's sister, Betty Russell. (R. 50). Thus, Evans was on Hodge's property to benefit Russell, not Hodge. (R. 50). Clearly, if Evans was on Hodge's property for the benefit of Russell and not Hodge, Evans cannot qualify as an invitee of Hodge and summary judgment was proper.

In an attempt to try to create some basis for liability on the part of Hodge, Evans argues that Hodge did indeed receive a benefit from Evans' visit. Evans says that had she not delivered the mail to Russell, then Hodge would have "had to" drive to Jackson to get the mail. This is specious. In the first place, Hodge would not have been required to drive to Jackson to get Russell's mail. Second, there is no proof at all that Hodge was planning on driving to Jackson to get the mail. Finally, even if there was some proof of that, Hodge submits that this still would be insufficient as a matter of law to create liability on the part of Hodge. It is undisputed that Evans testified that the sole purpose of her visit to Hodge's house was to deliver mail to Russell. (R. 50). Evans was not at Hodge's house to do a favor to Hodge, but rather to do a favor to Russell, who is not a party to this case.

Evans even goes so far as to argue that Hodge is liable because she said "thank you" to Evans when she left the house. Evans' Brief, p. 3. That Hodge may have said "thank you" to Evans hardly creates a basis for tort liability. If saying "thank you" becomes a trigger for imposition of tort liability in Mississippi, we have truly reached a sad stage in our jurisprudence. People say "thank you" every day for a multitude of different things. The idea that Hodge suddenly became liable in tort after politely saying "thank you" to a friend of her sister's who came over at the sister's invitation to deliver the sister some mail is misguided.

There simply is no basis to conclude that Hodge received any type of direct, tangible benefit or advantage from Evans' visit to her house. Russell received a benefit from Evans'

presence, and Evans may very well have been an invitee of Russell. As to Hodge, however, Evans was only a licensee because Hodge derived no benefit from Evans' presence on her property. Therefore, Judge Yerger was correct to enter summary judgment in favor of Hodge and this court should affirm.

3. *Evans was a licensee of Hodge because social guests are regarded as licensees under Mississippi law*

Mississippi courts have long held that social guests are licensees, not invitees. *Sharp v. Odom*, 743 So. 2d 425 (Miss. 1999); *Sample v. Haga,* 824 So. 2d 627 (Miss. App. 2001); *Skelton v. Twin County Rural Elec. Ass'n*, 611 So. 2d 931 (Miss. 1992); *Howze v. Garner*, 2005 So. 2d (2004-CA-01257-COA); *Green v. Dalewood Property Owners Ass'n, Inc.*, 919 So. 2d 1000 (Miss. App. 2005). In *Raney v. Jennings,* 158 So.2d 715, 717 (Miss. 1963), the Court stated, "[t]he relation between host and guest is not that of invitor and invitee, but that of licensor and licensee." More recently, in *Green v. Dalewood Property Owners Ass'n, Inc.*, 919 So. 2d 1000, 1006 (Miss. App. 2005), the Court of Appeals stated that "a social guest, or invited guest, is a licensee."

The Mississippi Supreme Court has always held that the legal duties owed by residential homeowners to social guests differ from the duties owed by commercial enterprises to their customers. In *Pinnell v. Bates*, 838 So. 2d. 198 (Miss. 2003), Justice Waller, speaking for an *en banc* court, held:

> Eliminating homeowners' protection from liability for injuries sustained by social guests would impose on the homeowners the same standard and duty a commercial enterprise such as Wal-Mart owes to its customers. However, in reality, there are enormous differences between businesses and residences:
>
> Businesses extend invitations to prospective customers, clients, etc., to come to their places of business for commercial purposes. Persons so coming are, for the most part, personally unknown to those extending the invitation. It is anticipated these invitees will roam freely about the public areas of businesses, and a part of

> the cost of doing business is providing reasonably safe premises. These establishments are, ordinarily, professionally designed, built, and equipped. Safety and convenience account for much of their sterile uniformity.
>
> Residences are designed to please the homeowners and meet their needs and wants. A residence reflects the homeowners' individuality and is equipped and operated by the homeowners according to how they want to live. We live in the age of the do-it-yourselfer. Few homes would meet OSHA's standards, and few individuals would desire to live in such a home. Modern businesses do not have polished hardwood floors, throw rugs, extension cords, rough flagstone paths, stairways without handrails, unsupervised small children, toys on the floor, pets and all the clutter of living---homes do. There are good reasons behind the old adage that most accidents occur in the home.

Pinnell v. Bates, 838 So. 2d. 198 (Miss. 2003), quoting *Jones v. Hansen*, 254 Kan. 499, 867 P.2d 303, 317-18 (1994) (McFarland, J., dissenting).

In the present case, Evans, a guest of Hodge's sister, Betty Russell, asks this court to impose liability on Hodge, a residential homeowner, for allegedly "negligently" maintaining a welcome mat. As explained by Justice Waller in *Pinnell*, Mississippi courts have historically declined to impose upon homeowners the duty to make their premises "reasonably safe" to social guests such as Evans. Had Evans slipped and fallen on an icy doormat at Wal Mart or Fred's Dollar Store or some other business establishment, then she very well may have had a viable claim against that establishment for negligently failing to wipe off the doormat or failing to warn her. However, when the undisputed facts are that Evans went to the residential home of Hodge at the invitation of Hodge's sister for the sole purpose of visiting Hodge's sister and taking her some mail, Evans' claim against Hodge must fail.

Since it is undisputed that Hodge did not invite Evans to her home and since it is undisputed that Evans' sole purpose for entering Hodge's home was to do a favor to Russell, it is clear that Evans was at most a social guest of Hodge. Hodge allowed Evans onto her property so that she could deliver some mail to Russell. Under the cases cited above, Evans was, at most, a

social guest/licensee of Hodge at the time of the accident. Judge Yerger's decision should be affirmed.

B. HODGE DID NOT WILLFULLY OR WANTONLY INJURE EVANS

The only legal duty Hodge owed Evans was the duty to refrain from willfully or wantonly injuring her. *Cook v.* Stringer, 764 So.2d 484, (Miss. App. 2000); *Skelton v. Twin County Rural Elec. Assoc.*, 611 So.2d 931, 936 (Miss. 1992). There is no evidence – and Evans does not even allege – that Hodge willfully or wantonly injured her. This is merely a slip and fall case with no allegation or evidence of willful, intentional conduct on the part of Hodge. Since there is no evidence whatsoever that Hodge willfully or wantonly injured Evans, this court should affirm the summary judgment entered by Judge Yerger.

C. JUDGE YERGER DID NOT GRANT SUMMARY JUDGMENT PREMATURELY

In her brief, Evans suggests, without developing the argument, that Judge Yerger may have prematurely heard and granted Hodge's motion for summary judgment. See Evans' Brief, pp. 1-2. Although the "ripeness" issue has not really been advanced on appeal by Evans and does not need to be considered at length by the court, Hodge submits that Judge Yerger did not prematurely enter summary judgment. There are several reasons for this.

In the first place, Evans admits in her brief that when she responded to Hodge's motion for summary judgment, she told Judge Yerger "there existed sufficient evidence to support her contention that Hodge failed to maintain her property in a reasonably safe manner." Evans' Brief, p. 1. Thus, according to Evans, she had sufficient evidence and facts at the time Hodge's motion for summary judgment was filed and additional discovery was not necessary.

Second, Evans never filed a motion under Miss. R. Civ. P. 56(f) asking Judge Yerger to continue Hodge's motion in pending additional discovery. Had Evans thought additional

discovery was necessary, she could have and should have filed a motion under Rule 56(f) and made this request. However, Evans never filed such a motion. Therefore, she did not preserve this issue for appeal. *Kerr-McGee Corp. v. Maranatha Faith Ctr., Inc.*, 873 So. 2d 103 (Miss. 2004); *Russell v. Williford*, 907 So. 2d 362 (Miss. App. 2004).

Third, Evans has not explained to this court how or why additional discovery, i.e., the deposition of Hodge, would have materially affected this case. In fact, Evans continues to argue that she has enough facts to support her contention that she was an invitee and not a licensee at the time of the accident. Evans' Brief, pp. 1-2.

Finally, Evans does in fact have sworn testimony from Hodge which Evans quotes in her brief. (R. 94-96). In that sworn testimony, Hodge describes her version of the events. Evans has not articulated any reason why this case should be remanded so that Hodge can say the same thing in a deposition that she said in her sworn statement.

Evans does not really push the "ripeness" argument in her brief, and Hodge does not believe the court needs to address the issue. However, Hodge did want to briefly respond to the suggestion that Judge Yerger had somehow prematurely granted Hodge's motion for summary judgment.

CONCLUSION

Based on the foregoing, the Appellee, Bonnie Hodge, respectfully requests this Court to affirm the judgment of the trial court.

Respectfully submitted this 25th day of October, 2007.

BONNIE HODGE, *Defendant/Appellee*

BY: 

WILLIAM M. VINES (MSB[redacted]

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CERTIFICATE OF SERVICE

I, William M. Vines, do hereby certify that I have this day mailed, first-class, postage prepaid, a true and correct copy of the above and foregoing document to:

Alma Walls, Esq.
Walls Law Firm
Post Office Box 236
Clarksdale, Mississippi 38614

Honorable W. Swan Yerger
Hinds County Circuit Judge
Post Office Box 327
Jackson, Mississippi 39205

THIS the 25th day of October, 2007.

WILLIAM M. VINES