

**WAYNE JAMISON**

**Appellant**

**v.**

**GREGORY C. BARNES**

**Appellees**

**Case No. 2007-CA-00765**

**Appeal from the Circuit Court of Noxubee County, Mississippi**

**Brief for Appellant**

**OF COUNSEL:**

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**ATTORNEY FOR APPELLANT,  
WAYNE JAMISON**

**Appellant**

**v.**

**GREGORY C. BARNES**

**Appellees**

**Case No. 2007-CA-00765**

**CERTIFICATE OF INTERESTED PERSONS**

The undersigned counsel of record certifies that the following 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. Wayne Jamison, Appellant
2. R. Gregg Rogers, Counsel for Appellant
3. Gregory C. Barnes, Appellee
4. J. Niles McNeel, Counsel for Appellee
5. Honorable James T. Kitchens, Circuit Court Judge, Noxubee County

  
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R. Gregg Rogers

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1. Whether the Circuit Court Erroneously Granted Appellee's Motion for Summary Judgment.
2. Whether the Circuit Court Erroneously Dismissed and Failed to Grant Appellant's Motion for Summary Judgment.

## **STATEMENT OF THE CASE**

Plaintiff/Appellant, Wayne Jamison, was seriously injured in a motor vehicle accident that occurred on November 5, 2005, in Noxubee County, Mississippi. At the time of this accident, Mr. Jamison was operating a tractor on Mississippi Highway 388 and traveling in an easterly direction. The Defendant/Appellee, Gregory C. Barnes, was operating his vehicle in an easterly direction on Mississippi Highway 388. The Defendant/Appellee, Gregory C. Barnes, struck the Plaintiff/Appellant, Wayne Jamison's vehicle in the rear as he was operating his vehicle on Mississippi Highway 388. That Wayne Jamison sustained head injuries and permanent knee injuries which required surgery.

That Wayne Jamison filed his Complaint for permanent injuries and other damages against Gregory C. Barnes in the Circuit Court of Noxubee County, Mississippi. The Complaint was answered by defense counsel on behalf of Gregory C. Barnes.

After initial discovery, Gregory C. Barnes filed a Motion for Summary Judgment on October 24, 2006. Wayne Jamison filed Plaintiff's Response to Defendant's Motion for Summary Judgment and Plaintiff's Counterclaim for Summary Judgment on November 16, 2006. Gregory C. Barnes filed Defendant's Response to Plaintiff's Motion for Summary Judgment and Response to

which the Defendant's Motion for Summary Judgment was granted and the Plaintiff's Motion for Summary Judgment was denied.

Wayne Jamison filed his notice of appeal on April 26, 2007.

## **STATEMENT OF FACTS**

Wayne Jamison would show that he was involved in a motor vehicle accident that took place on November 5, 2005 on Mississippi Highway 388 located in Noxubee County, Mississippi. Wayne Jamison would show that he was traveling in an easterly direction on Mississippi Highway 388 at the time of the accident. As the Appellant was traveling in an easterly direction on Mississippi Highway 388, it is uncontraverted that Gregory C. Barnes came from the Plaintiff's rear and struck the Plaintiff's vehicle in the rear as he was traveling at a lawful rate of speed and in his designated lane of travel. Jamison would show that the Defendant struck his vehicle when Barnes had an unobstructed view of the Plaintiff's vehicle and had no arguable reason for striking the Plaintiff's vehicle in the rear.

Plaintiff would show that he left his employment on the vehicle at approximately 5:00 p.m. and was going to travel approximately ten miles or less to his home. It was daylight at the time he left his employment and had only traveled several miles at the time of this accident when his vehicle was struck in the rear by Barnes. It is clear that there was still plenty of daylight available and vehicles were able to travel on Highway 388 without the use of headlights at the time of this accident. It has also been established that Jamison had a fairly large reflective triangle on the back

Mae Owens as an exhibit to Plaintiff's Response to Defendant's Motion for Summary Judgment and in regards to Plaintiff's Motion for Summary Judgment. In this sworn Affidavit, Ms. Owens stated that she came along shortly after this accident happened. (R., pgs. 3 - 4) Ms. Owens is quite clear on the fact that there was plenty of daylight to see at the time she came by and that she could see all of the vehicles involved WELL IN ADVANCE of arriving at the accident scene. (R., pgs. 3 - 4) Ms. Owens states that she stayed to give aid to Mr. Jamison until medical personnel could arrive. (R., pgs. 3 - 4)

In regards to the time of the accident, the United States Naval Observatory Anatomical Data shows that sunset was at 4:59 p.m. on the date of this accident. (R., p. 5) Plaintiff submitted, with his Motion for Summary Judgment, the official data from the United States Naval Observatory which shows that civil twilight ended at 5:25 p.m. on the date of this accident. (R., p.5) Civil twilight is defined as the time from sunset until the time in the evening when the center of the sun is geometrically six degrees below the horizon. (R., p. 8) It is stated that terrestrial objects, such as vehicles, can be clearly distinguished. (R., p. 8) Additionally, it is stated that some outdoor activities may be conducted without artificial illumination during these intervals of twilight. (R., p. 8) It is finally stated that complete darkness does not begin until sometime after the end of evening civil twilight. (R., p. 8)

It is clear from Jamison's testimony that this accident happened somewhere around 5:10 p.m.. Assuming Barnes' position, the latest the accident could have occurred was 5:18 p.m.. All of these times were well in advance of the end of civil twilight. Jamison would also point out that darkness

the attached testimony that there was still plenty of daylight available at the time of this accident.

## **SUMMARY OF THE ARGUMENT**

The Trial Court erred both in granting the Defendant's Motion for Summary Judgment and in denying the Plaintiff's Motion for Summary Judgment. In regards to the granting of the Defendant's Motion for Summary Judgment, the Trial Court erred in finding that there was no genuine issue as to the material facts involving liability and that the granting of the Defendant's Motion for Summary Judgment was improper.

Furthermore, the Court erred in not granting Plaintiff's Motion for Summary Judgment as it was clear from applicable case laws submitted that the Defendant was negligent in the operation of his vehicle on the date of this accident and said negligence was the sole proximate cause of this motor vehicle accident.

For these reasons, the Trial Court erred in granting Summary Judgment to the Defendant and in denying Summary Judgment to the Plaintiff in this case.

## **ARGUMENT**

### **Standard of Review**

A trial court's grant of summary judgment is reviewed a de novo on appeal. The appellate court views all evidentiary matters, including admissions in pleadings, answers to interrogatories, depositions, and affidavits, in the light most favorable to the nonmoving party. *Noxubee County Sch. Dist. v. United Nat'l Ins. Co.*, 883 So. 2d 1159, ¶ 6 (Miss. 2004).



is no genuine issue as to any material fact and that the moving party is entitled to Judgment as a matter of law” (Rule 56 Mississippi Rules of Civil Procedure).

A Motion for Summary Judgment should be denied unless “ the Trial Court finds, beyond a reasonable doubt, that the Plaintiff would be unable to prove any facts to support his claim” (*Palmer v. Anderson Infirmary Association*, 656 So. 2d 790,794 (Miss. 1995). In reviewing the evidence, the Court must review the evidence in the light most favorable to the non-moving party. Furthermore, and most importantly, the Trial Court should not try the issue set out in the Motion, and the Court’s only job is to determine if there are issues to be tried (*Brown v. Credit Center, Inc.*, 444 So. 2d 358).

When doubt exists whether there is a fact issue, the non-moving party against whom the summary judgment has been sought should be given the benefit of every reasonable doubt (*Liberty Leasing Co. V. Hillsum Sales Corporation*, 380 F. 2d 1013).

A motion for summary judgment should not be granted when movant and respondent have sworn to different versions of the issue before the Court (*Dennis v. Seale*, 457 So. 2d 941).

Summary judgment is no substitute for trial regarding disputed issues of fact (*Dethlets v. Beau Maison Development Corp.*, 458 So. 2d 714).

Summary judgment should not be granted when a complete presentation of the evidence would lead to a triable issue (*Great Southern National Bank v. Minter*, 590 So. 2d 129).

The responsibility of determining what evidence is credible and what is not is the proper province of the jury (*Doe v. Stegall*, 757 So. 2d 201,205).

belief that there were no genuine issues as to any material fact that Wayne Jamison was the sole proximate cause of this motor vehicle accident. (R., p. 1) The Trial Court did not make any specific findings whatsoever in its Order regarding the facts and the reasons why the Defendant's Motion for Summary Judgment was granted. (R., p. 2) In this regard, it is difficult for the Appellant to address the error in the Court's findings due to the fact that the Court did not make any specific findings whatsoever. Appellant would state that this is reversible error in itself.

Plaintiff would show that there were definitely genuine issues as to liability in regards to this matter. Firstly, Jamison would show that he was operating his vehicle in a lawful manner on Mississippi Highway 388 and was traveling at a lawful rate of speed. Jamison would show that the Defendant struck his vehicle when the Defendant had an unobstructed view of the Plaintiff's vehicle and had no arguable reason for striking the Plaintiff's vehicle in the rear. This motor vehicle accident took place on a straight-of-way where there were approximately two miles of unobstructed view.

Jamison would also show, according to the Affidavit of Pearlie Mae Owens, that it was clearly daylight at the time of this motor vehicle accident. (R., pgs. 3 - 4) In fact, Ms. Owens came upon the scene after the accident and states clearly in her Affidavit that she could see and identify all of the vehicles involved well in advance of arriving at the accident scene. (R., p. 4) This Affidavit was properly submitted to the trial court at the motion hearing. In failing to make findings or address the sworn Affidavit, the Trial Court has violated the guidelines of *Dethlets* and *Doe*.

data contained in the United States Naval Observatory Report that civil twilight did not end until 5:25 p.m. on the date of this accident. (R., p. 5) Darkness would not have come until sometime after 5:25 p.m. (R., p. 8) This scientific evidence clearly supports the sworn Affidavit of Pearlie Mae Owens and clearly contradicts the Affidavit submitted by Barnes from Tommy Temple.

Barnes pointed out to the Trial Court that Jamison was guilty of negligence per se according to his violation of Mississippi Statutes. Jamison first points out that there is no clear indication in the statutes as to whether the violation occurs at the time of sunset or at the end of civil twilight. Jamison would show that it was the intent of the statute to cover until the end of civil twilight, as this was the time when headlights are necessary to operate on roads or highways. The case of *Eastwood v. State*, 415 So. 2d 678 clearly shows that there has been no direct showing of the legislative intent as to when night actually starts. As this Court will note from this case, the Courts have adopted the common law definition of night as the "period between sunset of one day and sunrise of the next day during which there is not enough daylight or twilight to discern a man's face." This case clearly holds that night does not begin, under present Mississippi law, until the end of civil twilight. There is further confirmation of legislative intent under Mississippi Code Section 63-7-71. Under said Code Section, "whenever any motor vehicle, truck, or bus is stopped upon the highway except for the purpose of picking up or discharging passengers between the hours of one-half hour before sunrise and one-half hour after sunset, the driver or person in charge of such vehicle shall place upon the highway in a standing position red flags, one at a distance not less than 100 feet to the rear of the vehicle and not less than 100 feet in advance of the vehicle, and the third upon the roadway side of

twilight. Jamison would show that based upon the competent evidence and the legislative intent of the statute, there was no violation of said statute and that Jamison clearly was not guilty of negligence per se. Additionally, Jamison would show that a violation of this statute is only relevant as to a citation which was not issued by the Mississippi Highway Patrol. The violation of this statute is not controlling evidence as to the sole proximate cause of this accident.

Appellant would show that the Trial Court was in error of its understanding of applicable law in its ruling. Once again, the Trial Court made no findings, so this has to be inferred from the Trial Court's questions at the summary judgment hearing. In regards to the arguments on when night starts and legislative intent, the Trial Court expressed the opinion that duck hunting is not permitted after sunset under applicable law. (R., pgs. 13 - 14) The Trial Court stated that it was a crime to hunt ducks after sunset according to United States Naval Observatory data. (R., pgs. 13 - 14) The Court's understanding of applicable law is clearly in error according to Mississippi Code § 49-7-59. The code states "it is unlawful for any person to hunt any wild animal or wild bird during the night from one-half hour after sunset to one-half hour before sunrise. This shows that the Trial Court was in error in its understanding of the law and its application to this set of fact circumstances. No findings were made by the Court in its Order, but a reasonable inference must be made that this misinterpretation of the law was applied to this case. This statute also points out again that the legislative intent as to night is always tied to the end of civil twilight.

Finally, Barnes asserted the point that the Jamison has shown no evidence of negligence on the part of Barnes. According to *White v. Miller*, 513 So. 2d 600, the burden shifts to the

and sufficient distance behind proceeding vehicles so that should the preceding vehicle stop suddenly, he could nevertheless stop his vehicle without colliding with the forward vehicle. Jamison would show that based upon scientific evidence and the competent testimony, Barnes had ample daylight to see Jamison's vehicle ahead of him. Jamison would show that Barnes has the burden in this case to show emergency or unusual condition to overcome this burden. The only evidence that Barnes has shown to show emergency or unusual condition is lack of daylight. This is clearly not the case based upon scientific evidence and the competent testimony of record. If anything, Barnes is guilty of negligence per se.

**THE CIRCUIT COURT ERRONEOUSLY DISMISSED AND FAILED TO GRANT PLAINTIFF/APPELLANT'S MOTION FOR SUMMARY JUDGMENT.**

The Trial Court denied Jamison's Motion for Summary Judgment. Once again, the Trial Court failed to state any facts or any reason for the denial of Jamison's Motion for Summary Judgment in the Trial Court's Order. Once again, it is difficult for Jamison to respond since there were no specific findings of fact, but will do so in this argument. It is uncontraverted that Barnes rear-ended Jamison's vehicle as Jamison was traveling on Mississippi Highway 388. Under the case of *White v. Miller*, 513 So. 2d 600, the Defendant, Gregory C. Barnes, had a duty to have his vehicle under proper control, keep a proper lookout ahead, and drive at a speed and sufficient distance behind Mr. Jamison's vehicle so that should the Jamison vehicle stop suddenly, he could nevertheless stop his vehicle without colliding with the Jamison vehicle. Additionally, to overcome this burden, Barnes must show emergency or unusual circumstances.

was sufficient daylight for Barnes to see Jamison's vehicle and to avoid colliding with the rear of Jamison's vehicle.

Barnes has asserted his Affidavit, along with the Affidavit of Tommy Temple, to show that there was darkness at the time of this accident. Based upon scientific evidence, it is clear that there was not darkness at the time of this accident and, in fact, darkness would not begin until sometime after 5:25 p.m. (R., p. 8) Based upon this scientific evidence, the Affidavits of Barnes and Tommy Temple are clearly in error and should be disregarded by this Court based upon judicial notice of the lighting conditions as confirmed by the scientific evidence. The deposition testimony of Wayne Jamison, and the witness, Pearlie Mae Owens, are clearly in line with the scientific evidence and are contradictory in no manner. Jamison would show unto this Honorable Court that Barnes has not overcome his burden and is guilty of negligence per se in regards to this motor vehicle accident.

### CONCLUSION

The Trial Court committed error in granting the Appellee's Motion for Summary Judgment. There are genuine issues as to liability in this motor vehicle accident. The Trial Court has disregarded these genuine issues and has substituted his opinion for the clear province of the jury. This Trial Court has also committed reversible error in failing to make findings as to the contested issues in its Order.

The Trial Court has also committed reversible error in failing to grant the Appellant's Motion for Summary Judgment. There are genuine issues of material fact as to liability. However, the case

scientific evidence clearly show no unusual circumstance to overcome this burden. Appellant's Motion for Summary Judgment should have been granted by the trial court.

Therefore, the trial court's grant of summary judgment to the Appellee should be reversed and the Appellant's Motion for Summary Judgment should be granted. This case should be remanded back to the trial court for further proceedings on the issue of damages alone.

RESPECTFULLY SUBMITTED,

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I, R. Gregg Rogers, Attorney at Law, P. O. Box 478, Louisville, Mississippi, 39339,  
Attorney for Plaintiff, do hereby certify that I have this day provided, postage prepaid, a copy of the  
foregoing **Brief for Appellant** to the following:

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Honorable James T. Kitchens, Jr.  
Circuit Court Judge  
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This the 19 day of November, 2007.

  
\_\_\_\_\_  
R. GREGG ROGERS