IN THE SUPREME COURT OF MISSISSIPPI

THE CITY OF JACKSON — APPELLANT

VS. — CAUSE NO. 2007 CA-01756

SHARON TRIGG-SPANN — APPELLEE

On Appeal From The Circuit Court
of Hinds County, Mississippi
Cause Number 251-04-598CIV
Honorable Winston Kidd

Brief of Appellant City of Jackson

ORAL ARGUMENT NOT REQUESTED

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IN THE SUPREME COURT OF MISSISSIPPI

THE CITY OF JACKSON **APPELLANT**

VS. **CAUSE NO. 2007 CA-01756**

SHARON TRIGG-SPANN **APPELLEE**

CERTIFICATE OF INTERESTED PERSONS

Pursuant to Miss.R.App. 28(a)(1), 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:

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Respectfully submitted,

CITY OF JACKSON

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STATEMENT OF THE ISSUES

The issues that this Court should resolve on this appeal are:

1. The Trial Court erred in finding the City of Jackson 100% liable for the collision.

2. The Trial Court's damage award was against the substantial, credible evidence.

STATEMENT OF THE CASE

A. PROCEEDINGS BELOW

This action was filed July 24, 2004 against Defendants Mary Jenkins and the City of Jackson. R. at 6. Plaintiff Sharon Trigg Spann alleged that she was injured as a result of a motor vehicle accident on October 21, 2003 wherein Mary Jenkins negligently collided with a City of Jackson Police car operating with reckless disregard. R. at 7-9. The City of Jackson filed its Answer and Affirmative Defenses on September 15, 2004. R. at 12. Jenkins filed her Answer and Defenses on September 15, 2004. R. at 17. The normal course of discovery ensued, and on March 4, 2005, the Hinds County Circuit Court set this matter for trial beginning December 12, 2005. R. at 36. Plaintiff settled with Defendant Jenkins prior to trial[1].

A bench trial took place on December 12, 2005 with respect to the Plaintiff's remaining claim against the City of Jackson. Pursuant to the trial court's instructions at the close of evidence, both parties submitted proposed findings of fact and conclusions of law. T. at 254. Thereafter, on December 1, 2006, the trial court issued its Opinion and Order finding the City of Jackson 100% liable and awarding $285,595.93 to Plaintiff. R. at 185. The City of Jackson timely filed on December 8, 2006 its Motion to Amend and/or Vacate Judgment or, in the Alternative, for a New Trial. R. at 196. The trial court then entered a Final Judgment on December 18, 2006. R. at 200.

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[1] A Judgment of Dismissal with Prejudice was entered on December 20, 2005. R. at 151. However, Plaintiff's settlement with Defendant Jenkins occurred before trial; while Jenkins was a witness at trial, she was no longer a party at that time.

Pursuant to a May 23, 2007 Order, the trial court subsequently granted in part and denied in part the City's Motion. R. at 219. That Order reduced Plaintiff's recovery by the amount paid by previously dismissed Defendant Mary Jenkins ($25,000) but denied all other relief. Thereafter, an Amended Final Judgment was entered on June 11, 2007. R. at 221. From there, the City of Jackson timely filed its Notice of Appeal on June 27, 2007. R. at 222.

B. STATEMENT OF THE FACTS

On October 21, 2005, Jackson Police Department Officers Rueben Curry and Reginald Liggins were attempting to pull over a stolen Nissan Altima and ultimately ended up in a multi-vehicle collision which allegedly injured Plaintiff Sharon Trigg-Spann. While liability and damages are vigorously contested by the parties, the underlying facts are not in dispute.

At approximately 2:30 or 3:00 p.m., Officers Liggins and Curry were on patrol in West Jackson when they noticed a silver Nissan Altima (Altima) on Valley Street near Capitol Street[2]. The Altima was heading in the opposite direction when the officers noticed that it did not have a license plate. T. at 108. Officer Curry subsequently saw the Altima run a stop sign at Valley and Capitol Streets. T. at 109. The officers turned around and proceeded onto Capitol Street behind the path of the Altima, only to have the Altima speed off once the officers activated blue lights and sirens. T. at 109, 110. The officers then lost the vehicle in the area of Capitol Street and Ellis Avenue. T. at 110.

[2] Officer Liggins was driving the patrol car, and Officer Curry was a passenger. T. at 105.

Having lost sight of the vehicle, the officers canvassed the area, as these neighborhoods are areas where criminals normally abandon stolen cars. T. at 111, 154. After searching ten to fifteen minutes without success, the officers returned to regular patrol. T. at 154. While on regular patrol at the intersection of St. Charles and Ellis Avenue, the officers once again spotted the Altima. T. at 155, 156. The driver of the Altima likewise spotted the officers, ran a red light at the intersection of St. Charles and Ellis Avenue and proceeded South on Ellis Avenue. T. at 156. The officers turned South from St. Charles onto Ellis Avenue, once again in the direction of the Altima. T. at 156.

As the vehicles proceeded South on Ellis Avenue, several important activities occurred. First, the vehicles proceeded through a school zone; thus, Officer Liggins did not initiate blue lights and siren until ***after*** he made it past the school zone. T. at 156. Once past the school zone, Officer Liggins activated the blue lights and siren, while Officer Curry started radio communication. T. at 156. The Altima continued South on Ellis Avenue at an estimated speed of 55-70 miles per hour[3]. As the Altima continued South on Ellis Avenue crossing Robinson and then Lynch Streets, the officers were unable to close the distance between the patrol car and the Altima. T. at 190. The entire distance between the point where the officers spotted the Altima at the intersection of St. Charles and Ellis Avenue until the accident at the intersection of Lynch and Ellis Avenue was a mile or a mile and a half. T. at 164.

[3] Officer Liggins estimated the Altima's speed at 55-60 miles per hour. T. at 161. Officer Curry estimated 60-70 miles per hour. T. at 127, 128.

With blue lights and siren still activated, officer Liggins approached the intersection of Ellis and Lynch Streets. T. at 165. Officer Liggins checked for oncoming vehicles, and having noted all vehicles had stopped, slowed down and started to proceed through the intersection. T. at 165, 166. Officer Liggins was proceeding through the intersection via the left turn lane at approximately 15-20 miles per hour, and his view was unblocked. T. at 167, 169. Officer Liggins turned his head to check for on-coming traffic. T. at 169. At the same time, Mary Jenkins[4] was travelling East on Lynch Street behind "four or five maybe" other vehicles. T. at 95. Mary Jenkins did not see any blue lights, hear any sirens, see the police car prior to impact or see the silver Altima. T. at 96, 101. Mary Jenkins conceded that her eyes were tired that day. T. at 100. She was "observing" and "focusing" on going straight ahead, and never saw the Federal Express truck operated by Plaintiff Trigg-Spann or a red Mustang, other vehicles damaged in the collision. T. at 102.

The upshot of Mary Jenkins' inattention was a collision between her vehicle and the patrol car of Officers Liggins and Curry. As a result, Plaintiff Trigg-Spann, who was sitting in a Federal Express truck facing North on Ellis Avenue, was struck first by the red Mustang and second by the patrol car. T. at 27. Plaintiff Trigg-Spann, when asked at trial who was at fault for causing the collision, responded that she "couldn't say". T. at 52. Upon cross-examination with her Answers to Interrogatories, Plaintiff Trigg-Spann's testimony revealed that:

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[4] Mary Jenkins also sued the City of Jackson, but ultimately abandoned her claim. T. at 98. Mary Jenkins was sued by the Plaintiff, Trigg-Spann, and settled with Plaintiff prior to trial. T. at 99.

> I [Trigg-Spann] left Smith Rouchon traveling north on Ellis Avenue towards Capitol Street. I stopped my vehicle at the red light at the intersection of Ellis Avenue and Lynch Streets. I could hear a police siren and two Jackson Police Department vehicles were in pursuit of a small gray vehicle which was traveling south on Ellis Avenue, attempting to allude the two police vehicles. All traffic at the Lynch Street and Ellis Avenue intersection except Mary Jenkins' vehicle stopped to allow the police vehicles to pass. Period. Ms. Jenkins continued into the intersection and collided into one of the Jackson police pursuit vehicles which caused the police car to hit a red Mustang stopped next to me and then eventually the police car Ms. Jenkins hit collided into my vehicle.
>
> Q. Did I read that correctly?
>
> A. Yes, you did.
>
> Q. Do you remember giving us this answer during discovery?
>
> A. Yes, I did.

T. at Page 53, Line 16 through Page 54, Line 6.

Plaintiff acknowledged that the patrol car slowed down as it approached the Ellis Avenue and Lynch Street intersection, though she disputes whether the patrol car's lights and siren were activated[5]. T. at 56. Plaintiff further stated that she did not know whether Mary Jenkins slowed down as Jenkins approached the intersection. T. at 63. It is undisputed that it was Jenkins' white Nissan Maxima that struck the patrol car in the intersection. T. at 193[6].

Plaintiff Trigg-Spann's injuries are in serious dispute. While Plaintiff Trigg-Spann contends, and the Court found, all manner of injuries, Plaintiff Trigg-Spann went to the Mississippi Baptist Medical Center's Emergency Room the day of the accident and was treated and released. T. at 63. She did not

[5] Plaintiff Trigg-Spann stated in deposition that she heard sirens, but tried to retreat or "clarify" this at trial. T. at 59.

[6] Jenkins herself could not recall what vehicle she struck first. T. at 102, 103.

sustain any broken bones, internal injuries, breaks of her skin or physical scars. T. at 64. Plaintiff Trigg-Spann saw, among others, Drs. Williams and Wilkerson, who opined that Trigg-Spann reached maximum medical improvement within a few months[7]. T. at 65, 68-70. Nevertheless, the trial court relied instead on the two doctors chosen by Plaintiff and awarded over $285,000 in damages. R. at 215-218.

[7] This testimony is addressed in detail, ***infra***.

SUMMARY OF THE ARGUMENT

The circuit court erred in assessing all liability to the City of Jackson. Plaintiff did not prove that the officers' actions were a proximate cause of the collision. Alternatively, the trial court failed to apply MISS. CODE ANN. §85-5-7 (7)[8]. In this matter, it is undisputed that there were two alleged tort-feasors: the City of Jackson, by and through the actions of Officers Liggins and Curry; and, Mary Jenkins. The circuit court, however, neither properly established that the officers' actions were a proximate cause nor assigned any fault to Mary Jenkins.

The trial court further erred with respect to its damage award. On the unique facts of this case, the damage award is so high as to be unreasonable at first blush and is contrary to the overwhelming weight of the credible evidence. The credible, substantial evidence before the trial court does not support the damages award. On the contrary, Plaintiff was deemed to have fully recovered within approximately five months.

[8] "In actions involving tort-feasors, the trier of fact shall determine the percentage of fault for each party alleged to be at fault."

ARGUMENT

STANDARD OF REVIEW

In a claim based on the Mississippi Tort Claims Act, the trial judge sits as the finder of fact. MISS. CODE ANN. §11-46-13(1) (Rev. 2002). Where a circuit judge sits without a jury, the circuit judge's findings will not be reversed on appeal where they are supported by substantial, credible and reasonable evidence. Donaldson v. Covington County, 846 So.2d 219, 222 (Miss. 2003). The circuit judge's findings of fact and conclusions of law are subject to reversal if the judge abused his discretion, was manifestly wrong, clearly erroneous or applied an erroneous legal standard. Miss. Dep't. of Transp. v. Trosclair, 851 So.2d 408, 413 (Miss. Ct. App. 2003).

In determining whether a circuit judge's award of damages was excessive, the standard of review is whether substantial evidence supports the award. Jackson Public School Dist. v. Smith, 875 So.2d 1100, 1104 (Miss. App. 2004). When determining an amount of damages, the fact finder must weigh a number of variables such as the amount of physical injury, pain, nature of any disability, loss of wage-earning capacity and age and health of the injured plaintiff. Woods v. Nichols, 416 So.2d 659, 671 (Miss. 1982). Each suit for personal injury must be decided by the facts shown in that particular case. Id.

A. The Trial Court erred in finding the City of Jackson 100% liable for the Collision.

The trial judge concluded that Officer Liggins' actions were in reckless disregard and, thus, the City of Jackson was 100% liable for the collision.

R. at 215. This determination is erroneous for two reasons. First, Plaintiff Trigg-Spann never proved—nor did the trial court find--that the actions of Officer Liggins as he entered the Lynch Street/Ellis Avenue intersection proximately caused the collision. Secondly, even if Officer Liggins' actions were a proximate cause of the accident, the actions of Mary Jenkins were ***also*** a proximate cause. Both of these errors were called to the trial court's attention in the City's post opinion motion, but denied without comment. R. at 197, 219-220. A circuit judge, sitting as trier of fact, is accorded great deference but his finding is treated the same as a jury verdict when he or she ignores the weight of the evidence. Jackson v. Daley, 739 So.2d 1031, 1039 (Miss. 1999)

For the purposes of this appeal, the City of Jackson does not contest the trial court's finding that the officers' pursuit of the Altima constitutes reckless disregard. This is not to say that the City concedes the issue. Rather, analysis of the reckless disregard factors in a pursuit context is unnecessary in the case at bar. That is because even if a plaintiff proves reckless disregard, a plaintiff must also establish that the complained of actions were the proximate cause of the accident. McIntosh v. Victoria Corp., 877 So.2d 519, 523 (Miss. Ct. App. 2004). Proximate cause, in turn, requires: (1) cause in fact; and (2) forseeability. Morin v. Moore, 309 F.3d 316, 326(5th Cir. 2002). "Cause in fact" means that the act or omission was a factor in bringing about the injury, and without it the harm would not have occurred. Ogburn v. City of Wiggins, 919 So.2d 85, 92 (Miss. Ct. App. 2004). "Forseeability" means that a person of ordinary intelligence should have anticipated the dangers that his negligent act created for others." Id. (Citing Morin, 309,F. 3d at 326).

In the case at bar it was the negligent acts of driver Jenkins as opposed to those of Officer Liggins that were the proximate cause of the collision. On the one hand, Officer Liggins:

- As he approached Ellis Avenue and Lynch Street, checked for oncoming vehicles and noticed all vehicles had stopped. (T. at 165);
- Only proceeded through the intersection once he saw no vehicles moving. (T. at 166, 167);
- Had blue lights and siren activated; (T. at 166);
- Proceeded through the intersection at 15 or 20 miles per hour. (T. at 167);
- Did not have an obstructed view. (T. at 168);
- Turned his head to look west up Lynch Street (the direction of Jenkins) to see if any traffic was coming (T. at 169); and,
- Observed the red Mustang before entering the intersection (T. at 192).

All of these actions indicate that Officer Liggins did not act with reckless disregard as he entered the intersection, and, more importantly, that his actions were not a proximate cause of the collision. On the other hand, the actions of Mary Jenkins do amount to the proximate cause as Jenkins:

- Did not see any blue lights or hear any sirens. (T. at 96);
- Did not see the police car before she struck it. (T. at 101);
- Had tired eyes on the day of the accident. (T. at 100);
- Was only "observing" and "focusing" on going straight ahead. (T. at 102);
- Never saw the Federal Express truck or red Mustang. (T. at 102);
- Had no explanation as to why the four or five vehicles ahead of her could avoid a collision, but she could not. (T. at 102);

Mississippi law holds that a motorist's right to assume that the driver of a vehicle proceeding toward an intersection will obey the law of the road extinguishes when the motorist knows or in the exercise of care should know the proceeding vehicle will not stop. Busick v. St. John, 856 So.2d 304, 317 (Miss. 2003). Such a failure to recognize that a proceeding vehicle will not stop constitutes a failure to keep a proper lookout and maintain control of one's vehicle. Id. at 318. Jenkins acknowledged as much when she conceded that she had a duty to keep a lookout for everything that was going on around her when she operates a vehicle. T. at 99. Unfortunately, Jenkins failed to keep such a lookout. But for Jenkins' failure, this accident would not have occurred.

In fact, Plaintiff Trigg-Spann also conceded as much when she stated that "all traffic at Lynch Street and Ellis Avenue intersection except Mary Jenkins' vehicle stopped to allow police [sic] vehicles to pass... Jenkins continued into the intersection and collided into one of the Jackson Police pursuit vehicles which caused the police car to hit a red Mustang...and then eventually the police car Ms. Jenkins hit collided into my vehicle". R. at 53-54. Negligence which merely furnishes the condition or occasion upon which injuries are received, but does not put in motion the way in which the injuries are inflicted, is not the proximate cause. Robison v. McDowell, 247 So.2d 686, 688 (Miss. 1971). *See also*, Hoke v. Holcombe, 186 So.2d 474, 477 (Miss 1996); Mississippi City Lines, Inc. v. Bullock, 194 Miss 630, 640, 13 So.2d 34, 36 (1943). It was the negligence of Jenkins which was the proximate cause of the accident. Thus, the trial court's 100% liability assessment to the City of Jackson was in error.

Assuming, *arguendo*, that Plaintiff proved the actions of Officer Liggins were a proximate cause of the collision, then the trial court erred by not apportioning fault to Mary Jenkins. Mississippi case law has long recognized there may be more than one proximate cause of an accident. Blackmon v. Payne, 510 So.2d 483, 486 (Miss. 1987) (Internal citations omitted). Plaintiff's complaint alleges that Mary Jenkins operated her vehicle "in a careless, negligent and reckless manner". R. at 8. Moreover, Plaintiff demanded "a judgment of and from the Defendants" as a "direct and proximate result of the ***concurrent*** reckless, negligent and [sic] gross negligent acts of Defendant Mary Jenkins ***and*** the City of Jackson...". R. at 10. (Emphasis supplied).

MISS. CODE ANN. § 85-5-7 provides, in pertinent part:

> (1) As used in this section, "fault" means an act or omission of a person which is a proximate cause of injury or death to another person or persons, damages to property, tangible or intangible, or economic injury, including, but not limited to, negligence, malpractice strict liability, absolute liability or failure to warn.
>
> (7) In actions involving joint tort-feasors, the trier of fact shall determine the percentage of fault for each party alleged to be at fault.

Ironically, the trial court's Opinion and Order cites the case of City of Jackson v. Brister, 838 So.2d 274 (Miss. 2005) in finding reckless disregard. R. at 189. Yet, the trial court completely ignored that the trial judge in Brister apportioned fault 50% to the City of Jackson and 50% to the other driver. Id. at 276[9].

[9] Brister is similar to this case in that the Plaintiff in each case is a third-party.

In addition to the similarities to Brister where liability was properly apportioned by the trial court, the case of City of Ellisville v. Richardson, 913 So.2d 973 (Miss. 2005) is instructive. In Richardson, the plaintiff alleged that another individual (Evans) was negligent in addition to the Ellisville police officer. "Nevertheless, the trial judge failed to address in his Memorandum Opinion and Judgment or his Judgment denying Defendant's Motion for Reconsideration, that the apportioned fault between the joint tort-feasors as required by MISS. CODE ANN. § 85-5-7". Id. at 980. The Supreme Court concluded that the trial judge's failure to apportion fault pursuant to the findings was ambiguous and constituted plain error. Id. (Citing Selman v. Selman, 722 So.2d 547, 554 (Miss. 1998)). Accordingly, the Supreme Court reversed the trial court and directed that the trial court enter "a specific finding of the respective percentages of fault of [each defendant...]. Id.

The Richardson holding echoes the holding in Mississippi Dep't of Public Safety v. Durn, 861 So.2d 990 (Miss. 2003). In Durn, the circuit judge found that a state trooper acted in reckless disregard in causing a motor vehicle accident. However, the circuit court failed to apportion any liability to the plaintiff, despite the issue of comparative negligence being placed before the court. Thus the decision was reversed and remanded with instructions to the circuit court to apportion liability. The procedural posture found in Richardson and Durn is the exact situation created by the trial court in this matter. Therefore, in the least, this matter must be reversed for an allocation of fault.

B. The Trial Court's Damage Award was Against the Substantial, Credible Evidence.

The trial court, in rendering its damages award, concluded "that the expert opinions of Drs. Crenshaw and Goel are very persuading and should therefore be given more weight than the opinions of the Defendants' experts." R. at 194[10]. The trial also court relied on the Plaintiff's self-serving testimony. However, the trial court simply ignored the testimony of Dr. Wilkerson and Dr. Williams, both of whom were initial treaters of Plaintiff Trigg-Spann[11]. The trial court's decision to not even address or weigh this testimony results in a damages award which is contrary to the substantial evidence presented at trial.

Courts determine on a case-by-case method whether a damage award is excessive. Brandon HMA, Inc. v. Bradshaw, 809 So.2d 611, 621 (Miss. 2001). Damage awards are normally affirmed unless the award "shocks the conscience" after examining the evidence in support of it. Wal-Mart Stores, Inc. v. Frierson, 818 So.2d 1135 (Miss. 2002). A trial judge's determination receives similar deference and will be upheld when substantial evidence supports those findings and those findings are not clearly erroneous. Fred's Stores of Tennessee, Inc. v. Brown, 829 So.2d 1261 (Miss. Ct. App. 2002) (Citing Crowe v. Smith, 603 So.2d 301, 305 (Miss. 1992)).

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[10] The City of Jackson presented testimony from two of Plaintiff's treating physicians. The physicians were not hired by the City of Jackson, and were only "experts" to the extent that ***all*** treating doctors are experts. It is ironic that Plaintiff did not offer the testimony of two of her own treating doctors.

[11] Drs. Crenshaw, Goel, Wilkerson and Williams were presented via deposition pursuant to M.R.C.P. 32(a)(3)(E). The depositions were inadvertently not included in the original record, but the Court's admission of the depositions is reflected at pp. 247-248 and 254 of the transcript. An Agreed Order correcting the Record was sent to the trial judge on January 11, 2008. Accordingly, the doctors' testimony is cited as "[Doctor's name] at _____."

Dr. Williams was practicing at the Methodist Rehabilitation Center when he treated Plaintiff Trigg-Spann. Williams at 9. His practice is exclusively devoted to physical medicine, rehabilitation and electro-diagnostic medicine, and he is board certified in physical medicine and rehabilitation, as well as electro-diagnostic medicine. Williams at 6. He almost daily treats patients involved in motor vehicle accidents, and, initially, saw Plaintiff Trigg-Spann on December 8, 2003. Williams at 7, 10. The purpose of this initial visit was to evaluate Plaintiff Trigg-Spann for neck, mid-back and low back pain. Williams at 11. The initial examination, some six weeks post-accident, revealed normal ability to walk and raise up on her toes, normal strength throughout her upper and/or lower extremities, normal coordination and normal reflexes with only subjective complaints of pain. Williams at 11-12. Dr. Williams concluded that Plaintiff Trigg-Spann had "examination findings that were consistent with exaggerated pain behavior". Williams at 15. He discontinued all pain relievers and muscle relaxants at this time, and provided Trigg-Spann with a return to work excuse, recommending medium duty[12]. Dr. Williams also expected Trigg-Spann to attend physical therapy and scheduled a return visit in four weeks. Williams at 17.

Dr. Williams did see Trigg-Spann again, and his findings do not support the trial court's award. On January 7, 2004, Dr. Williams noted that while Trigg-Spann failed to bring her x-rays as requested, she had attended physical therapy with improved strength and flexibility and no impediment. Williams at 18-19.

[12] Medium duty meant Trigg-Spann could lift up to 50 pounds infrequently and 25 pounds frequently. Williams at 16.

Dr. Williams concluded that Trigg-Spann was exhibiting "secondary gain" behavior, a conclusion supported by pain complaints inconsistent with physical examination. Williams at 20. Nonetheless, Dr. Williams scheduled Trigg-Spann for electro-diagnostic testing on January 20, 2004. This objective testing revealed no impingement in any complained of area. Williams at 23-24. Dr. Williams then saw Trigg-Spann on February 3, 2004 and concluded that she was exhibiting "significant exaggerated pain behavior on examination and a history inconsistent with anatomical pathology". Williams at 28. Dr. Williams determined that Trigg-Spann had reached maximum medical improvement of February 3, and could "return to work regular duty with no restrictions". Williams at 28.

Like Dr. Williams, Dr. George Wilkerson saw Plaintiff Trigg-Spann in close proximity to the accident. Dr. Wilkerson is certified by the American Board of Clinical Neurology and has an educational training and background in both psychiatry and neurology. Wilkerson at 6, 7. Dr. Wilkerson first saw Trigg-Spann on February 11, 2004 as a referral from Dr. Crenshaw[13]. Wilkerson at 11. Trigg-Spann expressed subjective complaints and it was Dr. Wilkerson's job to determine whether a patient has an objective basis for the subjective complaints. Wilkerson at 13, 14. Dr. Wilkerson, in fact, reviewed the objective tests performed by Dr. Williams—all of which were "normal". Wilkerson at 18. Based on the information available, along with his own examination, Dr. Wilkerson concluded to "any degree of reasonable medical probability that there was no

[13] Dr. Crenshaw is a general practitioner whose deposition was submitted by Plaintiff and relied on by the trial court. R. at 193.

objective evidence that Mrs. Spann suffered any permanent consequence from her motor vehicle accident, nor was there any impairment that would preclude her from going back to work full time...". Wilkerson at 19. Dr. Wilkerson prescribed no medicine on physical therapy, nor did he place any restrictions on Trigg-Spann. Wilkerson at 20. Dr. Wilkerson also concluded that Trigg-Spann had "absolutely [no] traumatic injury to her back, and though he did not see a March 2005 MRI until his deposition, the MRI also indicated no traumatic back injury. Wilkerson at 30. In fact, the March 2005 MRI studies were all normal, as Dr. Wilkerson expected from his February 2004 visit. Wilkerson at 31-32.

Notwithstanding the testimony from these board-certified physicians, Plaintiff Trigg-Spann continued to malinger and seek other medical care. It is this other medical testimony, along with Trigg-Spann's circumspect testimony, on which the trial court relied in calculating $285,595.53 in damages. This award of 10.6 times the already questionably inflated medical specials strikes one at first blush as unreasonable. While each case is unique, it is hard to fathom that a damage award of $285,000 is appropriate where two board certified specialists concluded that Trigg-Spann had reached maximum medical improvement within five months of the accident. Perhaps this is why the trial court did not discuss the testimony of Drs. Williams and Wilkerson at all in the Opinion and Order.

CONCLUSION

For the above reasons, the City of Jackson requests that this Court reverse the lower Court's judgment in this action. Specifically, the City respectfully submits that reversing and rendering the judgment is proper as Mary Jenkins was the sole proximate cause of the accident which injured Trigg-Spann. Alternatively, the City of Jackson submits that the judgment should be reversed with instructions to the trial court to properly apportion fault and, further, reduce the damages award to an amount consistent with the substantial, credible relief. And the City of Jackson prays for such other relief as this Court deems appropriate.

Respectfully submitted this the 16th day of January, 2008.

THE CITY OF JACKSON, MISSISSIPPI

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CERTIFICATE OF SERVICE

The undersigned does certify that he has this date mailed, via United States mail, postage pre-paid, a true and correct copy of the above and foregoing Appellant's Brief to the following:

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Honorable Winston L. Kidd,
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So certified, this the 16th day of January, 2008.

PIETER TEEUWISSEN