

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

JOSEPH DAVIS, JR.,

APPELLANT

VERSUS

BILOXI PUBLIC SCHOOL DISTRICT, BILOXI PUBLIC SCHOOL BOARD, ET AL

APPELLEES

NO. 2007-TS-02155

**APPEAL FROM THE CIRCUIT COURT OF HARRISON COUNTY,
MISSISSIPPI, SECOND JUDICIAL DISTRICT**

APPELLANTS' BRIEF

ORAL ARGUMENT REQUESTED

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PRO SE (COUNSEL OF RECORD)
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CERTIFICATE OF INTERESTED PERSONS

The undersigned, Joseph Davis, Jr., Appellant, Pro Se, Counsel of Record certifies that the following listed persons have an interest in the outcome of the 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. Appellant, Joseph Davis, Jr.
2. Joseph Davis, Jr., Pro Se, Counsel of Record for the Appellant.
3. Edward F. Donovan, Lawyer for the Appellees, Present Biloxi Public School Board Attorney,
134 Rue Magnolia, P. O. Box 87, Biloxi, Mississippi 39533.
4. Lawyer Gerald Blessey, Past Biloxi Public School Board Attorney, P. O. Box 4648, Biloxi,
Mississippi 39535 (Replaced by Lawyer Edward F. Donovan).
5. Patti Golden, School Board Attorney (terminated) Biloxi Public School Board (Replaced by
Lawyer Gerald Blessey, Biloxi Public School Board Attorney, who was replaced by Lawyer
Edward F. Donovan the present Biloxi Public School Board Attorney).

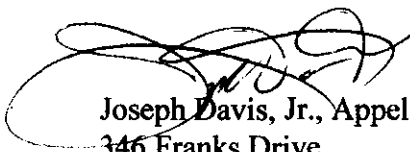
6. Patricia L. Bodin, Court Reporter, Circuit Court, Second Judicial District, Harrison County, Gulfport, Mississippi 39502. Mailing address: 18057 Fairway View Drive, Biloxi, Mississippi 39532.
7. Judge Roger T. Clark, (Present) Circuit Court Judge, Second Judicial District, Harrison County, P. O. Box 1461, Gulfport, Mississippi 39502.
8. Judge Robert H. Walker, (Past) Circuit Court Judge, Second Judicial District, Harrison County, P. O. Box 235, Biloxi, Mississippi 39530.
9. Michelle Casino, Official Court Reporter, for the Second Judicial District of the State of Mississippi.
10. Betty W. Sephton, Clerk of the Supreme Court of Mississippi, Post Office Box 249, Jackson, Mississippi 39205.
11. Ella Lock, Circuit Court Clerk, Deputy Clerk, Second Judicial District, Harrison County, Gulfport, Mississippi (Deceased).
12. Mrs. Andrea Petro, (Past) Principal, Popps Ferry Elementary, Biloxi Public School District. (Present) Principal, Lopez Elementary School, Biloxi Public School District.
13. Dr. Janice Wilson, (Past) Assistant Principal, Popps Ferry Elementary School, Biloxi Public School District. (Present) Curriculum Development, Biloxi Public School District.
14. Dr. Paul A. Tisdale, (Present) Superintendent, Biloxi Public School District, Biloxi, Mississippi. (Past) Director Administrative Services (Replaced Dr. Larry D. Drawdy, as Superintendent, Biloxi Public School District).

15. Dr. Larry D. Drawdy, Retired (Past) Superintendent, Biloxi Public School District, Biloxi, Mississippi.
16. Robert W. Bowles, (Retired) Deputy Superintendent, Biloxi Public School District.
17. Jude McDonnell, (Retired/Resigned/Fired) Comptroller, Biloxi Public School District.
18. Rick Stewart, (Past) President, Biloxi Public School District, Biloxi Public School Board (resigned for conflict of interest) Replaced by David Blaine (Past) Vice-President, Biloxi Public School District, Biloxi Public School Board.
19. David Blaine, (Past) President, Biloxi Public School District, Biloxi Public School Board.
20. Kenny Holloway, (Present) President, Biloxi Public School District, Biloxi Public School Board (brother of Mayor A. J. Holloway, City of Biloxi).
21. Mrs. Mildred Roy, (Past) Secretary, Biloxi Public School District, Biloxi Public School Board.
22. Mr. Glendon Johnson, (Past) Assistant Secretary, Biloxi Public School District, Biloxi Public School Board.
23. Mrs. Madelon Gruich, (Past) Member, Biloxi Public School District, Biloxi Public School Board.
24. Col. Lance Young, KAFB Liaison, Biloxi Public School District, Biloxi Public School Board.
25. Maj. John Tenaglia, KAFB Asst. Liaison, Biloxi Public School District, Biloxi Public School Board.

26. Carolyn Martino, Payroll Department, Biloxi Public School District, Biloxi Public Schools.
27. Biloxi Police Officer Miller, Biloxi Police Department, Biloxi, Mississippi.
28. Biloxi Police Officer P. Bowen, Badge #102, Biloxi Police Department, Biloxi, Mississippi.
29. Biloxi Police Officer, Jackie Rhodes, Community Services Officer, Biloxi Police Department, Biloxi, Mississippi.

Respectfully Submitted,

This the 31st Day of July 2008.



Joseph Davis, Jr., Appellant, Pro Se
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STATEMENT OF ISSUES

I.

I, Appellant, Joseph Davis, Jr., pro se, am a tenured employee in the Biloxi Public School District with property interest as required by statute and State law under the State of Mississippi, Mississippi Education Employment Procedures Law (MEEPL) and as an employee have a legitimate claim of entitlement to my employment of over 9 (nine) years of Creditable Service, in the Public Employees' Retirement System of Mississippi (PERS).

(Tab 4, Record Excerpts of the Appellant with Exhibit "1" attached)

(Appeal Record page 90, Exhibit "1")

II.

I, Appellant Joseph Davis, Jr., pro se, tenured employee in the Biloxi Public School District was entitled to a hearing based upon my valid claim of entitlement to continued employment as a teacher's assistant and the unlawful termination deprived me the tenured employee of my property interest that would invoke the due process provisions of the United States Constitution.

III.

I, Appellant, Joseph Davis, Jr., pro se, tenured employee in the Biloxi Public School District am being deprived of my rights as an employee as a teachers assistant in the Biloxi Public School District with property interest as required by State Statute and the Mississippi Employee Education Procedures Law, §37-9-101, Long Title. vested with tenure protections cognizable by Genuine Issues of Material Facts and the Law.

§1983. Civil Action for Deprivation of Rights:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or Territory of the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, other proper proceeding for redress, except that in any action brought against a judicial officer for an act of omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

IV.

I, Appellant, Joseph Davis, Jr., pro se, tenured employee in the Biloxi Public School District am being denied the protections of the Thirteenth Amendment (1865) that prohibits slavery or involuntary servitude and authorizes Congress to enforce that prohibition. The State of Mississippi is the only state of the 50 (fifty) states that has not Ratified the Thirteenth Amendment (1865). This is a Genuine Issue of a Material Fact and the law.

V.

The Fourteenth Amendment guarantees due process and equal protection of the laws to all persons. I, Appellant, Joseph Davis, Jr., pro se, United States Citizen by birth, tenured employee, with property interest in the Biloxi Public School District am being denied protection of the

Fourteenth Amendment rights under the Fourteenth Amendment under Section 1.

Section 1. All persons born or naturalized in the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws. This is a Genuine Issue of a Material Fact and the law.

VI.

The Federal Constitution guarantees a broader right than the state statute, the statute must yield.
Billiot v. State, 515 So. 2d 1234, 1236 (Miss. 1987)

VII.

I, Joseph Davis, Jr., Appellant, pro se, am a tenured employee of the Biloxi Public School District without an employment contract who have been terminated for reasons declared legally impermissible. Heartsouth, PLLC v. Boyd, 865 So.2d 1095, 1108 (¶39) (Miss.2003)
Levens v. Campbell, 733 So.2d 753, 760 (¶24) (Miss. 1999)
Shaw v. Burchfield, 481 So.2d 247,253-54 (Miss. 1985)

VIII.

I, Joseph Davis, Jr., Appellant pro se, am a tenured employee of the Biloxi Public School District whose cause of action for termination is legally impermissible based upon the cause of action for termination is one of the two exceptions to the general, employment-at-will rule. I, Joseph Davis, Jr., am a tenured employee of the Biloxi Public School District with property interest who was discharged for reporting illegal acts of his employer to the state auditor's

general office and the state attorney generals office and I am therefore, not barred by the employment at will doctrine from bringing action in tort for damages against my employer.

Buchanan v. Ameristar Casino Vicksburg, 852 So. 2d 25,26-27 (¶5)Miss.2003)

McArn v. Allied Bruce-Terminix Co., Inc., 626 So.2d 603,607 (Miss.1993)

See, Heartsouth, PLLC v. Boyd, 865 So.2d 1095, 1108 (¶39) (Miss.2003)

IX.

ERROR AND ISSUE

The Appellant, Joseph Davis, Jr., pro se, was arbitrary and capriciously denied the right to a Trial by Jury, by the Honorable Circuit Court Judge Roger T. Clark, In the Circuit Court of Harrison County, Mississippi, Second Judicial District, on Order that was Ordered and Adjudged, on 28 February 2008, (**Refer to Appellants Record Excerpts, Tab 14**) and The Appeal Record page 340A. The Order is not Filed/Stamped by the Circuit Court Clerk, and properly entered into the Circuit Court Records pursuant to the Mississippi Rules of Civil Procedure.

The Appellant, Joseph Davis, Jr., pro se, respectfully refer the court to the **Appellants Record Excerpts, Tab 4, Affidavit of Joseph Davis, Jr., Plaintiff Pro Se In Response to Biloxi Public School District Motion to Dismiss or in the Alternative, for Summary Judgment Cause Number A2402-07-00036, Filed/Stamped November 15, 2007, In the Circuit Court of Harrison County, Mississippi, Second Judicial District, Filed/Stamped by November 15, 2007, by Gayle Parker, Circuit Clerk.**

X.

ERROR AND ISSUE

The Honorable Judge Robert H. Walker, (then) Circuit Court Judge , Second Judicial District, Harrison County Mississippi erred in not ruling on or responding to the Rule 60(a) and Rule 60(b) Motions that were properly submitted and filed by Joseph Davis, Jr., Appellant, Pro Se. Also, Relevant Evidence has been omitted by the Court, under M. R. A. P. 10(b)(1), Designation of the Record in the original Cause Number A2402-04-00011.

The lack of ruling on the two Mississippi Rules of Court, Mississippi Rules of Civil Procedure Rule(s) 60 (a) and 60 (b) have caused the Appellant, Joseph Davis, Jr., to be unjustly toll the time for filing the original appeal whereas the Rule 60 Motion, which historically **has not been tolled the time. See Michael v. Michael, 650 So. 2d 469 (Miss. 1995) and the Appellant, Joseph Davis, Jr., Pro Se, is seeking relief from judgments tainted by fraud, misrepresentation and statutory misconduct and violations by the Defendants.** Please refer to Appellants Record Excerpts, Tab 8 (Plaintiff's Motion Rule 60a, Mississippi Rules of Civil Procedure) Also, refer to Appeal Record pages 305 through 308.

STATEMENT OF THE CASE

On about August 12, 2003, I, Joseph Davis, Jr., Appellant, pro se, tenured employee of the Biloxi Public School District reported the Biloxi Public School District, Comptroller, Mr. Jude McDonnell to the State Auditor General's Office (Phil Bryant was the Auditor General) for malfeasance in office and also, the unlawful garnishment of my wages by Mr. Jude McDonnell, Comptroller, Biloxi Public School District. Also, I, Appellant Joseph Davis, Jr., pro se, tenured employee in the Biloxi Public School District reported to the State of Mississippi, Superintendent of Education, Dr. Johnson, the malfeasance that was occurring in the Biloxi Public School District and the intimidation my family and I was suffering due to the reporting of the Comptroller and administration's wrongdoings. (**Appeal Record Page 279**) Biloxi Public School District Check No. 14154, dated 2/1/2001, \$5,284.65.

The above cited Biloxi Public School District was subsequently reissued on 2/4/04, Check No.004210, in the same amount of \$5,284.65 replacing check #14154 dated 2/1/2001.

I, Appellant, Joseph Davis, Jr., pro se, am still in possession of the check dated 2/4/04, No.004210 pending the complete payment of the full garnished monies that was unlawfully taken from the Appellant, Joseph Davis, Jr., Pro Se, tenured employee of the Biloxi Public School District, by the Comptroller of the Biloxi Public School District, Jude McDonnell and the Biloxi Public School District Administrators.

The garnishment of my (Joseph Davis, Jr., Appellant, Pro Se) employee wages by the Comptroller, Biloxi Public School District, Mr. Jude McDonnell was unlawful, uncaring and grossly negligent. **The lawyer that initiated the garnishment is R.. Scott Wells, who reside across the street from me (the Appellant, Joseph Davis, Jr., pro se).**

Lawyer R. Scott Wells unlawfully deposited the garnished monies into his personal account during the time of the garnishment. (All of the garnished monies have not been remitted back to my family and I) If it pleases the court and in an effort to secure justice for me (Joseph Davis, Jr., Appellant, Pro Se) **please direct your attention to the case Nationwide Recovery v. Joseph Davis, Jr., (Appellant) that was Reversed and Remanded from the Supreme Court of Mississippi, Cause Number 20000-CP-00036-SCT, on 03/29/2001,** to the Harrison County Circuit Court, Second Judicial District, In the State of Mississippi. The Supreme Court of Mississippi, mandated and entered a final judgment on the 19th day of April 2001, A.D. to the Harrison County Circuit, 2nd Judicial District, and Filed/Stamped on April 23, 2001, Gayle Parker, by Lisa Brown Deputy Clerk.

The above cited case **Joseph Davis, Jr. V. Nationwide Recovery Service, Inc., 797 So. 2d 929 (Miss. 2001)**, reversed the dismissal and remanded the case to the Harrison County Circuit Court finding that the denial of the rule 60(b) motion was timely filed and that the circuit court abused its discretion in dismissing the appeal. The Nationwide Recovery Case is joined at the hip with this Complaint and is still pending in the Circuit Court of Harrison County Second Judicial District.

I, Joseph Davis, Jr., Appellant, pro se, tenured employee of the Biloxi Public School District, filed a Notice of Appeal to the Judgment of Dismissal , Ordered and Adjudged on the 15th day of November 2007, by the honorable Circuit Court Judge Roger T. Clark, Stamped on November 16, 2007, by Gayle Parker, Circuit Court Clerk, Filed/Stamped November 16, 2007, 237/ 250-252. Mailed from the Circuit Court Clerk office by Certified Mailed on November 20, 2007 Certified Mail Number 7004 1350 0002 4887 0575, delivered to the Plaintiff's residence on the afternoon of Saturday, November 24, 2007. Appellant's Notice of Appeal was Filed/Stamped November 26, 2007, in the Circuit Court of Harrison County, Second Judicial District.

(Refer to Appellant's Record Excerpts Tab 7).

I, Joseph Davis, Jr., Appellant, pro se, tenured employee of the Biloxi Public School, filed Plaintiff's Memorandum in Response to Judgment of Dismissal Filed/Stamped April 9, 2008. (Please refer to the Plaintiff's Memorandum in Response to Judgment of Dismissal as it brief describes the nature of the case, the course of the proceedings and its disposition in the circuit court) **Applicant's Record Excerpts Tab 6.**

STATEMENT OF THE FACTS

I, Appellant, Joseph Davis, Jr., pro se, tenured employee in the Biloxi Public School District whose cause of action for termination is legally impermissible based upon the fact that the cause of action for termination is one of the two (2) exceptions to the general, employment - at-will rule. I, Appellant Joseph Davis, Jr., pro se, am a tenured employee in the Biloxi Public School District with property interest (Tab 4, Record Excerpts of the Appellant with Exhibit "1" attached) and (Appeal Record, page 90, Exhibit "1") and as an employee who was discharged for reporting illegal acts of his employer (Biloxi Public School District) to the State Auditor's General Office and the State Attorney General's Office, and I am therefore not barred by the employment-at-will doctrine from bringing action in tort for damages against my employer. *Buchanan v. Ameristar Casino Vicksburg*, 852 So. 2d 25,26-27 (¶5) Miss. 2003); *McArn v. Allied Bruce-Terminix Co., Inc.*, 626 So.2d 603, 607 (Miss. 1993) and also see, *Heartsouth, PLLC v. Boyd*, 865 So.2d 1095, 1108 (¶39) (Miss. 2003).

The Appellant, Joseph Davis, Jr., pro se, being a tenured employee, with 9.75 Total Service Credit in the Public Employees' Retirement of Mississippi (Tab 4, Record Excerpts of the Appellant with Exhibit "1" attached) and (Appeal Record, page 90, Exhibit "1") as outlined and defined in Statues and Session Law 25-11-103, as established and described in Section 25-11-101, and filling a position of Teacher Assistant as provided for by Section 25-11-105(f), was unjustly and unlawfully deprived of his continued employment in the Biloxi Public School District whose cause of action for termination is legally impermissible based upon the exception to the general, employment-at-will rule.

There are Constitutional Issues involved on this case and Statutory Issues (the Defendants Lawyer Silas W. McCharen in his own words acknowledge that there is a “statutory Scheme” that is imposed by the Mississippi Employee Education Procedures Law (MEEPL), Long title; See Statue §37-9-101, short title; legislative intent, School Employment Procedures Law “SEPL”.

Therefore, I Joseph Davis, Jr., Appellant Pro Se, tenured employee, with vested property interest in my continued employment in the Biloxi Public School District am questioning the unconstitutionality of the Mississippi Employee Education Procedures Law (MEEPL), Long Title , See Statue §37-9-101, short title, legislative intent, School Employment Procedures Law “SEPL”. This case involves fundamental issues of public importance requiring determination by the Supreme Court and conflicts with prior decisions rendered by the Mississippi Supreme Court.

Where the Federal Constitution guarantees a broader right than does a state statue, the statue must yield, *Billiot v. State*, 515, So. 2d 1234, 1236 (Miss. 1987).

The Appellate court’s rule is to abstain from ruling on a constitutional issue, unless necessary to the disposition of a case. *Freeman v. P.E.R.S. of Mississippi*, 822 So 2d 724, 281

(¶24)(Miss.2002), *Dean v. Public Emp. Retirement System*, 797 So. 2d 830, 833 (¶14)(Miss. 2000), and *Johnson v. Memorial Hospital of Gulfport*, 732 So. 2d 864, 866 (¶9) (Miss. 1998).

I, Joseph Davis, Jr., am a tenured employee of the Biloxi Public School District whose cause of action for termination is legally impermissible based upon the cause of action for termination is one of the two exceptions to the general, employment-at-will doctrine/rule.

I, Joseph Davis, Jr., am a tenured employee in the Biloxi Public School District with vested property interest as an employee with continued employment, who was discharged for reporting illegal acts of his employer (Biloxi Public School District, Comptroller, Superintendent, Deputy Superintendent, and Administrator) to the State of Mississippi Auditor General's Office and the State of Mississippi Attorney General's Office **and I am therefore, not barred by the employment at will doctrine from bringing action in tort for damages against my employer.**

Buchanan v. Ameristar Casino Vicksburg, 852 So. 2d 25, 26-27 (¶5) Miss. 2003), McArn v. Allied Bruce-Terminix Co., Inc 626 So. 2d 603, 607 (Miss. 1993), See, Heartsouth, PLLC v. Boyd, 865 So.2d 1095, 1108 (¶39) (Miss. 2003).

On the Original Appeal, the Honorable Judge Robert H. Walker, (then) Circuit Court Judge, Second Judicial District, Harrison County Mississippi erred in not ruling on or responding to the Rule 60 (a) and Rule 60(b) Motions that were properly submitted and filed by the Appellant, Pro Se. **The lack of ruling on the two (2) Mississippi Rules of Court, Mississippi Rules of Civil Procedure Rules (60 (a) and 60 (b) has caused the Appellant, Joseph Davis, Jr., to be unjustly tolled the time for filing the Original Appeal whereas the Rule 60 Motion, which historically has not been tolled the time. See Michael v. Michael, 650 So. 2d 469 (Miss. 1995) and the Appellant Joseph Davis, Jr., pro se is seeking relief from judgments tainted by capricious and arbitrary misrepresentation and statutory misconduct and violations by the Dependents. (Please refer to Appellants Record Excerpts, Tab 8 (Plaintiff's Motion Rule 60a, Mississippi Rules of Civil procedure) Also, refer to Appeal Record pages 305-308.**

The Appellant, Joseph Davis, Jr., pro se respectfully refer the court to the **Appellants Record Excerpts, Tab 4, Affidavit of Joseph Davis, Jr., Plaintiff., Pro Se In Response to The Biloxi Public School District Motion to Dismiss or in the Alternative, for Summary Judgment** Cause Number A2402-07-00036, Filed/Stamped A November 15, 2007, In the Circuit Court of Harrison County, Mississippi, Second Judicial District, Filed/Stamped on November 15, 2007, by Gayle Parker, Circuit Clerk.

ARGUMENT

The Appellant, Joseph Davis, Jr., tenured and vested employee being a member of the Public Employees' Retirement System of Mississippi pursuant to and as outline and described in Sections 25-11-101, and Session Law 25-11-103, as established and described in Section 25-11-101, and filling a position of State Service as provided by Section 25-11-105(f) has been unjustly deprived of his vested property interest as an employee to his continued employment in the Biloxi Public School District.

Joseph Davis, Jr., tenured and vested employee (with property interest in the Biloxi Public School District as an employee under the Mississippi Employee Education Procedures Law (MEEPL) §37-9-101, Long Title have been deprive of that by the Biloxi Public School District and the Biloxi Public Public School Board.

I, Joseph Davis, Jr., Appellant, pro se, am a tenured and vested employee in the Biloxi am being deprived of my rights under the 42 U.S.C.A Section 1983, U. S. Constitutional Admendments 1st, 4th, 5th, 6th, 7th, 9th, 13th, and 14th, and The Civil Rights Law under Title VII of the Civil Rights act of 1991. Under §1983. CivilAction for Deprivation of Rights: Every person who, under color of any statue, ordance, regulation, custom, or usage, of any state or territory of the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, other proper proceeding for redress, except that in any action brought against a judicial officer for an act of omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

Due to the “statutory scheme” of the Mississippi Employee Education Procedures Law such relief has been unavailable to the Appellant Joseph Davis, Jr., employee who is tenured and vested with full property interest for continued employment in the Biloxi Public School District.

I, Joseph Davis, Jr., Appellant, pro se, am a tenured employee of the Biloxi Public School District without an employment contract who have been terminated for reasons declared legally impermissible. *Heartsouth, LLC v Boyd*, 865 So.2d 1095, 1108 (¶39) (Miss.2003), *Levens v. Campbell*, 733 So. 2d 753, 760 (¶24) (Miss. 1999), and *Shaw v. Burchfield*, 481 So. 2d 247, 253-54 (Miss. 1985)

I, Joseph Davis, Jr., Appellant, pro se, am a tenured employee of the Biloxi Public School District whose cause of action for termination for termination is legally impermissible based upon the cause of action for termination is one of the two (2) exceptions to the general, employment-at-will rule. I, Joseph Davis, Jr., am a tenured employee of the Biloxi Public School with verifiable and genuine property interest for continued employment in the Biloxi Public School District who was discharged for reporting illegal acts and malfeasance of my employer to the State Auditor’s General’s Office and the State Attorney Generals Office. Therefore, I am not barred as an employee by the employment at will doctrine from bringing action in tort for damages against my employer. *Buchanan v. Allied Bruce-Terminix Co., Inc.*, 626 So. 2d 603, 607 (Miss. 1993) Also, See *Heartsouth, PLLC v. Boyd*, 865 So. 2d 1095, 1108 (¶39) (Miss. 2003)

Statement of Issues Number (s) IX and X, attest to the arbitrary and capricious acts of the court in regard to the errors committed in the court and the evidence omitted that have been properly and procedurally cognizant and filed by the Appellant without any relief from the lower court.

The Honorable Judge Robert H. Walker, (then) Circuit Court Judge, Second Judicial District, Harrison County Mississippi erred in not ruling or responding on or responding to the Rule 60(a) and Rule 60 (b) Motions that were properly submitted and filed by Joseph Davis, Jr., Appellant, Pro Se. Also, relevant Evidence has been omitted by the court, under M. R. A. P. 10(b)(1), Designation of the Record in the original case Number A2402-04-00011.

The lack of ruling on the two Mississippi Rules of Court, Mississippi Rules of Civil Procedure Rule(s) 60 (a) and 60 (b) have caused the Appellant, Joseph Davis, Jr., to be unjustly tolled the time for filing the original appeal whereas the Rule 60 Motion, which historically has not been tolled the time. See Michael v. Michael, 650 So. 2d 469 (Miss. 1995) and the Appellant, Joseph Davis, Jr., Pro Se, is seeking relief from judgments tainted by fraud, misrepresentation, and statutory misconduct and violation by the defendants. See Record Excerpts, Tab 8 (Plaintiff's Motion Rule 60a, Mississippi Rules of Civil Procedure) Also,, please refer to Appeal Record pages 305 through 308.

The Appellant, Joseph Davis, Jr., Pro Se, has been denied his right to a Jury Trial and denied due process under the thirteenth (13th) and the Fourteenth (14th) Amendments to the United States Constitution.

ARGUMENT SUMMARY

In summary, I Joseph Davis, Jr., am a tenured Employee with property interest for continued employment under the statues and laws of the State of Mississippi, I truly believe in the judicial system and well know that the court will review the forgoing with an opened standard of review for the Argument submitted on the case and based upon the standard of review for evaluating the denial of relief from judgment is abuse of discretion. *Montgomery v. Montgomery*, 759 So. 2d 1238, 1240 (Miss. 2000).

The Appellant, Joseph Davis, Jr., am being denied the protections of the 1st, 4th, 5th, 6th, 7th, 9th, 13th, and 14th Amendments, and is being deprived of his Constitutional Rights, Justice denied one is Justice denied all.

The Appellant, Joseph Davis, Jr., pro se, prays that justice is done.

CONCLUSION

In conclusion, the Appellant Joseph Davis, Jr., pro se, by law and stature is a tenured vested employee **in the Biloxi Public School District, under the law and in the protections of letter of the law, but more so in the spirit of The Law.**

I, pray for relief, in the reversal and remanding of the case consistent with the law. I pray that if it pleases the court that the ruling allows me the continued employment in my position as a Teacher's Assistant/Teacher's Aide in the Biloxi Public School District with the grace of God.

CERTIFICATE OF SERVICE

I, Joseph Davis, Jr., Pro Se, Appellant, do certify that I have this day forwarded, via overnight mail return receipt requested a true and correct copy of the Appellant's Brief and Record Excerpts under the Rules of Appellate Procedure to:

Edward F. Donovan, Lawyer
786 View Marche
Post Office Box 87
Biloxi, Mississippi 39533

Silas W. McCharen, Lawyer
Daniel, Coker, Horton & Bell
4400 Old Canton Road, Suite 400
Post Office Box 1084
Jackson, Mississippi 39215

Patricia L. Bodin, Court Reporter
Circuit Court, Second Judicial District, Harrison County
18057 Fairway View Drive
Biloxi, Mississippi 39532


Judge Roger T. Clark
Circuit Court Judge, Second Judicial District, Harrison County
P.O. Box 1461
Gulfport, Mississippi 39502

Betty W. Sephton, Supreme Court Clerk
P.O. Box 249
Jackson, Mississippi 39205

Ann H. Lamar, Justice
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