

IN THE SUPREME COURT OF MISSISSIPPI

DANIEL WEBSTER

PLAINTIFF-APPELLANT

VERSUS

CA NO. 2008-CA-00203

CITY OF D'IBERVILLE, CITY OF
D'IBERVILLE CITY COUNCIL, MAYOR
OF D'IBERVILLE AND CITY COUNCIL
PRESIDENT RUSTY QUAVE, D'IBERVILLE
PLANNING COMMISSION, AND CITY
MANAGER OF D'IBERVILLE,
ALAN SANTA CRUZ

DEFENDANT-APPELLEES

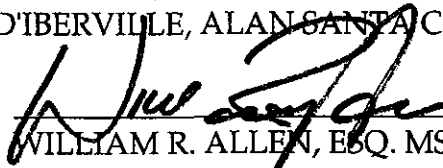
CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of the Supreme Court and the Court of Appeals may evaluate possible disqualifications or recusal.

1. Daniel Webster, Appellant-Plaintiff.
2. City of D'Iberville, Mississippi, Mayor of D'Iberville, Rusty Quave, and City Manager Alan Santa Cruz, Appellees-Defendants.
3. LaQuita M. Golden, Counsel of Record for the Plaintiff-Appellant.
4. The Honorable Jerry O. Terry, Trial Court Judge.
5. Robert O. Allen, Esq. and William R. Allen, Esq., Counsel of Record for Defendants-Appellees.

CITY OF D'IBERVILLE, CITY OF
D'IBERVILLE CITY COUNCIL,
MAYOR OF D'IBERVILLE AND
CITY COUNCIL PRESIDENT RUSTY
QUAVE, D'IBERVILLE PLANNING
COMMISSION, AND CITY MANAGER
OF D'IBERVILLE, ALAN SANTA CRUZ

BY:


WILLIAM R. ALLEN, ESQ. MSB # [REDACTED]
ONE OF THE ATTORNEYS FOR
APPELLEES

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TABLE OF CONTENTS

	<u>Page</u>
1. Certificate of Interested Parties.....	i-ii
2. Table of Contents.....	iii
3. Table of Authorities.....	iv-v
4. Statement of Issues.....	1
5. Statement of the Case.....	2
A. Course of Proceedings Below.....	2-3
B. Statement of the Facts.....	3-5
C. Summary of the Argument.....	5-6
6. Argument.....	6-9
7. Conclusion.....	10
8. Certificate of Service.....	12

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TABLE OF AUTHORITIES

Cases:

Gale v. Thomas, 759 So.2d 1150, 1159 (Miss. 1999)..... 6

Harden v. Field Memorial Comm. Hosp.,
265 Fed. Appx. 405 (5th Cir. 2008)..... 10

L.W. v. McComb Separate Municipal Sch. Dist.,
754 So.2d 1136, 1138 (Miss. 1999)..... 6

McCrary v. City of Biloxi, 757 So.2d 978, 980 (Miss. 2000)..... 7

Parker v. Harrison Co. Bd. of Superv., 2008 Miss. LEXIS 360..... 9

South Central Regional Medical Center v. Guffy,
937 So.2d 1252 (Miss. 2006)..... 5, 7, 8, 9, 10

Suddith v. Univ. of Southern Miss., 977 So.2d 1158
(Miss. Ct. App. 2007)..... 9

Statutes:

Miss. Code Ann. Sec. 11-46-5..... 6

Miss. Code. Ann. Sec. 11-46-7..... 6

Miss. Code Ann. Sec. 11-46-7(1)..... 6

Miss. Code Ann. Sec. 11-46-9.....	6
Miss. Code Ann. Sec. 11-46-11.....	6, 8
Miss. Code Ann. Sec. 11-46-11(1).....	6
Miss. Code Ann. Sec. 11-46-11(2).....	2, 5, 6, 7 8, 9, 10

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ALAN SANTA CRUZ**

DEFENDANT-APPELLEES

STATEMENT OF ISSUES

Whether the trial court properly granted summary judgment to the City based on Webster's failure to comply with the Notice of Claim requirements specified in Section 11-46-11(2) the Mississippi Tort Claims Act?

IN THE SUPREME COURT OF MISSISSIPPI

DANIEL WEBSTER

APPELLANT

V.

CA. NO. 2008-CA-00203

**CITY OF D'IBERVILLE, CITY OF
D'IBERVILLE CITY COUNCIL, MAYOR
OF D'IBERVILLE AND CITY COUNCIL
PRESIDENT RUSTY QUAVE, D'IBERVILLE
PLANNING COMMISSION, AND CITY MANAGER
OF D'IBERVILLE, ALAN SANTA CRUZ**

APPELLEES

STATEMENT OF THE CASE

This case arises out of the demolition of a dilapidated and hazardous structure located at 10162 Seymour Avenue in D'Iberville, Mississippi, and owned by Appellant Daniel Webster. Webster filed suit against the City of D'Iberville, the City Council of D'Iberville, the Mayor of D'Iberville, City Council President Rusty Quave, the City of D'Iberville Planning Commission and City of D'Iberville Manager Alan Santa Cruz, (hereinafter collectively referred to as "the City") alleging that they violated various state and federal laws or duties in demolishing the structure located on Seymour Avenue.

The City answered Webster's Complaint and, after engaging in discovery, filed a Motion for Summary Judgment asserting, among other things, that Webster's claims were barred due to his failure to meet the notice of claim requirements specified in Section 11-46-11(2) of the Mississippi Tort Claims Act ("MTCA").

COURSE OF PROCEEDINGS BELOW

On January 31, 2007, the City filed its Motion for Summary Judgment in this matter and submitted a Memorandum of Authorities in Support of Motion for Summary Judgment. [R. 78-162]. On March 22, 2007, Webster responded to the Motion for

Summary Judgment. [R. 165-195]. Finally, on May 7, 2007, the City filed a Reply to Plaintiff's Response to its Motion for Summary Judgment. [R. 196-204].

On November 30, 2007, a hearing was held on the City's Motion for Summary Judgment and, after considering the briefs and oral argument, the trial court granted summary judgment in favor of the City. [R. 205-208]; see also, Transcript. A Final Judgment memorializing the Court's opinion was entered on December 20, 2007. [R. 205-208].

On January 14, 2008, Webster filed this appeal. [R. 209-210].

STATEMENT OF FACTS

In 2000, Webster owned real property at 10162 Seymour Avenue in D'Iberville, Mississippi (hereinafter "Property"). [R. 12, 31-34]. The Property contained a dilapidated and hazardous structure. [R. 12, 117].

On September 19, 2000, the City set a public hearing regarding the cleanliness of the Property and gave Webster notice of the same. [R. 126-128]. The City also published notice of the hearing. [R. 126]. At the hearing, the City determined that the Property was "in such a state of uncleanness that its condition is a menace to the public health and safety of the community" and, as a result, the City issued Resolution 947 stating that the City would commence clean-up of the property. [R. 122-125].

On December 8, 2000, Webster was provided a copy of the Resolution via certified mail and, in response to Resolution 947, Webster began initial clean-up of the Property. [R. 122-125].

On January 11, 2001, the City forwarded correspondence to Webster via certified mail giving him notice of a public hearing to take place on February 6, 2001, the purpose of which was to discuss taking a terminal step to rehabilitate the Property. [R. 129-132].

On February 6, 2001, the City held a public hearing regarding the Property. [R. 133, 149-150]. The Plaintiff and his attorney, David Daniels, both attended the hearing and both gave testimony at the hearing. [R. 133-136].

Following the hearing, the City issued Resolution No. 965 which required Webster to perform certain tasks indicating an active plan and/or effort to repair or remove the structure on the Property including submitting architectural and engineering plans. [R. 133-136].

According to Webster, on March 21, 2001, he conveyed the Property to Danny McDaniel. [R. 100-102, 141-147].

On April 30, 2001, the City forwarded a certified letter to, among others, McDaniel and Daniels (Webster's attorney.) [R. 107-108]. The letter stated that because architectural and engineering plans were not submitted to the City by February 27, 2001, as required by Resolution 965, the City intended to demolish the structure on the Property. [R. 35-36, 107-108].

On May 9, 2001, in response to the City's April 30, 2002, letter Webster filed a "Cross-Complaint for Emergency Injunctive Relief" in the Chancery Court of the Second Judicial District of Harrison County, Mississippi seeking to enjoin the City from demolishing the structure. [R. 137-139].

The City responded to the Complaint and, on May 11, 2001, a hearing was held before the Honorable Wes Teel. [R. 153-158, 159-160]. Judge Teel ruled that a temporary restraining order prohibiting demolition of the structure would issue if Webster, his lawyer or McDaniels posted a \$5,000.00 bond by 5:00 p.m. on May 18, 2001. [R. 159-160].

The bond set by Judge Teel was never posted and, on May 23, 2001, counsel for the City advised Judge Teel of the same. [R. 159-160].

On May 31, 2001, the City demolished the structure located on Webster's Property. [R.161-162].

Aggrieved by the City's demolition of the structure, on April 16, 2002, Webster forwarded to the Mayor, the City Manager and the City Attorney what he contends amounts to a notice of claim under Section 11-46-11(2) of the MTCA. [R. 161-162, 184-185; R.E. 184-185, Tab K].

SUMMARY OF ARGUMENT

The trial court properly granted the City's Motion for Summary Judgment based on Webster's failure to comply with the notice of claim provisions specified in Section 11-46-11(2) of the MTCA. More specifically, the trial court was correct in determining that Webster provided information for only two of the seven categories of information designated by Section 11-46-11(2). Furthermore, the trial court was correct in ruling that, pursuant to Section 11-46-11(2) and this court's decision in *South Central Regional Medical Center v. Guffy*, 93⁰ So.2d 1252 (Miss. 2006), Webster failed to comply with the notice of claim provisions of the MTCA and, as such, his Complaint had to be dismissed.

In *Guffy*, this court clearly held that a notice of claim must disclose some information for each and every one of the seven categories of information specified in Section 11-46-11(2) and that failing to provide some information for even one of these categories is fatal. In his notice of claim, Webster provided information regarding: (1) the circumstances which brought about his alleged injury; and (2) the time and place of his alleged injury. However, Webster failed to provide "some information" for each of the remaining five categories specified in the statute. As such, the trial court properly granted the City's Summary Judgment and this Court should affirm the same.

ARGUMENT

The MTCA is the exclusive state law remedy for a party allegedly injured by the acts or omissions of a Mississippi governmental entity or its employees and, as such, governs Webster's claims against the City in this case. Miss. Code Ann. § 11-46-7(1); *L.W. v. McComb Separate Municipal Sch. Dist.*, 754 So. 2d 1136, 1138 (Miss. 1999). Under the MTCA, the State of Mississippi and its political subdivisions waive sovereign immunity for torts; however, this waiver is subject to numerous conditions, limitations and exceptions. See, e.g., Miss. Code Ann. §§ 11-46-5; 11-46-7; 11-46-9; 11-46-11. Perhaps the most significant procedural condition is the notice of claim requirement delineated in Section 11-46-11.

Section 11-46-11 requires a claimant who wishes to bring suit against a political subdivision submit a "notice of claim" to that political subdivision ninety (90) days before bringing any such suit. Miss. Code Ann. § 11-46-11(1). This section "imposes a condition precedent to the right to maintain an action." *Gale v. Thomas*, 759 So.2d 1150, 1159 (Miss.

1999). Properly filing a notice of claim is considered jurisdictional. *McCrary v. City of Biloxi*, 757 So.2d 978, 980 (Miss. 2000).

Section 11-46-11(2) of the MTCA governs the substance of the required notice of claim and provides as follows:

Every notice of claim shall contain a short and plain statement of the facts upon which the claim is based, including the circumstances which brought about the injury, the time and place the injury occurred, the names of all persons known to be involved, the amount of money damages sought and the residence of the person making the claim at the time of injury and at the time of filing the notice.

Miss. Code Ann. § 11-46-11(2). In *South Central Regional Medical Center v. Guffy*, 930 So.2d 1252 (Miss. 2006), this Court gave a detailed explanation of what does and does not satisfy the substantive requirements of Section 11-46-11(2). More specifically, in *Guffy*, the Court explained that there are seven “required categories of information that must be included” in any notice of claim:

(1) the circumstances which brought about the injury; (2) the extent of the injury; (3) the time and place the injury occurred; (4) the names of all persons known to be involved; (5) the amount of money damages sought; (6) the residence of the person seeking the claim at the time of the injury; and (7) the claimants residence at the time of filing the notice.

Id. at 1257. The Court then ruled that the seven categories of information delineated in Section 11-46-11(2) are “mandatory” and the “failure to provide **any one of the seven categories** is failure to comply” with the notice provisions. *Id.* at 1257-58 (emphasis added). Where “some information in each of the seven required categories is provided,” courts must determine whether the information is ‘substantial’ enough to be in compliance with the statute.” *Id.* at 1258. However, where a claimant fails to provide

information as to any one of the seven categories specified in Section 11-46-11(2), the term “substantial compliance...is rendered meaningless.” *Id.* at 1258. Either the “written notice complied with Miss. Code Ann. § 11-46-11(2) by disclosing **all seven required categories of information** or it did not comply with the statute **by failing to disclose all seven required categories of information.**” *Id.* (emphasis added).

In essence, *Guffy* held that a trial court is to engage in a two prong analysis when examining the sufficiency of a notice of claim: First, does the notice of claim contain some information for each of the seven categories of information delineated in Section 11-46-11; second, if the first requirement has been met, is the information provided for each one of the seven categories “substantial enough” to amount to compliance. *Id.* at 1258.

In the case at bar, Webster’s April 16, 2002, notice of claim provided, at best, information for two of the seven required categories of information: (1) the circumstances which brought about the injury; and (2) the time and place of the injury. [R. 184-185; R.E. 184-185, Tab K]. The notice of claim does not provide the extent of the injury suffered, the names of all persons known to be involved, the money damages sought, Webster’s residency at the time of the injury or Webster’s residency at the time of filing the notice. [R. 184-185; R.E. 184-185, Tab K].

Significantly, Webster readily admits that his Notice of Claim contains information only as to “some of the required categories.” [R. 174]; *Webster’s Brief*, p. 10. Nonetheless, Webster contends that April 16, 2002, notice of claim was statutorily sufficient under the Court’s “substantial compliance” standard and *Guffy*. *Webster Brief*, p. 8-10. Webster reads *Guffy* as limited to those cases where no written information is provided for any of the

seven categories and, in light of the fact that he provided written information as to “some” categories, he contends that he has met the substantial compliance standard. *Webster’s Brief*, p. 10. Simply put, Webster asserts that a notice of claim need not contain information for each of the seven required categories specified in Section 11-46-11(2). This position, however, is clearly contrary to the statute itself and this Court’s ruling in *Guffy*.

Again, in *Guffy*, this Court clearly ruled that some information must be provided for each one of the seven categories noted in Section 11-46-11(2) and only when “**some information in each** of the seven required categories is provided,” should a court even analyze whether the information provided is “substantial” enough to comply with the statute. *Guffy*, 930 So.2d at 1258.

This Court’s recent decision in *Parker v. Harrison Co. Bd. of Superv.*, No. 2007-CA-00532-SCT (Miss. 2008) reinforces *Guffy* and further illustrates the error in Webster’s position. In *Parker*, the claimant alleged that she complied with the notice of claim requirements of the MTCA on at least three occasions, two of which, involved written letters from attorneys. *Parker*, ¶ 16. The County moved for summary judgment based on, among other things, claimant’s failure to provide a proper notice of claim. *Id.* at ¶ 4-7. The trial court granted summary judgment in favor of the County. *Id.* at ¶ 8.

On appeal, this Court affirmed the trial court’s decision and noted that it need “not even reach the issue of whether a plaintiff substantially complied with the statute if **all seven categories of information are not contained in the notice letter.**” *Id.* at ¶ 19 (emphasis added). The Court then went on to explain that the claimant’s attempt at meeting the notice of claim requirements failed because the letters submitted by the

claimant contained information only as to two of the seven required categories. *Id.* at ¶ 20-22. See also, *Suddith v. Univ. of Southern Miss.*, 977 So.2d 1158 (Miss. Ct. App. 2007)(holding that the “failure to provide any information regarding even one of the categories described in Section 11-46-11(2) prevents a finding of ‘substantial compliance.’”); *Harden v. Field Memorial Comm. Hosp.*, 265 Fed. Appx. 405 (5th Cir. 2008)(holding claimant’s notice of claim failed where claimant provided information as to two of seven categories of information).

This Court’s decision in *Guffy* either requires a claimant provide “some” information for each and every one of the seven categories specified in Section 11-46-11(2) or it does not. The trial court’s ruling that a notice of claim must include some information for each and every one of the seven specified categories of information was correct and the trial court’s grant of summary judgment based on Webster’s failure to provide information for each and every one of the seven categories was similarly correct. This Court should affirm the trial court’s decision.

CONCLUSION

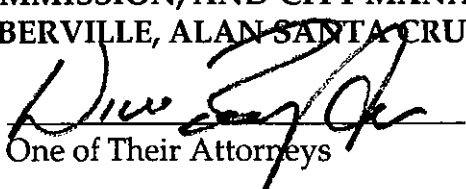
As demonstrated above, the trial court’s granting summary judgment in favor of the City was proper. Webster failed to comply with the notice of claim provision specified in Section 11-46-11(2) of the MTCA.

Because the trial court’s decision is supported by the record evidence in this matter, the same should be upheld in favor of the City and affirmed by this Court.

Respectfully submitted,

CITY OF D'IBERVILLE, CITY OF
D'IBERVILLE CITY COUNCIL, MAYOR OF
D'IBERVILLE AND CITY COUNCIL PRESIDENT
RUSTY QUAVE, D'IBERVILLE PLANNING
COMMISSION, AND CITY MANAGER OF
D'IBERVILLE, ALAN SANTACRUZ

BY:


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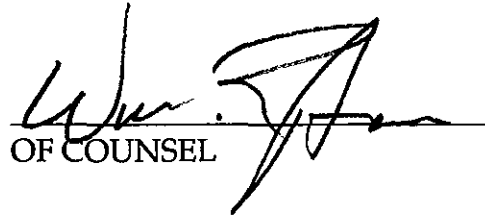
CERTIFICATE

I, the undersigned, of Allen, Allen, Breeland and Allen, PLLC, attorney of record for the defendants City of D'Iberville, hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing Brief for Defendant-Appellees to the following counsel of record:

Honorable Jerry Terry
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This the 10th day of September, 2008.


OF COUNSEL