

**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI**

**CITY OF VICKSBURG, MISSISSIPPI**

**APPELLANT**

**VS.**

**NO. 2008-CA-00287**

**ANTHONY LANE**

**APPELLEE**

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**APPEAL FROM WARREN COUNTY CIRCUIT COURT**

**APPELLEE'S BRIEF**

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**Oral Argument Not Requested**

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VS.

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APPELLEE

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome 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.

APPELLANTS

City of Vicksburg

Board Members: Laurence E. Leyens, Mayor; Sidney H. Beuman, Jr., Alderman; Michael A. Mayfield, Sr., Alderman

Nancy Thomas and Bobby D. Robinson are the attorneys for appellants.

APPELLEES

Anthony Lane

Ramel L. Cotton is attorney for appellee.

This the 21 day of August, 2008.

Respectfully submitted,



Ramel L. Cotton

## **TABLE OF CONTENTS**

CERTIFICATE OF INTERESTED PERSON .....	ii
TABLE OF CONTENTS .....	iii
TABLE OF AUTHORITIES .....	iv
STATEMENT OF THE ISSUES .....	1
STATEMENT OF THE CASE .....	2
STATEMENT OF THE FACTS .....	3
SUMMARY OF THE ARGUMENT .....	5
ARGUMENT .....	6
CONCLUSION .....	10
CERTIFICATE OF SERVICE .....	11

## **TABLE OF AUTHORITIES**

### **CASES**

<i>Cash Distributing Co., Inc. v. Neely</i> , 947 So.2d 317, 324 (Miss. App. 2006). . . . .	9
<i>Felder v. State</i> , 831 So.2d 562, 567 (Miss. App. 2002) . . . . .	6
<i>FDIC v. Mallen</i> , 486 U.S. 230 (1988) . . . . .	8
<i>Humphrey v. State</i> , 831 So.2d 368, 375 (Miss. 2000). . . . .	6

## **STATEMENT OF ISSUES**

I. Whether or not the Circuit Court erred in finding that the July 22, 2005 suspension of Anthony Lane was “implicitly affirmed” by the Civil Service Commission when the July 22, 2005 suspension was not appealed to the Civil Service Commission as required.

II. Whether or not the Circuit Court Judge erred in finding that “since a jury of Warren County, after a trial, found the appellant not guilty and a judgment of acquittal was rendered by the Circuit Court, then the suspension without pay was without merit” and ordered the City to reimburse Lane for the time that he was suspended without pay.

## STATEMENT OF THE CASE

This is an employment case regarding the Vicksburg, Mississippi Police Department and Officer Anthony Lane. Officer Lane was suspended for twenty (20) days by Chief Tommy Moffett based on allegations that Officer Lane had an inappropriate sexual relationship with Samantha Claypool, a student at Vicksburg High School where Lane was assigned to patrol. Lane did not appeal Chief Moffett's disciplinary action and served the duration of the suspension and later returned to work without incident. Subsequent to Lane's return to work, he was indicted by the Warren County Grand Jury for sexual battery by a person in a position of trust or authority. Following the issuance of the indictment, Lane was suspended and placed on unpaid leave until such time as his criminal charge was resolved. After trial by jury, Lane was found not guilty and acquitted of all charges. Lane then petitioned for reinstatement of his employment with the Vicksburg Police Department. After a formal hearing was conducted by the Vicksburg Civil Service Commission, Lane's reinstatement petition was denied and he was formally terminated.

Lane subsequently, appealed the Vicksburg Civil Service Commission's decision to the Warren County Circuit Court, pursuant to statute. Upon briefing the issues presented, Judge Isadore Patrick upheld the termination, but ordered the City of Vicksburg to pay Lane back pay for the period of time he was suspended without pay awaiting the resolution of the criminal charges for which he was ultimately acquitted. The City of Vicksburg has now appealed to this Court, Judge Patrick's ruling ordering the City of Vicksburg to pay Lane for the period he was on unpaid leave.

## **STATEMENT OF THE FACTS**

Officer Anthony Lane was employed by the City of Vicksburg Police Department as a patrol officer. Officer Lane was assigned to patrol the area including, but not limited to, Vicksburg High School.<sup>1</sup> On or about June 2004, Chief Tommy Moffett began an investigation of allegations that Lane was involved in an inappropriate sexual relationship with Samantha Claypool, a student at Vicksburg High School where Lane was assigned to patrol. Following Chief Moffett's investigation he saw fit to impose disciplinary actions against Lane. Tr. 36. Chief Moffett suspended Lane without pay for twenty (20) days for conduct unbecoming of an officer, more specifically, for the "inappropriate" relationship with Claypool. Id. It is undisputed that this disciplinary action was done within the rules and procedures of the Vicksburg Police Department and that it was served in full by Lane. Following the expiration of the twenty (20) day suspension, Lane returned to work as usual without incident.

Subsequently, Lane was indicted by a Warren County Grand Jury for sexual battery by a person in a position of trust or authority. Following the issuance of the indictment, Chief Moffett suspended Lane and placed him on unpaid leave "pending the outcome of the criminal charges." Tr. 37. After a trial by jury, Lane was found not guilty and the charge was dismissed with prejudice. Tr. 38. After being acquitted, Lane petitioned for reinstatement of his employment with the Vicksburg Police Department. After a formal hearing conducted by the Vicksburg Civil Service Commission, Lane's reinstatement petition was denied and he was formally terminated.

Lane timely filed his appeal of the Vicksburg Civil Service Commission's order terminating

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<sup>1</sup>While the City contends that Lane was a "School Resource Officer," the evidence at trial showed that Lane was never trained or certified by the Mississippi Department of Education as a "School Resource Officer."

his employment to the Warren County Circuit Court, pursuant to statute. Upon briefing the issues presented, Judge Isadore Patrick upheld the termination, but ordered the City of Vicksburg to pay Lane back pay for the period of time he was suspended without pay awaiting the resolution of the criminal charges for which he was ultimately acquitted. The City of Vicksburg has now appealed to this Court, Judge Patrick's ruling ordering the City of Vicksburg to pay Lane for the period he was on unpaid leave.



### **SUMMARY OF THE ARGUMENT**

The lower court was not in error for finding that the Civil Service Commission “implicitly affirmed” the suspension. The Commission in its September 22, 2006 order reviewed and ruled on the validity of the suspension once it was raised by Lane. Accordingly, the Commission affirmed the suspension, thus, making the issue ripe for appeal before the Warren County Circuit Court. Also the lower court was not in error for awarding back pay to Lane because based on the language used in the suspension, the basis and merit of the suspension was based on the outcome of Lanes criminal trial. Once Lane was acquitted it was appropriate to award him back pay for the time he was suspended pending the outcome of the trial.

## ARGUMENT

**I. Whether or not the Circuit Court erred in finding that the July 22, 2005 suspension of Anthony Lane was “implicitly affirmed” by the Civil Service Commission when the July 22, 2005 suspension was not appealed to the Civil Service Commission as required.**

On July 22, 2005 the City of Vicksburg informed Lane by letter that he was being suspended without pay indefinitely “until the court issues a decision” on the criminal charges against him. Once Lane was brought to trial on the charges in the Warren County Circuit Court, a jury of his peers found him not guilty and all the charges were dismissed with prejudice. The suspension which Lane was serving was to continue “until the court issues a decision.” Thus, upon being acquitted of all charges, Lane petitioned the Vicksburg Civil Service Commission for reinstatement of his employment. Although Lane was acquitted of the charges upon which he was suspended, on June 29, 2006 Lane was notified by letter that the Mayor and Board of Aldermen had voted not reinstate him to his position. On July 19, 2006 a pre-termination hearing was held before the Mayor and Board of Aldermen. After hearing arguments and testimony from Lane and the City, the Mayor and Board of Aldermen officially terminated Lane. Lane timely filed his appeal to the Vicksburg Civil Service Commission. On September 15, 2006 a hearing was held before the Vicksburg Civil Service Commission regarding Lane’s reinstatement from his suspension and his subsequent termination. On September 22, 2006 the Vicksburg Civil Service Commission issued its Order upholding the suspension and subsequent termination.

This Court will give trial courts’ findings the same deference as a jury verdict and will not reverse the trial judge upon appeal unless it is manifestly wrong. *Felder v. State*, 831 So.2d 562, 567 (Miss. App.2002); citing *Humphrey v. State*, 759 So.2d 368, 375 (Miss.2000). Appellants argue that the trial court erred in finding that the Vicksburg Civil Service Commission “implicitly affirmed”

Lane's suspension. They further argue that the trial court erred in ruling on the suspension and ultimately ordering back pay, because the suspension was not appealed and therefore was not an issue before the trial court. However, Appellants fail to recognize that Lane argued in his appeal to the Vicksburg Civil Service Commission that the suspension and subsequent termination violated the Constitutional protection against double jeopardy. Accordingly, in its September 22, 2006 Order the Commission reviewed and ruled on that very issue. In ruling that the Commission's suspension was appropriate and not violative of double jeopardy, the Commission was in essence affirming the City's imposition of suspension. Thus, this issue was again raised in Lane's appeal to the Warren County Circuit Court making it appropriate for the trial court to review and rule on the suspension.

Appellants also argue that the trial court did not have authority to award back pay. In the trial courts January 15, 2008 Order awarding back pay, Judge Patrick bases his award on the wording and intent of the City's basis for the unpaid suspension. The City suspended Lane "until the Court issues a decision" – referring the outcome of the criminal trial. Accordingly, the court reasoned that this suspension was based on the outcome of the trial. Thus, once the outcome of the trial was such that Lane was acquitted of all charges, the court found it appropriate to award back pay for the time Lane was suspended "until the Court issues a decision."

**II. Whether or not the Circuit Court Judge erred in finding that “since a jury of Warren County, after a trial, found the appellant not guilty and a judgment of acquittal was rendered by the Circuit Court, then the suspension without pay was without merit” and ordered the City to reimburse Lane for the time that he was suspended without pay.**

On January 15, 2008 the Warren County Circuit Court found that the suspension without pay was without merit and therefore awarded back pay to Lane for the time he was suspended without pay. Appellants have appealed this ruling and petition this Court to overturn Judge Patrick’s ruling.

Appellants argue that the trial court erred in finding that the suspension was without merit because the finding of not guilty had no bearing on the employment action. However, the appellant’s reasoning is misplaced in a number of ways. The appellant attempts to summarize the trial court’s ruling as a finding that merely because Lane was found not guilty the suspension had to be without merit. This is not what the court ruled at all. In suspending Lane, the City informed him that he would be suspended without pay “until the court issues a decision.” The lower court reasoned that this language made the basis and merit of the suspension completely determined by the court’s decision. Accordingly, once the court handed down an acquittal – by way of the jury – and dismissed the charges with prejudice, the basis, i.e. merit, did not exist. Thus, it was appropriate for the lower court to award Lane back pay for the period of his suspension. Further, Appellant’s arguments regarding the effect of a an acquittal on an employment decision is out of context and not applicable to the case at bar.

Appellants also cite *FDIC v. Mallen*, 486 U.S. 230 (1988), and argue that if there was sufficient evidence to terminate, there had to be sufficient evidence to suspend. This argument will not work because Appellants argue that the termination was not for the “inappropriate relationship” but instead it was because the “illumination and publication of the details of the relationship” caused

Lane to lose the public trust and ability to effectively perform his duties. Likewise, the basis for the suspension was the indictment issued by the Warren County Grand Jury. Thus, the assertion that if there was sufficient evidence to terminate, then there had to be sufficient evidence to suspend is unfounded because the bases for the two disciplinary acts were different.


Additionally, Appellants argue that this matter should be remanded to Civil Service Commission to calculate any offsets that should be deducted if Lane had other employment. Any additional employment Lane had during the time of his suspension is irrelevant and should not be considered in determining the amount of back pay awarded. The City does not get an offset because it improperly suspended Lane without pay and he was forced to seek other means of employment to sustain he and his family means. *Cash Distributing Co., Inc. v. Neely*, 947 So.2d 317, 324 (Miss. App. 2006).

## CONCLUSION

The lower court was not in error for finding that the Civil Service Commission "implicitly affirmed" the suspension. The Commission in its September 22, 2006 order reviewed and ruled on the validity of the suspension once it was raised by Lane. Accordingly, the Commission affirmed the suspension, thus, making the issue ripe for appeal before the Warren County Circuit Court. Also the lower court was not in error for awarding back pay to Lane because based on the language used in the suspension, the basis and merit of the suspension was based on the outcome of Lanes criminal trial. Once Lane was acquitted it was appropriate to award him back pay for the time he was suspended pending the outcome of the trial.

Respectfully submitted this the 21 day of August, 2008.

ANTHONY LANE

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**CERTIFICATE OF SERVICE**

I, Ramel L. Cotton, do hereby certify that I have this day served the foregoing document,  
via U.S. Mail, postage prepaid, to the following:

Nancy D. Thomas, Esq.  
Bobby D. Robinson, Esq.  
City of Vicksburg  
P.O. Box 150  
Vicksburg, Mississippi 39180

This the 21 day of August, 2008.

  
Ramel L. Cotton