

IN THE SUPREME COURT OF MISSISSIPPI

CITY OF JACKSON, MISSISSIPPI

APPELLANT

VS.

CAUSE NO. 2008 CA-00381

LYNDA KEY PRESLEY

APPELLEE

**On Appeal from the Circuit Court
of Hinds County, Mississippi
Cause Number 251-99-465CIV
Honorable Swan Yerger**

**Supplemental Briefing on
Writ of Certiorari**

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INTRODUCTION

It is well-settled precedent that a municipality is only liable for injuries arising from the result of providing police protection where the conduct evinces reckless disregard. With all due respect to the Court of Appeals, the opinion issued on November 17, 2009 is contrary to recent Supreme Court decisions regarding the issue of reckless disregard. Specifically, the Mississippi Supreme Court's recent opinions in ***City of Laurel v. Williams***, No. 2008-CA-01137-SCT, Nov. 19, 2009 and ***Rayner v. Pennington***, No. 2008-CA-01924-SCT, January 7, 2010, contradict the Court of Appeal's decision in this matter on this issue. The Court of Appeal's decision basically carves out a *stare decisis* for officers crossing the Five Points Intersection on Woodrow Wilson Drive in the City of Jackson. As such, this Court should reversed the Court of Appeals and the trial court because each Court:

- Misapprehended the law when it concluded that Officer Morton's actions were in reckless disregard of the safety and well-being of others.

FACTS/APPELLATE PROCEDURAL HISTORY

At approximately 5:30 p.m. on May 20, 1998, Jackson Police Officer Morton was patrolling the area near on Prosperity Street in Jackson and received a call that there was a white male lying in the street in the Georgetown area and was unresponsive and bleeding. Due to the fact that a white male was lying in the street in Georgetown, she deemed this a priority call. Further, she was the only officer called to the scene at that time. Officer Morton attempted numerous routes, but the traffic was too heavy.

Subsequently, Officer Morton turned onto Livingston Road, heading south towards Five Points intersection.¹

Officer Morton testified that when she approached the intersection, the light was red, so she stopped with her blue lights and sirens engaged. She began changing the sound of her sirens, making it louder, because the traffic was heavy. Officer Morton waited for the traffic to stop at the intersection, and she began crossing the intersection one lane at a time. She testified that she was “inching forward every lane to make sure nothing was moving.” Officer Morton stated that she when through the first lane, and as she was going into the second lane, a truck to her left (a bobtail truck) was obstructing her view, so she stopped. This truck was traveling in the same direction as Presley. The truck began to move and she stopped briefly, then she proceeded across the third lane because she thought the traffic was clear. Presley, who was in the third lane of traffic on the other side of the truck, proceeded through the green light at the intersection and collided with Officer Morton’s police cruiser. Presley’s vision was obscured as she entered the crowded intersection and sustained injuries as a result of the collision.

The only non-party witness to the accident who testified at trial was Mr. Catouche Body.² Mr. Body was at the intersection and noticed Officer Morton stopped at the light. He then noticed the officer’s blue lights and heard the distinct buzzer sound that the police make when proceeding through an intersection. Mr. Body testified that the cars at the intersection began stopping as they saw the officer’s lights. He witnessed Officer

¹ All in all, Morton made three attempts to turn onto alternate streets before she reached the Five Points intersection. However, she was unable to proceed on these alternative routes due to the heavy traffic.

² Mr. Body is an attorney and is an active member of the Mississippi Bar. At the time of the accident, he was in law school.

Morton “ease out” and cross two lanes of traffic, stopping and blowing the buzzer each time. Mr. Body then witnessed Officer Morton attempt to cross the third lane, but there was a large truck on the side of the officer, which appeared to block the view of the officer. Mr. Body noticed Presley approaching in the third lane, beside the large truck. He observed that neither Officer Morton nor Presley appeared to see each other due to the large truck between them. Presley then proceeded through the intersection and collided with Officer Morton as she was attempting to cross the intersection. Mr. Body testified that Officer Morton was “less than five miles per hour” at the time of the collision.

On November 17, 2009, the Court of Appeals rendered its decision, affirming the lower court’s holding that Officer Morton acted with reckless disregard.³ On December 1, 2009, the City timely submitted its Motion for Rehearing. On February 9, 2010, the Court of Appeals denied the City’s Motion for Rehearing. As such, the City now timely files its Petition for Writ of Certiorari with the Mississippi Supreme Court.

ARGUMENT

The Court of Appeal’s opinion is contrary to this Court’s holding on the issue of reckless disregard.

In light of the recent Mississippi Supreme Court opinions of *City of Laurel v. Williams* and *Rayner v. Pennington*, as well as settled precedent, the City respectfully requests that this Court reverse the Court of Appeal’s decision in this matter. The Court of Appeal’s finding that Officer Morton acted with reckless disregard

³ The trial court’s “finding” of reckless disregard was written by Plaintiff’s counsel and adopted verbatim. In fact, the trial court’s official Order is entitled “Plaintiff’s Findings of Facts and Conclusions of Law.”

is contrary to the aforementioned cases and must be dismissed pursuant to Mississippi state law precedent.

A. The Court of Appeal's opinion is contrary to this Court's holding in *City of Laurel v. Williams*

The facts in *City of Laurel* are much more egregious than the facts in the case at bar, yet this Court found that the officers' actions were not in reckless disregard of the safety of others. The *City of Laurel* involved a domestic violence matter wherein the Laurel Police Department was called three times in the same night regarding Kenneth Wilson. The first time the officers were called, they responded to a domestic dispute at Williams' home at approximately 8:30 p.m. *City of Laurel* at ¶ 2. The police did not arrest Kenneth Wilson at this time. The second time the police were called was an hour and a half later at 10:00 p.m. when Wilson was causing a disturbance at another residence where Wilson was "intoxicated and angry". *Id.* at ¶¶ 8 and 9. The police did not arrest Wilson at this time either.

At approximately 11:15 p.m., the police were called to Williams' house, where Wilson was found with a knife in his hand, standing over Williams, who eventually died of stab wounds. *Id.* at ¶¶ 12 and 13. The Supreme Court held that the officers' actions in failing to arrest Wilson did not amount to willful or wanton conduct. *Id.* at ¶21. The Court further held that there was no evidence that "the officers intended for harm to follow their decision not to arrest, nor is there evidence establishing a conscious indifference to the consequences of their actions." *Id.* If the actions of the Laurel Police

Officers do not rise to the heightened standard of reckless disregard, then the actions of Officer Morton do not rise to this level either.

In the case *sub judice*, the Court of Appeals found that Officer Morton acted with reckless disregard because “Officer Morton fully appreciated the risk of entering the dangerous intersection during extremely heavy rush-hour traffic and proceeded anyway across three lanes of traffic against the signal light with an obstructed view.” ***City of Jackson v. Presley***, 2008-CA-00381-COA, Nov. 17, 2009, ¶19. However, the Court of Appeals misapplied the standard of reckless disregard. In ***City of Laurel v. Williams***, the Supreme Court held that the reckless disregard standard is essentially a two-prong test: 1) that the officer must appreciate the unreasonable risk involved, and 2) that the officer must have a deliberate disregard of that risk, amounting almost to a willingness that harm should follow. ***City of Laurel*** at ¶17. The Court of Appeals found that Officer Morton appreciated the risk of entering the Five Points intersection; however, the Court of Appeals failed to apply the second prong of the reckless disregard standard: whether there was evidence to establishing a conscious indifference to the consequences of Officer Morton’s actions.

The Supreme Court has held that in order for the Plaintiff to recover damages in a claim against an officer, the plaintiff must “prove by a preponderance of the evidence that the defendants acted in reckless disregard of his [or her] safety and that [the plaintiff] was not engaged in criminal activity at the time of injury.” *Id.* In ***City of Laurel v. Williams***, the Supreme Court elaborated on this heightened standard in stating, “[r]eckless disregard has been defined by this Court as a higher standard than gross negligence, and embraces willful or wanton conduct which requires knowingly and intentionally doing a thing or wrongful act.” *Id.* Then, the Court specifically pointed to

the second prong of the “reckless disregard” standard in stating that “[r]eckless disregard usually is accompanied by a conscious indifference to consequences, amounting almost to a willingness that harm should follow.” *Id.* “Reckless disregard occurs when ‘the conduct involved evinced not only some appreciation of the unreasonable risk involved, but also a deliberate disregard of that risk and the high probability of harm involved.’” *Id.* Importantly, the Supreme Court held that “the nature of the officers’ actions is judged on an objective standard with all the factors that they were confronted with.” *Id.*

In the case *sub judice*, the Court of Appeals failed to make a finding as to whether the evidence demonstrates that Officer Morton had a “conscious indifference to the consequences, amounting to a willingness that harm should follow.” Nothing in the record establishes that Officer Morton’s actions amounted to willful or wanton conduct. There is no evidence that Officer Morton intended for harm to follow her decision to enter the Five Points intersection; nor is there evidence establishing a conscious indifference to her actions. To the contrary, the record clearly establishes that Officer Morton was doing everything she could to avoid an accident.

The evidence presented at trial and the testimony elicited certainly does not indicate that Morton failed or refused to exercise any care. At worst, the evidence simply indicates that she failed to exercise due care. Certainly, the evidence does not indicate that Officer Morton intended for harm to follow when she entered the intersection. The following facts demonstrate that Officer Morton was not acting with reckless disregard:

- Officer Morton was stopped at the Five Points intersection when she activated her blue lights and siren.

- Officer Morton activated her buzzer at different volumes to alert traffic while she was crossing the lanes of traffic at Five Points Intersection.
- Officer Morton crossed one lane at a time, making sure traffic was stopped.
- All of the cars stopped at the intersection when Morton activated her lights and siren, with the exception of Presley.
- Officer Morton was going approximately 5 miles per hour when Presley collided with her vehicle.
- Officer Morton noticed the bobtail truck beside her move, causing her to stop. She then attempted to proceed through the intersection when the truck stopped moving.

There is no indication that Morton acted with deliberate disregard to the consequences of attempting to cross the intersection. To the contrary, there is every indication, as enumerated *supra*, that Morton was aware of the nature of this intersection and took specific steps to **avoid** the collision. These actions are contrary to the Supreme Court's definition of reckless disregard. For example, if Officer Morton failed to stop at the intersection, failed to engage her blue lights, and failed to heed the traffic, it would be clear that Officer Morton engaged in behavior that was in reckless disregard of the safety of others. However that is not the case here.

B. The Court of Appeal's decision is contrary to this Court's holding in *Rayner v. Pennington*.

This Court recently handed down an opinion that is factually and legally **identical** to the case at bar. *Rayner v. Pennington* involved an incident wherein a Rankin County deputy was responding to a call and drove through a red light at the intersection of Highway 468 and Highway 18 in Brandon, Mississippi. Deputy McCarty testified that when he approached the intersection, he slowed and crossed into the oncoming lane of Highway 468, coming to a complete stop at the red light. His view was

obstructed by a vehicle in the center turning lane on Highway 18. This Court noted that Deputy McCarty “slowly crept forward and stopped, crept forward and stopped, and crept forward and stopped,” keeping a lookout the entire time. Additionally, the deputy engaged his blue lights and sirens when he entered the intersection, and crept forward at 5 miles per hour. The deputy never saw the minivan, because his view was obstructed by the vehicle in the center turn lane. Further, Rayner never saw the deputy’s sirens or heard the blue lights. **These facts are identical to the case at bar.**

This Court found that Deputy McCarty’s actions were not in reckless disregard, and specifically noted that “although Deputy McCarty’s view was obstructed due to the vehicle stopped in the center turn lane, he appreciated the danger from oncoming traffic and proceeded cautiously by keeping a lookout and slowly creeping into the intersection.” **This is exactly what Officer Morton did in the case at bar.** Here, Officer Morton appreciated that the Five Points intersection was a busy intersection, the testimony from both Officer Morton and an independent eye-witnesses demonstrates that Officer Morton was attempting to proceed through this busy intersection in a safe manner. Officer Morton activated her buzzer at the intersection, made sure all lanes of traffic were stopped when she proceeded through the intersection, and “inched her nose out” to see around the bobtail truck when Presley collided with her. These actions do not rise to the heightened standard of reckless disregard.

In ***Rayner***, this Court stated that “reckless disregard is the ‘entire abandonment of any care,’ while negligence is the failure to exercise due care.” (Citations omitted.) **This is the City’s exact argument in the case at bar,** and this is the area of law in which the Court of Appeal’s opinion is contrary to this Court’s previous holdings.

Specifically, Paragraphs 19 and 20 of the Court of Appeals decisions are in direct contradiction to this Court's holding in **Rayner**. The Court of Appeals held that Officer Morton acted with reckless disregard because she fully appreciated the risk of the danger of the Five Points intersection, and erroneously finds that Officer Morton could have chosen a different route.⁴ The Court of Appeals also notes that Presley did not see or hear the officer's blue lights or sirens before the collision. However, these exact facts were presented to this Court in **Rayner**, and this Court found that the Rankin County deputy's actions were not in reckless disregard.

Finally, the Court of Appeals found that Officer Morton was acting with reckless disregard because this was not a "priority one" call. The Plaintiff made this exact argument in **Rayner**. However, this Court found in **Rayner** that the Plaintiff failed to cite to any authority that violating a general order is equivalent to acting with reckless disregard. In the case at bar, the Court of Appeals found that violating a general order in this matter was equivalent with acting in reckless disregard, yet fails to cite any authority. This holding is contrary to this Court's holding in **Rayner**. As such, the City respectfully requests this Court reverse the Court of Appeal's ruling.

CONCLUSION

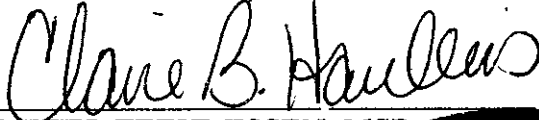
In light of recent Mississippi Supreme Court rulings regarding the heightened standard of reckless disregard, the City of Jackson respectfully requests that this Court reverse the Court of Appeal's ruling. And the City of Jackson prays for such other relief as this Court deems appropriate.

⁴ The record clearly establishes that Officer Morton attempted three different routes before choosing to take the route through the Five Points intersection.

Respectfully submitted this the 27th day of April, 2010.

THE CITY OF JACKSON, MISSISSIPPI

By:



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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 ***Petition for Writ of Certiorari*** to the following:

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Honorable Swan Yerger,
Hinds County Circuit Court Judge
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So certified, this the 27th day of April, 2010.



CLAIRE BARKER HAWKINS