IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI
CASE # 2008-CA-00669

BARRY S. LOGAN — APPELLANT

VS.

OVERLEY ELECTRIC, INC. — APPELLEE

APPEAL FROM THE CIRCUIT COURT OF OKTIBBEHA COUNTY, MISSISSIPPI

OKTIBBEHA COUNTY CIRCUIT CAUSE NO. 2005-0234CV

BRIEF OF APPELLEE OVERLEY ELECTRIC, INC.

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BARRY S. LOGAN **APPELLANT**

VS.

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CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel for the Appellee Overley Electric, Inc., hereby 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 disqualifications or recusals.

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This the 12th day of November, 2008.

Reagan D. Wise

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I. STATEMENT OF THE ISSUES

The sole issue presented for review by the appellate court is:

1. Whether the trial court committed error by granting summary judgment to Overley Electric, Inc. based on its findings that there are no disputed issues of genuine material fact which exist that would need to be decided by a jury.

II. STATEMENT OF THE CASE

A. Nature of the Case

Plaintiff Barry Logan fell while descending an unlighted stairwell during the course and scope of his employment with Jody Plumbing and Mechanical, a subcontractor working on a renovation project at Cresswell dormitory on the campus of Mississippi State University. (R. 129; R.E. 8).[1] Logan made identical allegations of negligence against both named defendants, including that each removed temporary lighting from the stairwell and each left an unknown object on the stairs which caused him to fall. (R. 7-12, 129; R.E. 1-6, 8). Logan sued seeking compensatory and punitive damages.

On December 10, 2007, the trial court entered its order granting summary judgment in favor of Overley Electric, Inc. (R. 450-451; R.E. 82-83). On April 1, 2008, the trial court denied Logan's Motion to Reconsider. (R. 507; R.E. 87). Thereafter, on April 1, 2008, the trial court entered its Final Judgment pursuant to M.R.C.P. 54(b) in favor of Overley. (R. 504-506; R.E. 84-86). Logan now appeals the trial court's ruling.

B. Statement of Facts

On May 20, 2002, Plaintiff Barry Logan was an employee of Jody Plumbing and Mechanical. Jody Plumbing and Mechanical was one of several subcontractors working on a renovation project at Cresswell dormitory on the campus of Mississippi State University. (R. 130; R.E. 9). This dorm

[1] As used herein, "R" refers to the Record prepared by the Circuit Clerk, and "R.E." refers to the

has five floors and three sets of stairs that service each floor, two of which are lighted by both natural and artificial lighting, and the middle of which is lighted only by artificial lighting. (R. 130, 160; R.E. 9, 39).

Overley Electric, Inc. ("Overley") was the electrical subcontractor. Defendant Lloyd G. Oliphant & Sons Paint Co., Inc. ("Oliphant"), was the painting subcontractor on the project. Logan was foreman for Jody Plumbing on this project. (R. 130, 163; R.E. 9, 42). The general contractor was Larry J. Sumrall Contractors Co., Inc., which was not named a defendant. (R. 130; R.E. 9).

Logan ascended the middle stairway around 9:00 a.m. break time on May 20, 2002. Logan acknowledged that before entering the stairwell that the temporary lighting that had been on earlier in the morning had been removed. Logan described the situation as follows:

> We [Logan and co-worker Mark Iseley] had went to break. And we came back into the building and found that the temporary lights have been disconnected. So, we sat there and argued the point for a minute and decided we were going to go on up the stairs, anyway, even though it was - it wasn't probably the smartest thing to do. But we went up the stairs on the right-hand side holding the handrail. Of course, when we got to the second floor, we could see plain enough then and didn't have any problems.

(R. 130-131; R.E. 9-10).

According to Logan the stairwell was pitch black (R. 131, 184; R.E. 10, 63) and Logan did not complain to anyone about the stairwell being dark or unsafe. (R. 131,157; R.E. 10, 36). Likewise, co-worker, Mark Iseley did not complain to anyone on the job site. (R. 131, 193; R.E. 10, 72). Logan testified that he had no difficulty ascending the stairs, although he thought that the unlighted stairwell was "dangerous." (R. 131, 157; R.E. 10, 36).

Logan descended by one of the other lighted stairwells. After Logan ate lunch, he went back upstairs by one of the other stairwells. Although Logan knew the stairwell was not lighted and believed it was dangerous, he chose to return to the first floor by using the middle stairwell because it was more convenient to him than the other two stairwells. (R. 131, 166-167; R.E. 10, 45-46).

Appellee's Record Excerpts.

Logan is legally blind in his right eye. Logan admitted that he was not required to use that particular stairwell and he was not forced to do so by anyone. (R. 131, 166; R.E. 10, 45). Mark Iseley, Logan's co-worker, also testified that he and Logan used the middle stairwell simply as a matter of convenience. (R. 131, 198; R.E. 10, 77). Logan fell while descending the stairwell leading from the second floor to the first floor.[2] (R. 131-132, 167; R.E. 10-11, 46).

Logan had not before attempted to descend the unlighted stairwell, and the only time prior to his fall that he had been on the unlighted stairs was during the 9:00 a.m. break when he ascended them with Iseley. He was descending the middle stairwell at the time of the fall, as opposed to one of the other available stairwells (which would have been lighted with at least natural lighting) , as a matter of convenience, holding the stair railing with his right hand and a cup of ice in his left hand. (R. 132;158-160; R.E. 11, 37-39).

Logan alleges that he slipped on a piece of conduit but does not have any proof that what he slipped on might have been a piece of conduit. Two days after the fall, Logan returned to the jobsite and saw in the bottom of the middle stairwell in the vicinity where he landed a piece of conduit with paint on it.[3] (R. 133; R.E. 12).

---

[2]According to Logan, the middle stairwell between the 3rd floor and 2nd floor was lighted; it was the middle stairwell between the 2nd floor and 1st floor that was unlighted. (R. 168; R.E. 47). Logan's co-worker, Mark Iseley, testified that all five floors of the middle stairwell were unlighted, the only light available being on the landing of each stairwell, coming from the adjoining dorm floor hallway. (R. 194; R.E. 73). Logan described the area he fell as follows: "It wasn't on the first step. It was on the very top [step] . . . . Right on the edge of it. * * * There's a set of stairs that go up. You hit a platform, go around, and another set of stairs going up. That's one set of stairs, all the - as far as I'm concerned. * * * I came down the first set of them, platform. I went to the second set [in the 1st floor stairwell], and that's where the conduit was." (R. 157-158; R.E.36-37). According to Iseley, the landing in the middle of each set of stairs was "pitch black." (R. 199; R.E.78).

[3]Logan does not recall ever having told anyone except his wife and children that he saw paint on the conduit. (R. 173; R.E. 52). Logan did not pick up this conduit and its whereabouts are unknown. Although Loan testified that Iseley also saw the conduit with paint in the area where Logan landed, Iseley testified that he never saw Logan return to the work site, and never saw a conduit with paint on it in the vicinity where Logan landed. (R. 196; R.E. 75).

Logan is not even claiming that Overley removed the temporary lighting from the middle stairwell. (R. 177; R.E. 56). Logan has no idea whether or not the conduit with paint on it that he allegedly saw for the first time two days after the accident was what he slipped on. (R. 134, R.E. 13). He only assumes he slipped on a conduit based on his familiarity with that sensation having slipped on conduit previously. (R. 134, 174-175; R.E. 13, 53-54). Of course, he could have as easily slipped on a pin, screw, nail, or any manner of debris that he testified was regularly all over the jobsite left by all workers, or simply missed his step. Logan does not know what caused him to fall and testified,

> Q: So your testimony that that – the piece of conduit with paint on it was the piece of conduit you slipped on would – would be speculation? You would be speculating, correct?
>
> A: I guess so, yeah.

(R. 134-135, 184-185; R.E. 13-14, 63-64).

III. SUMMARY OF THE ARGUMENT

Logan claims that Overley's actions or inactions caused him to fall because he alleges Overley left a piece of conduit in the stairwell Logan was descending and Overley removed or failed to maintain the temporary lighting in the subject stairwell. Logan makes these claims although he readily admits that he does not even know what he slipped on. Logan also makes these claims although he knew the stairwell he chose to descend was dark and he never notified anyone of the condition. Moreover, Logan admits that he has no evidence that Overley or any of its employees knew the temporary lighting had been removed when Logan's fall occurred. Moreover, Logan has absolutely no idea if the temporary lighting was ever turned back on after he first ascended the stairwell but before his fall. Of course, the lights were off at the time of his fall but there is no evidence as to the exact amount of time they had been off prior to his fall.

The trial court correctly granted Overley summary judgment as there were no genuine issues of material fact for a jury to decide. Logan's claims are not supported by sufficient evidence and are based on mere speculation. The trial court's decision granting summary judgment in favor of Overley was correct and should be affirmed.

IV. ARGUMENT

A. Standard of Review.

The standard for reviewing the granting or denying of summary judgment in the Supreme Court is the same standard as is employed by the trial Court. The Supreme Court conducts a de novo review of orders granting or denying summary judgment and examines all the evidentiary matters before it. The evidence must be reviewed in the light most favorable to the party against whom the motion has been made. If in this view there are genuine issues of material fact and the moving party is not entitled to judgment as a matter of law, summary judgment should not be entered in his favor. ***Henderson v. Unnamed Emergency Room, Madison County Medical Center***, 758 So.2d 422, ¶7, (Miss. 2000). It has been held that all motions for summary judgment should be viewed with great skepticism and if the Trial Court is to err, it is better to err on the side of denying the motion. When doubt exists whether there is a fact issue, the non-moving party gets its benefit. Indeed, the party against whom the summary judgment is sought should be given the benefit of every reasonable doubt. ***Ratliff v. Ratliff***, 500 So.2d 981 (Miss. 1986). The Court also consistently held that summary judgment is not a substitute for the trial of the disputed fact issues. According, the Court cannot try issues of fact on a Rule 56 motion, it may only determine whether there are issues of fact to be tried. ***Brown v. Credit Center, Inc.***, 444 So.2d 358, 363 (Miss. 1983).

B. The Trial Court did not err in granting Overley Electric, Inc. summary judgment.

1. Overley's duty to Logan.

Under Mississippi law, the general rule is that a general contractor on a construction site is in control of the premises and is burdened with the duty to use ordinary reasonable care to provide a safe place for employees of a subcontractor to work. ***Oden Const. Co. v. McPhail***, 228 So. 2d 586, 588 (Miss. 1969); ***Mississippi Power Co. v. Brooks***, 309 So. 2d 863, 866 (Miss. 1975). In addition, the general contractor also has a duty to oversee the conditions in the work of each subcontractor so far as they affect the safety of the employees of other contractors.

However, the fact that the general contractor in this case, Larry J. Sumrall Contractors, was required to provide a safe working environment for Logan, as an employee of subcontractor, Jody Plumbing & Mechanical, Inc., does not absolve subcontractor Overley from liability for its own negligence that may cause harm or injury to employees of other subcontractors. ***Ainsworth v. Capform, Inc.***, 784 So. 2d 1008, 1011 (Miss. App. 2001). In other words, while on the work site Overley is responsible for its own acts of negligence that cause harm to employees of other subcontractors such as Logan. ***Id.***

2. Overley did not breach its duty to Logan.

A. *There is no evidence that Overley removed or disconnected the temporary lighting.*

Logan fell while walking down the middle stairwell in the Creswell dormitory. (R. 129, 138; R.E. 8, 17) Logan claims that the temporary lighting between the second and first floors of the middle stairwell had been removed making the stairwell very dark. (R. 130-131; R.E. 9-10). Logan alleges that Overley breached its duty to him by negligently removing the temporary lighting from the stairwell. (R. 10, 138; R.E. 4, 17). However, Logan does not have any evidence that Logan removed or even disconnected the temporary lighting. Logan testified in pertinent part as follows,

> Q. ... You never heard anyone say that the electricians, Overley Electric, removed the temporary lighting, did you?

A. No.

Q. Okay. And you're not making a claim in this lawsuit that Overley Electric removed the temporary lighting, correct?

A. No, I'm not saying they did it.

Q. Okay. So it's your claim that the painters removed the temporary lighting?

A. Yes, sir.

Q. Not – not that Overley Electric removed the temporary lighting?

A. Correct.

(R. 138, 177; R.E. 17, 56).

Q. (Mr.Wise) You never personally saw somebody from Overley Electric remove the temporary lighting, correct?

A. That particular light?

Q. Right.

A. Or any of them?

Q. The light – the temporary lighting that you said was removed, you never saw anyone – you never personally saw anyone from Overley Electric remove that temporary lighting?

A. I didn't see anybody remove it, whether it be Overley or the painters. I didn't see anybody do it.

Q. Okay.

A. It was just removed.

(R. 138-139, 178; R.E. 17-18, 57).

Q. And, again, you never made any complaints to Overley or to anyone else, for that matter, that Overley was failing to keep its work area cleaned up or that their work - Overley's work area was unsafe?

A. I never made any complaints about Overley –

(R. 139, 186; R.E. 18, 65).

Q. (Mr. Wise) Do you think Overley or its employees of the company itself, Overley, should be punished for any conduct in association with your lawsuit?

BY MR. WHITE: Same Objection.

A. I believe somebody needs to be held accountable for this.

Q. (Mr. Wise) But you're just not sure who; is that right?

A. I'm just not sure who.

(R. 139, 188; R.E. 18, 67).

Although Logan claims that Overley is liable for his injuries by negligently removing the temporary lighting he does not have any evidence to support his claim. (R.12, R.E.6). Logan even admits that he is not claiming Overley removed the temporary lighting. In fact, Logan testified that he claims that Oliphant removed the temporary lighting. Clearly, there is no disputed question of fact as to whether Overley removed the temporary lighting or even disconnected the temporary lighting in the stairwell where Logan fell. (R. 139-140, R.E. 18-19)

B. ***There is no evidence Overley had knowledge that the temporary lighting had been removed or disconnected.***

Logan also claims that the temporary lighting had been removed for a sufficient amount of time to put Overley on notice of the lights being out which would have allowed Overley to remedy the situation. (R. 10, 140, 157; R.E. 4, 19, 36). However, Logan admits that he used the stairwell in question several hours before his fall and he never notified Overley or anyone else on the job site that the temporary lighting had been removed or disconnected. Logan testified to the following,

Q. Mr. Logan, do you have any information or evidence that Overley knew the temporary lighting had been taken out or removed?

A. Physical evidence? No. But everybody down there knew it had been took out of there.

Q. Okay. But you - you personally don't have any information or evidence that, at the time just prior to your fall, that Overley knew that temporary lighting had been removed?

A. No.

(R. 140, 189-190; R.E. 19, 68-69).

Q. Okay. But before that, you don't have any reason to believe that Overley knew that temporary lighting had been removed?

A. No.

(R. 140, 190; R.E. 19, 69).

Logan does not have any proof or evidence that anyone working for Overley knew the temporary lighting was out. Logan even admits that after ascending and descending the dark stairwell he never notified Overley nor did his co-employee Mark Iseley. (R. 140, 157, 193; R.E. 19, 36, 72). Logan's claim is solely based on speculation and conjecture. There is no proof or evidence that Overley knew the temporary lighting was out. Moreover, Logan was well aware the lighting was out and chose to descend a dark stairwell. In addition, although Logan claims that the lighting was out for some two (2) to three (3) hours before his fall, Logan does not know if the lights were ever turned back on after he ascended the stairwell at 9:00 a.m. Although the lights may have been out at the time of Logan's fall, Logan has no evidence s to the exact amount of time the lighting was off prior to his fall.

C. ***There is no evidence Overley left a piece of conduit in the stairwell.***

Logan claims that Overley breached is duty by leaving a piece of conduit in the stairwell where Logan fell. Logan claims that he slipped on a piece of conduit causing him to fall to the bottom of the stairwell. Again, Logan did not present evidence demonstrating that Overley left a piece of conduit in the stairwell. Logan even admits that he does not have evidence that Overley left a piece of conduit in the stairwell. Logan testified to the following:

Q. Okay. Do you have any reason to believe that someone from Overley Electric left the piece of conduit in the stairwell?

A. I don't see any reasons why they would have done it, or anybody, for that matter, but, you know, it was just there. And it had paint on it.

(R. 141, 178-179; R.E. 20, 57-58).

Q. Okay. Has anyone ever told you that someone working for Overley Electric left that piece of conduit in the stairwell?

A. No.

Q. Okay. Do you have any information whatsoever that someone working for Overley Electric at that time left that piece of conduit in the stairwell?

A. No.

(R. 141, 179-180; R.E. 20, 58-59).

Q. And they weren't doing any work that day in the stairwell - stairwell where you fell, correct?

A. No, no.

(R. 142, 182; R.E. 21, 61).

Q. Sure.

A. I came down the first set of them, platform. I went to the second set, and that's where the conduit was. That' when I stepped, and that's when I went down the stairs.

Q. Okay. Did you see the piece of conduit before you –

A. No.

Q. – stepped on it?

A. Huh-uh. It was dark in there, no light.

Q. Was it, I mean, pitch dark?

A. Just absolutely. It was dark. You couldn't see your hand in front of your face.

Q. Okay. After you fell and you were down at the bottom of the stairs, and before you were taken to the emergency room, did you personally see the piece of conduit anywhere?

A. No.

Q. So, at that time, shortly after the accident, you didn't know if the piece of conduit had paint on it or not; is that correct?

A. That's correct.

(R. 142, 184-185; R.E. 21, 63-64).

Clearly, Logan does not even know if he slipped on a piece of conduit and even admits that he does not have any evidence that an Overley employee left a piece of conduit in the stairwell. Logan cannot meet his burden of proof as his claims are based on mere speculation. Obviously, there was not an issue of material fact regarding whether Logan slipped on a piece of conduit left in the stairwell by Overley. Thus, the trial court did not err in granting summary judgment.

D. ***Logan does not know what he slipped or stepped on.***

Logan testified under oath that he would only be speculating to conclude that he slipped on a piece of conduit. Logan testified in pertinent part,

Q. Sure.

A. I came down the first set of them, platform. I went to the second set, and that's where the conduit was. That' when I stepped, and that's when I went down the stairs.

Q. Okay. Did you see the piece of conduit before you –

A. No.

Q. – stepped on it?

A. Huh-uh. It was dark in there, no light.

Q. Was it, I mean, pitch dark?

A. Just absolutely. It was dark. You couldn't see your hand in front of your face.

Q. Okay. After you fell and you were down at the bottom of the stairs, and before you were taken to the emergency room, did you personally see the piece of conduit anywhere?

A. No.

Q. So, at that time, shortly after the accident, you didn't know if the piece of conduit had paint on it or not; is that correct?

(R. 143, 184; R.E. 22, 63).

A. That's correct.

Q. You didn't know it had paint on it until two days later when you returned?

A. That's correct.

Q. So it's possible the piece of conduit you saw two days later with paint on it was not the piece of conduit you stepped on?

BY MR. WHITE: Object to the form of the question.

Q. (Mr. Wise) Is that possible; you would agree with me that's possible?

A. Yeah. Oh, yeah, it's possible.

Q. So your testimony that that – the piece of conduit with paint on it was the piece of conduit you slipped on would –would be speculation? You would be speculating, correct?

A. I guess so, yeah.

(R. 143-144, 185; R.E. 22-23, 64).

Again, Logan testified that it would be speculation for him to contend that the piece of conduit he allegedly observed two (2) days later at the job site was the exact piece of conduit that he slipped on. (R. 143-144, 185; R. E. 22-23, 64). In other words, Logan does not even know what, if anything, caused him to fall. Thus, there is no genuine issue of material fact as to whether Overley left a piece of conduit in the stairwell that allegedly caused Logan to fall.

3. Logan Has Not Met His Burden of Proof.

As a subcontractor, Overley did not owe any special or particular duty to Logan other than what any person owes to another: not to negligently cause foreseeable injury or harm.

Logan's claims fail as a matter of law because he has not and cannot meet his burden of proof. His reliance on unsubstantiated hearsay and speculation is insufficient to create a jury issue. The Mississippi Supreme Court explained in ***Maness v. Ilinois C. R. Co.***, 271 So.2d 418, 422 (Miss. 1972),

> The question to be determined here is . . . was the evidence sufficient to require an issue to be submitted to the jury? As a general rule, in order to establish an allegation of negligence based upon circumstances, inferences and acts of a defendant in the nature of admissions, the proof or circumstances shown must be such that they will take the case out of the realm of conjecture and place it within the field of a legitimate inference of liability. ***Alexander Pool Co. v. Pevey***, 247 Miss. 389, 152 So.2d 451 (1963); ***Brunt v. Chicago Mill & Lbr. Co.***, 243 Miss. 607, 139 So.2d 380 (1962); ***Fowler Butane Gas Co. v. Varner***, 244 Miss. 130, 141 So.2d 226 (1962); ***Denman v. Denman***, 242 Miss. 59, 134 So.2d 457 (1961); ***Magnolia Petroleum Co. v. Stinson***, 230 Miss. 533, 93 So.2d 815 (1957); ***Tombigbee Electric Power Ass'n v. Gandy***, 216 Miss. 444, 62 So.2d 567 (1953); ***Johnston v. Canton Flying Services, Inc.***, 209 Miss. 226, 46 So.2d 533 (1950). In the case of ***Brown Oil Tools, Inc. v. Schmidt***, 246 Miss. 238, 148 So.2d 685 (1963); we quoted frm 38 Am.Jur. *Negligence* §334 (1941) wherein it was said:
>
> > '* * * proximate cause need not be established by the testimony of eyewitnesses, nor by direct or positive evidence, but may be proved by circumstantial evidence; it may be determined from the circumstances of the case. * * * In view of the fact that the burden of proof is upon the plaintiff, such circumstances **must be ample and must appear from the evidence. Moreover, the evidence must not leave the causal connection a matter of conjecture;** it must be something more than consistent with plaintiff's theory as to how the accident occurred.'
> > (emphasis added).

The case of ***Byrne v. Wal-Mart Stores, Inc.***, 877 So.2d 462 (Miss.Ct.App. 2003) involved a plaintiff who could not meet her burden of proof. In ***Byrne***, the plaintiff slipped in Wal-Mart on what she thought was a cookie, causing injury to her back. ***Byrne***, 877 So.2d at 464. Byrne appealed arguing that the trial court "improperly substituted its own judgment for that of the jury on issues concerning the nature, condition, identity and length of time the unidentified substance that led to her injuries was on the floor." ***Id.*** at 465.

In affirming the award of summary judgment to the premises owner, the Mississippi Supreme Court pointed to the insufficiency of the plaintiff's evidence, stating as follows:

> In ***Sears, Roebuck***, the court stated, "The basis of liability is negligence and not injury. Proof merely of the occurrence of a fall on a floor within business premises is insufficient to show negligence on the part of the proprietor. Proof that the floor on which the fall occurred had present thereon litter and debris is similarly insufficient."
>
> * * *
>
> Byrne failed to produce any proof that the object which caused her injury was the result of an affirmative act by Wal-Mart or Andrew Lightsey, as manager. In fact, she stated in her deposition that she did not know how the cookie came to be on the floor. . . . Byrne did not offer any proof that met her burden under the first prong of ***Downs v. Choo***, 656 So.2d 84, 86 (Miss. 1995), the first prong being proof of a negligent act by the defendant caused the plaintiff's injury].

Id. at 465-466.

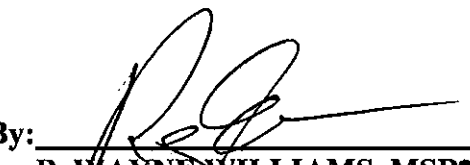
Logan's claims against Overley are nothing but speculation. Logan presented no proof of what caused him to fall. Likewise, Logan has no proof as to who removed the temporary lighting. (R. 139, 188; R.E. 18, 67). In addition, he does not have any proof that Overley knew prior to his fall that the lighting had been removed. (R. 140, 189-190; R. E. 19, 68-69). In fact, Logan knew it had been removed but never notified anyone. Logan even admits that someone is responsible for his injuries, he is just not sure who. (R. 139, 188; R.E. 18, 67). Consequently, absent any proof that Overley breached any duty owed to Logan, Logan's claims against Overley fail as a matter of law and the trial court correctly granted summary judgment to Overley. There are no issues for a jury to decide.

V. CONCLUSION

Based on the foregoing, the trial court's decision granting summary judgment in favor of Overley should be affirmed as there are no genuine issues of material fact precluding summary judgment. Logan's claims are based on nothing but mere speculation. Logan chose to descend the stairwell even though he knew it was dark. Logan never notified anyone of the stairwell's unlighted condition and he has no proof as to how long the lights had actually been out. Finally, Logan does

not even know what he slipped on. Therefore, the trial court correctly granted summary judgment in favor of Overley. The trial court's decision is properly supported and should be affirmed.

WEBB, SANDERS & WILLIAMS, P.L.L.C.



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CERTIFICATE OF MAILING

This is to certify that I, Reagan D. Wise, attorney for Appellee Overley Electric, Inc., has this day mailed via Federal Express, the original and three (3) copies of the **Appellee's Brief** to Betty W. Sephton, Supreme Court of Mississippi at the address of said Court, 450 High Street, Jackson, MS 39201-1082.

THIS, the 11th day of November, 2008.

REAGAN D. WISE

CERTIFICATE OF SERVICE

I hereby certify that I have delivered via hand-delivery and mailed via Federal Express, a true copy of the foregoing Brief of Appellee Overley Electric, Inc. to:

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