

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

**ROBERT LEE GILES, ROBERTO GILES, A MINOR,
BY AND THROUGH HIS FATHER AND NEXT
FRIEND, ROBERT LEE GILES, AND ANTONIO
GILES, A MINOR, BY AND THROUGH HIS FATHER
AND NEXT FRIEND, ROBERT LEE GILES,
APPELLANTS**

v.

**ROBERT A. BROWN, AND LEAKE COUNTY,
MISSISSIPPI, BOARD OF SUPERVISORS,
APPELLEES**

**Appeal from the Circuit Court
of Leake County, Mississippi**

REPLY BRIEF OF THE APPELLANTS

ORAL ARGUMENT REQUESTED

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In reply to the appellee's brief, the appellants would like to address several issues and they are as follows:

I. ISSUE OF WHETHER THE CHILDREN WERE COMMITTING A CRIME WHICH WOULD PRECLUDE THEM FROM RECOVERING IN THIS CASE

The appeals court clearly made its opinion known in this regard and was remanded from the Court of Appeals with the following directive:

"Unlike their father, Giles's children were neither charged with, nor convicted of, any crime. While they both admitted that they knew it was against the law for the to be riding the ATV on the highway and riding without their helmet on, we find that this does not rise to the level of criminal activity contemplated by the statute. Unlike their father, the children could not have been charged with reckless driving, as they were not driving, nor could the children have been charged with driving with a suspended license. Therefore, the "criminal activity" limitation would not be sufficient to dismiss the children's case at summary judgment." Giles v. Brown, 962 So.2d 612 (2006).

"...we reverse and remand the court's judgment as to Roberto and Antonio because there are genuine issues of material facts as to: (1) whether the children were engaged in criminal activity given the absence of criminal charges or convictions; (2) whether any criminal activity on the part of the children had a "causal nexus" to the accident; and (3) whether Brown acted with reckless disregard in his pursuit of Giles." Giles v. Brown, 962 So.2d 612 (2006).

The constable was committing a crime himself in the subject accident. He was driving his vehicle with no liability insurance coverage. He had simply let the insurance coverage lapse. He did not get a ticket for this and was not charged for anything whatsoever. If someone in the general public had done this, he/she would have gotten a ticket and possibly around a \$1,000.00 fine. The constable was in his private vehicle and it was his duty to have the liability insurance coverage as required by law. He was not supposed to be on that highway that day either. It was just as illegal for him to be going down that highway with no liability insurance coverage as it was for the appellants'

father to be driving the four-wheeler on the highway. However, the county basically had backup insurance, which would cover the constable for the county.

The Appellants would also show that the constable was not re-elected and, after his conduct in this accident, one could clearly see why the public did not want him anymore as their constable.

The bottom line is that the children did not commit a crime. They did not drive without a license; they did not drive the four-wheeler upon the highway; they did not speed on the highway; they did not run from the constable; they did not refuse to stop; and they did not have control over what their father's actions. The constable, on the other hand, committed numerous road violations when he followed the four-wheeler within four inches from the bumper going approximately 45 miles per hour with two minor children on the back of the four-wheeler. It was a traffic offense for the Constable to do this. According to the witness, Amber Wilcher, who was stopped at the road, she testified that he appeared to deliberately run into the back of the four wheeler, knocking the four wheeler into her. Amber Wilcher testified as follows:

A: *As the four-wheeler was starting to turn, the car hit the four-wheeler, the four-wheeler hit my car, and then the other car hit my car.*

Q: *Okay. Now, are you sure it happened that way?*

A: *Yes, sir.*

Q: *Is there any question that the officer's car hit the four-wheeler first?*

A: *No, sir.*

Q: *You were looking directly at it?*

A: *Yes, sir.*

Q: *And did you see the four-wheeler come into your car?*

A: Yes, sir.

Q: And you were looking at that?

A: Yes, sir.

(Transcript at pages 103 and 104)(emphasis added).

The appellees, with absolutely no basis, tried to claim that Robert Giles hit the car first. This is ridiculous when everyone there said that the constable rear-ended the four-wheeler and knocked it into the car. Suzanne Sharpe's testimony regarding the accident, is as follows:

Q: *So the four-wheeler came across to turn, what did Robert Brown?*

A: He just...

Q: He just what?

A: *He just kept going.*

Q: *He kept going. And what did that do?*

A: *Well, that's when we hit the car.*

(Deposition of Suzanne Sharp at page 23, Volume 1 of 1 of the Record, Plaintiff's Exhibit)(emphasis added).

The constable's conduct was so blatantly bizarre and irrational that one would have to conclude that he was in such a road rage that he could not control himself. Whether the constable agreed for Robert Giles to go to his house or not does not justify his outrageous conduct. The father and the children said, and it was established, that Robert Giles was going to his house, which was only about one and one half miles from the place the constable started following them. All he had to do was follow the four-wheeler for another half a mile to Robert Giles house. Robert Giles said that the constable knew him and had been to his house and he knew the constable knew where they

were going. In regard to whether Robert Brown and Robert Giles knew each other Suzanne Sharpe testified as follows:

Q: The question is, they acted like they knew each other, didn't they?

A: At the time, yes.

(Deposition of Suzanne Sharp at page 38, Volume 1 of 1 of the Record, Plaintiff's Exhibit).

If this had been a murder and a violent criminal was about to escape then a whole different standard would come into play, but the constable was only following him for a traffic offense. He was not even attempting to give the children a ticket and never did. If he had not been in such a road rage he could have just followed them to their house like it appeared he was doing. The distance was only one half miles and he had followed him for a mile and was at the place where the Robert Giles had turned right to go to his house. All Robert Brown had to do is wait for the half a mile trip and he would be stopped at the appellants' house. ***It was obvious that Robert Brown was not trying to stop Robert Giles at anytime because Robert Brown followed Robert Giles for a mile and he never once passing him and to get in front and/or pulled beside of Robert Giles to tell Giles to stop.*** If Robert Brown had actually wanted Robert Giles to stop why would he have not done that. The constable's behavior obviously confused the Gileses because they thought Robert Brown was ok with following them to the house until he barreled into their rear.

Furthermore, the testimony showed that Robert Giles could have turned off and gone into the woods at anytime instead of going down the road for a mile. He had every opportunity to take the woods and the constable could not have followed him. Amber Wilcher and Robert Giles testified to this fact. The Appellants would show that the Robert Giles' actions in no way indicated that he was fleeing from the constable and, likewise, the Constable's behavior in now way indicated that he

was not ok with following Robert Giles to his house.

The children had been riding the road on back of the four wheeler for approximately ten years with no problems and no danger to them. Their father takes extremely good care of his children and he is a very loving father, doing what a father needs to do for his children. The only danger they faced was when the constable intervened. The constable should have to protect people, yet this constable just committed such outrageous conduct and to almost kill the children and all of this over simply a road violation by their father. If the Giles had wrecked on the road due to someone's negligence, either their own negligence or another person's negligence, this would have been tragic; but when a supposed law enforcement officer intentionally exposes these children to this danger, he should have faced some kind of criminal charges. Robert Brown deliberately drove his car several times within four inches of the four-wheeler with the minor's on it going 45 miles per hour. The constable had to deliberately drive the vehicle in this manner as it did not do it on its own. If an individual on the road would have done this to these minor children, almost killing and permanently injuring one for life, he or she would more than likely been sent to the penitentiary as a dangerous criminal. In this case the constable did not even suffer any consequences for his criminal behavior.

Moreover, the twelve and fourteen year old minor children did not commit a criminal act or crime that would have barred them from making a claim under our Mississippi law.

**II. WHETHER THE FACTS SUPPORT THE FACT THAT THE OFFICER ACTED
WITH RECKLESS DISREGARD FOR THE SAFETY AND WELL-BEING OF THE
TWO MINOR CHILDREN**

The appellants have quoted the facts from the trial records and it is no dispute that the witnesses said exactly what has been quoted. The defense would take the witnesses and try to get them to change their story but that did not change anything.

The alleged pursuit expert, Jerry Barrett, did not sit in the courtroom while testimony was being given and he did not hear the appellant, Robert Brown, testify in court. However, he was allowed, over the repeated objection of the Appellants' attorney, to tell an alleged conversation with the constable that took place outside of the Courtroom. All of this was strictly hearsay. There is no way Barrett could remember exactly what was said and all of hearsay testimony was self-serving. He simply told the story the way he wanted the facts to sound. In fact Robert Brown, during his court trial, did not give the same testimony as Jerry Barrett, the alleged police pursuit expert, says. It was imperative that Jerry Barrett be in the Courtroom to hear the testimony of Robert Brown, however, he was not. We have no way of knowing if Robert Brown actually told Jerry Barrett what Barrett said or not. Yet, the Appellees are citing that as testimony in Court.

Jerry Barrett testified that the accident was caused by the negligence of Robert Giles in swinging out to the left and turning back to the right. These facts are not supported by much evidence. This is only by Jerry Barrett's hearsay and self-serving conversation with the constable.

Furthermore, Barrett said that he was not an accident reconstructionist and that he had not had one course in accident reconstruction. Yet, the court allowed him to testify as to who's fault this accident was. If the alleged police pursuit expert was testifying, he should have been able to say what the proper steps were for the pursuit. Yet, Barrett refused to answer any question along this line and the Judge refused to make Barrett answer.

The constable's story that he thought Robert Giles was about to turn left and go off into the woods is totally absurd and ridiculous. In the first place, there is no road to the left and it is a high embankment and trees on the left side of the road. If the Giles turned left off the roadway, down the embankment into the trees, it would have probably seriously injured or killed them. That is not even logical to have thought that the Appellants were going to turn left. The Appellants would refer the Court to the pictures are marked as Plaintiff's Exhibits 3, 4, 5, 6, 7, and 8 and are in Volume 1 of 1 of the Trial Court exhibits.

Every witness knew that the Appellants were turning right. Amber Wilcher and Suzanne Sharp testifies that it was clear that they were turning right. Suzanne Sharp testified as follows:

A: *...And it didn't take a rocket scientist to figure out he is going to turn trying to turn into that stop sign....*

(Deposition of Suzanne Sharp at s 12-13, Volume 1 of 1 of the Record, Plaintiff's Exhibit)(emphasis added).

Q: *And at that time that you came up to the intersection you say it was obvious that he was fixing to make a right – that the guy on the four-wheeler was fixing to make a right-hand turn.*

A: *(Nodded head affirmatively.)*

Q: *You have to say it.*

A: *Yes.*

(Deposition of Suzanne Sharp at page 20-21, Volume 1 of 1 of the Record, Plaintiff's Exhibit)(emphasis added).

Q: And did you at any time notice the guy on the four-wheeler slowing down as

he went to make that curve – that turn into the Laurel Hill Road?

A: He had gotten over on the left side of the road and he had to slow down to make that turn.

Q: But you saw him slow down?

A: Yes.

Q: And you could tell that he was slowing down?

A: Yes.

Q: Do you think Robert Brown slowed down at all.

A: I do not know that. You've got to realize it's been five years.

(Deposition of Suzanne Sharp at pages 35-36, Volume 1 of 1 of the Record, Plaintiff's Exhibit)

Wilcher, who was stopped at the stop sign, said she could tell he was turning to the right. Amber Wilcher testified as follows:

Q: A couple of feet. Okay. Now, as it come on up here, after we get almost to the intersection, what did the four-wheeler start to do?

A: *It crossed over into the center line, like, to make a right-hand turn.*

Q: All right. You say it crossed over into the center line?

A: Yes, sir.

Q: And it, and the center means the middle. Was it on the center line?

A: Yes, sir, it – 'cause you have to make a wide right-hand turn for a ATV, so *you could well that's what was gonna happen* – it crossed over the double line.

Q: So you could tell from where you were that he was fixing to turn off?

* * *

Q: What was he doing?

A: *Could I tell if he was fixing to turn?*

Q: *Right.*

A: *Yes, sir.*

Q: And what was he doing?

A: He was over in the middle line. And he started to turn the four-wheeler.

Q: He started turning the four-wheeler. All right. How far was the four-wheeler – Robert Brown's police car behind him at the time he started making his turn?

(Transcript at pages 101 and 102)(emphasis added).

In order to understand, all anyone has to do is look at the pictures. The pictures are marked as Plaintiff's Exhibits 3, 4, 5, 6, 7, and 8 and are in Volume 1 of 1 of the Trial Court exhibits.

In regard to the turn, the Appellees want to make it sound as though Robert Giles did something unusual by moving over to the center line to make his right turn and that by him moving over to the center line that this caused the wreck and, somehow, relieved the constable of any responsibility. This would be absurd because in the first place, the constable was following too close to the Appellants in violation of the laws of the State of Mississippi. There is a reason for the law to require a person not to tailgate another vehicle. The lane is only approximately six feet wide per lane and if he did get over near the center line, this only left three or four feet in the lane that he was not occupying. Certainly, the Constable could not have thought that he could pass him on the right. This would have been highly illegal. The officer cannot justify why he ran into the rear of the four-

wheeler. He can try using every excuse but it boils down to his gross, willful, malicious, and reckless conduct that broke this little minor child's body all up and he should have to pay for negligent conduct just like anyone else would have to do.

CONCLUSION

Appellants would show that the trial court abused its discretion finding in favor of the Appellees and determining that the Appellants were engaged in criminal activity, in determining that the Robert Giles' actions were the "superceding cause" of the subject accident, and in determining that the Appellee, Brown, " was not found to have been pursuing the [Appellants] with *reckless disregard* for the safety of [Appellants]...as described under applicable MS. case law and is therefore entitled to all of the immunities prescribed under § 11-46-9(1)(c), *MCA*, and which immunity also extends to the Co-Defendant Leake County, Mississippi Board of Supervisors." The Appellants would also show that the Court erred in allowing Jerry Barrett to qualify as a police pursuit and to give numerous opinions based upon accident reconstruction as to how the accident happened, whose fault the accident was, and as to whether the Appellee, Brown's, behavior did not amount to a reckless disregard for the safety and well being of the Appellants when he was not accepted as an accident reconstruction expert and when he was not qualified under *Daubert* to testify as a police pursuant expert. Finally, the Court erred in denying the Appellants' Motion requesting that the Court to reimburse the Appellants with regard to the Court ordering the Appellants to pay one-half of the entire transcript which the Court ordered to be done before he rendered a decision on the case.

The Appellants pray that the Court will reverse the Court's judgment and that it will send the case back to lower court for a trial on damages only or for an entire new trial and that the Court order

that a Judge from outside the court district hear the case since Judge Cotton has already dismissed the case twice, once on Summary Judgment and once on the regular trial. If the Appellants have prayed for the wrong or insufficient relief, then the Appellants pray that the Court will grant whatever relief the Court deems proper.

RESPECTFULLY SUBMITTED,

**ROBERTO GILES, A MINOR, BY AND
THROUGH HIS FATHER AND NEXT
FRIEND, ROBERT LEE GILES, AND
ANTONIO GILES, A MINOR, BY AND
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CERTIFICATE OF SERVICE

I, Don H. Evans, attorney for Appellants, do hereby certify that I have served, via U.S. Mail, postage prepaid, a copy of the foregoing Appellants' Brief to the following:

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On this the 25th day of November, 2008.


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carriage

GILLES

Wilcher car

Laurel Hill R.R.

PLAINTIFFS
EXHIBIT
13

11
W. M. H. H. H.

PLAINTIFF'S
EXHIBIT
7



PLANTIFFS
EXHIBIT
5



PLAINTIFFS
EXHIBIT
6



PLAINTIFFS
EXHIBIT





PLAINTIFF'S
EXHIBIT