

IN THE SUPREME COURT OF MISSISSIPPI

NO.: 2008-CA-01137

CITY OF LAUREL, MISSISSIPPI

APPELLANT

VS.


CLYDE WILLIAMS, AS PERSONAL/LEGAL
GUARDIAN AND NEXT FRIEND OF
MICHAEL DeANTHONY WILLIAMS,
INDIVIDUALLY AND CLYDE WILLIAMS
AS PERSONAL/LEGAL GUARDIAN AND
NEXT FRIEND OF MINOR CHILD,
MICHAEL DeANTHONY WILLIAMS AND
THE MINOR CHILD, DORRIEN
ALEXANDER WILLIAMS, BEING THE
WRONGFUL DEATH HEIRS OF LISA
WILLIAMS, DECEASED

APPELLEE

APPEAL FROM THE CIRCUIT COURT OF
JONES COUNTY, SECOND JUDICIAL DISTRICT

BRIEF OF APPELLANT

ORAL ARGUMENT REQUESTED

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CERTIFICATE OF INTERESTED PERSONS

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/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. City of Laurel, Mississippi - Appellant.
2. L. Clark Hicks, Jr. - Counsel for Appellant.
3. L. Grant Bennett - Counsel for Appellant.
4. Clyde Williams - Appellee.
5. Michael DeAnthony Williams - Minor child and interested heir.
6. Dorrien Alexander Williams - Minor child and interested heir.
7. J. Michael Horan - Counsel for Appellee.
8. Kevin Horan - Counsel for Appellee.

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STATEMENT REGARDING ORAL ARGUMENT

Local law enforcement agencies respond to domestic disturbances every day. Officers expose themselves to dangers inherent in responding to these calls. The Mississippi legislature enacted a “good faith” immunity defense for these officers shielding them from civil liability in their good faith handling of domestic disturbances. Judge Landrum’s decision, for all practical purposes, eviscerates this immunity. Laurel seeks oral argument so that the appellate court may correct clear errors of law made by the trial court.

STATEMENT OF ISSUES

- I. Whether Judge Landrum erred by not enforcing the statute which renders police officers immune for any failure, in good faith, to make a domestic related arrest?
- II. Whether Judge Landrum erred in ruling the Laurel Police Department acted in “reckless disregard” by failing to prevent Kenneth Wilson from murdering Lisa Williams?
- III. Whether Judge Landrum erred by failing to find that the alleged recklessness of the police department was a proximate cause of the death of Lisa Williams?

STATEMENT OF THE CASE

I. Nature of the case, course of proceedings, and disposition in the court below.

On July 2, 2003, Kenneth Wilson murdered Lisa Williams in the City of Laurel. (R. 63, R.E. 63). Wilson is serving time in Parchman for his heinous crime. The heirs of the victim sued the City of Laurel claiming that Laurel police officers should have prevented the murder and because they did not do so, Laurel should be civilly liable for the crime. (R. 3-12).

Laurel vigorously defended the claim arguing that it should not be monetarily liable for Kenneth Wilson's murder of Ms. Williams. Laurel contended its officers acted professionally and responsibly in handling a domestic disturbance call. Their actions did not rise to the level of "reckless disregard," the conduct necessary to impose liability on the city. Further, the actions of the officers, who were engaged in police functions, did not proximately cause Kenneth Wilson to murder Lisa Williams. (R. 22-30).

The case went through its usual course of discovery and was tried in a bench trial, as required by statute, before Billy Joe Landrum. The two police officers involved testified regarding their handling of 911 calls, and the Court was given the benefit of a police videotape, which Laurel contends proves the officers did not act in "reckless disregard" and further, that Kenneth Wilson was the sole cause of the murder. The trial court received into evidence the complete police file relating to the incident. (R. Exhibit 1).

When the Plaintiff rested at trial, a strange twist happened. Believing that they did not prove their case against Laurel, the lawyers for the victim's heirs announced that if Judge Landrum would rule in their favor, they would accept no more than \$75,000.00 for the gruesome death of Lisa Williams at the hands of Kenneth Wilson. (Tr. 78). The strategy worked.

Following trial, Judge Landrum found the police officers acted in “reckless disregard” and disregarded a “good faith” immunity protection found in Miss. Code Ann. § 99-3-7(7). (R. 63-66, R.E. 63-66). The judge made no comment and no finding whatsoever whether the officers’ actions were a proximate cause of the murder of Lisa Williams. (R. 63-66, R.E. 63-66).

The judge determined that since the damages stipulated were \$75,000.00, the Court would enter an award for the Plaintiff in that amount. (R. 66, R.E. 66).

Laurel is aggrieved by this decision. Laurel contends the actions of its officers did not amount to “reckless disregard,” were not in bad faith and that the alleged actions or omissions of the officers were not a proximate cause of the death of Lisa Williams. Kenneth Wilson caused her death.

The Court entered its Final Judgment on June 23, 2008, and Laurel timely filed its Notice of Appeal on June 30, 2008. (R. 67-69).

II. Statement of Facts.

On July 2, 2003, the Laurel Police Department responded to a 911 call in reference to a disturbance at an address on 1422 North Second Avenue. (R. Exhibit 1)¹. Officers Styron Keller and Shane Valentine went to the residence around 8:30 p.m. When they arrived, the alleged disturbance had ended. (Tr. 43, R. Exhibit 1, #1021). There were numerous individuals in the residence, but it appeared as though there had been some kind of dispute between two persons, namely Lisa Williams and Kenneth Wilson. The videotape reveals the police interviews and investigation which occurred. (R. Exhibit 4). The officers determined that there may have

¹Exhibit 1 is a complete compilation of the entire police file. The parties stipulated to its admission. This Court should review the file, but the trial judge made no reference to these documents, or anything within them, in his memorandum opinion.

been a previous tussle between Williams and Wilson, but Williams showed no signs of injury. She had no abrasions, bruises, or any other signs of any physical altercation or assault by Wilson. (Tr. 44). One family witness testified at trial that Williams' hair was messy, but no person identified an injury to either party as being caused by any domestic altercation. Williams' demeanor was calm as was Wilson's.

The officers separated the two persons for independent interviews. Officer Valentine interviewed Wilson and Officer Keller spoke with Williams. Wilson acted as though nothing had happened. (Tr. 45). Wilson denied having struck Williams or having made any physical contact with her, and similarly, Williams made no complaints about Wilson. (Tr. 46). Officer Keller did notice a small abrasion on one of Wilson's knuckles and when asked about this, Wilson advised he did not know how the abrasion occurred, though later in the interview he believed that he got the wound at work. (Tr. 46, 49) (See R. Exhibit 1, #1022).

Neither person wanted charges against the other, and there was no indication of any serious violence having occurred. Lisa Williams did state on more than one occasion to Officer Keller that she wanted Wilson to leave her home. (Tr. 45). As revealed by the tape, the officers obliged this request and made sure that Wilson left the premises. (Tr. 49).

The tape reveals a common technique used by officers when called to the scene of a possible domestic disturbance. Keller advised both parties that he could arrest them (but exactly what for was unclear), and he said that he was not going to do so on this occasion. (Tr. 47-48). Keller characterized this as a "bluff" technique. (Tr. 48). This veiled threat apparently helped to diffuse the situation, and Wilson left the scene under the watchful eye of the officers.

What exactly transpired that night is fairly well depicted on the tape which the Court can

review, but it was apparent that neither party wanted the other arrested. Both parties were acting normal. Williams did not appear hurt in any way and denied causing the nick on Wilson's hand. Williams wanted Wilson to leave, and he calmly packed a few things to do so. (R. Exhibit 1, #1022). The other family members at the home acted polite and quietly allowed the officers to do their work. The entire episode played like a typical, routine police house call.

The owner of the residence, Rika Carmichael, testified at the trial that before the officers arrived, she heard a scuffle between Williams and Wilson. (Tr. 56). She admitted that when the officers arrived, the alleged altercation had ended, and the parties were calm. (Tr. 69). At trial, with the benefit of hindsight, Carmichael testified that the officers should have arrested someone, yet her typed statement given to the police only makes reference to her knowledge that the two parties had been in a "fuss," and her written statement reveals nothing more than the parties had a verbal disagreement. (Tr. 66, R. Exhibit 1, #1068). Further, the tape reveals no efforts by Carmichael to get the officers to do anything other than what they did that night, which was to make sure Wilson left the scene. In fact, Carmichael testified that though Wilson left the scene, he eventually wandered back to her home. Carmichael then drove Wilson to the parents of Lisa Williams and dropped him off there. (Tr. 61, R. Exhibit 1, #1068). Carmichael admittedly had no fear for her own safety when she took Wilson to the home of Annie Walker, Williams' mother. (Tr. 69).

Later that evening around 10:00 p.m., the officers received a second call, this time from the home of the parents of Lisa Williams, where Wilson had been dropped off by Carmichael. Officers Keller and Valentine responded to the call. Upon arrival, Officer Valentine made contact with Wilson. (Tr. 80). Lisa Williams' mother, Annie Walker, testified that Wilson had

been at her home, talking loud and ranting about Williams. Walker did not want to hear about any problems between her daughter and apparent boyfriend (Kenneth Wilson) and just wanted Wilson to leave. (Tr. 71).

According to Officers Keller and Valentine, Wilson displayed a quiet, and cooperative demeanor. (Tr. 80-81). Wilson had been drinking, but Officer Valentine did not believe Wilson to be intoxicated. (Tr. 86). Wilson was sitting on the steps near the sidewalk not causing any trouble. In the meantime, Lisa Williams was at her home. This second call, though related to the one earlier, did not involve a domestic disturbance. Obviously, the officers knew Wilson was on his best behavior, and by other witness accounts, had been talking too loud and irritating other family members. Faced with this situation, the officers decided to use a "cooling off" technique in which they handcuffed Wilson for his safety and transported him from the scene to the police department. (Tr. 81).

With the benefit of hindsight, Williams' heirs alleged the officers should have placed Wilson in jail. Annie Walker swears Office Valentine said she would not have any more trouble out of Wilson as he was going to jail. (Tr. 72). Valentine denied this comment but both officers testified there was no solid basis to make an arrest of Wilson on the second call. (Tr. 51, 80-81). Kenneth Wilson had not harmed anyone at the home of Lisa Williams' parents. There were no victims. There were no persons clamoring for his arrest. There was no sign of any physical injury he had caused or was about to cause, and no sign of any damage to any property caused or about to be caused. He had been drinking and sitting on the steps near the sidewalk, apparently fussing about problems with Williams. (R. Exhibit 1, #1027). Lisa Williams' parents simply did not want him around, so the officers placed him in the vehicle, drove him to the police station

and called his mother. Wilson had a waiting period at the police station. Mabel Martin, the police clerk, witnessed Wilson's presence at the station, but she could not attend trial. The parties stipulated at trial Martin would have testified that Wilson's mother picked him up at the police station. Officer Keller is the one who called Wilson's mother, who personally drove him away from the station. (Tr. 53).

At trial, Williams' heirs argued that police records show Wilson had been arrested and formally charged. They believed the police did not follow their procedures and should have placed him in jail overnight. They never identified the procedures not followed or the crime that Wilson committed, and they offered no city documents showing the crime with which he was charged. There is a dispatch report, not a formal arrest report, making reference to Wilson being under arrest for family disturbance, but the officers testified that if Wilson had been charged with a crime, a lengthy arrest report would have been filled out, he would have been booked and other procedures done by the police department. (Tr. 52-53). There is no question that the officers talked with numerous persons when investigating both calls. Both officers made several statements to witnesses which indicated that they would remove Wilson from the premises. They did on both occasions and made sure that he was in the hands of his mother to be transported from the police department. (See, R. Exhibit 1, police records).

Unfortunately, Wilson's mother drove him straight back to Lisa Williams' house nearby. (Tr. 53). Wilson admits this in an interview with Detective Byron Craft. (R. Exhibit 1, #1073). When Wilson return to Williams' house, he and she started arguing. In the heat of the moment, Wilson flipped out and grabbed a kitchen knife, stabbing Williams repeatedly. The police were called, and the officers arrived with guns drawn. The officers exercised remarkable restraint by

not killing Wilson on the spot. (R. Exhibit 1).

After the conviction and permanent incarceration of Wilson, Williams' heirs contended that because the officers had contact with Wilson that night, they should have foreseen that he would murder Lisa Williams and found some reason to place him in jail. The Laurel Police Department countered at trial that the videotape shows that the officers exercised prudence, were professional and handled the calls no differently than they would other disturbances. The officers contended that the crime was unforeseeable and that to hold the City civilly liable would require the officers to prevent most crimes.

Contrary to Judge Landrum's opinion, the City believes that the evidence presented did not support a finding that the officers "displayed a conscious indifference to the consequences of their failure to make an arrest." (R. 66). Further, the actions of Kenneth Wilson, not the police, caused Lisa Williams' death.

SUMMARY OF THE ARGUMENT

I. Whether Judge Landrum erred by not enforcing the statute which renders police officers immune for any failure, in good faith, to make a domestic related arrest?

Laurel is not liable in a civil action for the failure of its police officers, in good faith, to make a domestic related arrest. Miss. Code Ann. § 99-3-7(7). Viewing the evidence most favorably to the Plaintiff, there is no evidence of bad faith by the police officers. This statutory immunity is designed to prevent a flood of lawsuits by disgruntled citizens and to protect law enforcement officers who make difficult judgment decisions. The legislature understood that officers daily are called to domestic disturbances and because these calls are so frequent and the results are so unpredictable, officers should not be liable for subsequent crimes, absent bad faith. This statutory protection was reinforced in the case of *Fair v. Town of Friars Point*, 930 So. 2d 467, 470-471 (Miss. Ct. App. 2006). Judge Landrum noted the immunity, but did not explain why the provision did not apply. The “good faith” immunity is applicable and should be enforced.

II. Whether Judge Landrum erred in ruling the Laurel Police Department acted in “reckless disregard” by failing to prevent Kenneth Wilson from murdering Lisa Williams?

The most liberal interpretation of the evidence fails to show the officers acted in a willful, wanton and wrongful manner with conscious and deliberate indifference to the results. Judge Landrum made no reference to specific willful, wanton and intentional conduct by the officers. None existed. The officers did not act in “reckless disregard” and are immune under Miss. Code Ann. § 11-46-9(1)(c).

III. Whether Judge Landrum erred by failing to find that the alleged recklessness of the police department was a proximate cause of the death of Lisa Williams?

To be liable, the Court had to find the actions of the officers were a proximate cause of the death of Lisa Williams. In his opinion, the Court made no reference to causation.

The evidence in this case proves the actions of Wilson were the sole cause of the death of Williams. The officers were not actively participating in Wilson's conduct at the time of Williams' death. Kenneth Wilson left the police department long before he went to Williams' house and murdered her. He left the police department in the company and control of his mother. Wilson grabbed a knife and stabbed Williams repeatedly. Wilson made the decision to go back to the home and escalate the conflict. Any temporal connection with the police department is insufficient to establish legal causation in this case.

STANDARD OF REVIEW

The standard of review in a Tort Claims case, following a bench trial, is well-settled in Mississippi law. “A circuit court judge sitting without a jury is accorded the same deference with regard to his findings as a chancellor, and his findings are safe on appeal where they are supported by substantial, credible, and reasonable evidence.” *Broome v. City of Columbia*, 952 So. 2d 1050, 1052 (Miss. Ct. App. 2007), *Ogburn v. City of Wiggins*, 919 So. 2d 85, 88 (Miss. Ct. App. 2005), *Maldonado v. Kelly*, 768 So. 2d 906, 908 (Miss. 2000). The trial court will be reversed when his findings are “manifestly wrong, clearly erroneous or an erroneous legal standard was applied.” *Ogburn*, 919 So. 2d at 88.

The Mississippi Supreme Court reviews errors of law, such as the proper application of the Mississippi Tort Claims Act, *de novo*. *Broome*, 952 So. 2d at 1052, and *Maldonado*, 768 So. 2d at 908. “Notwithstanding our respect for and deference to the trial judge, on matters of law, it is our job to get it right. That the trial judge may have come close is not good enough.” *Walker v. Gallagher*, 926 So. 2d 890, 893 (Miss. 2006)(internal quotations omitted).

ARGUMENT

I. Whether Judge Landrum erred by not enforcing the statute which renders police officers immune for any failure, in good faith, to make a domestic related arrest?

A lawsuit filed against a municipality of Mississippi falls under the exclusive civil tort remedy of the Mississippi Tort Claims Act, which provides for the elements that the plaintiff must satisfy in order to recover. *Howard v. City of Biloxi*, 943 So. 2d 750, 754 (Miss. Ct. App. 2006). As it pertains to the actions of the City's police officers, a number of immunities are applicable.

Miss. Code Ann. § 11-46-9(1)(b) provides that a governmental entity and its employees acting within the course and scope of their employment

. . . shall not be liable for any claim arising out of any act or omission of any employee of a governmental entity exercising ordinary care in reliance upon, or in the execution or performance of, or in the failure to execute or perform, a statute, ordinance or regulation, whether or not the statute, ordinance or regulation be valid.

The applicable statutes in this case are Miss. Code Ann. § 99-3-7(7) and Miss. Code Ann. § 93-21-27. Miss. Code Ann. § 99-3-7(7) provides that a law enforcement officer shall not be held liable in any civil action for the failure, in good faith, to make a domestic violence arrest. Miss. Code Ann. § 93-21-27 states an officer shall not be liable for omission in good faith arising from a domestic incident or failure to make a domestic violence arrest.

The interaction of these statutes has been covered by the Court of Appeals in *Fair v. Town of Friars Point*, 930 So. 2d 467 (Miss. Ct. App. 2006).

The *Fair* case contains striking similarities. In that case, officers were called to the scene of a domestic dispute involving two individuals. There had been an obvious physical altercation in which one individual had pushed the other through a glass coffee table. The officers arrested

the suspect for simple assault but not under the domestic abuse statute. After paying a small fine, the suspect returned to the home and stabbed the victim to death. *Id.* The victims of the decedent argued that the officers should have made an arrest under the domestic abuse statute. The Domestic Abuse Law does make mandatory the arrest of a person if the officer has probable cause to believe a person has committed an act of domestic violence. Miss. Code Ann. § 99-3-7(3)(a). The Court of Appeals, citing the immunity provision of the domestic abuse statute, held that even if the officers owed a duty to the victim (of which the Court of Appeals had some doubt), the statute specifically provided immunity to the officers. *Fair*, 930 So. 2d at 471.

The Court of Appeals, in the *Fair* case, noted that the domestic abuse statute arguably imposes a ministerial duty on officers to make a domestic violence arrest under certain conditions. Importantly, however, the Court of Appeals correctly noted that the legislature saw fit to specifically add a clause imposing immunity on the officers for civil liability if, in good faith, they failed to make an arrest. Thus, even if the officer has probable cause to make an arrest for domestic violence (and we contend the officers did not in this case), the officer may not be held liable for a mistake in not making an arrest, so long as the actions were in good faith. In the context of a domestic violence call, if the officer has probable cause to believe that a person has knowingly committed an act of domestic violence and if the officer acts in bad faith by not making an arrest, only then may the immunity shield be lowered.

Having discussed the legal standard, the facts of this case do not support a finding of bad faith. This Court should carefully review the exhibits consisting of incident reports, videotape, and the trial transcript.

The first problem for the Plaintiff is that there was no evidence that the officers had

probable cause to believe that one or more persons had knowingly committed an act of domestic violence. Judge Landrum cited the wrong standard in his opinion as he stated that, in his opinion, the officers had probable cause to make an arrest. (R. 65). This is not the issue. The question is whether the officers had probable cause to believe that one or more persons knowingly committed an act of domestic violence, not any misdemeanor. Miss. Code Ann. § 99-3-7(3)(a). The officers testified that when they got to the scene, the parties were calm. (Tr. 14). There was no sign of any physical confrontation. Rika Carmichael completed a report saying that the two parties had been in a fuss and that Williams' hair was a bit messy. Wilson had some old blood on his knuckle which he claims he got at work. (Tr. 18). They were milling around and talking calmly when the officers got to the scene. On the second call at Annie Walker's house, Williams was still at her home. The second call had nothing to do with potential domestic violence.

These were not rookie cops. Keller was a 14 year veteran with specific training on domestic abuse regulation techniques and the applicable law. (Tr. 42). Valentine had similar training. There was insufficient probable cause to make an arrest of either party for domestic violence. The officers, to make an arrest, needed evidence that Wilson or Williams, or both, knowing committed domestic violence. Miss. Code Ann. § 99-3-7(3)(a). If Wilson had not returned to Williams' home later that night, no rational and reasonable person looking at this case, would argue that the officers should have arrested one or more of the parties. It is only hindsight which causes one to wish something might have prevented Wilson's actions.

Even if one argues that it was close call whether to arrest Wilson or Williams when Officers Valentine and Keller were at the home on the first call, the evidence does not support a

finding that the officers acted in bad faith. The legislature added the good faith immunity exemption especially for cases such as this one. It is easy to look back and second guess an officer's actions. They chose to separate the parties and have them cool off, not knowing Wilson would later decide to go back to the home and murder his girlfriend. Judge Landrum made no specific finding regarding the good faith immunity protection. He did not explain why it was not applicable. He found that the officers should have made an arrest of some sort (that is not the standard), and he further made the general statement that the officers acted with "conscious indifference" to the consequences of their failure to make an arrest. The evidence belies this finding.

The officers are entitled to rely on this immunity provision, and it alone shields them from liability. Further, the statute comports with the ministerial function immunity provision of the Tort Claims Act which provides that the officers and a municipality are not liable for exercising ordinary care in relying on a statute. See Miss. Code Ann. § 11-46-9(1)(b). The statutory immunity provisions as discussed in the *Fair v. Town of Friars Point* case all support a finding in favor of Laurel.

II. Whether Judge Landrum erred in ruling the Laurel Police Department acted in "reckless disregard" by failing to prevent Kenneth Wilson from murdering Lisa Williams?

The Tort Claims Act protects municipalities from ordinary police protection activities and provides immunity from civil lawsuits:

Arising out of any act or omission of an employee of a governmental entity engaged in the performance or execution of duties or activities related to police or fire protection, unless the employee acted in reckless disregard of the safety and well being of any person not engaged in criminal activity at the time of injury

Miss. Code Ann. § 11-46-9(1)(c). The Mississippi Supreme Court has noted that as a result of

their employment, “[p]olice officers and fire fighters are more likely to be exposed to dangerous situations and to liability, and therefore, public policy requires that they not be liable for mere negligence. Entities engaged in police and fire protection activities will be liable for reckless acts only.” *Maldonado*, 768 So. 2d at 909. In *Willing*, the Mississippi Court of Appeals noted:

Reckless disregard is a higher standard than gross negligence. The standard embraces wilful or wanton conduct which requires knowingly and intentionally doing a thing or wrongful act. Reckless disregard usually is accompanied by a conscious indifference to consequences, amounting almost to a willingness that harm should follow. Reckless disregard has consistently been found where the conduct at issue demonstrated that the actor appreciated the unreasonable risk at stake and deliberately disregarded that risk and the high probability of harm involved. The plaintiff has the burden of proving reckless by a preponderance of the evidence.

Willing v. Estate of Benz, 958 So. 2d 1240, 1247 (Miss. Ct. App. 2007) (“citations omitted”).

The *Fair v. Town of Friars Point* case is illuminating because it also discusses the “reckless disregard” immunity provision of a Tort Claims Act case. In the *Fair* case, the Court further found that the actions of the officers were not in reckless disregard and that their failure to charge the suspect with domestic violence was not willful or wanton. So too in this case, the officers’ failure to make a domestic violence arrest, or any other arrest for that matter, did not constitute “reckless disregard.” Police officers are given wide discretion and great leeway in their day-to-day functions.

The incident report and tape in this case show that the officers acted in a professional and prudent manner. They were calm and cordial with the two individuals when they arrived at the first call. They investigated the scene, interviewed witnesses and made sure that the wishes of Lisa Williams were satisfied. Wilson left the scene, and any potential problem was subsided. The second incident did not involve Williams and Wilson. Wilson was at the home of the victim’s parents. He was calm and cooperative and while he had obviously been drinking, he

was not harming person or property. The persons at the home did not want him arrested, they only wanted him to leave. The officers assisted and transported him to the police station. (R. Exhibit 1, #1073). At the police station, the mother of the suspect picked him up and left the police station. Viewing all the evidence in this case, it cannot be reasonably said that the officers acted in reckless disregard of the safety and well-being of Lisa Williams. Lisa Williams was not in the vicinity of the police department when the police department last saw Wilson leaving with his mother. The hard evidence from the police file disputes any assertion that the officers were consciously indifferent to their actions, willful and wanton and that they virtually intended harm to befall of Lisa Williams. See *Estate of Benz*, 958 So. 2d at 1247.

It is the obligation of the trial court, and this Court, to look at the actions of the officers in present time as they were happening with the circumstances around them.

Just as in the *Fair* case, it cannot be said that the officers knowingly and intentionally failed to charge Wilson with domestic violence or displayed a reckless behavior in their investigation and reporting of the incident. *Fair*, 930 So. 2d at 472. The best spin for the Plaintiff is that a debatable point existed whether to make an arrest.

The Mississippi Tort Claims Act is written in the disjunctive and the subparts should be read as alternative separate and apart from one another. *Pearl River Valley Water Supply District v. Bridges*, 878 So. 2d 1013, 1016 (Miss. Ct. App. 2004).

If any subpart of the statute applies, immunity exists. Thus, the officers in Laurel were entitled to immunity under the “reckless disregard” provision in addition to the ministerial function provision.

III. Whether Judge Landrum erred by failing to find that the alleged recklessness of the police department was a proximate cause of the death of Lisa Williams?

Lost in Judge Landrum's opinion is any reference to proximate cause. A fundamental principle of tort law is that there must be a duty, breach of duty, causation and damages.

Proximate cause requires (1) cause in fact and (2) foreseeability. *Ogburn v. Wiggins*, 919 So. 2d 85, 91 (Miss. Ct. App. 2005).

A "cause in fact" means that the act or omission was a substantial factor in bringing about the injury, and without which the harm would not have occurred. *Id.* Foreseeability means that a person of ordinary intelligence should have anticipated the dangers that his act created for others. It cannot be said that the actions of the officers were a substantial factor in bringing about the murder of Lisa Williams. It is more than a stretch to say that a reasonable person could have anticipated the murder of Lisa Williams.

A helpful case is *Johnson v. Alcorn State University*, 929 So. 2d 398 (Miss. Ct. App. 2006). In the *Alcorn State* case, a deceased student's mother brought a wrongful death action against the university after the student was shot and killed by a non-student during an altercation on the campus. There were allegations that campus police failed to conduct proper check points of visitors, make proper inspection of vehicles, check licenses and similar omissions. The Court noted that if the officers had prevented the suspect from entering the campus, he would not have had an altercation with the victim. The Court nevertheless found the connection tenuous at best and determined that any omissions by the security were not the cause in fact of the death of the victim. The Court further found that the actions of the assailant were not foreseeable. *Id.*

The Court went on to find that the acts of the suspect were an intervening and superceding cause of the death of the victim. A superceding cause is an act of a third person or

other force which by its intervention prevents the actor from being liable for harm to another which his antecedent negligence is a substantial factor in bring about. *Greene v. Dalewood Property Owners Association*, 919 So. 2d 1000 (Miss. Ct. App. 2005).

There are six factors to determine whether an intervening act qualifies as a superceding cause. These factors are:

- (a) the fact that its intervention brings about harm different kind from that which would otherwise have resulted from the actor's negligence;
- (b) the fact that its operation or the consequences thereof appear after the event to be extraordinary rather than normal in view of the circumstances existing at the time of its operation;
- (c) the fact that the intervening force is operating independently of any situation created by the actor's negligence, or, on the other hand, is or is not a normal result of such a situation;
- (d) the fact that the operation of the intervening force is due to a third person's act or to his failure to act;
- (e) the fact that the intervening force is due to an act of a third person which is wrongful toward the other and as such subjects the third person to liability to him;
- (f) the degree of culpability of a wrongful act of a third person which sets the intervening force in motion.

The Court should take particular note of the degree of culpability of the wrongful act of Wilson. He committed murder and is serving a life sentence in Parchman. His actions were intentional and willful and all through his own doing. He operated independent of any other person or entity and on his own volition. The city police department was not actively involved in the incident at the time. There is a temporal connection with the police department as Wilson left the police department in the care and control of his mother. No one knows for sure how he ended up at Williams' house or what may have transpired between the time he left the police

department and the time that he murdered Lisa Williams. Without dispute, Wilson never once, in the officers presence, exhibited a violent nature or made threats against Williams or anyone else.

The decision of Judge Landrum contains an error of law as he failed to address causation and for this reason alone, it cannot be affirmed. See, *Corning v. R. J. Reynolds Tobacco Company*, 868 So. 2d 331, 341 (Miss. 2004)(issue of proximate causation is matter of law to be decided by court). Considering all of the evidence, the trial court could not find proximate cause to exist in this case. It cannot be said that the actions of the officers were a cause in fact of the murder of Lisa Williams, and that it was foreseeable. Further, the most reasonable conclusion is that the actions of Wilson were an intervening and superceding cause of any alleged acts by Wilson.

For this additional reason, Judge Landrum erred in ruling in favor of the Plaintiff.

CONCLUSION

Judge Landrum erred in his ruling against Laurel for the following reasons:

1. Laurel is entitled to the good faith immunity and ministerial immunity provisions of Miss. Code Ann. § 99-3-7(7), Miss. Code Ann. § 93-21-27 and Miss. Code Ann. § 11-46-9(1)(b);
2. Laurel is immune because its officers did not act in “reckless disregard” of the safety and well-being of Lisa Williams under Miss. Code Ann. § 11-46-9(1)(c); and
3. Acts or omissions of the officers were not a proximate cause of the murder of Lisa Williams and further, the acts of Kenneth Wilson were an intervening and superseding cause of her death.

A remand of this case to Judge Landrum for correction of legal errors is not necessary. This Court interprets and applies the law *de novo* and in so doing, this Court should enforce the immunity provisions, consider all of the essential elements of the Plaintiff's claim, and enter judgment in favor of Laurel.

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CERTIFICATE OF SERVICE

I certify that I have served a copy of Brief of Appellant on counsel for all parties by depositing a copy of Brief of Appellant in the United States mail, properly addressed and first class postage prepaid:

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THIS the 9 day of December, 2008.

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