

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

**DON SAUVAGE and GENE J. SAUVAGE,
Individually and as Personal Representatives of the
Estate of ARANKA ABADIE SAUVAGE, Deceased**

APPELLANTS

VS.

CIVIL ACTION NO.: 2008-CA-02116

**MEADOWCREST LIVING CENTER, LLC.,
STEVE YANCOVICH, Administrator of Meadowcrest
Living Center, LLC, TRANSITION HEALTH
SERVICES OF LOUISIANA, LLC, ROBERT R. BATES,
Corporate President of Transition Health Services of
Louisiana, LLC, NEW ORLEANS TOURS, INC.,
JAMES E. SMITH, JR., Representative for New Orleans
Tours, Inc., and JOHN DOES 1-25**

APPELLEES

BRIEF OF APPELLANTS

Oral Argument Requested

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CERTIFICATE OF INTERESTED PERSONS

1. Don Sauvage, Plaintiff/Appellant.
2. Gene J. Sauvage, Plaintiff/Appellant.
3. Stephen W. Mullins of the Law Firm of Luckey and Mullins, PLLC, counsel for Plaintiffs/Appellants.
4. Meadowcrest Living Center, LLC., Defendant/Appellee
5. Steve Yancovich, Defendant/Appellee
6. Transition Health Services of Louisiana, LLC., Defendant/Appellee
7. Robert R. Bates, Defendant/Appellee
8. Corey D. Hinshaw, counsel for Defendants/Appellees.
9. The Honorable William F. Coleman, Hinds County Circuit Court Judge



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APPELLEES

BRIEF OF APPELLANTS

COMES NOW the Appellants, DON and GENE SAUVAGE, individually and as Personal Representatives of the Estate of ARANKA ABADIE SAUVAGE, deceased, by and through undersigned counsel, and file this, their Brief, and in support thereof would show unto this Honorable Court the following, to-wit:

STATEMENT OF THE ISSUES

A. Whether the trial court's memorandum and order granting the Appellee's Motion to Dismiss for Lack of Persona Jurisdiction or Based on Forum non Conveniens constitute reversible error.

STATEMENT OF THE CASE

A. Nature of the case

The complaint in this matter was filed on or about October 3, 2007 in the Circuit Court of Hinds County, Mississippi, alleging negligence, breach of contract and wrongful death. (Sauvage R. 4-60). Appellees, Meadowcrest Living Center, LLC., Steve Yancovich, Transition Health Services of Louisiana, LLC., and Robert R. Bates, filed their answer to Plaintiffs' complaint on or about December 14, 2007. (Sauvage R. 63-73).

On or about January 3, 2008, Appellees filed a Motion to Dismiss for Lack of Persona Jurisdiction or Based on Forum non Conveniens. (Sauvage R. 74-103). Plaintiffs' response to said Motion was filed on or about April 25, 2008. (Sauvage R. 104-128). Appellees filed a rebuttal to Plaintiffs' response on or about June 19, 2008. (Sauvage R. 132-140). Plaintiffs filed a response to said rebuttal on or about July 7, 2008. (Sauvage R. 141-146).

On or about July 8, 2008, Honorable Judge William F. Coleman delivered the opinion for the Court granting Appellees Motion to Dismiss. (Sauvage R. 147-148). Plaintiffs filed a Motion for Reconsideration on or about November 7, 2008. (Sauvage R. 149-152). On or about November 21, 2008 said Motion was denied and the order of July 8, 2008 was affirmed. (Sauvage R. 153). On or about December 17, 2008, Plaintiffs filed a Notice of Appeal. (Sauvage R. 154).

B. Facts

On or about August 25, 2005, Appellees, through Bob Bates of "Management", were made aware that a hurricane was gathering strength over the Gulf of Mexico and had the ability to impact or destroy the "nursing home" found at 535 Commerce

Street, Gretna, LA 70056; yet Appelle Nursing Home made no overt attempt to evacuate the residents of its facility until August 28, 2005, when Hurricane Katrina's landfall was less than twenty-four (24) hours away.

Appellants, Don Sauvage and Gene J. Sauvage, say that their grandmother, Aranka Abadie Sauvage, now deceased, was a resident of the "nursing home" and was not evacuated from the "nursing home" until the afternoon of August 28, 2005, with Hurricane Katrina impacting the "nursing home" early the next day, August 29, 2005. Appellants aver that Appellee Nursing Home had no valid or reasonable evacuation plan for their grandmother, Aranka Abadie Sauvage, and that the 102 elderly and mostly bed-ridden residents of the "Nursing home" were transported in three (3) buses owned and operated by Appelle "Tours" to the UPC camp, located at 1093 Pentecostal Drive, Raymond, MS, which more or less was in the path of the hurricane.

Appellants say that the UPC camp consisted of a large metal building with a
Appellants? all suited to house the elderly, mostly bed-ridden residents of the
that the Appellants' grandmother was confined in the building
which was very hot, humid and smelled of human waste. Thus, Appellees knew or should have known that confining their grandmother to such a facility would lead to serious medical conditions, exacerbate current illness, and even lead to death. Appellants say that the act of confining their grandmother to the rural metal building with a concrete floor, without adequate medical care, breached Appelles' duty to Aranka Abadie Sauvage, and in fact, resulted in her death on September 1, 2005.

STANDARD OF REVIEW

The Appelles cast its Motion as one to dismiss pursuant to Miss.R.Civ.P. 12(b)(2). The standard this Court must apply to a Rule 12(b)(2) Motion to Dismiss is well established. Jurisdictional questions are subjected to a *de novo review*. *Sorrels v*

.R.R. Custom Coach Works, Inc, 636 So.2d 668,670 (Miss.1994); *McCain Builders, Inc. v. Rescuer Rooter, Inc.*, 797 So.2d 952,954 (Miss. 2001); *City of Cherokee v. Parsons*, 944 So.2d 886, 888 (Miss. 2006). In reviewing questions of Jurisdiction this Court is in the same position as the trial court, since all the facts are set out in the pleadings or exhibits. *McDaniel v. Ritter*, 556 So.2d 303, 308 (Miss. 1989); *Yatham v. Young*, 912 So.2d 467, 469 (Miss. 2005).

ARGUMENT

A. INTRODUCTION

No matter how Appellees spin the issue, it is undisputed that Mrs. ARANKA ABADIE SAUVAGE died in the State of Mississippi, while under the control of Appellees, that Appellees brought her to this State and at all times controlled her movement as she could not walk un-aided. For Appellees to callously suggest to the Court that “such plans [the bringing of Mrs. Sauvage to Mississippi] in a Louisiana nursing home **are not matters of particular concern to Mississippi or Mississippians** and should be adjudicated in Louisiana by a Louisiana jury” is an affront to every citizen of this State, and the Court should so rule.

No Mississippian would take lightly the suggestion that Mrs. Sauvage’s death in Mississippi is a Louisiana matter. As will be shown at the trial of this matter, Appellants will show that both the County Sheriff and Mississippi Attorney General looked on Mrs. Sauvage’s death as akin to a crime. Appellees brought her to this State alive and under their control. She died here, and at all times was under the direct control of Appellees. ¹

¹ Interestingly, at Paragraph 11 of their “motion’ Appellees , in reference to the

This Court need go no further than the law of this State. In regard to Mrs. Sauvage's death, Mississippi Code Ann. § 11-11-3 is quite clear in saying that venue is proper "in the county where a substantial alleged act or omission occurred or where a substantial event that caused the injury occurred." Section 3 is specific to "institutions for the aged or infirm," stating that in actions for negligence or malpractice against nursing homes "shall be brought **only** in the county in which the alleged act or omission occurred," as in this action. Appellees cannot, also, make a case for *forum non conveniens* (which, according to 4(a)(i)-(vii), would be difficult to allege, particularly because of provision vii, which allows for consideration of plaintiff's choice). Mrs. Sauvage's death took place in Mississippi and this is where Appellants now want to litigate it, and this Court should allow them to do so.

B. THE LAW

B.1 Mississippi has In Personam Jurisdiction Over Appellees

Mississippi courts apply a two-part test to decide whether personal jurisdiction should be exercised over a non-resident individual defendant and a non-resident corporate defendant. In *Horne v. Mobile Area Water and Sewer Sys.*, the Mississippi Supreme Court described the test as follows:

Whether a Mississippi court may exercise personal jurisdiction over a non-resident defendant is determined

"tort" prong of the Mississippi Long-Arm statute admit jurisdiction. Defendants boldly assert that "[Personal jurisdiction under the "tort" prong of the long-arm statute is proper over a non-resident Defendant only if some part of the tort or torts alleged by the plaintiff take place in Mississippi." Plaintiffs have sued for the wrongful death of Mrs. Sauvage, which took place in this State. Certainly it is "some part of the tort or torts," more succinctly said, it is the tort itself, and it occurred right here, in Mississippi.

through the application of a two-tiered analytical framework. **Two distinct questions must be addressed.** The first question is whether the defendant is amenable to suit here by virtue of Mississippi long-arm statute, Miss. Code Ann. § 13-3-57(rev. 2002), *McDaniel v. Ritter*, 556 So.2d 303, 307 (Miss. 1989). This inquiry is governed by Mississippi law. Assuming an affirmative answer, the second question is whether the defendant is amenable to suit in Mississippi consistent with the due process clauses of the federal constitution, and, as well, this state's constitution. *Id.* at 308. **This inquiry is controlled by federal law. (Emphasis provided)**

Horne v. Mobile Area Water and Sewer Sys., 897 So.2d 972, 976 (Miss. 2004). To satisfy the first prong of the *Horne* test, Defendants must have been engaged in actions which would trigger the state's long-arm statute, either by (1) **the commission of a tort in whole or in part in Mississippi**, (2) by entering into a contract in Mississippi or, (3) **"[Such defendants]. . . who shall do any business or perform any character of work or service in this state, shall by such act or acts be deemed to be doing business in Mississippi and shall thereby be subjected to the jurisdiction of the Courts of this state."** Miss. Code Ann. § 13-3-57 (Supp. 2000).

Appellees have been sued for a tort which took place in this State, which **satisfies the first element of the Mississippi long-arm statute.** Appellees, as will be shown at trial, had a contract in this State with the United Pentecostal Church for shelter for Mrs. Sauvage, so the **second part of the statute is likewise satisfied.** As to the third part, Appellees cannot deny that **their profession was/is the providing of nursing home care**, and that under this profession, they brought Mrs. Sauvage to this State alive, under their total care, and death resulted from this care. Miss. Code Ann. § 13-3-57 is therefore satisfied.

If the long-arm statute is triggered, then, to satisfy the second prong of the *Horne* test, the Court will analyze whether or not the Appellees have sufficient "minimum contacts" with the forum state that would demonstrate that the Appellees have purposely availed themselves of the laws and benefits of the State, making the

exercise of personal jurisdiction consistent with constitutional due process. In the present case, despite Appellees' protests to the contrary, Appellees have sufficient minimum contacts with the forum state as required by *International Shoe*. *International Shoe Co. v. State of Washington*, 326 U.S. 310 (1945). To satisfy minimum contacts, Mississippi courts have held that a contact as minimal as a non-resident's transmission of a single email to a Mississippi recipient satisfied the "doing-business" prong of the long-arm statute. *Internet Doorway, Inc. v. Parks*, 138 F. Supp. 2d 773 (S.D. Miss. 2001). In *Parks*, the Defendants, in advertising a pornographic website, sent precisely one e-mail to Mississippi residents; under an analysis of the Mississippi long-arm statute, the federal district court held that this was an attempt to solicit business for a particular website and was, therefore, "a purposeful act that occurred in Mississippi, just as if she had sent, via United States Mail, a letter to the Mississippi resident advertising a particular product or service." 138 F. Supp. at 776.

In the present case, Appellees have much more than email contacts with the state: Appellees were physically present in the state when the tortious activities occurred. Mrs. Sauvage's wrongful death occurred on the damp concrete floor of a retreat center in Mississippi, where she had been transported, in the hands of Appellees. Her untimely demise was caused by the actions of the Appellees which had negligently failed to provide proper care as a nursing home care provider. Additionally, Appellees, as stated above, entered into the world of **contracts** with the United Pentecostal Church **to utilize the UPC's retreat facilities in Raymond, Mississippi, as an evacuation center**, however inadequate the center may have been for the purposes which Appellees utilized it. Appellees, therefore, were present in the forum state and entered into a contract with a Mississippi entity, thus satisfying the minimum contacts requirement of *International Shoe*.

Appellees, in their Motion to Dismiss, allege that the *International Shoe* minimum contacts standard has not been satisfied. The facts, however, clearly reveal that this standard has been exceeded for purposes of personal jurisdiction. Additionally, hailing Appellees into court in the state in which Appellees committed substantial tortious activities, after bringing the subject of the tort to Mississippi, hardly offends “traditional notions of fair play and substantial justice,” as Appellees have alleged in their motion. Because Appellees maintained a physical presence in Mississippi, Mississippi is the proper venue for this dispute.

Additionally, most of the witnesses will be Mississippi residents, including the law enforcement authorities who investigated the matter. Certainly the Appellees have “minimum contacts with a state if the defendant has purposefully directed his activities at residents of the forum.” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985). Appellees did not accidentally arrive in Mississippi, they purposefully pursued their activities in this forum and thus this is the proper place to litigate this dispute, and the Court should so rule.

B.2. Mississippi has In Personam Jurisdiction Over Appellees Pursuant to Mississippi’s Long-Arm Statute.

Mississippi’s long-arm statute provides for jurisdiction to be exercised over non-resident persons or corporations “who shall do **any business or perform any character of work or service in this state** [Such non-resident persons or corporations] shall, by such act or acts be deemed to be doing business in Mississippi and shall thereby be subjected to the jurisdiction of the courts of this state.” Miss. Code Ann. § 13-3-57 (rev. 2002) [emphasis provided]. Appellees certainly were “doing business” in bringing Mrs. Sauvage to Mississippi, thus meeting this

prong of our long-arm statute which requires that the actions and contacts of the Defendants must necessarily be related to the factual circumstances from which this litigation arose. This is certainly found in the instant matter; Appellees were in Mississippi pursuant to a business contract.

It is well-settled law that the “doing-business” prong of the Mississippi long-arm statute applies to both individuals as well as corporations. *Brown v. Flowers Industries, Inc.*, 688 F.2d 328 (5th Cir. 1982). This is clear in this dispute as Appellees were in Mississippi “doing business” pursuant to their contract with the recreational center and their contract with the family of the deceased, as well as the deceased. *In Estate of Jones v. Phillips*, 992 So.2d 1131 (Miss. 2008), Defendants argued that the Mississippi long-arm statute did not apply to their case as the medical offices they had in the state of Mississippi were considered timeshare offices and spaces that they rented for half a day. The Supreme Court held that Defendants subjected themselves to suit under the “doing business” component of the long-arm statute. *Id.* at 1139. Similarly, in the case at hand, Appellees had a business contract that allowed them to utilize the UPC’s retreat facilities in Raymond, Mississippi, as an evacuation center. Therefore, the “doing business” prong of the Mississippi long-arm statute subjects Appellees to suit in the state of Mississippi.

Under the tort prong in the Mississippi long-arm statute, “[Personal jurisdiction is proper if any element of the tort (or any part of any element) takes place in Mississippi.” *Paz v. Brush Engineered Materials, Inc.* 445 F.3d 809, 812 (5th Cir. 2006). In *Paz*, a product manufactured by a foreign corporation caused injuries to Mississippi residents. 445 F.3d at 811. While it was acknowledged by the *Paz* Court that no negligent act took place in Mississippi, the fact that Mississippi residents were

injured in Mississippi was sufficient under the tort-prong for a Mississippi court to exercise jurisdiction. 445 F. 3d at 812-13.

The case of *Thompson v. Chrysler Motors Corp.* provides further support for the exercise of jurisdiction under the tort prong. 755 F.2d. 1163 (5th Cir. 1985). There, the court held that “the tort is not complete until injury occurs and **if the injury occurs in this state**, then, under the amended statute, the tort is committed, at least in part, in this state, and [in] personam jurisdiction of the non-resident tortfeasor is conferred upon the Mississippi court.” *Thompson* 755 F. 2d at 1168. While the alleged tortfeasor in *Thompson* committed the tort in Alabama, the tort caused an injury – namely a wrongful death arising out of a vehicular accident – **in Mississippi**. The Court held that jurisdiction was properly exercised. *Thompson*, 755 F. 2d at 1168; See also *Fava Custom Applicators, Inc. v. Cummons Mid-America, Inc.*, 707 F. Supp. 224 (N.D. Miss. 1995) (For purposes of the “tort prong” of Mississippi’s long-arm statute, a tort occurring outside the state which causes injury within the state confers jurisdiction over Defendant); *Wilkinson v. Merchantile Nat. Bank*, 529 So. 2d 616 (Miss. 1988) (Tort is divided into its four elements and if damage occurs in this state, then **the tort is committed in this state at least in part and jurisdiction is proper** under tort prong).

It is well settled Mississippi law that a tort is not complete until an injury occurs. See e.g. *McMillan v. Puckett*, 678 So.2d 652, 653 (Miss. 1996). Further, in a wrongful death action, “. . . **there is no injury, and hence no cause of action until a death occurs.**” *Id.* at 653 [emphasis supplied]. The Appellants’ wrongful death claim injury occurred in Mississippi, the place of Mrs. SAUVAGE’s death. The negligent acts of Appellees also occurred here and even if some occurred in Louisiana,

it is still clear that the ongoing injury to the Appellants' decedent occurred in Mississippi.

The *Horne* case, discussed *supra*, demonstrates how a foreign defendant's actions can result in injury in Mississippi, conferring jurisdiction under the tort prong. There, the Mobile, Alabama Area Water and Sewer System released water from a reservoir which flowed into the Mississippi, causing damage to property owners. *Horne*, 897 So. 2d at 973. All the actions of the defendant occurred in Alabama; however, the resultant injury – the damage caused by the water flowing into Mississippi – occurred in the forum state. *Id.* at 976. The reviewing Court, sitting *en banc*, unanimously held that the exercise of jurisdiction over the Alabama governmental entity was proper even though there was no finding that the defendant availed itself of the benefits of the forum state. *Id.* at 979. Here, the Appellees were actively managing nursing home patients in Mississippi and availing themselves of this state's benefits. (Rec. Supp., Wright at 12, R.E. 240; Rec. Supp., Roberts at 25-26, R.E. 275-276).

It is clear that Appellees, by causing the injury and death of Mrs. Sauvage in Mississippi are amenable to jurisdiction under the tort prong of the long-arm statute.²

Within a Fourteenth Amendment analysis, a long line of cases has held that "minimum contacts" can give rise to two completely different types of jurisdiction: "general jurisdiction" and "specific jurisdiction." In *Internet Doorway Inc. v. Parks*, 138 F. Supp. 2d 773 (S. D. Miss. 2001) the court described the difference between specific and general jurisdiction as follows:

²While it is only necessary that one prong of the long-arm statute be noted that Plaintiffs' make no assertion that the "contract prong" is met.

← ?

When the activities that establish personal jurisdiction are also the basis of the suit in question, a relationship among the defendant, the forum, and the litigation is the essential foundation of *in personam* jurisdiction. *Id.* Contacts of this type allow a forum to invoke specific jurisdiction. *Heleicopteros Nacionales De Colombia, S.A. v. Hall*, 466 U.S. 408 (1984). However, when the contacts have nothing to do with the subject matter of the litigation, the forum is said to exercise general jurisdiction. Under such circumstances defendants can be subject to general *in personam* jurisdiction if they have continuous and systematic contacts with the forum state.

Internet Doorway Inc. v. Parks, 138 F. Supp. at 778. [quotes and internal citations omitted].

Appellees have such contacts.

B.3 General Jurisdiction

Appellees, as non-resident defendants will be found to have “minimum contacts” with a forum state when they purposely avails themselves of the privilege of conducting activities within the forum state, thus invoking the *benefits and protections* of its laws. Appellees cannot suggest to this Court that they have not purposely availed themselves of the privilege of conducting activities within Mississippi, and invoking the benefits thereof, as this is an absolutely indefensible position. Appellees maintained a contract with a Mississippi entity, transported Louisiana citizens to it, and used the entity, with Mrs. Sauvage and at least one other individual dying while under the care and control of Appellees at their leased Mississippi location.

The fact that general jurisdiction may be asserted over Appellees is clear. Appellees purposefully entered into Mississippi to do the business of providing care for Mrs. Sauvage and more than 100 other individuals, and bringing Mrs. Sauvage with them. Thus Appellees had “continuous and systematic contacts” with Mississippi.

More significant is whether the contacts suggest that the non-resident Defendants purposefully availed themselves of the benefits of the forum state.” *Brown*

v. Flowers, 688 F. 2d 328, 333 (5th Cir. 1982). Not only did Appellees use the camp grounds, they used local hospitals and law enforcement entities, thus for general jurisdiction to attach, the nature of the contacts by a defendant must have been “purposeful.” See, e.g., *Lofton v. Turbine Design, Inc.* 100 F. Supp. 2d 404 (N.D. Miss. 2000). It is not a prerequisite to general jurisdiction that the non-resident defendant “physically enter” the forum state, although it is highly persuasive if, in fact, the Appellees have done so. *Burger King*, 471 U.S. 462.

It is beyond dispute that Appellees’ presence in Mississippi was “purposely directed toward the forum state.” See *Asahi Metal Industry Co. v. Superior Court*, 480 U.S. 102, 112 (1987). Appellees entered Mississippi specifically for the purpose of removing their “residents” from the path of a hurricane. In the landmark case of *Burger King*, the United States Supreme Court held:

Moreover, where individuals *purposefully derived benefit* from their interstate activities it may well be unfair to allow them to escape having to account in other states for consequences that arise proximately from such activities; the due process clause may not readily be wielded as a territorial shield to avoid interstate obligations that have been *voluntarily assumed* and because modern transportation and communications have made it much less burdensome for a party sued to defend himself in a state where he engages in economic activity, it usually will not be unfair to subject him to the burdens of litigating in another forum. . .”

471 U.S. at 473-4. [emphasis provided].

There is no conceivable burden which can be claimed by defending a cause of action in the state in which the Appellees are found doing business, and moreover, committing a tort in the same state.

While the exercise of *either* general or specific jurisdiction is all that is required to meet Fourteenth Amendment due process concerns, for the reasons discussed below, it is clear that specific jurisdiction also attaches to Appellees.

B.4. Specific Jurisdiction

Specific jurisdiction is based on contacts with the forum state that are related to the underlying cause of action. *See eg. Mason v. Shelby County Healthcare Corp.*, 919 F. Supp. 235 (S. D. Miss. 1996). Further, a single contact with the state can support the exercise of jurisdiction if the Defendant “purposefully directed” his activities at residents of the forum state. *Horne*, at 897 So. 2d at 979-80 (Miss. 2004). A single phone call has definitively been held to provide for a basis of the exercise of specific jurisdiction in our courts. *Brown*, 688 F. 2d. at 333. In cases specifically involving the exercise of specific jurisdiction, the analysis has focused on **which party initiated the contact**. *Mason v. Shelby County Healthcare Corp.*, 919 F. Supp. 235, 237-38 (S.D. Miss. 1996). Clearly it was Appellees. If Appellees had not brought Mrs. Sauvage to Mississippi, then she could not have died in Mississippi, clearly establishing a relationship to the underlying cause of action.

Appellees are subject to specific *in personam* jurisdiction as they made the initial contact by contracting with a Mississippi entity, the owners of the camp ground.

Against this backdrop, the Appellees are subject to specific jurisdiction in Mississippi, and the Court should so rule.

B.5. Fair play, substantial justice and Mississippi's interest

This Court must also determine whether “the exercise of . . . jurisdiction in this case would be fair and reasonable, considering the burden on the Defendants, the interests of the forum state, the interest of the Plaintiffs in obtaining relief and the intents of the several states.” *Rittenhouse v. Mabry*, 832 F. 2d 1380 (1987); *Asahi Metal Indus.*, 480 U.S. at 113; *World-Wide Volkswagen Corp. v. Woodson*, 444 U. S. 286, 292 (1980).

In the case at bar, it is overwhelmingly fair to subject Appellees to jurisdiction in Mississippi – a state in which the tort occurred, a state in which the majority of

witnesses are found, and a state in which Appellees had contracted for services which lead to the death of Mrs. Sauvage. If it was "convenient" for the Appellees to bring Mrs. Sauvage to our state, [evidence will demonstrate that her family was told she was to go to elsewhere] then they may reasonably expect to be haled into court here In *Brown*, the Fifth Circuit described the fairness analysis in this manner:

When a defendant purposely avails himself of the benefits and protection of the forum's laws – by engaging in activity . . . outside the state that there is reasonably foreseeable consequences in the state – maintenance of the lawsuit does not offend traditional notions of fair play and substantial justice.

688 F 2d. at 333.

In the case at bar, Appellees availed themselves of this forum's benefits as found above. Instructive is the case of *Gardner v. Clark*, 101 F. Supp. 2d. 468 (N.D. Miss. 2000). In that case, concert promoter, Dick Clark, was subject to the jurisdiction of the Mississippi courts for alleged torts arising out of a concert to be performed in Mississippi, despite the fact that Clark was a non-resident. *Id.* at 469. The Court there found that no burden could be demonstrated by the defendant since he had purposefully come into Mississippi to hold the concert. *Id.* at 477.³ Of course, the same situation exists here.

Another significant factor in the fairness analysis is the interest of the forum state in resolution of the controversy. See, e.g. *Waffenschmidt v. MacKay*, 763 F. 2d. 711, 722, (5th Cir. 1985). In this cause, Mississippi has an overwhelming interest in protecting its citizens and other citizens from torts committed by out-of-state entities that purposefully, systematically, and continuously avail themselves of the benefits of Mississippi.

³See also *American Cable Corp. v. Trilogy Communications, Inc.*, 754 So. 2d. 545, 552 (Miss. Ct. App. 2000)(not unreasonable to hale a Florida defendant into a Mississippi Court as Mississippi has an interest in providing a means of redress for its citizens).

Appellees came into Mississippi to do business. It is simply an untenable position for the Appellees to claim that they should be immune from the jurisdiction of this forum, when they have enjoyed the benefits of our state.

CONCLUSION

Considering the argument of Appellants, as found above, the Court should make short work of Appellees' exceptions to this dispute being heard in Mississippi and deny Appellees' motion. Further, Appellants pray for attorneys' fees and all costs associated with this matter to which they may be entitled.

RESPECTFULLY SUBMITTED this, the 21st day of April, 2009.

DON SAUVAGE and GENE J. SAUVAGE, Individually
and as personal representatives of
the Estate of ARANKA ABADIE SAUVAGE, deceased,
Plaintiffs

By and Through Their Attorneys of Record,
LUCKEY & MULLINS, PLLC

By 

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CERTIFICATE OF SERVICE

I, STEPHEN W. MULLINS, attorney for Plaintiffs/Appellants, certify that I have this day forwarded this Brief to the Clerk of this Court and have served a copy of same by U. S. Mail with postage prepaid on the following persons:

Honorable William F. Coleman
Hinds County Circuit Court
Post Office Box 999
Raymond, MS 39154

Corey D. Hinshaw, Esq.
Post Office Box 650
Jackson, MS 39205.

THIS, the 21st day of April, 2009.



STEPHEN W. MULLINS