IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

CASE NO. 2008-CA-02123

REBUILD AMERICA, INC. PLAINTIFF/APPELLANT

VERSUS

DAVID EARL JOHNSON, INDIVIDUALLY
AND IN HIS OFFICIAL CAPACITY AS
CHANCERY CLERK OF PEARL RIVER
COUNTY, MISSISSIPPI, AND DAVID ALLISON,
INDIVIDUALLY AND IN HIS OFFICIAL
CAPACITY AS SHERIFF OF PEARL RIVER
COUNTY, MISSISSIPPI DEFENDANTS/APPELLEES

BRIEF OF APPELLEE DAVID EARL JOHNSON, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS CHANCERY CLERK OF PEARL RIVER COUNTY

APPEAL FROM THE CIRCUIT COURT OF PEARL RIVER COUNTY, MISSISSIPPI

ORAL ARGUMENT NOT REQUESTED

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CASE NO. 2008-CA-02123

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DAVID EARL JOHNSON, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS CHANCERY CLERK OF PEARL RIVER COUNTY, MISSISSIPPI, AND DAVID ALLISON, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS SHERIFF OF PEARL RIVER COUNTY, MISSISSIPPI — DEFENDANTS/APPELLEES

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following list of persons or parties have an interest in the outcome of this case. These representations are made in order that the judges of the Supreme Court may evaluate possible disqualification or recusal.

1. Rebuild America, Inc., Plaintiff/Appellant;
2. David Earl Johnson, Chancery Clerk of Pearl River County, Post Office Box 431, Poplarville, Mississippi 39470, Defendant/Appellee;
3. David Allison, Sheriff of Pearl River County, 200 S. Main, Poplarville, Mississippi 39470, Defendant/Appellee;
4. Kimberly P. Turner, Esq., E. Barry Bridgeforth, Esq., Henry, Barbour, DeCell & Bridgeforth, Ltd., Post Office Box 4681, Jackson, Mississippi 39296, Attorneys of Record for Plaintiff/Appellant, Rebuild America, Inc.;

5. J. L. Wilson, IV, Esq., Upshaw, Williams, Biggers, Beckham & Riddick, LLC, Post Office Drawer, 8230, Greenwood, Mississippi 38935-8230, Attorney of Record for Defendant/Appellee, David Allison, Sheriff of Pearl River County;

6. Terry R. Levy, Esq., Brenda B. Bethany, Esq., Daniel Coker Horton & Bell, P.A., Post Office Box 1084, Jackson, Mississippi 39215, Attorneys of Record for Defendant/Appellee, David Earl Johnson, Chancery Clerk of Pearl River County;

7. Joseph H. Montgomery, Esq., Williams Williams & Montgomery, Post Office Box 113, Poplarville, Mississippi 39470-0113, also Attorney of Record for Defendant/Appellee, David Earl Johnson, Chancery Clerk of Pearl River County; and

8. Honorable Prentiss Greene Harrell, Circuit Judge, Post Office Box 488, Purvis, Mississippi 39475.

Respectfully submitted, this the 8 day of October, 2009.

By: Brenda B. Bethany
BRENDA B. BETHANY

STATEMENT REGARDING ORAL ARGUMENT

David Earl Johnson, individually and in his official capacity as the Chancery Clerk of Pearl River County, Mississippi, as Appellee, submits the record and briefs of counsel will be sufficient for appellate review of the decision of the circuit judge, and that oral argument would not aid significantly to the decisional process.

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STATEMENT OF THE CASE

A. PROCEEDINGS AND DISPOSITION IN THE COURT BELOW

The instant suit is a complaint against David Earl Johnson ("Johnson"), individually and as Chancery Clerk of Pearl River County, Mississippi, and David Allison ("Allison"), individually and as Sheriff of Pearl River County, Mississippi, for alleged breach of official duties in allegedly causing Rebuild America, Inc.'s ("Rebuild America") tax deed to be set aside. On November 2, 2006, Robert and Patricia Milner ("Milners") filed suit against Rebuild America to set aside the tax sale of their property and a quitclaim deed they had given Rebuild America. Rebuild America filed a counterclaim against the Milners, seeking to acquire clear title to the property and for unlawful entry and detainer against the Milners. On December 14, 2007, a Judgment Setting Aside Tax Sale and Deed was entered, which included a provision for a refund of taxes paid to Rebuild America. The decision was appealed by Rebuild America, and was affirmed by the Mississippi Court of Appeals *in Rebuild America v. Milner*, 7 So.3d 972 (Miss. Ct. App. 2009).

On May 27, 2008, while the *Milner* suit was on appeal, Rebuild America filed the instant suit. On page 5 of the Brief of Appellant, Rebuild America states it intends to assert "reckless disregard, negligence and/or gross negligence" against Johnson and Allison. Such causes of actions are torts covered by the Mississippi Tort Claims Act ("MTCA"). Rebuild America sought damages allegedly sustained by its alleged ownership interest by virtue of a quitclaim deed in the property being set aside, including, but not limited to acquisition costs, lost profits, attorney's fees and court costs.

Johnson responded with a Motion to Dismiss on the following bases: (1) Johnson had tendered into the registry of the Court for distribution to Rebuild America the sum of $2,940.87 as full refund of all purchase money paid for the tax parcel in question; (2) Rebuild America previously made factual allegations in the *Milner* case in the Court of Appeals of Mississippi that Johnson fully complied with his statutory duties to provide notice of redemption to the property owner and lienholder in this matter and was thereby judicially estopped from proceeding with this action; (3) Johnson moved the Court to dismiss the Complaint for failure to state a claim upon which relief can be granted pursuant to Mississippi Rule of Civil Procedure 12(b)(6); (4) Johnson moved the Court to dismiss the Complaint for failure to comply with the service, notice and other mandates of the MTCA; (5) Johnson moved the Court to dismiss the Complaint because he had statutory immunity; (6) Johnson moved the Court to dismiss the Complaint because he cannot be subject to personal liability; and (7) Johnson moved the Court to dismiss the Complaint because Rebuild America lacked standing to proceed with the action. Allision filed a Joinder in the Motions to Dismiss of Johnson.

A hearing was held on the Motions to Dismiss (R. Vol. 5) and on December 1, 2008, Circuit Court Judge Prentiss Greene Harrell's Order granting the Motions to Dismiss was entered.

Judge Harrell held a Rule 12(b)(6) dismissal was warranted for the following reasons: (1) a purchaser cannot be granted relief based on a defect in title of which he had notice when he contracted; (2) the entire amount of damages which the tax sale purchaser may recover had been tendered into the registry of the court; and (3) any claim for damages is

governed by the MTCA, under which no notice of claim was filed, no employee of a political subdivision can be held personally liable, and the statute of limitations had run. The trial judge dismissed the case with prejudice.

On December 29, 2008, Rebuild America filed its Notice of Appeal with this Court.

B. STATEMENT OF RELEVANT FACTS

By Warranty Deed executed December 15, 2000, Robert K. Milner and Patricia K. Milner became owners of certain real property in Pearl River County, Mississippi commonly known as 309 Rouse Street, Poplarville, MS, and being tax parcel number 2159310010301100. (C.P. 1:11).

On December 19, 2000, the Milners executed a Deed of Trust to Jim Walter Homes, Inc. securing the purchase price for construction of a new home on the property described above. (C.P. 1:11) The Deed of Trust was recorded and subsequently assigned seven times. (C.P. 1:77; 79). The last assignment of record was to First Union National Bank. (C.P. 1:111). The Milners failed to pay the 2002 *ad valorem* taxes and the property was sold for taxes on August 25, 2003 to Wachovia Bank for Magnolia Investors, LLC. (C.P. 1:11).

Notice of the tax sale was mailed to "Robert K. Milner et ux" by Johnson. Robert Milner signed the return receipt on June 16, 2005. (C.P. 1:16). Likewise, a Notice to Lienor was mailed to First Union National Bank. The return receipt was signed and dated by the bank on June 19, 2005. (C.P. 1:16).

Rebuild America, Inc. allegedly acquired title to the property at issue by virtue of a Quitclaim Deed from Wachovia Bank, N.A., for Magnolia Investors, LLC, dated October 18, 2005. (C.P. 1:12). As pointed out by the chancellor in the judgment in the *Milner* case, there is no authority of record for Wachovia Bank, N.A. to act for Magnolia Investors, LLC. (C.P. 1:12). In fact, Rebuild America obtained a quitclaim deed from the Milners to "clear up their file." (C.P. 1:12). The October 18, 2005 quitclaim deed and assignment from Wachovia Bank, N.A. for Magnolia Investors, LLC to Rebuild America, Inc. specifically states the interests of the grantor are quitclaimed "as is" and "where is." (C.P. 1:81). It also provides that the property transfer is made "subject to any outstanding . . . clouds of title not deriving from the grantor." (C.P. 1:81).

On November 2, 2006, Rebuild America was sued by the Milners seeking to set aside the tax deed and the quitclaim deed they gave to "clear up the title". (C.P. 1:73-85). The Milners claimed Johnson had failed to notify Ms. Milner individually and failed to send the lienholder's notice to the proper address. They also claim there was a Sheriff's lack of return on the notice, as required by Miss. Code Ann. § 27-43-3. (C.P. 1:73-85). At the trial on these issues in the *Milner* suit, Rebuild America's corporate representative testified that Rebuild America had an opportunity to look at the documents from the tax sale and the tax deed prior to obtaining a quitclaim deed and assignment from Magnolia Investors. (C.P. 3:438). The representative further testified Rebuild America was specifically aware of the law regarding tax sales in Mississippi and the statute that controls the process, (R. 000442) and that the lack of a Sheriff's return in the tax sale file was known to them at the time they took the deed to the property. (C.P. 3:438). Rebuild America had its grantor's title examined by a title

insurance company and Tax Title Services worked with Rebuild America to try to cure the issues. (C.P. 3:446).

In the *Milner* case, Rebuild America filed a Motion to Dismiss, stating that Johnson had provided the requisite notice to the Milners:

> Plaintiffs allege in this complaint that the 2002 tax sale should be set aside by reason of the failure of the Chancery Clerk of Pearl River County, Mississippi to provide notice to the landowners as required by law pursuant to the provisions of section 27-43-1, *et seq.*, Miss. Code Ann. The individuals to whom taxes were assessed, however, were provided with the requisite notice under the statute and, in addition thereto, Plaintiff Wachovia Bank's admitted predecessor in title, namely First Union National Bank also received the required notice in accordance with Mississippi statute, all as evidenced by Exhibit "C," attached hereto. **Thus, the tax sale was conducted properly and no basis exists upon which to set-aside the same.**

(Emphasis added.) (C.P. 1:86).

Rebuild America also alleged in its Motion to Dismiss in the *Milner* suit that the Milners had no right to challenge the tax sale because of the quitclaim deed they gave to Rebuild America:

> Mr. and Mrs. Milner transferred any and all right, title and interest they may have had in the property to Defendant Rebuild America as of the date of the quitclaim conveyance, thereby relinquishing any right to challenge the subject tax sale.

(C.P. 1:87-99).

Johnson has tendered into the registry of the Court for distribution to Rebuild America $2,940.87 as full refund of all purchase money paid by Rebuild America for the tax parcel in question. (C.P. 1:57).

Rebuild America admits it never served a notice of claim pursuant to the notice provisions of the MTCA prior to filing suit. (See Brief of Appellant at p. 14).

SUMMARY OF THE ARGUMENT

Johnson has sovereign immunity for acts occurring within the course and scope of his duties. Johnson owes no duty to Rebuild America. Rebuild America has suffered no damages. The Mississippi Tort Claims Act is applicable to Rebuild America's claim. Rebuild America did not provide the requisite notice under the MTCA and the statute of limitations has run. Rebuild America should be judicially estopped from asserting its claim.

ARGUMENT

STANDARD OF REVIEW

A motion to dismiss under rule 12(b)(6) of the Mississippi Rules of Civil Procedure raises an issue of law, which is reviewed under a *de novo* standard. *Cook v. Brown*, 909 So. 2d 1075, 1077-78 (Miss. 2005). This Court also applies a *de novo* standard of review to questions involving the application of the Mississippi Tort Claims Act. *Johnson v. Alcorn State Univ.*, 929 So. 2d 398 (Miss. Ct. App. 2006).

I. NO INDIVIDUAL ACTION AGAINST JOHNSON CAN BE MAINTAINED

Johnson, as an employee of a governmental entity, cannot be held personally liable for an act or omission occurring within the course and scope of his duties. Miss. Code Ann. § 11-46-7 (Rev. 2002). All claims Rebuild America has asserted against Johnson are against him in his official capacity as chancery clerk. The lower court was correct in dismissing the individual claims against him with prejudice.

II. THE LOWER COURT PROPERLY GRANTED THE MOTIONS TO DISMISS BASED UPON RULE 12(b)(6) OF THE MISSISSIPPI RULES OF CIVIL PROCEDURE

A. Rebuild America's Complaint Fails to State a Claim Because of a Lack of Duty

Rebuild America has failed to show that Johnson owes any duty to it. A purchaser at a tax sale buys strictly under the rule of *caveat emptor*. In *Parsons v. Marshall*, 139 So. 2d 833, 837 (Miss. 1962) this Court stated:

> In the absence of a specific statutory provision to the contrary, neither the state or any public body participating in the [tax] sale makes a warranty. If the purchasers' title is ultimately defective for a lack of compliance with the law concerning proceedings leading up to the sale or in the conduct of the sale, that party has no affirmative remedy other than that which is provided by statute. *Id.* A failure to secure a good title to the property because of the invalidity of the tax sale does not serve as a basis for the purchaser to recover the amount paid for the property unless some statute provides for a remedy.

The October 18, 2005 quitclaim deed and assignment from Wachovia Bank, N.A. for Magnolia Investors, LLC to Rebuild America specifically provides that the property transfer is made "subject to any outstanding . . . clouds of title", and specifically acknowledges that no representations or warranties are made regarding title to the property other than it was awarded a tax certificate and tax title and that the property was purchased in "as is" and "where is" condition.

In *Everett v. Williamson*, 163 Miss. 848, 143 So. 690 (1932), this Court noted tax sale purchasers are charged "with notice and knowledge of the existing statutory requirements for a valid sale." Rebuild America's corporate representative testified at the trial

in the *Milner* case that Rebuild America was aware of issues with the tax sale at the time that they took the questionable quitclaim deed to the property in question from Wachovia.

B. Rebuild America's Complaint Fails to State A Claim Because of a Lack of Damages

Section 27-45-3 of Miss. Code Ann. provides in pertinent part:

> Should the clerk inadvertently fail to send notice as prescribed in this section, then such sale shall be void and the clerk shall not be liable to the purchaser or owner upon refund of all purchase money paid.

Miss. Code Ann. § 27-45-3 (2002).

On August 20, 2008, Johnson tendered into the registry of the Court for distribution to Rebuild America the sum of $2,940.87 as full refund of the purchase money paid for the tax parcel. Pursuant to Section 27-45-3, there can be no further statutory liability of Johnson. In *Lawrence v. Rankin*, 870 So. 2d 673, 677 (Miss. Ct. App. 2004), the Court of Appeals found there was no provision in the law for the assessment of attorney's fees in a case under Section 27-45-3 involving redemption of land sold for taxes. Rebuild America's only remedy, if any, is for the statutory amount which has already been paid into the registry of the Court for distribution to Rebuild America.

III. THE LOWER COURT PROPERLY DISMISSED THE CLAIMS OF REBUILD AMERICA WITH PREJUDICE UNDER THE MISSISSIPPI TORT CLAIMS ACT

A. Applicability of Mississippi Tort Claim Act

The Mississippi Legislature partially abrogated sovereign immunity in 1983 with the passage of the Mississippi Tort Claims Act. Prior to the passage of the MTCA, state

officials were immune from liability for negligent acts while engaging in official functions. Miss. Code Ann. § 11-46-1 through 11-46-23 (2001).

The MTCA declares:

> The remedy provided by this chapter against a governmental entity or its employee *is exclusive of any other civil action or civil proceeding by reason of the same subject matter against the governmental entity or its employee* or the estate of the employee for the act or omission which gave rise to the claim or suit; and any claim made or suit filed against a governmental entity or its employee to recover damages for any injury for which immunity has been waived under this chapter shall be brought only under the provisions of this chapter, notwithstanding the provisions of any other law to the contrary.

Miss. Code Ann. § 11-46-7(1) (rev. 2002) (emphasis added).

As stated in this provision, the remedy provided by the MTCA is exclusive of any other civil action against Johnson to Rebuild America's claims against him. Section 11-46-5 of the Mississippi Code waives immunity for actions against "governmental entities and the torts of their employees while acting within the course and scope of their employment. . . ." Miss. Code Ann. § 11-46-5(1) (rev. 2002). It is a rebuttable presumption that any act of an employee is within the course and scope of his employment. Miss. Code Ann. § 11-46-5(3) (rev. 2002). Rebuild America does not claim Johnson was acting outside the scope of his employment. In fact, Rebuild America claims Johnson failed to perform statutory duties. Clearly, Johnson's actions are within the scope of his employment. Therefore, Rebuild America's suit "shall be brought only under the provisions of [the MTCA], notwithstanding the provisions of any other law to the contrary." Miss. Code Ann. § 11-46-7(1) (rev. 2002).

Rebuild America argues in its brief that its suit is one against the clerk on his official bond for failure to comply with a statutory duty rather than for negligence and cites *Alexander v. Taylor*, 928 So. 2d 992 (Miss. Ct. App. 2006), in support of its argument. However, this argument must fail. Rebuild America has not sued on the bond and joined the bonding company as the plaintiff did in *Alexander*. Further, Rebuild America states in its brief that it intends to assert "reckless disregard, negligence and/or gross negligence" against Johnson, all of which are claims covered by the Mississippi Tort Claims Act. (See Brief of Appellant at p. 5). A suit against a public official for torts must be brought under the MTCA. *Young v. Benson*, 828 So. 2d 821 (Miss. Ct. App. 2002).

B. Rebuild America Failed to Give the Required Notice of Suit Under the MTCA

The notice of claim requirement of the MTCA is set forth in Section 11-46-11(1) of the Mississippi Code. This provision requires that a claimant give notice to the governmental entity's chief executive officer at least ninety days before filing suit. There is no dispute in this case that Rebuild America failed to give any notice before filing the instant suit. In its Brief, Rebuild America states:

> Rebuild America did fail to provide written notice to either the Chancery Clerk or Sheriff of Pearl River County, Mississippi ninety (90) days prior to filing its action. . . .

Brief of Appellant at p. 14. (Actually the clerk and/or sheriff would not be the proper party to receive notice under the MTCA). Mississippi law requires strict compliance with the ninety day notice provision. *See Univ. of Miss. Medical Center v. Easterling*, 928 So. 2d 815, 820 (Miss. 2006) For this reason alone, the lower court properly dismissed the suit.

C. Rebuild America's Claim Is Barred by the MTCA's One Year Statute of Limitations

It is well established that suits under MTCA must be brought within one year from the date of occurrence. The statute of limitations provision of the MTCA provides:

> All actions brought under the provisions of this chapter shall be commenced within one (1) year next after the date of the tortious, wrongful or otherwise actionable conduct on which the liability phase of the action is based, and not after. . . .

Miss. Code Ann. § 11-46-11(3) (rev. 2002). *See, e.g., Stockstill v. State of Miss.*, 854 So. 2d 1017 (Miss. 2003); *Southern v. Miss. State Hospital*, 853 So. 2d 1212 (Miss. 2003).

Rebuild America incorrectly states in its brief that the lower court did not find that the one year statute of limitations had expired. In paragraph 11 of the Order Granting Motions to Dismiss the circuit court judge stated:

> Based upon the dates alleged in Plaintiff's Complaint, **the Court finds that the statute of limitations has expired as a matter of law as well.**
>
> Plaintiff was on notice of the alleged failure to perform statutory duties at the time that the subject property was purchased on October 18, 2005, at the latest. *Plaintiff's Complaint, paragraph 5*; See, *Everett, supra*. Suit was not filed until May 20, 2008. From the face of the Complaint it is clear that the one year statute of limitations under the MTCA expired long before Plaintiff's Complaint was filed.

(bold emphasis added) (C.P. 493-94).

Rebuild America's statement in its brief that the lower court did not find that the one year statute of limitation had expired is grossly incorrect.

Further, Rebuild America's statement that accrual of its cause of action began only upon the decision in the *Milner* case is also incorrect. In *Young v. Benson*, 828 So. 2d 821, (Miss. Ct. App. 2002), Young brought suit against Chancery Clerk Benson alleging he failed to pay her a court-ordered disbursement. Benson's motion to dismiss for failure to state a claim was granted by the trial court. The Mississippi Court of Appeals held the MTCA applied and stated whether the statute of limitations barred the action depended on when the cause of action accrued. The court held the cause of action accrued when the clerk failed to perform his official duty allegedly owed to the plaintiff.

In the instant case the cause of action would have accrued when Johnson allegedly failed to give proper notice to the Milners and First Union National Bank. On June 16, 2005, a notice of maturation of the 2003 tax sale for 2002 *ad valorem* taxes due Pearl River County was published in the Poplarville Democrat newspaper. The tax sale records maintained by the Chancery Clerk of Pearl River County reflect that a notice of forfeiture was mailed to Robert K. Milner, et ux and signed for by Robert Milner on June 16, 2005. A notice of forfeiture was mailed to First Union National Bank and signed for by the bank on June 19, 2005. Suit was filed May 20, 2008, well after any cause of action had accrued and the one year statute of limitations had run.

IV. REBUILD AMERICA IS JUDICIALLY ESTOPPED FROM ASSERTING ITS CLAIM

"What this doctrine of judicial estoppel is trying to prevent is the misuse of the Courts by inconsistent representations, in which litigants choose case by case what representation may do them the most good." *Illinois Central Railroad Co. v. Haymer*, 1998 Miss. App. LEXIS 1931 (Oct. 27, 1998).

Rebuild America, in the *Milner* suit, adamantly took the position that Johnson fulfilled his duties properly in giving notice to the Milners and the lienholders. Rebuild America even filed a Motion to Dismiss for failure to state a claim and stated "[t]he individuals to whom taxes were assessed . . . were provided with the requisite notice under the statute and, in addition thereto, Plaintiff Wachovia Bank's admitted predecessor in title, namely First Union National Bank, also received the required notice in accordance with Mississippi statute. . . ." Moreover, Rebuild America took the position in the Milner suit that it had a valid quitclaim deed from the Milners. It can hardly claim now that the tax sale is invalid where it previously claimed it had title by virtue of the quitclaim deed. Rebuild America has now filed the instant suit claiming Johnson "failed to issue the required notice to landowner Patricia K. Milner, thereby breaching his official duty," and "Johnson failed to properly send the requisite notice to the Milners' lienholder. . . ."

The doctrine of judicial estoppel was developed to prevent actions such as that being taken by Rebuild America. The doctrine is known as the "doctrine of preclusion against inconsistent positions." 18 Charles A. Wright & Arthur Miller, FEDERAL PRACTICE AND PROCEDURE § 4477 (Supp. 1992). In *Coral Drilling, Inc. v. Bishop*, 260 So. 2d 463 (Miss. 1972), a plaintiff claimed in one suit that he was injured by a red truck and then in a later suit tried to claim for the wreck that he was injured by a blue truck. In *Coral Drilling*, this Court noted the importance of the doctrine of judicial estoppel:

> Coral's argument that Bishop was judicially estopped to maintain the second suit deserves comment. Although not sufficiently pleaded, a proper regard for the public policy that upholds the sanctity of an oath should require the court to take notice of this argument. Courts should on their own initiative preclude a party

> from repudiating in one suit a sworn statement made in support of former litigation.

Id. at 466 (emphasis added).

This Court should stop Rebuild America's factual "about face" in its tracks. Rebuild America should not be allowed to play "fast and loose" with the judicial process. The purpose of the doctrine of judicial estoppel is to protect the integrity of the judicial system. Rebuild America should not be allowed to claim in this suit that Johnson failed to give proper notice after filing a Motion to Dismiss in the *Milner* suit stating Johnson provided all parties with the requisite notice under the statute.

CONCLUSION

Johnson respectfully requests the lower court's dismissal with prejudice be affirmed.

Respectfully submitted,

DAVID EARL JOHNSON, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS CHANCERY CLERK OF PEARL RIVER COUNTY, MISSISSIPPI

By: _____
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CERTIFICATE OF SERVICE

I, Brenda B. Bethany, do hereby certify that I have this date served by First Class United States mail, postage fully prepaid, a true and correct copy of the above and foregoing Brief of Appellee David Earl Johnson, Individually and in His Official Capacity as Chancery Clerk of Pearl River County, to the following:

Honorable Prentiss Greene Harrell
Circuit Judge
Post Office Box 488
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Sheriff of Pearl River County;

DATED, this the 8 day of October, 2009.

Brenda B. Bethany
BRENDA B. BETHANY - BAR #[redacted]

ADDENDUM

Miss. Code Ann. § 11-46-1

MISSISSIPPI CODE of 1972 ANNOTATED

*** CURRENT THROUGH THE 2008 1ST EXTRAORDINARY SESSION ***
*** STATE COURT ANNOTATIONS CURRENT THROUGH FEBRUARY 10, 2009 ***

TITLE 11. CIVIL PRACTICE AND PROCEDURE
CHAPTER 46. IMMUNITY OF STATE AND POLITICAL SUBDIVISIONS FROM LIABILITY AND SUIT FOR TORTS AND TORTS OF EMPLOYEES

GO TO MISSISSIPPI CODE OF 1972 ARCHIVE DIRECTORY

Miss. Code Ann. § 11-46-1 (2008)

§ 11-46-1. Definitions

As used in this chapter the following terms shall have the meanings herein ascribed unless the context otherwise requires:

(a) "Claim" means any demand to recover damages from a governmental entity as compensation for injuries.

(b) "Claimant" means any person seeking compensation under the provisions of this chapter, whether by administrative remedy or through the courts.

(c) "Board" means the Mississippi Tort Claims Board.

(d) "Department" means the Department of Finance and Administration.

(e) "Director" means the executive director of the department who is also the executive director of the board.

(f) "Employee" means any officer, employee or servant of the State of Mississippi or a political subdivision of the state, including elected or appointed officials and persons acting on behalf of the state or a political subdivision in any official capacity, temporarily or permanently, in the service of the state or a political subdivision whether with or without compensation. The term "employee" shall not mean a person or other legal entity while acting in the capacity of an independent contractor under contract to the state or a political subdivision; provided, however, that for purposes of the limits of liability provided for in Section 11-46-15, the term "employee" shall include physicians under contract to provide health services with the State Board of Health, the State Board of Mental Health or any county or municipal jail facility while rendering services under such contract. The term "employee" shall also include any physician, dentist or other health care practitioner employed by the University of Mississippi Medical Center (UMMC) and its departmental practice plans who is a faculty member and provides

health care services only for patients at UMMC or its affiliated practice sites. The term "employee" shall also include any physician, dentist or other health care practitioner employed by any university under the control of the Board of Trustees of State Institutions of Higher Learning who practices only on the campus of any university under the control of the Board of Trustees of State Institutions of Higher Learning. The term "employee" shall also include any physician, dentist or other health care practitioner employed by the State Veterans Affairs Board and who provides health care services for patients for the State Veterans Affairs Board. The term "employee" shall also include Mississippi Department of Human Services licensed foster parents for the limited purposes of coverage under the Tort Claims Act as provided in Section 11-46-8.

(g) "Governmental entity" means and includes the state and political subdivisions as herein defined.

(h) "Injury" means death, injury to a person, damage to or loss of property or any other injury that a person may suffer that is actionable at law or in equity.

(i) "Political subdivision" means any body politic or body corporate other than the state responsible for governmental activities only in geographic areas smaller than that of the state, including but not limited to, any county, municipality, school district, community hospital as defined in Section 41-13-10, Mississippi Code of 1972, airport authority or other instrumentality thereof, whether or not such body or instrumentality thereof has the authority to levy taxes or to sue or be sued in its own name.

(j) "State" means the State of Mississippi and any office, department, agency, division, bureau, commission, board, institution, hospital, college, university, airport authority or other instrumentality thereof, whether or not such body or instrumentality thereof has the authority to levy taxes or to sue or be sued in its own name.

(k) "Law" means all species of law including, but not limited to any and all constitutions, statutes, case law, common law, customary law, court order, court rule, court decision, court opinion, court judgment or mandate, administrative rule or regulation, executive order, or principle or rule of equity.

HISTORY: SOURCES: Laws, 1984, ch. 495, § 1; reenacted without change, Laws, 1985, ch. 474, § 1; Laws, 1988, ch. 479, § 2; Laws, 1993, ch. 476, § 1; Laws, 1999, ch. 518, § 1; Laws, 2002, 3rd Ex. Sess., ch. 2, § 2, eff from and after Jan. 1, 2003.

NOTES: EDITOR'S NOTE. --Laws, 1987, ch. 483, § 50, provides as follows:
"SECTION 50. Section 4, Chapter 495, Laws of 1984, as reenacted and amended by Section 12, Chapter 474, Laws of 1985, as amended by Section 6, Chapter 438, Laws of 1986, which specifies the causes of action that are covered by Chapter 46, Title 11, Mississippi Code of 1972, and specifies the law that governs causes of action that occur prior to the effective date of coverage of Chapter 46, Title 11, Mississippi Code of 1972, is hereby repealed."

AMENDMENT NOTES. --The 2002 amendment, 3rd Ex. Sess., rewrote (f).

CROSS REFERENCES. --Immunity from suit of political subdivisions as they are defined in this section, see § 11-46-3.
Applicability of sections 11-46-1 et seq. to community hospitals, their owners, and their boards of trustees, see § 41-13-11.

Applicability of §§ 11-46-1 et seq. to causes of action arising out of any wrongful act or omission in connection with an activity or operation of a hospital, nursing home or other community hospital facility or community health program, see § 41-13-11.

Application of this chapter to actions by and against electric utilities arising out of injuries resulting from contact with high voltage overhead lines, see § 45-15-13.

"State" or a "political subdivision", as defined in this section, as being an employer subject to the Workers' Compensation Law, see § 71-3-5.

JUDICIAL DECISIONS

1. In general

1.5. Applicability.

Applicability

2. Constitutionality

3. Employee

4. Political subdivision

5. Dismissal of claim

6. Expert testimony.

7. Standard of care.

8. Miscellaneous.

1. IN GENERAL.

In an action brought under the Mississippi Tort Claims Act, plaintiff failed to prove that an ambulance driver was negligent as a matter of law in operating an ambulance during an emergency when she ran over plaintiff's foot and caused him to suffer damages. Albright v. Delta Reg'l Med. Ctr. 899 So. 2d 897 (Miss. Ct. App. 2004), cert. denied, 898 So. 2d 679 (Miss. 2005).

In the context of actions pursuant to the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-1 to 11-46-23, the common thread running through cases where an officer acts with reckless disregard in operating a motor vehicle is an appreciation of the unreasonable risk of the danger involved coupled with a conscious indifference to the consequences that are certain to follow. Davis v. Latch, 873 So. 2d 1059 (Miss. Ct. App. 2004).

Trial court properly granted summary judgment for defendants in a medical malpractice case where, since the hospital was protected by the Mississippi Tort Claims Act (MTCA), the husband had to meet the requirements of Miss. Code Ann. § 11-46-11; he did not substantially comply with the MTCA requirements; plaintiff filed his complaint after the one-year statute of limitations had expired. Davis v. Hoss, 869 So. 2d 397 (Miss. 2004).

Chancery court lacked subject matter jurisdiction to consider the individuals' claims brought pursuant to the Mississippi Tort Claims Act (MTCA), Miss. Code Ann. § 11-46-1 et seq. against the Mississippi Municipality Liability Plan, for injuries suffered as the result of a motor vehicle accident with a city police officer, as Miss. Const. art. 6, §§ 159 & 161 did not include actions under the MTCA; rather, the circuit court had jurisdiction over the matter pursuant to Miss. Const. art. 6, § 156. Miss. Mun. Liab. Plan v. Jordan, 863 So. 2d 934 (Miss. 2003).

Where a widow filed an action against a city, its police chief, and two police officers, arising from the shooting death of her husband in his home, the trial court erred in dismissing her amended complaint as to her claim under the Mississippi Tort Claims Act (MTCA), Miss. Code Ann. § 11-46-1 et seq. because she had specified and separated the negligence-and tort-based state law claims from the constitutional tort claims brought pursuant to 42 U.S.C.S. § 1983 in her amended complaint; the MTCA operated as the exclusive remedy for the state law civil claims against the city, the chief, and the officers; and Miss. R. Civ. P. 8(a) only required that notice of a claim be given. Elkins v. McKenzie, 865 So. 2d 1065 (Miss. 2003).

Because the only claim for equitable relief in a negligence action brought under the Mississippi Tort Claims Act, Miss. Code Ann. §§ 11-46-1 through 11-46-23, was a request for an accounting, the proper jurisdiction was in a circuit court, and not in chancery court. City of Ridgeland v. Fowler, 846 So. 2d 210 (Miss. 2003).

The clear intent of the legislature in enacting this chapter was to immunize the state and its political subdivisions from any tortious conduct, including tortious breach of implied term or condition of any warranty or contract; however, the provisions of this chapter have no application to a pure breach of contract action. City of Grenada v. Whitten Aviation, Inc. 755 So. 2d 1208 (Miss. Ct. App. 1999).

This chapter does not proscribe actions against the state for the return of private property allegedly wrongfully acquired by the state or its agencies or institutions. Greyhound Welfare Found. v. Mississippi State Univ. 736 So. 2d 1048 (Miss. 1999).

Negligence cause of action against municipality, arising after Pruett decision abolishing judicially-created sovereign immunity but before Presley decision prospectively holding unconstitutional the tort claims act provision stating sovereign immunity provisions were not yet effective, was governed by pre-Pruett common law. (Per Mills, J., with three justices concurring and three justices concurring in the result). Hord v. City of Yazoo City, 702 So. 2d 121 (Miss. 1997).

Physicians and other medical personnel at state prison, against whom action was brought following death of prisoner, were not the "state" or its "political subdivisions", and thus did not come within scope of statute under which state and its political subdivisions are not, have never been, and shall not be liable and are entitled to immunity. Sparks v. Kim, 701 So. 2d 1113 (Miss. 1997).

Codification of principles of sovereign immunity did not violate Mississippi constitutional provision that courts shall be open and remedy shall be available for every injury; remedy clause is not absolute guarantee of trial and it is legislature's decision whether or not to address restrictions upon actions against government entities. Mohundro v. Alcorn County, 675 So. 2d 848 (Miss. 1996).

Codification of principles of sovereign immunity did not violate due process clause of Fourteenth Amendment; there was no right to sue state or its political subdivisions at common law and, through codification, legislature continued to withhold such right, and

thus there was no property right to sue state. Mohundro v. Alcorn County, 675 So. 2d 848 (Miss. 1996).

The decision of Presley v. Mississippi State Highway Commission (Miss. 1992) 608 So. 2d 1288, which declared the codified principle of sovereign immunity (§§ 11-46-1 et seq.) unconstitutional, has no retroactive application. Robinson v. Stewart, 655 So. 2d 866 (Miss. 1995), rehearing denied.

There is no "property right" to sue the State, since the Mississippi Legislature has withheld that right through its statutes, and therefore the principle of sovereign immunity, as enacted by the legislature in §§ 11-46-1 et seq., does not violate the due process clause of the Mississippi Constitution or the 14th Amendment to the United States Constitution. Robinson v. Stewart, 655 So. 2d 866 (Miss. 1995), rehearing denied.

The Mississippi Legislature's post-Pruett legislative enactments on sovereign immunity (§§ 11-46-1 et seq.) do not violate the remedy clause of the Mississippi Constitution. Robinson v. Stewart, 655 So. 2d 866 (Miss. 1995), rehearing denied.

The governmental immunity and tort claims act should not be construed to immunize governmental authorities and agencies from suits other than for money damages. Fordice v. Thomas, 649 So. 2d 835 (Miss. 1995), but see USPCI of Miss., Inc. v. State ex rel. McGowan, 688 So. 2d 783 (Miss. 1997).

The decision of the Supreme Court declaring unconstitutional the portion of the Sovereign Immunity Act (§§ 11-46-1 et seq.) mandating that all claims against the State be governed by case law governing sovereign immunity as it existed on November 10, 1982, applies prospectively only, and is "purely prospective" so that it applies only to claims arising after the mandate issues. Presley v. Mississippi State Hwy. Comm'n, 608 So. 2d 1288 (Miss. 1992).

To the extent that § 11-46-6 [Repealed] purports to freeze the doctrine of sovereign immunity to the state of development of the common law prior to Pruett v. City of Rosedale (Miss. 1982) 421 So. 2d 1046, it is void; the State is immunized from claims arising thereafter to the extent that the Supreme Court would do so applying the evolving standards of common law, including any extensions or contractions of the doctrine deemed appropriate, on a case by case basis and to the extent that those benefitting by the immunity did not prepare themselves by acquiring insurance policies covering the liability in question in the event that immunity did not obtain. Presley v. Mississippi State Hwy. Comm'n, 608 So. 2d 1288 (Miss. 1992).

The portion of the Sovereign Immunity Act (§§ 11-46-1 et seq.) requiring that all claims against the State be governed by case law governing sovereign immunity as it existed immediately prior to the decision in Pruett v. City of Rosedale (Miss. 1982) 421 So. 2d 1046 is unconstitutional as it violates the doctrine of separation of powers and the prohibition against reviving or amending a law by reference to its title only. Presley v. Mississippi State Hwy. Comm'n, 608 So. 2d 1288 (Miss. 1992).

State Highway Commission is alter ego of state and shares in state's Eleventh Amendment immunity from suit in federal court. Brady v. Michelin Reifenwerke, 613 F. Supp. 1076 (S.D. Miss. 1985).

¶1.5. APPLICABILITY.

Given the context of the relationship between the manager and the nursing home, there was no genuine issue of material fact regarding whether the manager was an "instrumentality" of the nursing home; as an instrumentality of a community hospital, the manager was entitled to the protections, limitations, and immunities of the Mississippi Tort Claims Act. Estate of Fedrick v. Quorum Health Res., Inc. -- So. 2d -- (Miss. Ct. App. Nov. 4, 2008).

Trial court, on remand, had to determine whether at the time of the alleged negligent

conduct, the doctor was an employee of a state entity covered by the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-1; if so, the trial court had to further determine whether the statute of limitations had run as to the doctor as prescribed by Miss. Code Ann. § 11-46-11. McClain v. Clark, 992 So. 2d 636 (Miss. 2008).

Finding against the student in her action against a state university and a professor after she suffered a third-degree burn at an iron pour demonstration was improper because the state university, falling within the coverage of Miss. Code Ann. § 11-46-1 (j), was not protected by discretionary function immunity and was liable for the professor's negligence pursuant to the waiver of sovereign immunity; it was difficult to fathom how the professor's failure to put down dry sand before the pour involved a policy judgment of a social, political, or economic nature. Pritchard v. Von Houten, 960 So. 2d 568 (Miss. Ct. App. 2007).

Finding in favor of the husband and wife in their action against the city for personal injuries and loss of consortium under the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-1 et seq., was proper pursuant to Miss. R. Evid. 401 and Miss. R. Evid. 402 because an expert's testimony tended to make the fact that the city negligently repaired and maintained the grate and sidewalk more probable than that without his proffered evidence. City of Natchez v. Jackson, 941 So. 2d 865 (Miss. Ct. App. 2006).

Finding in favor of the hospital in the patient's action under the Mississippi Tort Claims Act was proper because the patient failed to prove that the treatment he received was the proximate cause of his alleged injuries. Lander v. Singing River Hosp. Sys. 933 So. 2d 1043 (Miss. Ct. App. 2006).

Dismissal of the decedent's mother's and a student's action against a state university resulting from a shooting on campus was appropriate under Miss. Code Ann. § 11-46-1 et seq. because the shooting of the victims was not the harm that would have otherwise resulted from failing to log the gunman in on campus; additionally, there was no authority that the university, through an employee, had a duty to warn the victims of the dangerous condition of the gunman's character. Johnson v. Alcorn State Univ. 929 So. 2d 398 (Miss. Ct. App. 2006).

Police did not have immunity from suit where a police officer acted recklessly in initiating a police chase of a suspect where the chase was not because a serious crime had just been committed; the vehicles exceeded the speed limit in a residential neighborhood, in the dark, with a low probability of apprehending the suspect, as he was known as someone who would flee and had successfully fled in the past. City of Ellisville v. Richardson, 913 So. 2d 973 (Miss. 2005).

Miss. Code Ann. § 11-46-3 granted immunity to the state and its political subdivisions for breach of implied term or condition of any warranty or contract. Thus, although the decedent was indeed a third-party beneficiary of the written contract between the city and the development district, her estate was not permitted to pursue claims of breach of implied terms of that contract against the city or its political subdivisions. City of Jackson v. Estate of Stewart, 908 So. 2d 703 (Miss. 2005).

Mississippi Tort Claims Act, Miss. Code Ann. §§ 11-46-1 to 11-46-23, did not provide immunity for a city that neglected to inspect or maintain a city ditch; business was entitled to damages when, during a heavy rain, the ditch flooded, causing property damage. City of Jackson v. Internal Engine Parts Group, Inc. 903 So. 2d 60 (Miss. 2005).

Denial of the general hospital's and physicians' motion to transfer venue in a medical malpractice action was improper under the Mississippi Tort Claims Act (MTCA), Miss. Code Ann. § 11-46-1 et seq., where the general hospital was entitled to a venue in the county in which the principal offices were located, Miss. Code Ann. § 11-11-3(1), because the decedent's heirs failed to assert a reasonable claim of liability against the medical center and treating physicians. Wayne Gen. Hosp. v. Hayes, 868 So. 2d 997 (Miss. 2004).

Personal injury plaintiffs' motion for a remand of the matter to state court was granted because it could not be stated that the Mississippi Department of Transportation (MDOT) was fraudulently joined as a defendant in the action simply to defeat diversity jurisdiction, particularly when the MDOT could be held potentially liable to plaintiffs under the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-1 et seq. Johnson v. James Constr. Group, LLC, 306 F. Supp. 2d 654 (S.D. Miss. 2004).

Department of Public Safety was not immune from liability in a suit by a driver. A state trooper, who was speeding excessively, acted in reckless disregard of the driver's safety. Miss. Dep't of Pub. Safety v. Durn, 861 So. 2d 990 (Miss. 2003).

Under the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-1 et seq., whether governmental conduct was discretionary required a two-prong analysis: (1) whether the activity involved an element of choice or judgment; and if so, (2) whether the choice or judgment involved social, economic or political policy alternatives, and, conversely, governmental conduct was ministerial if imposed by law, and its performance was not dependent on the employee's judgment. Doe v. State ex rel. Miss. Dep't of Corr. 859 So. 2d 350 (Miss. 2003).

While parole supervision procedures appeared to be ministerial in nature, a field officer's responsibilities to monitor and supervise a parolee were immune from suit in cases where the State had no indication of a specific threat on a parolee's part to harm an individual. Doe v. State ex rel. Miss. Dep't of Corr. 859 So. 2d 350 (Miss. 2003).

The University of Mississippi Medical Center and the University Anesthesia Services Practice Group (UAS) established in connection with the Medical Center are instrumentalities of the State of Mississippi within the meaning of the Mississippi Tort Claims Act, Miss. Code Ann. §§ 11-46-1 through 11-46-23 and, as such, waived their immunity against a claim for medical malpractice liability only to the extent that UAS had purchased liability insurance; further, a staff anesthesiologist who participated in an operation in which a child suffered brain damage while sedated was an employee of the Center entitled to immunity despite also being a member of UAS and despite the fact that the doctor had personal liability insurance. Mozingo v. Scharf, 828 So. 2d 1246 (Miss. 2002).

APPLICABILITY.

Sections 11-46-1 et seq., applied to a case where the event giving rise to the action occurred on June 1, 1994, clearly after the Act went into effect. Henderson v. Un-Named Emergency Room, 758 So. 2d 422 (Miss. 2000).

2. CONSTITUTIONALITY.

The fact that the parties disagreed as to whether an individual was an employee within the meaning of the statute did not mean the statute's definition was constitutionally vague. Smith v. Braden, 765 So. 2d 546 (Miss. 2000).

The Tort Claims Act does not violate the right to due process by depriving persons of their day in court as there is no property right to sue the state. Smith v. Braden, 765 So. 2d 546 (Miss. 2000).

The Tort Claims Act does not violate the right to equal protection by protecting a physician employed by the state, while not protecting other physicians practicing medicine in Mississippi. The relevant question is whether the plaintiff, rather than the defendant, is treated differently from others that are similarly situated. Smith v. Braden, 765 So. 2d 546 (Miss. 2000).

Sections 11-46-1 to 11-46-23 do not violate the constitutional requirements that courts be open and that a remedy be available for every injury since the remedy clause is not an absolute guarantee of trial and it is the legislature's decision whether to

address restrictions upon actions against government entities. Quinn v. Mississippi State Univ. 720 So. 2d 843 (Miss. 1998).

The court rejected the contention that the Sovereign Immunity Act is unconstitutional as it pertains to claims arising between April 1, 1993, and October 1, 1993. Chamberlin v. City of Hernando, 716 So. 2d 596 (Miss. 1998).

3. EMPLOYEE.

Although a patient alleged that he was injured by the negligence of a doctor who was an independent contractor of a hospital, the Mississippi Tort Claims Act provided immunity to the state and its political subdivisions, such as the hospital, for the negligence of its independent contractors. Therefore, the trial court properly entered summary judgment in favor of the hospital. Brown v. Delta Reg'l Med. Ctr. 997 So. 2d 195 (Miss. 2008).

Plaintiff VA patient conceded that a vascular surgeon was a state employee, and despite the patient's arguments to the contrary, the court found that there was no genuine issue of material fact that at the pertinent time, the surgeon was acting within the course and scope of his duties as a state employee, under Miss. Code Ann. §§ 11-46-5(3), 11-46-7(7), and, thus, immune under the Mississippi Tort Claims Act (MTCA), Miss. Code Ann. §§ 11-46-1 et seq. His involvement with the patient was solely by virtue of his being on-call pursuant to his employment with the university and its relationship to the VA facility. Creel v. United States, 512 F. Supp. 2d 574 (S.D. Miss. 2007).

Pursuant to Miss. Code Ann. § 11-46-1(f) and Miller factors, the doctor was an employee of the state hospital and the state for purposes of liability under the Mississippi Tort Claims Act; therefore, summary judgment was properly granted in favor of the doctor on the husband's wrongful death and medical malpractice claims. Barksdale v. Carroll, 944 So. 2d 107 (Miss. Ct. App. 2006).

Doctor acted as an employee of the state of Mississippi when he treated the patient; therefore, the doctor was entitled to immunity as provided in the Mississippi Tort Claims Act and the trial court erred when it denied the doctor's motion for summary judgment. Meeks v. Miller, 956 So. 2d 942 (Miss. Ct. App. 2006).

According to the plain language of Miss. Code Ann. § 11-46-1(f), the State intends to protect part-time workers, full-time workers, salaried employees, and uncompensated employees. The purpose of the Mississippi Torts Claim Act (MTCA) is to provide immunity to the physicians who are acting on behalf of the State or a political subdivision in any official capacity, temporarily or permanently, in the service of the State or a political subdivision, whether with or without compensation; the 2002 amendment to Miss. Code Ann. § 11-46-1 was not intended as an additional restriction to exclude certain physicians, but, rather, the addition was meant to assure that the physicians who were members of the departmental practice plans were fully protected under the MTCA. Thus, the appellate court was unable to conclude that the doctor (who was being sued by decedent's husband) was not an employee, merely because he did not belong to the departmental practice plan; an uncompensated, part-time physician at University of Mississippi Medical Center does not have to be a member of the employee practice plans to be considered an employee under Miss. Code Ann. § 11-46-1(f) of the MTCA. Barksdale v. Carroll, -- So. 2d -- (Miss. Ct. App. Mar. 14, 2006).

In a car accident case, where decedent's husband was suing a doctor who was an employee of the University of Mississippi Medical Center (UMMC), and the State, for purposes of liability under Miss. Code Ann. § 11-46-1(f) of the Mississippi Tort Claims Act (MTCA), the doctor was immune from liability because (1) he was acting as a supervisor with regard to the decedent; (2) he did not choose his patients or the residents that he supervised; (3) he was acting as a faculty physician and was

following the direction of the UMMC; (4) over the phone, he acted in a supervisory capacity to a surgical resident, which involved little judgment or discretion; and (5) he was acting as an uncompensated faculty member for the UMMC, not as an independent contractor. Therefore, the doctor's motion for summary judgment on the husband's second amended complaint alleging causes of action for malpractice, negligence and medical negligence, res ipsa loquitur, and failure to obtain informed consent, was properly granted. Barksdale v. Carroll, -- So. 2d -- (Miss. Ct. App. Mar. 14, 2006).

Doctor was not immune under the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-7(2), from a patient's malpractice suit because the doctor was an independent contractor, rather than an employee of a county hospital, within the meaning of "employee" in Miss. Code Ann. § 11-46-1(f), where the doctor's contract was with a private corporation that assigned her to work at the hospital and issued her paycheck. Carpenter v. Reinhard, -- F. Supp. 2d -- (N.D. Miss. July 15, 2005).

Grant of summary judgment against the patient in her medical malpractice action against the physician was proper where the physician was an employee of the state university medical center and therefore an employee of the state of Mississippi. Thus, he was immune from liability under Miss. Code Ann. § 11-46-7(2) of the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-1 et seq. Owens v. Thomae, 904 So. 2d 207 (Miss. Ct. App. 2005).

In a medical malpractice action, a doctor was not entitled to summary judgment on the issue of immunity under the Mississippi Tort Claims Act because there were disputed issues of fact regarding the doctor's true employment status, including the nature of the doctor's contractual and business relationships with a county hospital and a private corporation. Carpenter v. Reinhard, 345 F. Supp. 2d 629 (N.D. Miss. Nov. 22, 2004).

Although a man, who fell under the definition of "employee" for purposes of Miss. Code Ann. § 11-46-1(f) of the Mississippi Tort Claims Act (MTCA), Miss. Code Ann. §§ 11-46-1 to 11-46-23, caused an accident that injured an individual and then failed to disclose to the individual that the man was a county employee, the individual failed to establish that the county withheld information regarding the employee's work status, nor did the individual show that the county provided the individual with misleading or inaccurate information, and the individual did not exercise due diligence in determining the true parties of the lawsuit or in determining the man's work status; thus, the court affirmed the trial court's grant of summary judgment under Miss. R. Civ. P. 56(c) in favor of the county and the man on the grounds that the individual failed to substantially comply with the notice requirements of the MTCA, and, therefore, the statute of limitations had expired. Ray v. Keith, 859 So. 2d 995 (Miss. 2003).

For purposes of Miss. Code Ann. § 11-46-1(f) of the the Mississippi Tort Claims Act (MTCA), Miss. Code Ann. §§ 11-46-1 through 11-46-23, receiving income for a University of Mississippi Medical Center medical practice plan does not make a physician an independent contractor. Watts v. Tsang, 828 So. 2d 785 (Miss. 2002).

For purposes of Miss. Code Ann. § 11-46-1(f) of the the Mississippi Tort Claims Act (MTCA), Miss. Code Ann. §§ 11-46-1 through 11-46-23, the doctor who supervised a procedure that left the patient a paraplegic was a state employee and immune from liability because (1) the doctor was employed by the University of Mississippi Medical Center (UMMC) and acting according to the terms and conditions of the doctor's contract; (2) the doctor was a full-time faculty member at UMMC and had never engaged in the practice of medicine outside the course and scope of the doctor's employment; and (3) the doctor was a supervising teacher and trainer of residents (interns and fellows as well) and did not receive compensation from any person or entity other than a State entity. Watts v. Tsang, 828 So. 2d 785 (Miss. 2002).

Summary judgment for the defendant physician was not appropriate in a medical malpractice action where the plaintiffs did not dispute that the physician was an

employee of a state university in his role as an assistant professor, but there was a material issue of fact as to whether he was an employee of the state university in connection with his private practice. Smith v. Braden, 765 So. 2d 546 (Miss. 2000).

The defendant physician was not entitled to summary judgment in a medical malpractice action on the basis of the one year statute of limitations contained in the Tort Claims Act. There was a triable issue of fact regarding whether he was a state employee within the meaning of the statute while engaged in clinical outpatient practice under the general auspices of the state university which employed him. Miller v. Meeks, 762 So. 2d 302 (Miss. 2000).

The evidence showed that a doctor was not a staff physician, but rather a post-graduate house staff officer, and thus she was an employee of the state, who was provided with no additional compensation for her services; thus, the Tort Claims Act applied to her, and the lower court was correct in dismissing a medical malpractice action against her; however, the evidence with regard to two other doctors was not clear, and the cases against them were remanded for additional discovery. Pickens v. Donaldson, 748 So. 2d 684 (Miss. 1999).

4. POLITICAL SUBDIVISION.

Where the deceased patient's daughter brought a medical malpractice suit against the University of Mississippi Medical Center, the Supreme Court of Misssippi held that the medical center was an instrument of the State and subject to the requirements of the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-1(j). Therefore, plaintiff was required to timely give notice of her claim to the medical center within one year as provided by Miss. Code Ann. § 11-46-11(3). Univ. of Miss. Med. Ctr. v. McGee, 999 So. 2d 837 (Miss. 2008).

Where a doctor working in partnership with a community hospital was sued for medical malpractice, the trial court determined that he was entitled to immunity under the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-5. The doctor was an employee of a "community hospital" within the definition of "political subdivision" pursuant to Miss. Code Ann. § 11-46-1(i). Estate of Grimes v. Warrington, 982 So. 2d 365 (Miss. 2008).

Where a doctor working in partnership with a community hospital was sued for medical malpractice, he did nothing to assert immunity under the Mississippi Tort Claims Act (MTCA), Miss. Code Ann. § 11-46-1 et seq., for five years until he moved for summary judgment; because he delayed and actively participated in discovery, he waived MTCA immunity. Estate of Grimes v. Warrington, 982 So. 2d 365 (Miss. 2008).

While plaintiffs erred under Miss. Code Ann. § 11-46-1(i) in naming a sheriff's department as a defendant in a personal injury suit, the trial court erred in denying plaintiffs' motion for leave to amend the complaint pursuant to Miss. R. Civ. P. 15(c) to add a county as a defendant where plaintiffs' notice of claim letter put the proper county official on notice that, except for the mistake of naming the wrong party, the action would have been brought against the county. Mieger v. Pearl River County, 986 So. 2d 1025 (Miss. Ct. App. 2008).

Where plaintiff parent sued defendant school district in state court alleging her child was sexually assaulted at school and obtained a judgment under the Mississippi Tort Claims Act, her later claims in federal court were properly held as barred due to res judicata; while school districts' sources of funding under Miss. Code Ann. § 37-45-21, 37-47-1 et seq., Miss. Code Ann. § 37-57-1, Miss. Code Ann. § 37-59-3, and Miss. Code Ann. § 37-151-7 were equally divided between local school districts and the state under Miss. Code Ann. § 11-46-7, Miss. Code Ann. § 11-46-16(2), and Miss. Code Ann. § 11-46-17(2), any judgment against the school district would be paid through the Tort Claims Fund and excess liability insurance, and thus, the school district was not

considered an arm of the state entitled to Eleventh Amendment immunity. Black v. N. Panola Sch. Dist. 461 F.3d 584 (5th Cir. 2006).

State legislature did not intend for the Mississippi Tort Claims Act (MTCA) to extend to a private entity such as defendant, a transit company that executed an agreement with a city to operate and maintain a public transportation system; defendant was not created for the sole purpose of fulfilling a state mandated government service (rather, defendant was presumably created to be a profitable business for the benefit of its shareholders). Thompson v. McDonald Transit Assocs. 440 F. Supp. 2d 530 (S.D. Miss. 2006).

Although Miss. Code Ann. § 19-25-19 states that all sheriffs shall be liable for the acts of their deputies, this does not provide sufficient weight to tip the argument in favor of finding that a sheriff's department is a separate political subdivision or governmental entity for purposes of the Mississippi Tort Claims Act (MTCA). Brown v. Thompson, 927 So. 2d 733 (Miss. 2006).

In a case of first impression, the Supreme Court of Mississippi held that a county sheriff's department was not a political subdivision as defined in Miss. Code Ann. § 11-46-1(i), of the Mississippi Tort Claims Act (MTCA), and thus an individual's suit naming the sheriff's department was not properly filed; the county should have been named as the governmental defendant. A review of the structural relationship between counties and sheriff's departments in Miss. Code Ann. § 19-25-13 and Miss. Code Ann. § 19-25-19 supported that holding. Brown v. Thompson, 927 So. 2d 733 (Miss. 2006).

Suspect in murder gave a videotaped statement indicating that the couple were present during the victim's murder, robbery having been the motive, and based on that information, the sheriff obtained an arrest warrant for the couple. When the aforementioned suspect recanted his allegation, and sheriff realized there was no longer probable cause to hold the couple, sovereign immunity applied in the couple's suit against the sheriff and the county for false arrest and malicious prosecution, under the exception of Miss. Code Ann. § 11-46-9(1)(c). Keen v. Simpson County, 904 So. 2d 1157 (Miss. Ct. App. 2004).

Trial court abused its discretion in denying a motion by a hospital and three physicians to transfer venue in a medical malpractice action because a decedent's heirs had failed to assert a reasonable claim of liability against certain defendants that had been dismissed from the action and because the hospital was a community hospital under the Mississippi Tort Claims Act and was entitled to venue in the county in which its governing body's principal offices were located. Wayne Gen. Hosp. v. Hayes, -- So. 2d -- (Miss. Nov. 6, 2003).

Working in conjunction with Miss. Code Ann. § 11-46-3(1), § 11-46-1(i) defines "political subdivisions" to specifically include school districts. Harris v. McCray, 867 So. 2d 188 (Miss. 2003).

Airport authority that argued it was a "joint airport board" was nevertheless a governmental entity that exercised powers that were declared to be public and governmental functions, exercised for a public purpose, and matters of public necessity, and thus was a political subdivision under subsection (i); the airport authority could not escape liability by merely asserting that it was really an airport board because airport boards, although not specifically listed, were by definition subject to the statute. Spencer v. Greenwood/Leflore Airport Auth. 834 So. 2d 707 (Miss. 2003).

For purposes of Miss. Code Ann. § 11-46-1(i), (j) of the the Mississippi Tort Claims Act (MTCA), Miss. Code Ann. §§ 11-46-1 through 11-46-23, the University Anesthesia Services is an instrumentality of the State, even though it is a private, for-profit corporation that pays state taxes like other private corporations. Watts v. Tsang, 828 So. 2d 785 (Miss. 2002).

For purposes of Miss. Code Ann. § 11-46-1(i), (j) of the the Mississippi Tort Claims

Act (MTCA), Miss. Code Ann. §§ 11-46-1 through 11-46-23, where a medical practice group was created by the University of Mississippi Medical Center (UMMC), and is overseen by UMMC, and the purpose is to supplement the income of its faculty; when the day-to-day oversight is left to the department chair, subject to limited oversight by the vice chancellor, and its membership is composed solely of full-time UMMC-faculty physicians; where the faculty physicians can only practice at UMMC-approved sites, and the money is distributed on a point system based on factors other than mere patient service, the medical practice group is a State entity. Watts v. Tsang, 828 So. 2d 785 (Miss. 2002).

School district was entitled to sovereign immunity from wrongful death action arising out of death of eight-year-old special education student who ran away from school. Brown v. Houston Sch. Dist. 704 So. 2d 1325 (Miss. 1997).

5. DISMISSAL OF CLAIM.

Civil rights litigant's motion to amend his pro se complaint in tort to add a federal claim under 42 U.S.C.S. § 1983 for violation of his right to free speech on the ground that the tort claims were barred by the Mississippi Tort Claims Act was properly denied because the federal claim was barred under the applicable residual three-year statute of limitation period in Miss. Code Ann. § 15-1-49 and because the amended claim did not relate back to the time of the filing of the original pleading, pursuant to Miss. R. Civ. P. 15(c); the proposed amendment did not pass the identity of transaction test because the tort claims asserted in the original complaint did not bear a relation to the free speech claim and the defendant was not on notice regarding the free speech claim. Giles v. Stokes, 988 So. 2d 926 (Miss. Ct. App. 2008).

Where a county hospital and its employee were sued in tort for injuries related to a car accident that occurred when the employee was running an errand for her employer, the dismissal of the employee from the action under the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-1, et seq., did not act as a release of her insurance company. The insurance company was contractually obligated to defend or indemnify the county hospital as an additional insured under the language of the insurance policy. Franklin County Mem'l Hosp. v. Miss. Farm Bureau Mut. Ins. Co. 975 So. 2d 872 (Miss. 2008).

Grant of summary judgment in favor of the city and police officer in the jogger's action under the Mississippi Tort Claims Act, Miss. Code Ann. §§ 11-46-1 to 11-46-23, after he was struck by the police officer while jogging was appropriate because the jogger failed to prove that the officer acted with reckless disregard of the safety and well-being of others, Miss. Code Ann. § 11-46-9(1)(c). Morton v. City of Shelby, 984 So. 2d 323 (Miss. Ct. App. 2007).

Dismissal of the employee's action after he was terminated was proper because although he filed his suit against the sheriff's department and the sheriff within the statutorily prescribed period in Miss. Code Ann. § 11-46-11(3), he still failed to comply with the Mississippi Tort Claims Act since he filed his complaint 37 days before he filed his notice of claim with the sheriff's department. Clanton v. DeSoto County Sheriff's Dep't, 963 So. 2d 560 (Miss. Ct. App. 2007).

In an action pursuant to the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-1 et seq., where a slow-moving county motor grader executed a turn on the highway, even though the operator did not give a hand signal, the grader operator was not negligent in failing to do same or for failing to keep a proper lookout, but the injured driver was negligent in passing the grader within 100 feet of an intersection and failing to keep a proper lookout. Barnett v. Lauderdale County Bd. of Supervisors, 880 So. 2d 1085 (Miss. Ct. App. 2004).

Evidence showed the officer was traveling approximately 37 miles per hour with lights and sirens activated, there was nothing obstructing the view of either the person

later injured or the officer, and the greater weight of evidence also proved that the person's left turn signal was not activated. In addition, the officer had consciously stopped at the previous two intersections because the officer considered both of those to be blind intersections, and therefore, the officer's behavior supported the finding that the officer appreciated the risk involved in approaching the intersection and did not act with reckless disregard. Davis v. Latch, 873 So. 2d 1059 (Miss. Ct. App. 2004).

Grant of summary judgment in favor of the employee's employer was proper where the employee failed to substantially comply with the notice provisions of the Mississippi Tort Claim Act's, Miss. Code Ann. § 11-46-1 et seq., Miss. Code Ann. § 11-46-11. Harris v. Miss. Valley State Univ. 873 So. 2d 970 (Miss. 2004).

When a victim was raped by a parolee accepted from another state for supervision, summary judgment was correctly granted to the State in the victim's action against it for negligently accepting supervision of the parolee and negligently supervising him because acceptance of the parolee's supervision was mandatory under the Uniform Act for Out-of-State Parolee Supervision, Miss. Code Ann. § 47-7-71, as he had family and a job in Mississippi, and decisions made by the parolee's supervising parole officer in the course of the parolee's supervision were discretionary, so the State could not be held liable under the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-1 et seq. Doe v. State ex rel. Miss. Dep't of Corr. 859 So. 2d 350 (Miss. 2003).

Former university professor's tortious interference with contract claim against the university that formerly employed her and its officials was covered by the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-1 et seq.; accordingly, the professor had to comply with the Act's requirements as it was the exclusive remedy for the professor under Miss. Code Ann. § 11-46-7(1); furthermore, the professor's claim was time-barred under Miss. Code Ann § 11-46-11(3) as it was not timely filed. Black v. Ansah, -- So. 2d -- (Miss. Ct. App. June 3, 2003).

In an arrestee's suit alleging that a deputy sheriff used excessive force, the arrestee's state-law tort claims were dismissed because the arrestee failed, under the substantial compliance standard, to comply with the notice provisions of the Mississippi Tort Claims Act. Whiting v. Tunica County, 222 F. Supp. 2d 809 (N.D. Miss. 2002).

6. EXPERT TESTIMONY.

In a case filed under the Mississippi Tort Claims Act, Miss. Code Ann. §§ 11-46-1 et seq., a trial court did not err by allowing expert testimony under Miss. R. Evid. 702 because a witness did not have to be a pulmonologist in order to opine on matters concerning aspiration pneumonia; the witness had received specialized training and knowledge in medical school and by treating other patients. Univ. of Miss. Med. Ctr. v. Pounders, 970 So. 2d 141 (Miss. 2007).

7. STANDARD OF CARE.

Where alleged negligent actions are caused by an employee who is not a doctor or a nurse in a medical malpractice case, the conduct must be evaluated using traditional negligence/reasonable care standards; therefore, in a case filed under the Mississippi Tort Claims Act, Miss. Code Ann. §§ 11-46-1 et seq., the reasonable care standard was properly applied where an employee's action caused water to be aspirated by a post-surgical patient, which allegedly resulted in pneumonia. This action contradicted the medical records, which stated that the patient was to receive nothing by mouth. Univ. of Miss. Med. Ctr. v. Pounders, 970 So. 2d 141 (Miss. 2007).

8. MISCELLANEOUS.

Pursuant to 28 U.S.C.S. § 1367(c)(3), a court declined to exercise supplemental jurisdiction over the Mississippi Tort Claims Act (MTCA) claims of an arrestee and her children after their federal 42 U.S.C.S. § 1983 claims were dismissed with prejudice, as the Mississippi Supreme Court expressed a strong preference that MTCA claims be litigated before a state circuit judge. Smith v. Turner, -- F. Supp. 2d -- (N.D. Miss. Dec. 15, 2008).

After dismissing, upon summary judgment, a former student's 42 U.S.C.S. § 1983 claims against a university and its officials, a court declined, pursuant to 28 U.S.C.S. § 1367(c)(3), to exercise supplemental jurisdiction over the student's Mississippi Tort Claims Act, Miss. Code Ann. §§ 11-46-1 et seq., and state law breach of contract claims. Senu-Oke v. Jackson State Univ. 521 F. Supp. 2d 551 (S.D. Miss. 2007).

ATTORNEY GENERAL OPINIONS

Drainage district is political subdivisions of state, as well as private enterprise, and should have liability insurance coverage. Bradley Sept. 8, 1993, A.G. Op. #93-0632.

Office of district attorney is not exempt from supporting Tort Claims System through requirements to have liability insurance by virtue of general immunity. Mellen, Jan. 12, 1994, A.G. Op. #93-0705.

Although counties and cities are without authority to provide specific types of insurance set forth in Section 25-15-101 to volunteer firefighters, tort risk coverage may be provided under Section 11-46-1. Ranck, Feb. 16, 1994, A.G. Op. #94-0080.

Sections 11-46-1 et seq. include actions brought against state agency employees and political subdivision employees in federal law actions for acts or omissions occurring within the course and scope of their duties. Hardy, March 2, 1995, A.G. Op. #95-0084.

The Mississippi Business Finance Corporation (MBFC), as a state agency, has sovereign immunity. MBFC does not have the authority to execute an agreement which would, in effect, waive the immunity by agreeing to indemnify a third party for claims. Pittman, March 29, 1995, A.G. Op. #95-0107.

The Workers' Compensation Commission peer reviewers fall within the definition of Section 11-46-1(f) and as such would be entitled to a defense subject to all provisions of the Act. Additionally, if Section 11-46-9(1)(d) applies, the Commission's peer reviewers would be exempt from liability and therefore immune from suit. Porter, August 23, 1995, A.G. Op. #95-0343.

The definition, in Section 11-46-1(f), does exclude from the protection of the Act those persons "acting on behalf of the state" who are "independent contractors." Howell, March 8, 1996, A.G. Op. #96-0137.

The Tort Claims Act is not a "law with respect to the acquisition, operation or disposition of property," and therefore a housing authority is not excluded from the requirements of the Tort Claims Act. See Sections 11-46-1(i), 43-33-5 and 43-33-11. Hardy, March 29, 1996, A.G. Op. #96-0157.

There appears to be no statutory prohibition to using wanted posters in an effort to find individuals with outstanding contempt of court warrants. However, the Mississippi Tort Claims Act as set forth in Section 11-46-1 et. seq., does not protect state agencies or political subdivisions from defamation. Moran, July 8, 1996, A.G. Op. #96-0431.

If the county does not choose to provide a bond for the medical examiner, and the medical examiner is sued in her official capacity, the county would be obligated to provide legal counsel. See Sections 25-1-47 and 11-46-1, et seq. Brooks, December 20, 1996, A.G. Op. #96-0835.

Staff physicians under contract with the University of Mississippi Medical Center are employees of a governmental entity of the State of Mississippi, and the Medical Center is responsible for affording them a defense and paying any judgment against them or settlement for any claim arising out of an act or omission within the course and scope of their employment, and within the limits of the Mississippi Tort Claims Act. Conerly,

September 4, 1998, A.G. Op. #98-0500.

A county supervisor falls within the definition of "employee" under the Mississippi Tort Claims Act. Ross, Jr., Jan. 22, 2002, A.G. Op. #01-0754.

An unpaid volunteer acting on behalf of a state university hospital is afforded coverage under the Tort Claims Act. Connerly, Mar. 29, 2002, A.G. Op. #02-0144.

Full-time staff doctors employed by and paid by a public hospital owned by a county are considered employees for purposes of the Tort Claims Act, and as such, are not personally liable for acts or omissions occurring within the course and scope of their employment. Brown, Apr. 26, 2002, A.G. Op. #02-0211.

The Bolivar Medical Center Foundation is a public corporation and the respective trustees and employees are covered by the Tort Claims Act. Griffith, Oct. 18, 2002, A.G. Op. #02-0590.

Employees of the Pat Harrison Waterway District acting within the scope and course of their employment are covered by the Tort Claims Act. Matthews, Dec. 6, 2002, A.G. Op. #02-0686.

Doctors, nurses and pharmacists employed by the State Department of Health and acting within the scope and course of their employment are covered by the Tort Claims Act. Amy, Jan. 17, 2003, A.G. Op. #02-0746.

A legal defense is provided to doctors, nurses and pharmacists employed by the State Department of Health even though the conduct is alleged to be outside the course and scope of their employment. Amy, Jan. 17, 2003, A.G. Op. #02-0746.

There is no reason for a practitioner to obtain additional liability coverage as long as the acts are within the course and scope of his employment with the State Health Department. Amy, Jan. 17, 2003, A.G. Op. #02-0746.

Physicians, while performing responsibilities as Emergency Medical Services Medical Directors, are acting on behalf of the state in an official capacity and would fall within the definition of "employee" under the Mississippi Tort Claims Act. Amy, Aug. 8, 2005, A.G. Op. 05-0366.

No authority can be found for a state agency to enter into a contract which includes language obligating the state to defend a vendor or contractor, when the state or its employees are negligent. The state may affirmatively acknowledge its potential liability for negligence under the Tort Claims Act. Stringer, Jan. 25, 2006, A.G. Op. 06-0610.

In an instance where a Mississippi Animal Response Team volunteer is injured in a training exercise sponsored by the Mississippi Board of Animal Health, or where the volunteer injures a third party at such training event, any liability claims arising out of actions of the volunteer are subject to the Mississippi Tort Claims Act. Watson, Feb. 3, 2006, A.G. Op. 06-0005.

A county may enter private land and remove tree stumps and debris as part of a settlement with the landowner. Clanton, Feb. 10, 2006, A.G. Op. 06-0023.

Where a Mississippi Animal Response Team volunteer is injured in a training exercise sponsored by the Mississippi Board of Animal Health, or where the volunteer injures a third party at such training event, any liability claims arising out of actions of the volunteer are subject to the Mississippi Tort Claims Act. Watson, Feb. 24, 2006, A.G. Op. 06-0050.

Although a community hospital is a political subdivision protected by the Mississippi Tort Claims Act, any non-profit corporation or limited liability company formed by the hospital is not. Williamson, Apr. 7, 2006, A.G. Op. 06-0040.

There is no authority that would allow a city to reimburse city employees for the cost incurred for damage that was caused to their personal property while it was housed or displayed on city property. Lawrence, June 26, 2006, A.G. Op. 06-0237.

A community hospital is a political subdivision protected by the Mississippi Tort Claims Act. Donnell, July 22, 2005, A.G. Op. 05-0304.

ALR. Liability of county for torts in connection with activities which pertain, or are claimed to pertain, to private or proprietary function. 16 A.L.R.2d 1079.

Persons upon whom notice of injury or claim against municipal corporation may or must be served. 23 A.L.R.2d 969.

Immunity from liability for damages in tort of state or governmental unit or agency in operating hospital. 25 A.L.R.2d 203.

Tort liability of governmental unit for injury or damage resulting from insecticide and vermin eradication operations. 25 A.L.R.2d 1057.

Operation of garage for maintenance and repair of municipal vehicles as governmental function. 26 A.L.R.2d 944.

Installation or operation of parking meters as within governmental immunity from tort liability. 33 A.L.R.2d 761.

Infancy or incapacity as affecting notice required as condition of holding municipality or other political subdivision liable for personal injury. 34 A.L.R.2d 725.

Tort liability of municipality or other governmental unit in connection with destruction of weeds and the like. 34 A.L.R.2d 1210.

Maintenance of auditorium, community recreational center, building, or the like, by municipal corporation as governmental or proprietary function for purposes of tort liability. 47 A.L.R.2d 544.

Municipal operation of bathing beach or swimming pool as governmental or proprietary function, for purposes of tort liability. 55 A.L.R.2d 1434.

Rule of municipal immunity from liability for acts in performance of governmental functions as applicable to personal injury or death as result of a nuisance. 56 A.L.R.2d 1415.

Municipal operation of sewage disposal plant as governmental or proprietary function, for purposes of tort liability. 57 A.L.R.2d 1336.

Municipal immunity from liability for torts. 60 A.L.R.2d 1198.

Waiver of, or estoppel to assert, failure to give required notice of claim of injury to municipality, county, or other governmental agency or body. 65 A.L.R.2d 1278.

Liability or indemnity insurance carried by governmental unit as affecting immunity from tort liability. 68 A.L.R.2d 1437.

What is "motor vehicle" or the like within statute waiving governmental immunity as to operation of such vehicles. 77 A.L.R.2d 945.

Liability for performing an autopsy. 83 A.L.R.2d 955.

Snow removal operations as within doctrine of governmental immunity from tort liability. 92 A.L.R.2d 796.

Right of contractor with federal, state, or local public body to latter's immunity from tort liability. 9 A.L.R.3d 382.

Modern status of the rules as to immunity of foreign sovereign from suit in federal or state courts. 25 A.L.R.3d 322.

Modern status of doctrine of sovereign immunity as applied to public schools and institutions of higher learning. 33 A.L.R.3d 703.

Liability of highway authorities arising out of motor vehicle accident allegedly caused by failure to erect or properly maintain traffic control device at intersection. 34 A.L.R.3d 1008.

Tort liability of public schools and institutions of higher learning for injuries caused by acts of fellow students. 36 A.L.R.3d 330.

Tort liability of public schools and institutions of higher learning for accidents occurring during use of premises and equipment for other than school purposes. 37 A.L.R.3d 712.

Tort liability of public schools and institutions of higher learning for injuries due to condition of grounds, walks, and playgrounds. 37 A.L.R.3d 738.

Tort liability of public schools and institutions of higher learning for injuries resulting

from lack or insufficiency of supervision. 38 A.L.R.3d 830.

Liability of municipal corporation for negligent performance of building inspector's duties. 41 A.L.R.3d 567.

Liability of governmental entity or public officer for personal injury or damages arising out of vehicular accident due to negligent or defective design of highway. 45 A.L.R.3d 875.

Attorney's mistake or neglect as excuse for failing to file timely notice of tort claim against state or local governmental unit. 55 A.L.R.3d 930.

Modern status of the law as to validity of statutes or ordinances requiring notice of tort claim against local governmental entity. 59 A.L.R.3d 93.

Liability of governmental entity for issuance of permit for construction which caused or accelerated flooding. 62 A.L.R.3d 514.

Validity and construction of statute authorizing or requiring governmental unit to procure liability insurance covering public officers or employees for liability arising out of performance of public duties. 71 A.L.R.3d 6.

Validity and construction of statute authorizing or requiring governmental unit to indemnify public officer or employee for liability arising out of performance of public duties. 71 A.L.R.3d 90.

Maintenance of class action against governmental entity as affected by requirement of notice of claim. 76 A.L.R.3d 1244.

Sovereign immunity doctrine as precluding suit against sister state for tort committed within forum state. 81 A.L.R.3d 1239.

Governmental tort liability for social service agency's negligence in placement, or supervision after placement, of children. 90 A.L.R.3d 1214.

Governmental liability from operation of zoo. 92 A.L.R.3d 832.

Liability of governmental unit or private owner or occupant of land abutting highway for injuries or damage sustained when motorist strikes tree or stump on abutting land. 100 A.L.R.3d 510.

Liability of university, college, or other school for failure to protect student from crime. 1 A.L.R.4th 1099.

Tort liability of public schools and institutions of higher learning for educational malpractice. 1 A.L.R.4th 1139.

Liability, in motor vehicle-related cases, of governmental entity for injury or death resulting from design, construction, or failure to warn of narrow bridge. 2 A.L.R.4th 635.

Actual notice or knowledge by governmental body or officer of injury or incident resulting in injury as constituting required claim or notice of claim for injury -- modern status. 7 A.L.R.4th 1063.

Liability of urban redevelopment authority or other state or municipal agency or entity for injuries occurring in vacant or abandoned property owned by governmental entity. 7 A.L.R.4th 1129.

Construction and application, under state law, of doctrine of "executive privilege". 10 A.L.R.4th 355.

Liability of state, in issuing automobile certificate of title, for failure to discover title defect. 28 A.L.R.4th 184.

Governmental tort liability as to highway median barriers. 58 A.L.R.4th 559.

Governmental tort liability for injury to roller skater allegedly caused by sidewalk or street defects. 58 A.L.R.4th 1197.

Governmental liability for failure to post highway deer crossing warning signs. 59 A.L.R.4th 1217.

State's liability for personal injuries from criminal attack in state park. 59 A.L.R.4th 1236.

Tort liability of public authority for failure to remove parentally abused or neglected

children from parents' custody. 60 A.L.R.4th 942.

Liability of municipal corporation or other governmental entity for injury or death caused by action or inaction of off-duty police officer. 36 A.L.R.5th 1.

Excessiveness or adequacy of damages awarded for injuries to trunk or torso, or internal injuries. 48 A.L.R.5th 129.

Tort liability of public schools and institutions of higher learning for accident involving motor vehicle operated by student. 85 A.L.R.5th 301.

Liability of municipality or other governmental unit for failure to provide police protection from crime. 90 A.L.R.5th 273.

Federal Tort Claims Act: When is government officer or employee "acting within the scope of his office or employment" for purpose of determining government liability under 28 USCS sec. 1346(b). 6 A.L.R. Fed. 373.

Effect of Foreign Sovereign Immunities Act (28 USCS secs. 1330, 1441(d), 1602 et seq.) on right to jury trial in action against foreign state. 56 A.L.R. Fed. 679.

AM JUR. 41 Am. Jur. Trials 1, Social Worker Malpractice for Failure to Protect Foster Children.

LAW REVIEWS. The History and Future of Sovereign Immunity for Mississippi School Districts. 58 Miss. L. J. 275, Fall 1988.

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Miss. Code Ann. § 11-46-11

MISSISSIPPI CODE of 1972 ANNOTATED

*** CURRENT THROUGH THE 2008 1ST EXTRAORDINARY SESSION ***
*** STATE COURT ANNOTATIONS CURRENT THROUGH FEBRUARY 10, 2009 ***

TITLE 11. CIVIL PRACTICE AND PROCEDURE
CHAPTER 46. IMMUNITY OF STATE AND POLITICAL SUBDIVISIONS FROM LIABILITY AND SUIT FOR TORTS AND TORTS OF EMPLOYEES

GO TO MISSISSIPPI CODE OF 1972 ARCHIVE DIRECTORY

Miss. Code Ann. § 11-46-11 (2008)

§ 11-46-11. Statute of limitations; notice of claim requirements; savings clause in favor of infants and those of unsound mind

(1) After all procedures within a governmental entity have been exhausted, any person having a claim for injury arising under the provisions of this chapter against a governmental entity or its employee shall proceed as he might in any action at law or in equity; provided, however, that ninety (90) days prior to maintaining an action thereon, such person shall file a notice of claim with the chief executive officer of the governmental entity. Service of notice of claim may also be had in the following manner: If the governmental entity is a county, then upon the chancery clerk of the county sued; if the governmental entity is a municipality, then upon the city clerk. If the governmental entity to be sued is a state entity as defined in Section 11-46-1(j), service of notice of claim shall be had only upon that entity's chief executive officer. If the governmental entity is participating in a plan administered by the board pursuant to Section 11-46-7(3), such chief executive officer shall notify the board of any claims filed within five (5) days after the receipt thereof.

(2) Every notice of claim required by subsection (1) of this section shall be in writing, and shall be delivered in person or by registered or certified United States mail. Every notice of claim shall contain a short and plain statement of the facts upon which the claim is based, including the circumstances which brought about the injury, the extent of the injury, the time and place the injury occurred, the names of all persons known to be involved, the amount of money damages sought and the residence of the person making the claim at the time of the injury and at the time of filing the notice.

(3) All actions brought under the provisions of this chapter shall be commenced within one (1) year next after the date of the tortious, wrongful or otherwise actionable conduct on which the liability phase of the action is based, and not after; provided, however, that the filing of a notice of claim as required by subsection (1) of this section shall serve to toll the statute of limitations for a period of ninety-five (95) days from the date the chief executive officer of the state agency receives the notice of claim, or for one hundred twenty (120) days from the date the chief executive officer or other statutorily designated official of a municipality, county or other political subdivision

receives the notice of claim, during which time no action may be maintained by the claimant unless the claimant has received a notice of denial of claim. After the tolling period has expired, the claimant shall then have an additional ninety (90) days to file any action against the governmental entity served with proper claim notice. However, should the governmental entity deny any such claim, then the additional ninety (90) days during which the claimant may file an action shall begin to run upon the claimant's receipt of notice of denial of claim from the governmental entity. All notices of denial of claim shall be served by governmental entities upon claimants by certified mail, return receipt requested, only. For purposes of determining the running of limitations periods under this chapter, service of any notice of claim or notice of denial of claim shall be effective upon delivery by the methods statutorily designated in this chapter. The limitations period provided herein shall control and shall be exclusive in all actions subject to and brought under the provisions of this chapter, notwithstanding the nature of the claim, the label or other characterization the claimant may use to describe it, or the provisions of any other statute of limitations which would otherwise govern the type of claim or legal theory if it were not subject to or brought under the provisions of this chapter.

(4) From and after April 1, 1993, if any person entitled to bring any action under this chapter shall, at the time at which the cause of action accrued, be under the disability of infancy or unsoundness of mind, he may bring the action within the time allowed in this section after his disability shall be removed as provided by law. The savings in favor of persons under disability of unsoundness of mind shall never extend longer than twenty-one (21) years.

HISTORY: SOURCES: Laws, 1984, ch. 495, § 7; reenacted without change, Laws, 1985, ch. 474, § 6; Laws, 1987, ch. 483, § 6; Laws, 1988, ch. 479, § 3; Laws, 1993, ch. 476, § 5; Laws, 1999, ch. 469, § 1; Laws, 2000, ch. 315, § 1; Laws, 2002, ch. 380, § 1, eff from and after passage (approved Mar. 18, 2002.)

NOTES: JOINT LEGISLATIVE COMMITTEE NOTE. --Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the fifth sentence of (3), as amended by Laws, 1999, ch. 469, § 1. The words "denial of notice of claim" were changed to "notice of denial of claim". The Joint Committee ratified the correction at its April 28, 1999 meeting.

EDITOR'S NOTE. --Laws, 1987, ch. 483, § 50, provides as follows:
"SECTION 50. Section 4, Chapter 495, Laws of 1984, as reenacted and amended by Section 12, Chapter 474, Laws of 1985, as amended by Section 6, Chapter 438, Laws of 1986, which specifies the causes of action that are covered by Chapter 46, Title 11, Mississippi Code of 1972, and specifies the law that governs causes of action that occur prior to the effective date of coverage of Chapter 46, Title 11, Mississippi Code of 1972, is hereby repealed."

AMENDMENT NOTES. --The 2000 amendment added (4).
The 2002 amendment substituted "April 1, 1993" for "May 15, 2000" in (4).

JUDICIAL DECISIONS

1. In general

2. Constitutionality

3. Legislative intent

4. Applicability

5. "Chief executive officer."

6. Form of notice

7. Written notice

8. Sufficiency of notice

9. Time to file action

10. Discovery rule

11. Estoppel to assert statute of limitations

12. Tolling of limitation period

12.5 Minor Savings Clause.

12.6. Intervention

13. Illustrative cases

1. IN GENERAL.

Court upheld a ruling against a medical center in a medical malpractice action under the Mississippi Tort Claims Act because substantial evidence supported the judgment; although the expert testimony was conflicting, there was ample evidence for a finding that the patient had pneumonia while she was in the hospital and that the hospital staff failed to diagnose her. Univ. of Miss. Med. Ctr. v. Johnson, 977 So. 2d 1145 (Miss. Ct. App. 2007).

Allowing a plaintiff to file suit before 90 days have passed since noticing the claim is tantamount to reading out the notice provisions of the Mississippi Tort Claims Act, Miss. Code Ann. §§ 11-46-1-23, and gross disregard for the notice provisions is not considered substantial compliance. Wright v. Quesnel, 876 So. 2d 362 (Miss. 2004).

The statute applied to a case where the event giving rise to the action occurred on June 1, 1994, clearly after the Act went into effect. Henderson v. Un-Named Emergency Room, 758 So. 2d 422 (Miss. 2000).

A notice of claim delivered to the administrator of a subsidiary hospital may be held to constitute valid notice upon the subsidiary's parent hospital chain; however, the record in the present case was too sparse to make a final determination in such regard and, therefore, the trial court's ruling dismissing the case would be reversed and the matter would be remanded for additional findings. Humphrey v. Ocean Springs Hosp. 749 So. 2d 1044 (Miss. 1999).

The effective date of this section was April 1, 1993. Pickens v. Donaldson, 748 So. 2d 684 (Miss. 1999).

A school district was not entitled to dismissal on the basis of noncompliance with the statute where there was evidence that there were some negotiations between the school district's insurance carrier and the plaintiff and that there was a letter sent from the insurance carrier to the plaintiff, confirming a previous conversation between the plaintiff and the carrier, initiated by the carrier, which indicated evidence that the carrier was notified of the claim by someone from the school district. Smith County Sch. Dist. v. McNeil, 743 So. 2d 376 (Miss. 1999).

Plaintiff's claim was barred by the applicable one-year statute of limitation where the complaint was filed nearly two years and five months after the accident at issue. State v. Dampeer, 744 So. 2d 754 (Miss. 1999).

In order to carry out the legislative purpose of providing relief to injured citizens, the court held that substantial compliance with the notice provisions of this section is sufficient. Reaves by & Through Rouse v. Randall, -- So. 2d -- (Miss. Mar. 26, 1999).

This section does not require notice be filed with a governmental entity's insurance company. Brewer v. Burdette, 1999 Miss. LEXIS 150 (Miss. Apr. 15, 1999), subst. op., 768 So. 2d 920 (Miss. 2000).

A substantial compliance standard applies with respect to the notice of claim requirements of this section. Carr v. Town of Shubuta, 733 So. 2d 261 (Miss. 1999).

Police officer's action in turning onto road despite fact that view of oncoming traffic was blocked by row of hedges, while negligent, did not turn collision with motorist into crime of assault, so as to relieve motorist of having to comply with notice requirements in Tort Claims Act in subsequent personal injury claim against city and officer. City of Jackson v. Lumpkin, 697 So. 2d 1179 (Miss. 1997), overruled in part, Carr v. Town of Shubutu, 733 So. 2d 261 (Miss. 1999). But see Carr v. Town of Shubuta, 733 So. 2d 261 (Miss. 1999).

Uninsured motorist carrier's third party subrogation claim against city accrued, and one-year statute of limitations began to run, on date of accident. Coleman v. American Mfrs. Mut. Ins. Co. 930 F. Supp. 255 (N.D. Miss. 1996).

In a personal injury action against a city and city officials, the 6-year statute of limitations set forth in § 15-1-49, rather than the 2-year statute of limitations set forth in § 11-46-11(3) of the Tort Claims Act, applied since the Tort Claims Act had not yet taken effect. Starnes v. City of Vardaman, 580 So. 2d 733 (Miss. 1991).

2. CONSTITUTIONALITY.

Supreme Court of Mississippi holds that the March 2002 amendment to Miss. Code Ann. § 11-46-11(4) is unconstitutional to the extent that it makes the savings clause applicable to all claims since April 1, 1993. However, the savings clause as first enacted in April of 2000 is valid and enforceable, and those claims in existence on May 15, 2000, are subject to the savings clause. Univ. of Miss. Med. Ctr. v. Robinson, 876 So. 2d 337 (Miss. 2004).

The one-year statute of limitations in the Mississippi Tort Claims Act is rationally

related to a proper legislative purpose, i.e., protecting the state's interest in conserving government funds and protecting the public health and welfare at the earliest possible moment, and, therefore, is constitutional. Barnes v. Singing River Hosp. Sys. 733 So. 2d 199 (Miss. 1999).

The notice provision of this section does not violate the equal protection clause of the federal constitution, notwithstanding that it requires a person to give 90 days notice to the head of a governmental entity before suing that entity, whereas this type of notice is not required when suing an individual. Vortice v. Fordice, 711 So. 2d 894 (Miss. 1998).

3. LEGISLATIVE INTENT.

Court erred in dismissing a student's personal injury lawsuit against a university and two of its police officers on the ground that the action was barred by the statute of limitations; applying Miss. Code Ann. § 11-46-11 as written, the student timely filed lawsuit. It was the intention of the Legislature to toll the statutory period, meaning to suspend temporarily, and to grant claimants 90 days in addition to the one year in which to file their lawsuits. Page v. Univ. of S. Miss. 878 So. 2d 1003 (Miss. 2004).

The legislature intended for the statute to take effect from and after April 1, 1993, its date of passage. Chamberlin v. City of Hernando, 716 So. 2d 596 (Miss. 1998).

4. APPLICABILITY.

Trial court, on remand, had to determine whether at the time of the alleged negligent conduct, the doctor was an employee of a state entity covered by the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-1; if so, the trial court had to further determine whether the statute of limitations had run as to the doctor as prescribed by Miss. Code Ann. § 11-46-11. McClain v. Clark, 992 So. 2d 636 (Miss. 2008).

Suit against the state transportation commission, alleging a taking without just compensation in violation of Miss. Const. Art. 3, § 17, need not have been brought under the Mississippi Tort Claims Act, and thus was not time-barred under Miss. Code Ann. § 11-46-11(3), because the constitutional provision was self-executing. McLemore v. Miss. Transp. Comm'n, 992 So. 2d 1107 (Miss. 2008).

Tax sale purchasers' entire suit against the chancery clerk for failing to reimburse them for the 1994 taxes they paid when the prior owner redeemed the property for 1993 unpaid taxes was not governed by Miss. Code Ann. § 11-46-11 because the purchasers had raised claims in law for damages and in equity for recovery of land, which were not tort claims. Alexander v. Taylor, 928 So. 2d 992 (Miss. Ct. App. 2006).

Decedent's estate's negligence action against the circuit court clerks for failing to enroll a foreign judgment was barred by the one-year statute of limitations in the Mississippi Tort Claims Act (MTCA), Miss. Code Ann. § 11-46-11, because the complaint alleged that the court clerks were negligent in performing their official duties and the addition of the sureties as parties did not change the action into a contract action. Also, the action accrued when the estate learned that judgment had not been enrolled and not when the judgment debtor later filed bankruptcy, and the bankruptcy court held that the judgment was unenforceable in Mississippi. Estate of Spiegel v. Western Sur. Co. 908 So. 2d 859 (Miss. Ct. App. 2005).

Miss. Code Ann. § 11-46-11 of the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-1 et seq., applied to the university professor's attempt to recover tort damages; the alleged wrongful conduct by the university and individuals was the tortious failure to give her a new contract, and since the professor's claim of tortious interference was a tort claim and not a contract claim, she could only pursue that claim against the State using the Tort Claims Act. Black v. Ansah, 876 So. 2d 395 (Miss. Ct. App. 2003), cert.

denied, 878 So. 2d 66 (Miss. 2004).

Former university professor's tortious interference with contract claim against the university that formerly employed her and its officials was covered by the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-1 et seq.; accordingly, the professor had to comply with the Act's requirements as it was the exclusive remedy for the professor under Miss. Code Ann. § 11-46-7(1); furthermore, the professor's claim was time-barred under Miss. Code Ann § 11-46-11(3) as it was not timely filed. Black v. Ansah, -- So. 2d -- (Miss. Ct. App. June 3, 2003).

Statute did not apply to medical malpractice action because the tortious act occurred three years before the statute came into effect, thus the general medical malpractice statute, Miss. Code Ann. § 15-1-36 applied and allowed a patient two years to file suit. Bailey v. Almefty, 807 So. 2d 1203 (Miss. 2001).

When the simple requirements of the act have been substantially complied with, jurisdiction will attach for the purposes of the act. Reaves ex rel. Rouse v. Randall, 729 So. 2d 1237 (Miss. 1998).

5. "CHIEF EXECUTIVE OFFICER."

Department of Human Services was a state "department," as such, proper service would be had on the chief executive officer of DHS; nothing in the record showed there was even an attempt by the father to serve DHS's chief executive officer, or anyone at DHS. Little v. Miss. Dep't of Human Servs. 835 So. 2d 9 (Miss. 2002), cert. denied, 540 U.S. 878, 124 S. Ct. 296, 157 L. Ed. 2d 142 (2003).

The term "chief executive officer" may be read to include any of the following: president of the board, chairman of the board, any board member, or such other person employed in an executive capacity by a board or commission who can be reasonably expected to notify the governmental entity of its potential liability. Reaves ex rel. Rouse v. Randall, 729 So. 2d 1237 (Miss. 1998).

6. FORM OF NOTICE.

Grant of summary judgment in favor of the employee's employer was proper where the employee failed to substantially comply with the notice provisions of the Mississippi Tort Claim Act's, Miss. Code Ann. § 11-46-1 et seq., Miss. Code Ann. § 11-46-11. Harris v. Miss. Valley State Univ. 873 So. 2d 970 (Miss. 2004).

Negligence complaint against a sheriff's deputy was properly dismissed in a case where no notice of action was given to the deputy until a full two years after the alleged negligent conduct occurred. Conrod v. Holder, 825 So. 2d 16 (Miss. 2002).

A failure to comply with the requirement that a notice of claim be mailed by registered or certified mail will not serve as a basis to dismiss an action; in cases in which notice is sent by first class mail, a governmental entity must demonstrate actual prejudice resulting from the failure to comply with the registered or certified mail requirement in order to be entitled to a dismissal on this basis. Thornburg v. Magnolia Regional Health Ctr. 741 So. 2d 220 (Miss. 1999).

The statutory language implies that the required notice should be a single document which must in fact be sent by the claimant. Soileau v. Mississippi Coast Coliseum Comm'n, 730 So. 2d 101 (Miss. Ct. App. 1998).

7. WRITTEN NOTICE.

In an employment discrimination case in which a former teacher had not complied with the notice requirement in Miss. Code Ann. § 11-46-11, pursuant to the Mississippi Supreme Court, the failure to provide the 90 days' notice was grounds for summary

judgment. Burnworth v. Vicksburg Warren Sch. Dist. -- F. Supp. 2d -- (S.D. Miss. July 24, 2008).

Building owner's claims against a city for money had and received and unjust enrichment constituted implied-in-law contract causes of action and were covered by the Mississippi Tort Claims Act; the owner's failure to submit a notice of claim prior to commencing the suit meant its claims were barred under Miss. Code Ann. § 11-46-11 (1). 1704 21st Ave., Ltd v. City of Gulfport, 988 So. 2d 412 (Miss. Ct. App. 2008).

Finding against the employee in his action after he was terminated was proper because although he filed his suit against the sheriff's department and the sheriff within the statutorily prescribed period in Miss. Code Ann. § 11-46-11(3), he still failed to comply with the Mississippi Tort Claims Act since he filed his complaint 37 days before he filed his notice of claim with the sheriff's department. Clanton v. DeSoto County Sheriff's Dep't, 963 So. 2d 560 (Miss. Ct. App. 2007).

Although Miss. Code Ann. § 11-46-11 requires a plaintiff to file a notice of claim as a condition precedent to seeking damages from a municipal entity, it does not require the entity to respond to the notice of claim in order to preserve the defense of immunity. Mitchell v. City of Jackson, 481 F. Supp. 2d 586 (S.D. Miss. 2006).

There is no provision in the statute for actual or constructive notice, and a requirement of written notice is expressly stated. Holmes v. Defer, 722 So. 2d 624 (Miss. 1998). But see Carr v. Town of Shubuta, 733 So. 2d 261 (Miss. 1999).

8. SUFFICIENCY OF NOTICE.

Driver and passenger could not maintain their action against a county and a county employee because they failed to abide by the notice requirements of Miss. Code Ann. § 11-46-11(2); their letters to the county's insurance adjuster contained only scant information and did not provide information in each of the seven categories required in § 11-46-11(2). Parker v. Harrison County Bd. of Supervisors, 987 So. 2d 435 (Miss. 2008).

With regard to the ripeness of a Takings Clause claim, adequate state procedures include both administrative and state court remedies, and Mississippi has provided an adequate procedure for compensation in the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-11; however, merely sending a notice of claim letter is not sufficient for a plaintiff to avail himself of the adequate state judicial procedure provided in the Act. The entity receiving the letter is under no obligation to respond and may choose to remain silent, and once the plaintiff files a notice of claim and the defendant has been given an opportunity to respond, the plaintiff may then sue under the Act. Waltman v. Payne, 535 F.3d 342 (5th Cir. 2008).

Licensee's U.S. Const. Amend. V takings claim that a sheriff, thinking they were marijuana plants, destroyed kenaf plants that were growing on the land upon which the licensee held a hunting license was unripe because the licensee had not sought compensation under the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-11, by filing state court suit; the licensee's sending of a letter seeking compensation under § 11-46-11 was insufficient to exhaust the adequate remedies provided by Mississippi, and instead, the licensee should have filed a state court suit after receiving no response to his letter. Waltman v. Payne, 535 F.3d 342 (5th Cir. 2008).

In a patient's medical malpractice suit against a hospital and a limited liability company, diversity jurisdiction existed because the hospital was improperly joined since the patient provided deficient notice under the Mississippi Tort Claims Act because the notice contained no information regarding the amount of damages sought or the patient's residence at the time of injury or filing. Harden v. Field Mem. Cmty. Hosp. 516 F. Supp. 2d 600 (S.D. Miss. 2007).

In an employment dispute with the university, its former president, and its former

vice-president of academic affairs, the former professor's state-law tort claims were barred for lack of jurisdiction under the Mississippi Tort Claims Act because the professor's grievance and letter of representation did not substantially comply with the notice requirements of Miss. Code Ann. § 11-46-11(2) since: (1) the grievance letter to the board of trustees did not inform the university or the board of trustees of the professor's intent to file a claim in court; (2) the notice of claim was not filed after administrative remedies had been exhausted; (3) the notice of his claim was not served on the president of the university as required; (4) neither the letter nor the grievance stated an amount of damages sought or the extent of the alleged injury; and (5) the letter was not served upon the former president of the university. Suddith v. Univ. of S. Miss. 977 So. 2d 1158 (Miss. Ct. App. 2007).

Trial court erred in finding that the patient substantially complied with the notice provisions of Miss. Code Ann. § 11-46-11(2); due to the lack of any written notice, the patient failed to comply with the mandatory requirements of § 11-46-11(2) as none of the seven required categories of information were provided. South Cent. Reg'l Med. Ctr. v. Guffy, 930 So. 2d 1252 (Miss. 2006).

Injured person's letter of notice was not sent to the county, but rather to an attorney. In addition, the letter: (1) was not sent by registered mail or certified mail, nor was it delivered in person; (2) did not contain a short and plain statement of the facts with regard to circumstance of injury; (3) did not give the extent of injuries; (4) did not give the name of all persons involved; (5) did not list the damages sought; and (6) did not give the residence of the claimant. Because there was a bare attempt at "minimal compliance," and certainly not "substantial compliance," summary judgment for the county was proper. Fairley v. George County, 871 So. 2d 713 (Miss. 2004).

Telephone calls to several supervisors and a letter directed to a county employee regarding a fall down a staircase in a courthouse was sufficient to comply with the notice requirements of Miss. Code Ann. § 11-46-11(2). Williams v. Clay County, 861 So. 2d 953 (Miss. 2003).

There was substantial compliance with the notice requirements where the city received a notice of claim letter and suffered no actual prejudice as a result of plaintiff's failure to include her own address, because plaintiff was represented by an attorney at the time and his address was included. Powell v. City of Pascagoula, 752 So. 2d 999 (Miss. 1999).

The notice substantially complied with the requirements of the notice provisions of this section where it provided sufficient details regarding the incident at issue and was served on the city clerk and the city attorney. City of Pascagoula v. Tomlinson, 741 So. 2d 224 (Miss. 1999).

The plaintiff's notice of claim substantially complied with the statutory requirements where (1) the notice letter, sent to the defendant's Manager for Public Housing listed the persons involved in the accident, when the accident occurred, and the circumstances which brought about the injury, (2) the plaintiff's attorney contacted the defendant's offices to inquire as to who was the chief executive officer, (3) the plaintiff's attorney explained that the claim originated from the public housing division of the defendant, and (4) the Manager of Public Housing was employed by the defendant in an executive capacity and through the letter he received, the defendant's board of commissioners was put on notice of the claim. Tennessee Valley Reg'l Hous. Auth. v. Bailey, 740 So. 2d 869 (Miss. 1999).

The plaintiff's actions of communicating with the defendant board of supervisors equated to substantial compliance with the notice requirements of this section where (1) there was prolonged, continuous, and extensive communications between the parties, (2) as a result of these discussions, information regarding the plaintiff's claim was directed to and/or received by numerous people associated with the county, and (3) all of the parties involved in the settlement discussions were directly associated

with the county and/or the board of supervisors. Ferrer v. Jackson County Bd. of Supvrs. 741 So. 2d 216 (Miss. 1999).

The plaintiff substantially complied with the notice provisions of this section where her notice letter, sent to the superintendent of the defendant school district, listed the persons involved in the accident, when the accident occurred, where the accident occurred, and what vehicles were involved. Reaves by & Through Rouse v. Randall, -- So. 2d -- (Miss. Mar. 26, 1999).

Notice of claim to the chairman of the Mississippi Gaming Commission is sufficient to satisfy the pre-suit notice of claim requirements under the substantial compliance doctrine of the Mississippi Tort Claims Act. Alexander v. State Gaming Comm'n, 735 So. 2d 360 (Miss. 1999).

The plaintiff substantially complied with the requirements for a notice of claim where she provided the defendant town with all of the required information except a liquidated amount of damages, although she stated the extent of her injuries in adequate detail; she was given the form by a city employee and assisted in completing the form; and once her damages were ascertainable, the insurance adjuster was made aware of same and actively pursued settlement with the plaintiff and her attorney. Carr v. Town of Shubuta, 733 So. 2d 261 (Miss. 1999).

The plaintiff substantially complied with the notice provisions of the act where her notice letter, sent to the school superintendent, listed the persons involved in the accident at issue, when the accident occurred, where the accident occurred, and what vehicles were involved; the superintendent was employed in an executive capacity by the school board and through this letter the board was put on notice of the claim. Reaves ex rel. Rouse v. Randall, 729 So. 2d 1237 (Miss. 1998).

An initial incident report, coupled with correspondence between the plaintiff's attorney, the defendant coliseum's attorney, and the coliseum's insurance adjuster did not constitute compliance with the notice provisions of the statute. Soileau v. Mississippi Coast Coliseum Comm'n, 730 So. 2d 101 (Miss. Ct. App. 1998).

The plaintiff failed to comply with the notice requirements of the statute where he maintained communication only with the insurance carrier of the defendant political subdivision and did not file a notice of claim with the superintendent of the school district as required under the strict compliance standard of the statute. Watts v. Lafayette County Sch. Dist. 737 So. 2d 1019 (Miss. Ct. App. 1998).

9. TIME TO FILE ACTION.

Plaintiff may file a complaint without waiting the full 90 days under Miss. Code Ann. § 11-46-11(1) if the plaintiff receives a denial of notice of claim pursuant to § 11-46-11 (3). Lee v. Mem'l Hosp. 999 So. 2d 1263 (Miss. 2008).

Where summary judgment was granted in favor of a medical center based upon a wrongful death beneficiary's filing of his complaint only 41 days after he served the medical center with his notice of claim, the reviewing court rejected the argument that dismissal with prejudice was improper absent egregious circumstances warranting such a harsh sanction. While such a rule applied to the dismissal of medical malpractice actions for failure to comply with the 60-day notice provision of Miss. Code Ann. § 15-1-36(15), this case was governed by the Mississippi Tort Claims Act (MTCA), and the court was bound to adhere to the supreme court's precedent interpreting it. Stuart v. Univ. of Miss. Med. Ctr. -- So. 2d -- (Miss. Ct. App. Dec. 16, 2008).

Estate's doctor's affidavit did not allege any negligent conduct by the nursing home or its manager within one year of the notice of the estate's wrongful death claim; there was no genuine issue of material fact regarding whether the doctor raised a timely allegation of negligence. Estate of Fedrick v. Quorum Health Res., Inc. -- So. 2d -- (Miss. Ct. App. Nov. 4, 2008).

Mississippi Supreme Court's 2006 decision requiring strict compliance with the Mississippi Tort Claims Act's 90-day notice requirement had to be applied retroactively to a case pending at the time of the 2006 decision because the supreme court did not specifically state that its 2006 holding applied prospectively only. Stuart v. Univ. of Miss. Med. Ctr. -- So. 2d -- (Miss. Ct. App. June 24, 2008).

Patient's medical malpractice case against a regional medical center was properly dismissed where the patient failed to strictly comply with the notice provisions of Miss. Code Ann. § 11-46-11(1). The patient filed his notice of claim with the center and then filed suit less than a week later, although the patient should have waited 90 days before filing suit. Brown v. Southwest Miss. Reg'l Med. Ctr. 989 So. 2d 933 (Miss. Ct. App. 2008).

Patient's medical malpractice suit against a medical center was properly dismissed with prejudice because the patient failed to timely file suit within the one-year statute of limitations. Johnson v. Rao, 952 So. 2d 151 (Miss. 2007).

Patient's medical malpractice and wrongful death action against the Mississippi Department of Health (MDH) was time-barred under Miss. Code Ann. § 11-46-11(3) because the alleged improper prenatal care occurred no later than August 6, 1999, the last date the patient was treated at the clinic, the statute of limitations expired no later than August 6, 2000, and MDH did not receive notice of claim until October 24, 2000. Pounds v. Miss. Dep't of Health, 946 So. 2d 413 (Miss. Ct. App. 2006).

Record was clear that the patient's complaint against the hospital was filed fifty-five days after the accident occurred, and the hospital was served four days later; therefore, even though no written notice was contained in the record, the patient clearly did not wait the statutory ninety days under Miss. Code Ann. § 11-46-11(1) before commencing the action against the hospital. South Cent. Reg'l Med. Ctr. v. Guffy, 930 So. 2d 1252 (Miss. 2006).

Pursuant to Miss. Code Ann. § 11-46-11(3), a resident's negligence complaint against the county was timely; he filed his complaint on January 16, 2002, and assuming that he gave notice on August 7, 2000, the statute of limitations was tolled for 120 days or until December 5, 2000; after the tolling period ended, the one-year statute commenced running, and the deadline for filing was March 5, 2002. Farmer v. Bolivar County, 910 So. 2d 671 (Miss. Ct. App. 2005).

Dismissal of the individual's action against the city, fire department, fire department employee, and municipal services company after she was injured when the employee backed a fire truck into the individual's car was appropriate pursuant to Miss. Code Ann. § 11-46-11 since her complaint was filed beyond the one-year statute of limitations and she did not establish that the company's conduct was fraudulent, or that the company prevented her from filing her complaint on time. Patrick v. Shields, 912 So. 2d 1114 (Miss. Ct. App. 2005).

County board of supervisors and engineers were not entitled to dismissal of landowners' claims for damages allegedly sustained as a result of the board's and engineers' negligence in designing, approving, and constructing a subdivision that flooded, on the ground that the claims were barred by the one-year statute of limitations in Miss. Code Ann. § 11-46-11(3), because the statute of limitations began to run when the subdivision flooded or the landowners discovered that the flooding resulted from the design of the subdivision and the landowners' notices of claim, which tolled the statute of limitations, was filed within a year of both. Scheinblum v. Lauderdale County Bd. of Supervisors, 350 F. Supp. 2d 743 (S.D. Miss. 2004).

Trial court properly granted summary judgment in favor of county hospital where an individual did not file suit against the hospital until more than two years after tripping on its sidewalk; the hospital's contract with a private management company to run the hospital did not exempt it from the Mississippi Tort Claims Act. Allstadt v. Baptist Mem. Hosp. -- So. 2d -- (Miss. Ct. App. Aug. 24, 2004).

Trial court properly granted summary judgment for defendants in a medical malpractice case where, since the hospital was protected by the Mississippi Tort Claims Act (MTCA), the husband had to meet the requirements of Miss. Code Ann. § 11-46-11; he did not substantially comply with the MTCA requirements; plaintiff filed his complaint after the one-year statute of limitations had expired. Davis v. Hoss, 869 So. 2d 397 (Miss. 2004).

District court did not err in dismissing a claim filed against a county under the Mississippi Tort Claims Act, Miss. Code Ann. §§ 11-46-1 to 11-46-23, because the claim was filed after the one-year statute of limitations had expired; an injured party did not receive extra time to file the claim under Miss. Code Ann. § 11-46-11(3) after the time period had run because both tolling periods had run prior to the expiration of the one-year period. Williams v. Clay County, 861 So. 2d 953 (Miss. 2003).

Professor did not timely file her claim under the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-1 et seq. where the professor knew of her claim when or soon after she received the May 1999 notice that her contract would not be renewed; at no time in the proceedings did the professor allege that she had failed to realize the connection she presently claimed between her whistleblowing and the refusal to renew her contract. Black v. Ansah, 876 So. 2d 395 (Miss. Ct. App. 2003), cert. denied, 878 So. 2d 66 (Miss. 2004).

Victim's one-year window under Miss. Code Ann. § 11-46-11(3) of the Mississippi Tort Claims Act, Miss. Code Ann. §§ 11-46-1 et seq., to file a notice of claim against the State for damages related to the victim's rape by a parolee did not begin to run until the day the victim was raped, and the victim's notice of claim and complaint were timely filed, although the court ultimately found the State immune from liability under Miss. Code Ann. § 11-46-9(1). Connell v. State, 841 So. 2d 1127 (Miss. 2003).

Although the tort claims act allowed 90 days after the running of the one-year statute of limitations for filing of a claim, a widow's claim against the county for the death of her husband was time barred because she filed it 94 days after the statute had run. Marshall v. Warren County Bd. of Supvrs. 831 So. 2d 1211 (Miss. Ct. App. 2002).

Discovery rule applied to the Mississippi Tort Claim Act's statute of limitations; the circuit court erred in holding that the parents' claim against the hospital was untimely filed because it calculated the time in which to file the complaint by using the old 95-day period for filing a notice of claim instead of the amendment's 120-day period. Moore v. Mem'l Hosp. 825 So. 2d 658 (Miss. 2002).

Trial court did not err in granting summary judgment to a hospital that was a governmental entity under Miss. Code Ann. § 11-46-11(1), where the parents on behalf of their minor child failed to file their suit for negligent care and treatment against the hospital within the one-year limitation period under the Mississippi Tort Claims Act at Miss. Code Ann. § 11-46-11(3). Moore v. Mem'l Hosp. -- So. 2d -- (Miss. Apr. 11, 2002).

Amendment to statute was retroactive as claims pending at the time of the statute's amendment and not barred by its previous limitation gave them the benefit of the longer limitations period. Hollingsworth v. City of Laurel, 808 So. 2d 950 (Miss. 2002).

Mother's suit against the chancery court clerk for failure to timely dispense funds from another suit was properly dismissed where the complaint was barred by the one-year statute of limitations of Miss. Code Ann. § 11-46-11(3) on tort claims brought against public officials. The claim accrued when the court clerk received the funds in late 1997, to reimburse the mother for medical bills she paid arising out of her daughter's automobile accident, but the mother's suit was not filed until December 6, 1999. Young v. Benson, 828 So. 2d 821 (Miss. Ct. App. 2002), cert. denied, 829 So. 2d 1245 (Miss. 2002).

The trial court erred when it dismissed a personal injury action against a city on the

ground that the plaintiff did not wait 90 days after filing his notice of claim to commence the action; the appropriate remedy would have been for the court to issue an order staying the lawsuit until such time as the city had been given the benefit of the waiting period. Jackson v. City of Wiggins, 760 So. 2d 694 (Miss. 2000).

A notice of claim that included a settlement offer that would expire in 20 days did not violate the 90 day waiting period for filing an action. Thornburg v. Magnolia Regional Health Ctr. 741 So. 2d 220 (Miss. 1999).

Although a party must wait 90 days from the providing of notice to file a lawsuit, the dismissal of a lawsuit based on a failure to comply with the waiting period is a disproportionate remedy; instead, a governmental entity should request that the trial court issue an order staying the lawsuit until such time as the entity has been given the benefit of the applicable waiting period, and the governmental entity should be permitted to recover any expenses, including court costs and attorney's fees, which it incurs in obtaining a stay of the proceedings. City of Pascagoula v. Tomlinson, 741 So. 2d 224 (Miss. 1999).

10. DISCOVERY RULE.

By reenacting Miss. Code Ann. § 11-46-11(3) without addressing or countermanding the Mississippi Supreme Court's decision in Barnes, the Legislature acquiesced and tacitly approved and incorporated into the statute a discovery rule as announced in Barnes. Pursuant to the doctrine of stare decisis, the discovery rule was recognized as to §11-46-11(3). Caves v. Yarbrough, 991 So. 2d 142 (Miss. 2008).

Summary judgment was improperly granted to several health care providers in a medical negligence case because the limitations period in Miss. Code Ann. § 11-46-11 did not bar the claim; a discovery rule was recognized for claims filed under the Mississippi Tort Claims Act, Miss. Code Ann. §§ 11-46-1 to 11-46-23. Caves v. Yarbrough, -- So. 2d -- (Miss. Dec. 6, 2007).

One-year statute of limitations under the Mississippi Tort Claims Act, Miss. Code Ann. §§ 11-46-1 through 11-46-23, begins to run when a claimant knows, or by exercise of reasonable diligence should know, of both the damage or injury, and the act or omission which proximately caused it. The finder of fact must decide when those requirements are satisfied. Caves v. Yarbrough, -- So. 2d -- (Miss. Dec. 6, 2007).

By reenacting Miss. Code Ann. § 11-46-11(3) without addressing or countermanding the Mississippi Supreme Court's decision in Barnes v. Singing River Hosp., 733 So. 2d 199 (Miss. 1999), the Mississippi Legislature has acquiesced and tacitly approved and incorporated into § 11-46-11(3) a discovery rule as announced in Barnes. Pursuant to the doctrine of stare decisis, the Mississippi Supreme Court shall continue to recognize a discovery rule with respect to § 11-46-11(3). Caves v. Yarbrough, -- So. 2d -- (Miss. Dec. 6, 2007).

Supreme Court of Kansas overrules Barnes v. Singing River Hosp., 733 So. 2d 199, 205 (Miss. 1999), and its progeny, insofar as they judicially amended the statutes of the Mississippi Tort Claims Act (MTCA), Miss. Code Ann. §§ 11-46-1 et seq., by supplying a discovery rule tolling the MTCA's one-year statute of repose. Caves v. Yarbrough, -- So. 2d -- (Miss. Nov. 1, 2007).

Husband's medical malpractice and wrongful death claim against the hospital was not barred under Miss. Code Ann. § 11-46-11(3) where there was sufficient evidence to show that the husband was reasonably diligent in investigating the cause of his wife's death; there were numerous requests made for medical records and the husband submitted a notice of claim and filed suit shortly after the expert witness determined that the records indicated wrongful conduct; the husband could not have known of the alleged wrongdoing until he had access to the necessary medical records. Forrest County General Hosp. v. Kelley, 914 So. 2d 242 (Miss. Ct. App. 2005).

When the patient discovered that the patient's child had died in the womb, the patient should have known that there was some causal connection between the death and the doctor's treatment. Moreover, even if the patient did not recognize the causal connection at the time of death, there was absolutely no indication that the patient made any attempts to determine the cause of the patient's child's death until after one year had elapsed; thus, there was no issue of fact with respect to whether the discovery rule tolled the statute of limitations, and accordingly, the state hospital and its doctor were entitled to summary judgment. Wright v. Quesnel, 876 So. 2d 362 (Miss. 2004).

Denial of the general hospital's and physicians' motion to transfer venue in a medical malpractice action was improper where the general hospital was entitled to venue in the county in which the principal offices were located; further, the decedent's heirs were not reasonably diligent in investigating the cause of her injuries, the discovery rule did not apply in the case, and the claims against the medical center and treating physicians were, therefore, time-barred, Miss. Code Ann. § 11-46-11 (Rev. 2002). Wayne Gen. Hosp. v. Hayes, 868 So. 2d 997 (Miss. 2004).

Libel claims against a county filed more than one year after the last publication of allegedly defamatory statements by a coroner about the cause of death of a convalescent center patient were dismissed pursuant to Fed. R. Civ. P. 12(b)(6) as time-barred because the discovery rule did not apply to libel actions under the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-11(3). River Oaks Convalescent Ctr., Inc. v. Coahoma County, 280 F. Supp. 2d 565 (N.D. Miss. 2003).

Trial court erred in dismissing the money damages portion of the landowner's complaint against the county as time barred; the second flood on the landowner's property occurred just six months before the third flood and his learning of bridge alterations by the county, due to which his property was damaged; within six months after the third flood, the landowner learned of the alleged cause, and six months was a reasonable period in which to discover the alleged cause of the harm. Punzo v. Jackson County, 861 So. 2d 340 (Miss. 2003).

Action for wrongful death should not be given the benefit of the discovery rule; thus, a decedent's heirs' medical malpractice action against a hospital and three physicians was time-barred because it was brought over two years after the decedent's death, which was beyond the one-year statute of limitations of the Mississippi Tort Claims Act. Wayne Gen. Hosp. v. Hayes, -- So. 2d -- (Miss. Nov. 6, 2003).

Although the discovery rule applied to claims filed under the Mississippi Tort Claims Act, Miss. Code Ann. §§ 11-46-1 to 11-46-23, involving latent injuries, it did not operate to toll the statute of limitations because an injured party was aware of an injury after a fall down a staircase, despite the fact that the full extent of the injuries was not apparent. Williams v. Clay County, 861 So. 2d 953 (Miss. 2003).

The discovery rule does not apply to toll the accrual of a libel claim and to prevent the running of the one year statute of limitations under the statute. Ellisville State Sch. v. Merrill, 732 So. 2d 198 (Miss. 1999).

The discovery rule did not apply to an action for burns sustained by a quadriplegic when hot packs were placed on the backs of his legs during physical therapy treatments, notwithstanding his contention that he was unaware of the cause of action until he received correspondence from a physician stating the cause of the injuries; the plaintiff knew of his injuries at the time they occurred, since his burns were treated that day and for months afterwards, and he threatened legal action the next day. Robinson v. Singing River Hosp. Sys. 732 So. 2d 204 (Miss. 1999).

The discovery rule applies to Tort Claims Act actions involving latent injuries. Robinson v. Singing River Hosp. Sys. 732 So. 2d 204 (Miss. 1999).

Despite the absence of specific discovery language in this section, the discovery rule applies to subsection (3) of this section in actions involving latent injuries. Barnes v.

Singing River Hosp. Sys. 733 So. 2d 199 (Miss. 1999).

The discovery rule did not apply to an action in which the plaintiff alleged that the volunteer director/emergency medical technician for a city ambulance service negligently contributed to the death of her husband since the death of her husband was not a latent injury. Chamberlin v. City of Hernando, 716 So. 2d 596 (Miss. 1998).

¶11. ESTOPPEL TO ASSERT STATUTE OF LIMITATIONS.

The defendant was not estopped from asserting the statute of limitations since, although settlement negotiations were ongoing between the parties, there was never any representation by the defendant that the statute of limitations was tolled, and the plaintiff did not allege that the defendant led him to believe that he need not comply with the statute. Mississippi Dep't of Pub. Safety v. Stringer, 748 So. 2d 662 (Miss. 1999).

County was not estopped from asserting the statute of limitations defense in a case involving a claim filed under the Mississippi Tort Claims Act, Miss. Code Ann. §§ 11-46-1 to 11-46-23, because the statements of a county employee regarding the payment of medical bills were not fraudulent since an injured party failed to submit any valid medical claims; therefore, a trial court did not err in dismissing the case for failing to state a cause of action. Williams v. Clay County, 861 So. 2d 953 (Miss. 2003).

The defendant town and its insurer were estopped from asserting that the plaintiff failed to strictly comply with the notice of claim requirements where (1) the notice of claim form did not provide a blank for liquidated damages other than for an estimate for property damage; (2) the completed form disclosed the date and time of the accident, the nature/cause of the accident, persons/witnesses involved, and the exact location of the accident; (3) the insurer was given a medical release to obtain the plaintiff's medical records and did obtain those records in a timely fashion; (4) the plaintiff and her attorney cooperated fully with the city and its insurer throughout the investigation and settlement discussions; (5) the plaintiff and her attorney were contacted directly by the insurer and dealt almost exclusively with the insurer; and (6) the town and its insurer only asserted the plaintiff's failure to strictly comply after settlement negotiations broke down approximately one year and 90 days after the fall and after the plaintiff filed suit and discovery was completed. Carr v. Town of Shubuta, 733 So. 2d 261 (Miss. 1999).

¶12. TOLLING OF LIMITATION PERIOD.

Where a court declined to exercise supplemental jurisdiction over the Mississippi Tort Claims Act (MTCA) claims of an arrestee and her children after their federal 42 U.S.C.S. § 1983 claims were dismissed with prejudice, those MTCA claims were dismissed without prejudice to refiling in state court, and the limitations period in Miss. Code Ann. § 11-46-11 was deemed tolled during the pendency of the case in federal court. Smith v. Turner, -- F. Supp. 2d -- (N.D. Miss. Dec. 15, 2008).

Where plaintiff, the deceased patient's daughter, brought a medical malpractice suit against the University of Mississippi Medical Center, the statute of limitations for the wrongful-death claim began to run on December 19, 2004 when the patient died; since plaintiff's notice of claim letter was received on November 28, 2005, it was timely given within the one-year of the date of death as required by Miss. Code Ann. § 11-46-11(3). The statute of limitations was tolled for ninety-five days from the date of the notice, and plaintiff timely brought suit on February 21, 2006. Univ. of Miss. Med. Ctr. v. McGee, 999 So. 2d 837 (Miss. 2008).

Supreme Court of Mississippi held that the March 2002 amendment to Miss. Code Ann. § 11-46-11(4) was unconstitutional to the extent that it made the savings clause

for minors' claims under the Miss. Tort Claims Act applicable to all claims since April 1, 1993, as doing so could revive claims that previously been barred by the statute of limitations. Univ. of Miss. Med. Ctr. v. Robinson, 876 So. 2d 337 (Miss. 2004).

Pursuant to Miss. Code Ann. § 11-46-11 of the Mississippi Tort Claims Act (MTCA), Miss. Code Ann. §§ 11-46-1 to 11-46-23, and Miss. Code Ann. § 15-1-1, Miss. Code Ann. § 15-1-69 did not apply to the MTCA, and it is worth noting that non-tort claims act cases are not controlling as to the applicability of § 15-1-69, and because the MTCA has a one-year statute of limitation that is significantly shorter than the catchall three-year statute of limitation, the one-year statute of limitation found in Miss. Code Ann. § 11-46-11 is controlling; thus, the court rejected the parents' claim that Miss. Code Ann. § 15-1-69 applied to the MTCA to toll the statute of limitations under Miss. Code Ann. § 11-46-11. Stockstill v. State, 854 So. 2d 1017 (Miss. 2003).

Injured party's suit against a school district was timely filed; the injured party gave notice of her claim to the district within the one-year statutory time period, and she filed her suit within the subsequent 90-day period available for filing suit. Roberts v. New Albany Separate Sch. Dist. 813 So. 2d 729 (Miss. 2002).

Statutory amendments were prospective only and not retroactive; where plaintiff filed a suit under the amended statute, the claim could not be applied retroactively and the pre-amendment statute dictated the outcome of the case. Roberts v. New Albany Separate Sch. Dist. -- So. 2d -- (Miss. Sept. 13, 2001).

The one (1) year statute of limitations of the Mississippi Tort Claims Act set forth in this section is not tolled by the minors' savings clause in § 15-1-59. Hays v. Lafayette County Sch. Dist. 759 So. 2d 1144 (Miss. 1999).

The minor savings clause in § 15-1-59 only applies to periods of limitation within that chapter and not to the Mississippi Tort Claims Act, and plaintiff failed to file her claim under the MTCA within the prescribed limitations period. Hays v. Lafayette County Sch. Dist. 759 So. 2d 1144 (Miss. 1999).

The Mississippi Tort Claims Act's one year statute of limitations expressed in this section is not tolled by the "minor savings clause" of § 15-1-59 until the minor achieves majority. Marcum v. Hancock County Sch. Dist. 741 So. 2d 234 (Miss. 1999).

The statute of limitations was not tolled by fraud with regard to a medical malpractice claim where (1) the first request for the plaintiff's medical records was made on November 13, 1995, (2) when he did not receive the record by January 29, 1996, plaintiff's attorney contacted the hospital and was informed of the fee for copying the file, and (3) after plaintiff's attorney paid the copying fee, the medical records were delivered sometime in mid-February of 1996. Barnes v. Singing River Hosp. Sys. 733 So. 2d 199 (Miss. 1999).

¶12.5 MINOR SAVINGS CLAUSE.

Minor savings clause added to the Mississippi Tort Claims Act in 2000 did not apply retroactively to a medical negligence claim that accrued in 1997. Blailock v. Hubbs, 919 So. 2d 126 (Miss. 2005).

¶12.6. INTERVENTION.

In an action arising out of an automobile accident in which five persons and five others were injured, it was error for the court to permit the representatives of two of the deceased persons to intervene in an action filed against the defendant city where the motion for intervention was not filed until after the expiration of the notice of claim and statute of limitations provisions of this section. City of Tupelo v. Martin, 747 So. 2d 822 (Miss. 1999).

¶13. ILLUSTRATIVE CASES.

Where a wrongful death beneficiary served a notice of claim upon a medical center and filed a wrongful death claim 41 days later, the medical center was entitled to summary judgment because the complaint was filed in violation of the 90-day notice requirement of Miss. Code Ann. § 11-46-11(1), which courts were bound to strictly enforce. Stuart v. Univ. of Miss. Med. Ctr. -- So. 2d -- (Miss. Ct. App. Dec. 16, 2008).

Where the deceased patient's daughter brought a medical malpractice suit against the University of Mississippi Medical Center after it was discovered that a sponge was left in the patient's body during a surgery performed on September 1, 2004, plaintiff sent a notice-of-claim letter to the medical center on November 21, 2005 and filed a medical negligence suit on February 21, 2006. The Supreme Court of Mississippi held that plaintiff's survival claim based on the negligent act of leaving the sponge in the patient acrued more than one year prior to providing notice; thus, that claim was barred by the statute of limitations. Univ. of Miss. Med. Ctr. v. McGee, 999 So. 2d 837 (Miss. 2008).

In a medical malpractice case, a hospital patient substantially complied with Miss. Code Ann. § 11-46-11(2)'s requirement that she list all persons known to be involved by stating multiple hospital employees caused her injuries. If the identity of these persons was not known, the patient, who was unconscious a majority of her time at the hospital, was not required to provide their names. Lee v. Mem'l Hosp. 999 So. 2d 1263 (Miss. 2008).

Ninety-day notice requirement of Miss. Code Ann. § 11-46-11 was to be strictly enforced by the courts; where plaintiffs in an automobile negligence action against a governmental agency and its employee failed to strictly comply with the 90-day pre-suit notice requirement of Miss. Code Ann. § 11-46-11(1) and filed their complaint only seven days after sending their notice letter, the circuit court never obtained jurisdiction over their complaint and therefore erred in denying the government agency's motion to dismiss. Bunton v. King, 995 So. 2d 694 (Miss. 2008).

Where a doctor working in partnership with a community hospital was sued for medical malpractice, he did nothing to assert immunity under the Mississippi Tort Claims Act (MTCA), Miss. Code Ann. § 11-46-1 et seq., for five years until he moved for summary judgment; because he delayed and actively participated in discovery, he waived MTCA immunity. To be in compliance with the MTCA, plaintiff would have had to sue the partnership, joining the doctor under Miss. Code Ann. § 11-46-7(2) in his representative capacity only, and would have been required to provide ninety-day notice pursuant to Miss. Code Ann. § 11-46-11(1). Estate of Grimes v. Warrington, 982 So. 2d 365 (Miss. 2008).

Wife's medical malpractice action against a hospital and a physician for her husband's death was untimely under Miss. Code Ann. § 11-46-11(3), and therefore the trial court properly granted the hospital and physician summary judgment, where her husband died on April 17, 2000, and her notice of claim was not provided to the hospital until February 13, 2002, and was never provided to the physician. Caves v. Yarbrough, -- So. 2d -- (Miss. Nov. 1, 2007).

Where plaintiff fireman filed claims against defendants, a city, its mayor, and an alderman for wrongful demotion, because the fireman failed to provide the pre litigation notice as required by Miss. Code Ann. § 11-46-11(1) of the Mississippi Tort Claims Act, a wrongful demotion tort claim was barred. Montgomery v. Mississippi, 498 F. Supp. 2d 892 (S.D. Miss. 2007).

Appellate court reversed the denial of a university medical center's motion for summary judgment because plaintiff failed to comply with the ninety-day notice requirement under Miss. Code Ann. § 11-46-11(1). Judgment was entered for the medical center. Univ. of Miss. Med. Ctr. v. Easterling, 928 So. 2d 815 (Miss. 2006).

Summary judgment in favor of the driver was affirmed because there was no issue of material fact that the driver, by running a stop sign, was not acting outside the course and scope of her employment with the governmental entity, and it was undisputed that the claimants did not comply with the one year statute of limitations that accompanied actions under the Mississippi Tort Claims Act. Jackson v. Hodge, 911 So. 2d 625 (Miss. Ct. App. 2005).

Government hospital was properly dismissed from a medical negligence suit; the parents of a child with cerebral palsy did not sue the hospital within the one-year limitation set forth in the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-11(3). The discovery rule did not apply, because the child's injuries were apparent at birth. Blailock v. Hubbs, 919 So. 2d 126 (Miss. 2005).

Even if the language in the contract had been convincing enough to create a private entity and the county hospital had been deemed private, the injured person's claim remained one of premises liability. The agreement did not alter the fact that the county remained the owner of the physical property that comprised the hospital, and that includes the sidewalk outside the hospital where the injure person tripped and fell; thus, the trial court did not err in granting summary judgment in favor of the county hospital due to the injured person's claim being filed outside the one-year statute of limitations under Miss. Code Ann. Section 11-46-11(3). Allstadt v. Baptist Mem'l Hosp. 893 So. 2d 1083 (Miss. Ct. App. 2005).

Trial court erred in denying the medical center's summary judgment claim. The statute of limitations barred the minor's claim in 1996 and Miss. Code Ann. 11-46-11 (4) unconstitutional to the extent that it revived claims that had previously been barred by the statute of limitations. Univ. of Miss. Med. Ctr. v. Robinson, 876 So. 2d 337 (Miss. 2004).

Even though a man, who qualified as an "employee" for purposes of Miss. Code Ann. § 11-46-1(f) of the Mississippi Tort Claims Act (MTCA), Miss. Code Ann. §§ 11-46-1 to 11-46-23, caused an accident that injured an individual and then failed to disclose to the individual that he was a county employee, because the individual failed to establish that the county withheld information regarding the employee's work status, did not show that the county had provided the individual with misleading or inaccurate information, and did not exercise due diligence in determining the true parties to the lawsuit or in determining the man's work status, the court affirmed the trial court's grant of summary judgment under Miss. R. Civ. P. 56(c) in favor of the county and the employee, man on the grounds that the individual had failed to substantially comply with the notice requirements of the MTCA, and, that therefore, the statute of limitations had expired. Ray v. Keith, 859 So. 2d 995 (Miss. 2003).

Trial court did not err when, pursuant to Miss. R. Civ. P. 12(b)(6), a patient's complaint against a state hospital and physicians for failure to comply with Miss. Code Ann. § 11-46-11 of the Mississippi Tort Claims Act; the court found that (1) the record did not reflect that the patient had complied with the notice of claim requirements under § 11-46-11(3), and (2) the patient waited for over two years to file his action, which fell outside of the limitations period. Southern v. Miss. State Hosp. 853 So. 2d 1212 (Miss. 2003).

Because a citizen failed to file a notice of claim against the city pursuant to Miss. Code Ann. § 11-46-11(1) of the Mississippi Tort Claims Act, and because a document agreed to between the citizen and the city four years earlier did not serve as proper notice, the citizen failed to comply with the Act and the action was properly dismissed under Miss. R. Civ. P. 12(b)(6). Black v. City of Tupelo, 853 So. 2d 1221 (Miss. 2003).

Because parents waited over one year after their son's death to file an action under the Mississippi Tort Claims Act, Miss. Code Ann. §§ 11-46-1 to 11-46-23, against the State and state agencies, and nothing operated to toll the statute of limitations under Miss. Code Ann. § 11-46-11, the action was time-barred and properly dismissed

pursuant to Miss. R. Civ. P. 12(b)(6). Stockstill v. State, 854 So. 2d 1017 (Miss. 2003).

Patient in medical malpractice action who underwent surgery, was aware the next day that she had suffered a stroke, and two years after the surgery hand-delivered a letter to two of her treating physicians, as well as filed her initial complaint against a third physician was time-barred from bringing her medical malpractice action. Gilchrist v. Veach, 807 So. 2d 485 (Miss. Ct. App. 2002).

A notice of claim was sufficient with regard to a constable, notwithstanding that it misidentified the county for which he was a constable, where the notice of claim was delivered to the county administrator for the county that employed the constable, the constable had been employed by the county for several years, and it was clear that the county administrator knew of the existence of the constable. Williams v. Toliver, 759 So. 2d 1195 (Miss. 2000).

The trial court was correct in determining that two residents were employees of a state university hospital and that the plaintiff's failure to comply with the resulted in their dismissal since both doctors were student doctors where one was an intern in his first year of residency and the other was a resident physician in training there; however, the dismissal of a third doctor was premature and further discovery was required to determine whether he was an employee of the hospital or an independent contractor. Owens v. Thomae, 759 So. 2d 1117 (Miss. 1999).

The plaintiff substantially complied with the notice requirements of this section, notwithstanding that the notice of claim was not personally delivered or sent by registered or certified mail, since the defendant school district was not prejudiced by the plaintiff's failure to send her letter in the manner prescribed by statute; the superintendent of the school district was aware of the claim and the matter was already in the hands of the school district's insurance company. Overstreet v. George County Sch. Dist. 741 So. 2d 965 (Miss. Ct. App. 1999).

Despite the fact that the plaintiff's notice of claim letter was sent to the wrong person and sent via an improper route, she substantially satisfied the notice requirements of this section since she made a reasonable, good faith effort to comply with this section's requirements, the defendant received actual notice of her claim, and the defendant suffered no actual prejudice as a result of the plaintiff's failure to comply with the statute. McNair v. University of Miss. Med. Ctr. 742 So. 2d 1078 (Miss. 1999).

Where the plaintiff served the mayor of the defendant city with a complaint on April 2, 1997 and with a notice of claim on November 12, 1997 and where the complaint and the notice of claim taken together as a whole outlined each and every aspect required by the statute, she substantially complied with the notice requirement. Jackson v. City of Booneville, 738 So. 2d 1241 (Miss. 1999).

The court refused to lift statutory immunity in medical malpractice cases against state hospitals, notwithstanding the argument that hospitals should be prevented from claiming immunity merely because they're owned by a governmental entity unless acting in some governmental capacity. Barnes v. Singing River Hosp. Sys. 733 So. 2d 199 (Miss. 1999).

ATTORNEY GENERAL OPINIONS

The president of the board of supervisors is the chief executive officer for the county for the purpose of giving notice of claim under the statute. Creekmore, August 21, 1998, A.G. Op. #98-0478.

ALR. Insufficiency of notice of claim against municipality as regards statement of place where accident occurred. 69 A.L.R.4th 484.

Complaint as satisfying requirement of notice of claim upon states, municipalities, and other political subdivisions. 45 A.L.R.5th 109.

Person or entities upon whom notice of injury or claim against state or state agencies

may or must be served. 45 A.L.R.5th 173.

Sufficiency of notice of claim against local governmental unit as regards identity, name, address, and residence of claimant. 53 A.L.R.5th 617.

Sufficiency of notice of claim against local political entity as regards time when accident occurred. 57 A.L.R.5th 689.

LAW REVIEWS. The History and Future of Sovereign Immunity for Mississippi School Districts. 58 Miss. L. J. 275, Fall 1988.

1984 Mississippi Supreme Court Review: Civil Procedure. 55 Miss L. J. 49, March, 1985.

Frasier III, A Review of Issues Presented by § 11-46-11 of the Mississippi Tort Claims Act: The Notice Provisions and Statute of Limitations. 65 Miss L. J. 643, Spring 1996.

Recent Developments in Mississippi Tort Claims Act Law Pertaining to Notice of Claim and Exemptions to Immunity Issues: Substantial/Strict Compliance, Discretionary Acts, Police Protection and Dangerous Conditions, 76 Miss. L.J. 973, Spring, 2007.

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MISSISSIPPI CODE of 1972 ANNOTATED

*** CURRENT THROUGH THE 2008 1ST EXTRAORDINARY SESSION ***
*** STATE COURT ANNOTATIONS CURRENT THROUGH FEBRUARY 10, 2009 ***

TITLE 11. CIVIL PRACTICE AND PROCEDURE
CHAPTER 46. IMMUNITY OF STATE AND POLITICAL SUBDIVISIONS FROM LIABILITY AND SUIT FOR TORTS AND TORTS OF EMPLOYEES

GO TO MISSISSIPPI CODE OF 1972 ARCHIVE DIRECTORY

Miss. Code Ann. § 11-46-5 (2008)

§ 11-46-5. Waiver of immunity; course and scope of employment; presumptions

(1) Notwithstanding the immunity granted in Section 11-46-3, or the provisions of any other law to the contrary, the immunity of the state and its political subdivisions from claims for money damages arising out of the torts of such governmental entities and the torts of their employees while acting within the course and scope of their employment is hereby waived from and after July 1, 1993, as to the state, and from and after October 1, 1993, as to political subdivisions; provided, however, immunity of a governmental entity in any such case shall be waived only to the extent of the maximum amount of liability provided for in Section 11-46-15.

(2) For the purposes of this chapter an employee shall not be considered as acting within the course and scope of his employment and a governmental entity shall not be liable or be considered to have waived immunity for any conduct of its employee if the employee's conduct constituted fraud, malice, libel, slander, defamation or any criminal offense other than traffic violations.

(3) For the purposes of this chapter and not otherwise, it shall be a rebuttable presumption that any act or omission of an employee within the time and at the place of his employment is within the course and scope of his employment.

(4) Nothing contained in this chapter shall be construed to waive the immunity of the state from suit in federal courts guaranteed by the Eleventh Amendment to the Constitution of the United States.

HISTORY: SOURCES: Laws, 1984, ch. 495, § 3; reenacted and amended, Laws, 1985, ch. 474, § 3; reenacted and amended, Laws, 1986, ch. 438, § 2; Laws, 1987, ch. 483, § 2; Laws, 1988, ch. 442, § 2; Laws, 1989, ch. 537, § 2; Laws, 1990, ch. 518, § 2; Laws, 1991, ch. 618, § 2; Laws, 1992, ch. 491 § 4, eff from and after passage (approved May 12, 1992).

NOTES: EDITOR'S NOTE. --Laws, 1987, ch. 483, § 50, provides as follows:
"SECTION 50. Section 4, Chapter 495, Laws of 1984, as reenacted and amended by

Section 12, Chapter 474, Laws of 1985, as amended by Section 6, Chapter 438, Laws of 1986, which specifies the causes of action that are covered by Chapter 46, Title 11, Mississippi Code of 1972, and specifies the law that governs causes of action that occur prior to the effective date of coverage of Chapter 46, Title 11, Mississippi Code of 1972, is hereby repealed."

CROSS REFERENCES. --Immunity of vocational rehabilitation agency for the blind from suit for damages arising out of the operation of the agency's motor vehicles, see § 37-33-55.

Repeal of provisions requiring motor vehicle liability insurance on department of human service's vehicles on date sovereign immunity of state is waived as provided in this section, see § 37-33-55.

FEDERAL ASPECTS. --Eleventh Amendment to the Constitution of the United States, see USCS, Constitution, Amendment 11.

JUDICIAL DECISIONS

1. In general

1.5. Applicability of waiver.

2. Course and scope of employment.

3. Evidence sufficient to prove liability

4. Evidence insufficient to prove liability.

5. Employee.

6. Waiver of immunity defense.

1. IN GENERAL.

Where plaintiff parent sued defendant school district in state court alleging her child was sexually assaulted at school and obtained a judgment under the Mississippi Tort Claims Act, her later claims in federal court were properly held as barred due to res judicata; while school districts' sources of funding under Miss. Code Ann. § 37-45-21, 37-47-1 et seq., Miss. Code Ann. § 37-57-1, Miss. Code Ann. § 37-59-3, and Miss. Code Ann. § 37-151-7 were equally divided between local school districts and the state under Miss. Code Ann. § 11-46-7, Miss. Code Ann. § 11-46-16(2), and Miss. Code Ann. § 11-46-17(2), any judgment against the school district would be paid through the Tort Claims Fund and excess liability insurance, and thus, the school district was not considered an arm of the state entitled to Eleventh Amendment immunity as Miss. Code Ann. § 11-46-5(1) permitted school districts to be sued. Black v. N. Panola Sch. Dist. 461 F.3d 584 (5th Cir. 2006).

Finding that a city was not liable for a citizen's injuries under Miss. Code Ann. § 11-46-5(2) was reversed because the police acted with malice when they responded to a domestic disturbance call; a citizen was arrested for resisting arrest and disorderly conduct, was handcuffed and in submission, and one officer ground the citizen's face into the concrete garage floor, causing his teeth to break. The court held that the circuit court properly found that the immunity provisions of Miss. Code Ann. §§ 93-21-27 and 93-21-28 pertaining to domestic abuse incidents did not apply. City of Jackson v. Calcote, 910 So. 2d 1103 (Miss. Ct. App. 2005).

In a wrongful death suit, as Miss. Code Ann. § 11-46-9(1)(m) applied to any non-intentional/non-criminal acts alleged to have been committed upon a deceased inmate by a sheriff and/or his deputies in the course and scope of their employment, the trial court correctly dismissed claims alleging negligent acts by defendants and properly left an assault claim viable; however, it erred by dismissing other counts that alleged intentional criminal acts, as pursuant to Miss. Code Ann. §§ 11-46-5(2), 11-46-7(2), these claims remained viable under the wrongful death statute, Miss. Code Ann. § 11-7-13. Lee v. Thompson, 859 So. 2d 981 (Miss. 2003).

Dismissal of a minor student's suit against a school district and others over an alleged sexual assault by male students was affirmed, where the trial court's finding of no causation in fact, as the student failed to show she had been sexually assaulted, and that the district met its duty to use ordinary care to protect students from harm, were supported by the record. T.K. v. Simpson County Sch. Dist. 846 So. 2d 312 (Miss. Ct. App. 2003).

Because the parents failed to support their contention that Miss. Code Ann. § 11-46-5 superseded the specific types of immunity set forth in Miss. Code Ann. § 11-46-9, failure to cite legal authority in support of an issue was a procedural bar on appeal. Webb v. DeSoto County, 843 So. 2d 682 (Miss. 2003).

School district was "political subdivision" of state and thus was protected by sovereign immunity from negligence suit arising from incident on August 26, 1993, after effective date of statute restoring sovereign immunity for state and its political subdivisions, but before effective date of statute largely waiving such immunity for political subdivisions. Gressett ex rel. Gressett v. Newton Separate Mun. Sch. Dist. 697 So. 2d 444 (Miss. 1997).

While decision to replace bridge with culvert on county road was discretionary one to which qualified immunity attached, fact issue existed as to whether county supervisor who determined that replacement was necessary, determined size of culvert needed, and supervised installation of culvert substantially exceeded his authority or was so grossly negligent that his action could be described as constructively intentional such that he was deprived of immunity, precluding summary judgment for supervisor on motorist's personal injury claim. Mohundro v. Alcorn County, 675 So. 2d 848 (Miss. 1996).

¶1.5. APPLICABILITY OF WAIVER.

Former state university student's defamation, breach of contract, and other unspecified state-law claims against the university, a state board of trustees, and several professors were barred under U.S. Const. Amend. XI, and Miss. Code Ann. § 11-46-5 did not waive such immunity because the student's suit was brought in federal court. Washington v. Jackson State Univ. 532 F. Supp. 2d 804 (S.D. Miss. Mar. 15, 2006).

¶2. COURSE AND SCOPE OF EMPLOYMENT.

Plaintiff VA patient conceded that a vascular surgeon was a state employee, and

despite the patient's arguments to the contrary, the court found that there was no genuine issue of material fact that at the pertinent time, the surgeon was acting within the course and scope of his duties as a state employee, under Miss. Code Ann. §§ 11-46-5(3), 11-46-7(7), and, thus, immune under the Mississippi Tort Claims Act (MTCA), Miss. Code Ann. § 11-46-1 et seq. His involvement with the patient was solely by virtue of his being on-call pursuant to his employment with the university and its relationship to the VA facility. Creel v. United States, 512 F. Supp. 2d 574 (S.D. Miss. 2007).

Summary judgment in favor of the driver was affirmed because there was no issue of material fact that the driver, by running a stop sign, was not acting outside the course and scope of her employment with the governmental entity, and it was undisputed that the claimants did not comply with the one year statute of limitations that accompanied actions under the Mississippi Tort Claims Act. Jackson v. Hodge, 911 So. 2d 625 (Miss. Ct. App. 2005).

Although a trial court had not erred when it held that a city was not liable for the acts of two police officers during and after an arrest of an African-American male because the officers had acted beyond the scope of their employment, the court erred when it found the city liable because it had negligently supervised the officers. There was not a scintilla of evidence presented to indicate that the city had any policy which encouraged the type of activity that the officers engaged in and there was no factual support for the factual holding that the city was deliberately indifferent to the rights of African-Americans. City of Jackson v. Powell, 917 So. 2d 59 (Miss. 2005).

In the patient's suit against the doctor and the state hospital for the death of the patient's unborn child, the Miller factors were more than sufficient to determine the status of physicians working for state hospitals, and the state hospital's disclaimer of liability for the doctor's acts did not change the legal status of the doctor, especially when the state hospital had admitted that the doctor was its employee. Thus, the trial court properly determined that the doctor was shielded from liability under the Mississippi Tort Claims Act, Miss. Code Ann. §§ 11-46-1-23. Wright v. Quesnel, 876 So. 2d 362 (Miss. 2004).

Where a deputy assaulted an individual in attempting to force the individual to sit for a casino security photograph, the deputy was acting for the casino, and not in his official capacity for the county, and the deputy was not entitled to immunity. Kirk v. Crump, 886 So. 2d 741 (Miss. Ct. App. 2004), cert. denied, 887 So. 2d 183 (Miss. 2004).

Dismissal of an inmate's claim against the employees of the Missouri Department of Corrections was proper where the employees were acting within the course and scope of their employment; the inmate's negligence action was barred by the Mississippi Tort Claims Act, Miss. Code Ann. §§ 11-46-1 et seq., 11-46-5. Whitt v. Gordon, 872 So. 2d 71 (Miss. Ct. App. 2004).

Because a public school coach's actions at a fund-raiser where a plaintiff was injured were performed not for his own benefit but for the school's, the trial court properly held that he had acted in the scope of his employment and was thus immune from suit under the Mississippi Tort Claims Act, Miss. Code Ann. §§ 11-46-1 et seq. Singley v. Smith, 844 So. 2d 448 (Miss. 2003).

Proof by a preponderance of the evidence is necessary to overcome the presumption created by 46-5 Miss. Code Ann. § 11- 46-5 that any act or omission of an employee within the time and at the place of his employment is within the course and scope of his employment. Singley v. Smith, 844 So. 2d 448 (Miss. 2003).

An employee can be found to be acting outside the course and scope of employment if acting with malice. Bridges v. Pearl River Valley Water Supply Dist. 793 So. 2d 584 (Miss. 2001).

A county sheriff was acting in his official capacity when he responded to an emergency call at a residence and eventually shot a suspect; the plaintiff failed to offer

any evidence to suggest that the sheriff was not acting as an employee of the county; and there was a wealth of evidence to show that the sheriff acted in his official capacity. Holmes v. Defer, 722 So. 2d 624 (Miss. 1998). But see Carr v. Town of Shubuta, 733 So. 2d 261 (Miss. 1999).

Where the plaintiff sued the defendant city for false arrest, subsection (2) did not bar the city's liability. Foster v. Noel, 715 So. 2d 174 (Miss. 1998).

3. EVIDENCE SUFFICIENT TO PROVE LIABILITY.

In a child's suit against the Mississippi Department of Human Services (DHS), failure to investigate a child's allegations of sexual abuse by an employee of a youth care facility was a ministerial act for which DHS could be held liable. Miss. Dep't of Human Servs. v. S.W. 974 So. 2d 253 (Miss. Ct. App. 2007).

4. EVIDENCE INSUFFICIENT TO PROVE LIABILITY.

Finding against the student in her action against a state university and a professor after she suffered a third-degree burn at an iron pour demonstration was improper under Miss. Code Ann. § 11-46-9(1)(d) because the university was not protected by discretionary function immunity and was liable for the professor's negligence pursuant to the waiver of sovereign immunity codified at Miss. Code Ann. § 11-46-5; it was difficult to fathom how the professor's failure to put down dry sand before the pour involved a policy judgment of a social, political, or economic nature. Pritchard v. Von Houten, 960 So. 2d 568 (Miss. Ct. App. 2007).

When a teacher's aide was escorting an autistic child to his classroom, the child became agitated while the aide continued to move him through the hallway. The child suffered bruises as a result of the teacher's aide's fully sensible attempts to restrain him, and no treatment or medication was warranted or prescribed for the bruises; the aide's restraint of the child constituted control and discipline under Miss. Code Ann. § 37-11-57, and the circuit court properly applied Miss. Code Ann. § 11-46-9(1)(x) in finding that said actions did not constitute wanton and willful conduct to allow the parents to recover damages. Pigford v. Jackson Pub. Sch. Dist. 910 So. 2d 575 (Miss. Ct. App. 2005), cert. denied, 920 So. 2d 1008 (Miss. 2005).

Officer didn't show malice in an arrest in which the arrestee allegedly suffered a sprained wrist, and was immune from liability. The district, as well, was immune from from liability. Pearl River Valley Water Supply Dist. v. Bridges, 878 So. 2d 1013 (Miss. Ct. App. 2004).

Primary issue was whether the physicians were acting as employees of the University of Mississippi Medical Center (UMMC), or whether they were independent contractors for purposes of immunity or liability, and although the physicians did wear two hats, because they were entitled to engage, to an extent, in separate private practice, the appellate court, applying the standard of Miller v. Meeks, held that the State exercised reasonable control over the physicians, including the power to terminate the physicians' contract, the uncontroverted evidence was that the physicians were acting as employees of UMMC at the time of the subject surgery on the complaining patient, and pursuant to Mississippi's former sovereign immunity law, Miss. Code Ann. § 11-46-7 (2), the physicians were immune from liability. Brown v. Warren, 858 So. 2d 168 (Miss. Ct. App. 2003).

Where an individual worked for the Mississippi Bureau of Narcotics making drug buys, and was caught in the crossfire between a dealer and a Bureau officer, all the individual was able to show with regard to his negligence claim, was that the Bureau and its agents made a series of challengeable choices, from the level of training before sending an officer on a drug buy, to the directions given that officer; bad judgment; however,

was insufficient for liability where the individual offered no evidence to meet the evidentiary burden of the reckless disregard standard. Lippincott v. Miss. Bureau of Narcotics, 856 So. 2d 465 (Miss. Ct. App. 2003).

5. EMPLOYEE.

Although a patient alleged that he was injured by the negligence of a doctor who was an independent contractor of a hospital, the Mississippi Tort Claims Act provided immunity to the state and its political subdivisions, such as the hospital, for the negligence of its independent contractors. Therefore, the trial court properly entered summary judgment in favor of the hospital. Brown v. Delta Reg'l Med. Ctr. 997 So. 2d 195 (Miss. 2008).

Where a doctor working in partnership with a community hospital was sued for medical malpractice, the trial court determined that he was an employee of the community hospital for purposes of immunity under the Mississippi Tort Claims Act (MTCA), Miss. Code Ann. § 11-46-5. The partnership was an "instrumentality" of the community hospital and was entitled to the protections, limitations and immunities of the MTCA. Estate of Grimes v. Warrington, 982 So. 2d 365 (Miss. 2008).

6. WAIVER OF IMMUNITY DEFENSE.

A doctor's participation in a medical malpractice action for eleven years, coupled with his failure to pursue the immunity affirmative defense under the Mississippi Tort Claims Act, Miss. Code Ann. §§ 11-46-1, et seq., constituted a waiver of such defense. Aikens v. Whites, -- So. 2d -- (Miss. Oct. 2, 2008).

ATTORNEY GENERAL OPINIONS

Municipality does not have authority to waive immunity set forth in Section 11-46-1, et seq., by agreeing to indemnify railroad for claims; municipality does not have authority to agree to indemnify railroad for losses relating to use of license or arising from same location; city has authority to maintain shrubbery and vegetation on municipal property, but does not have authority to maintain shrubbery and vegetation on private property, such as railroad right-of-way. Scott Nov. 3, 1993, A.G. Op. #93-0727.

Members of Foster Care Review Board enjoy public official immunity for any of their acts arising out of and within course and scope of their duties on Board pursuant to Section 11-46-9 provided that conduct does not constitute fraud, malice, libel, slander, defamation or criminal offense. Tardy, Jan. 5, 1994, A.G. Op. #93-0972.

ALR. Waiver of, or estoppel to assert, failure to give required notice of claim of injury to municipality, county, or other governmental agency or body. 65 A.L.R.2d 1278.

Immunity of police or other law enforcement officer from liability in defamation action. 100 A.L.R.5th 341.

Liability of municipal corporation or other governmental entity for injury or death caused by action or inaction of off-duty police officer. 36 A.L.R.5th 1.

Tort liability of public schools and institutions of higher learning for accident involving motor vehicle operated by student. 85 A.L.R.5th 301.

When is federal agency employee independent contractor, creating exception to United States waiver of immunity under Federal Tort Claims Act (28 U.S.C.A. § 2671). 166 A.L.R. Fed. 187.

AM JUR. 18 Am. Jur. Pl & Pr Forms (Rev), Municipal, School, and State Tort Liability, Forms 1 et seq.

LAW REVIEWS. The History and Future of Sovereign Immunity for Mississippi School Districts. 58 Miss. L. J. 275, Fall 1988.

1984 Mississippi Supreme Court Review: Civil Procedure. 55 Miss L. J. 49, March, 1985.

Caught in the Crossfire: Employers' Liability for Workplace Violence, 70 Miss. L.J. 505 (2000).

Constitutional Law -- Fourth Amendment -- The Warrantless Use of Thermal Imaging Technologies Is Unconstitutional, 71 Miss. L.J. 325, Fall, 2001.

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Miss. Code Ann. § 11-46-7

MISSISSIPPI CODE of 1972 ANNOTATED

*** CURRENT THROUGH THE 2008 1ST EXTRAORDINARY SESSION ***
*** STATE COURT ANNOTATIONS CURRENT THROUGH FEBRUARY 10, 2009 ***

TITLE 11. CIVIL PRACTICE AND PROCEDURE
CHAPTER 46. IMMUNITY OF STATE AND POLITICAL SUBDIVISIONS FROM LIABILITY AND SUIT FOR TORTS AND TORTS OF EMPLOYEES

GO TO MISSISSIPPI CODE OF 1972 ARCHIVE DIRECTORY

Miss. Code Ann. § 11-46-7 (2008)

§ 11-46-7. Exclusiveness of remedy; joinder of government employee; immunity for acts or omissions occurring within course and scope of employee's duties; provision of defense for and payment of judgments or settlements of claims against employees; contribution or indemnification by employee

(1) The remedy provided by this chapter against a governmental entity or its employee is exclusive of any other civil action or civil proceeding by reason of the same subject matter against the governmental entity or its employee or the estate of the employee for the act or omission which gave rise to the claim or suit; and any claim made or suit filed against a governmental entity or its employee to recover damages for any injury for which immunity has been waived under this chapter shall be brought only under the provisions of this chapter, notwithstanding the provisions of any other law to the contrary.

(2) An employee may be joined in an action against a governmental entity in a representative capacity if the act or omission complained of is one for which the governmental entity may be liable, but no employee shall be held personally liable for acts or omissions occurring within the course and scope of the employee's duties. For the purposes of this chapter an employee shall not be considered as acting within the course and scope of his employment and a governmental entity shall not be liable or be considered to have waived immunity for any conduct of its employee if the employee's conduct constituted fraud, malice, libel, slander, defamation or any criminal offense.

(3) From and after July 1, 1993, as to the state, from and after October 1, 1993, as to political subdivisions, and subject to the provisions of this chapter, every governmental entity shall be responsible for providing a defense to its employees and for the payment of any judgment in any civil action or the settlement of any claim against an employee for money damages arising out of any act or omission within the course and scope of his employment; provided, however, that to the extent that a governmental entity has in effect a valid and current certificate of coverage issued by the board as provided in Section 11-46-17, or in the case of a political subdivision, such political subdivision has a plan or policy of insurance and/or reserves which the board has approved as providing satisfactory security for the defense and protection of the

political subdivision against all claims and suits for injury for which immunity has been waived under this chapter, the governmental entity's duty to indemnify and/or defend such claim on behalf of its employee shall be secondary to the obligation of any such insurer or indemnitor, whose obligation shall be primary. The provisions of this subsection shall not be construed to alter or relieve any such indemnitor or insurer of any legal obligation to such employee or to any governmental entity vicariously liable on account of or legally responsible for damages due to the allegedly wrongful error, omissions, conduct, act or deed of such employee.

(4) The responsibility of a governmental entity to provide a defense for its employee shall apply whether the claim is brought in a court of this or any other state or in a court of the United States.

(5) A governmental entity shall not be entitled to contribution or indemnification, or reimbursement for legal fees and expenses from its employee unless a court shall find that the act or omission of the employee was outside the course and scope of his employment. Any action by a governmental entity against its employee and any action by an employee against the governmental entity for contribution, indemnification, or necessary legal fees and expenses shall be tried to the court in the same suit brought on the claim against the governmental entity or its employee.

(6) The duty to defend and to pay any judgment as provided in subsection (3) of this section shall continue after employment with the governmental entity has been terminated, if the occurrence for which liability is alleged happened within the course and scope of duty while the employee was in the employ of the governmental entity.

(7) For the purposes of this chapter and not otherwise, it shall be a rebuttable presumption that any act or omission of an employee within the time and at the place of his employment is within the course and scope of his employment.

(8) Nothing in this chapter shall enlarge or otherwise adversely affect the personal liability of an employee of a governmental entity. Any immunity or other bar to a civil suit under Mississippi or federal law shall remain in effect. The fact that a governmental entity may relieve an employee from all necessary legal fees and expenses and any judgment arising from the civil lawsuit shall not under any circumstances be communicated to the trier of fact in the civil lawsuit.

HISTORY: SOURCES: Laws, 1984, ch. 495, § 5; reenacted and amended, Laws, 1985, ch. 474, § 4; reenacted and amended, Laws, 1986, ch. 438, § 3; Laws, 1987, ch. 483, § 4; Laws, 1988, ch. 442, § 4; Laws, 1989, ch. 537, § 4; Laws, 1990, ch. 518, § 4; Laws, 1991, ch. 618, § 4; Laws, 1992, ch. 491 § 6; Laws, 1993, ch. 476, § 3, eff from and after passage (approved April 1, 1993).

NOTES: EDITOR'S NOTE. --Laws, 1987, ch. 483, § 50, provides as follows:
"SECTION 50. Section 4, Chapter 495, Laws of 1984, as reenacted and amended by Section 12, Chapter 474, Laws of 1985, as amended by Section 6, Chapter 438, Laws of 1986, which specifies the causes of action that are covered by Chapter 46, Title 11, Mississippi Code of 1972, and specifies the law that governs causes of action that occur prior to the effective date of coverage of Chapter 46, Title 11, Mississippi Code of 1972, is hereby repealed."

CROSS REFERENCES. --Statute of limitations and notice requirements, see § 11-46-11.

JUDICIAL DECISIONS

1. In general

1.5. Constitutionality

2. Course and scope of duties

3. Applicability

4. Joinder.

1. IN GENERAL.

Five-part test articulated by the Mississippi Supreme Court to analyze a doctor's employment status for purposes of Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-7(2), in a case involving a doctor who served as both a contract employee for a state hospital and also as a solo practitioner, is not applicable in cases where a doctor has no direct contractual relationship with a state hospital. Carpenter v. Reinhard, -- F. Supp. 2d -- (N.D. Miss. July 15, 2005).

Trial court did not err in dismissing the decedent's estate's negligence action against the circuit court clerks for failing to enroll a foreign judgment, which allegedly prevented the estate from being able execute the judgment, because according to Miss. Code Ann. § 11-46-7(1) of the Mississippi Tort Claims Act (MTCA), when bringing suit against a governmental official for actions taken in his or her official capacity, a plaintiff must comply with the provisions of the MTCA. Among the provisions of the MTCA with which the estate failed to comply was the one-year statute of limitations and the notice of claim requirements of Miss. Code Ann. § 11-46-11. Estate of Spiegel v. Western Sur. Co. 908 So. 2d 859 (Miss. Ct. App. 2005).

Absent evidence showing otherwise, state environmental agencies and their employee were immune to landowners' claims of tortious interference with contract and business relations concerning the development of protected wetlands that belonged to the landowners. Dunston v. Miss. Dep't of Marine Res. 892 So. 2d 837 (Miss. Ct. App. 2005).

Deputy responding to a call from a fellow officer was not speeding and did not sound a siren because the deputy did not want there to be any accidents resulting from motorists coming to an abrupt stop, and while the deputy failed to anticipate that another vehicle might be pulling out from the blind spot in front of the truck in front of the deputy, the deputy's decision to steer around that turning truck did not exhibit a wilful or wanton disregard for the safety of others or a willingness that harm should follow; thus, summary judgment for the county was proper. Kelley v. Grenada County, 859 So. 2d 1049 (Miss. Ct. App. 2003).

Trial court abused its discretion in denying a motion by a hospital and three physicians to transfer venue in a medical malpractice action because a decedent's heirs had failed to assert a reasonable claim of liability against certain defendants that had been dismissed from the action and because the hospital was a community hospital under the Mississippi Tort Claims Act and was entitled to venue in the county in which its governing body's principal offices were located. Wayne Gen. Hosp. v. Hayes, -- So.

2d -- (Miss. Nov. 6, 2003).

Mississippi Torts Claims Act provides the exclusive civil remedy for claims of negligence against a school district. Harris v. McCray, 867 So. 2d 188 (Miss. 2003).

Where a widow filed an action against a city, its police chief, and two police officers arising from the shooting death of her husband in his home, the trial court erred in dismissing her amended complaint as to her claim under the Mississippi Tort Claims Act (MTCA), Miss. Code Ann. § 11-46-1 et seq., because she had specified and separated the negligence-and tort-based state law claims from the constitutional tort claims brought pursuant to 42 U.S.C.S. § 1983 in her amended complaint; under Miss. Code Ann. § 11-46-7(1) the MTCA operated as the exclusive remedy for the state law civil claims against the city, the chief, and the officers; and Miss. R. Civ. P. 8(a) only required that notice of a claim be given. Elkins v. McKenzie, 865 So. 2d 1065 (Miss. 2003).

Former university professor's tortious interference with contract claim against the university that formerly employed her and its officials was covered by the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-1 et seq.; accordingly, the professor had to comply with the Act's requirements as it was the exclusive remedy for the professor under Miss. Code Ann. § 11-46-7(1); furthermore, the professor's claim was time-barred under Miss. Code Ann § 11-46-11(3) as it was not timely filed. Black v. Ansah, -- So. 2d -- (Miss. Ct. App. June 3, 2003).

City was liable for the wrongful death of a driver under the Mississippi Tort Claims Act, Miss. Code Ann. §§ 11-46-1 et seq., because several officers acted in reckless disregard of the safety of the driver when they initiated a police chase in violation of department policy. City of Jackson v. Brister, 838 So. 2d 274 (Miss. 2003).

Court affirmed the trial court's dismissal of a physician, a faculty neurosurgeon at a state medical center, from a patient's medical malpractice action on the grounds of immunity under the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-7(2); there was nothing to support the patient's claim that the physician was an independent contractor because the physician performed the patient's operation in front of a surgical resident in furtherance of the resident's education, given that the state exercised sufficient control over the physician, and the fact that the physician exercised independent judgment in performing the operation did not make the physician an independent contractor. Clayton v. Harkey, 826 So. 2d 1283 (Miss. 2002).

In a case where a mother filed a lawsuit for damages after her son died in police custody, the trial court correctly granted summary judgment to a sheriff and a sheriff's deputy because the mother failed to also sue the county. Conrod v. Holder, 825 So. 2d 16 (Miss. 2002).

Trial court erred in granting summary judgment on the ground of governmental immunity to two psychiatrists who worked for a medical center at a state school, where a conservator claimed that his father had suffered side effects from prescription drugs the psychiatrists prescribed, as genuine issues of material fact existed as to whether the psychiatrists were protected by immunity for their actions. Bennett v. Madakasira, 821 So. 2d 794 (Miss. 2002).

Where doctor was hired as an employee of a community hospital, which was afforded immunity protection under Miss. Code Ann. § 41-13-11(5), and the doctor was found to be an employee of the hospital rather than an independent contractor, the patient was not able to proceed with a medical malpractice action against the doctor because the doctor was entitled to sovereign immunity protection. Gilchrist v. Veach, 807 So. 2d 485 (Miss. Ct. App. 2002).

Under the plain language of the Mississippi Tort Claims Act even though a government employee may not be personally liable for acts and omissions occurring within the course and scope of the employee's duties, the employee's still may be joined in the action against the employer, if the acts or omissions are ones for which

the governmental entity may be liable. Stewart v. City of Jackson, 804 So. 2d 1041 (Miss. 2002).

Statute provided the exclusive civil remedy against a governmental entity and its employees for acts or omissions that give rise to a suit; any claim filed against a governmental entity and its employees had to be brought under the statutory scheme. City of Jackson v. Sutton, 797 So. 2d 977 (Miss. 2001).

Where a school district was dismissed from a motor vehicle personal injury action because it was never served with process and the plaintiffs did not appeal that dismissal, the school district employee vehicle operator was not individually liable, due to immunity granted to an employee acting within the course and scope of her employment. Cotton v. Paschall, 782 So. 2d 1215 (Miss. 2001).

No claim upon which relief could be granted was stated in an action alleging that a student was physically injured when a teacher administered excessive corporal punishment to him where it was alleged that the teacher was acting within the course and scope of her employment. Duncan v. Chamblee, 757 So. 2d 946 (Miss. 1999).

Nurses employed by a community hospital owned by a county were immune under subsection (2) of this section for alleged negligence which occurred within the course and scope of their duties. Jones v. Baptist Mem. Hospital-Golden Triangle, 735 So. 2d 993 (Miss. 1999).

¶1.5. CONSTITUTIONALITY.

Statute was not in conflict with Mississippi Constitution because it did not violate due process; there was no property right to sue the State and without such a property interest there could be no due process violation. City of Jackson v. Sutton, 797 So. 2d 977 (Miss. 2001).

¶2. COURSE AND SCOPE OF DUTIES.

Plaintiff VA patient conceded that a vascular surgeon was a state employee, and despite the patient's arguments to the contrary, the court found that there was no genuine issue of material fact that at the pertinent time, the surgeon was acting within the course and scope of his duties as a state employee, under Miss. Code Ann. §§ 11-46-5(3), 11-46-7(7), and, thus, immune under the Mississippi Tort Claims Act (MTCA), Miss. Code Ann. § 11-46-1 et seq. His involvement with the patient was solely by virtue of his being on-call pursuant to his employment with the university and its relationship to the VA facility. Creel v. United States, 512 F. Supp. 2d 574 (S.D. Miss. 2007).

There was substantial credible evidence to conclude that the instructor was acting within the course and scope of his employment at the time of the student's injuries; there was nothing on the tape to indicate that the instructor was doing anything other than what he was told. Hayes v. Univ. of Southern Miss. 952 So. 2d 261 (Miss. Ct. App. 2006).

Summary judgment in favor of the driver was affirmed because there was no issue of material fact that the driver, by running a stop sign, was not acting outside the course and scope of her employment with the governmental entity, and it was undisputed that the claimants did not comply with the one year statute of limitations that accompanied actions under the Mississippi Tort Claims Act. Jackson v. Hodge, 911 So. 2d 625 (Miss. Ct. App. 2005).

Although a trial court had not erred when it held that a city was not liable for the acts of two police officers during and after an arrest of an African-American male because the officers had acted beyond the scope of their employment, the court erred when it found the city liable because it had negligently supervised the officers. There was not a scintilla of evidence presented to indicate that the city had any policy which encouraged

the type of activity that the officers engaged in and there was no factual support for the factual holding that the city was deliberately indifferent to the rights of African-Americans. City of Jackson v. Powell, 917 So. 2d 59 (Miss. 2005).

In plaintiff's personal injury action against a police officer, court did not err in finding that the officer was not individually liable under Miss. Code Ann. § 11-46-7(2) because the officer was acting within the course and scope of his employment at the time when he stopped plaintiff's vehicle and drew his gun. Officer had received a call that two vehicles were speeding and that shots had been fired. Smith v. Brookhaven, 914 So. 2d 180 (Miss. Ct. App. 2005).

Officer didn't show malice in arrest in which the arrestee allegedly suffered a sprained wrist, and was immune from liability. The district, as well, was immune from from liability. Pearl River Valley Water Supply Dist. v. Bridges, 878 So. 2d 1013 (Miss. Ct. App. 2004).

As a security officer who hugged and kissed appellant after arresting her for driving under the influence had not been acting within the scope of the officer's employment with a water district, appellant's claims against the district were properly dismissed on summary judgment. Cockrell v. Pearl River Valley Water Supply Dist. 865 So. 2d 357 (Miss. 2004).

Where the driver of a car was stopped during a police chase and then the driver gunned the engine and hit defendant police officer as the car again sped away, and the officer shot at the car, hitting plaintiff, a passenger in the car, the passenger's state law claims of assault, battery, aggravated assault, false arrest, false imprisonment, and intentional infliction of emotional distress failed, as none of the state law claims alleged misconduct occurring outside the scope of employment under Miss. Code Ann. § 11-46-7(2); rather, the officer's actions were within the course and scope of employment. Herman v. City of Shannon, 296 F. Supp. 2d 709 (N.D. Miss. 2003).

Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-7(2) barred plaintiff's state law claims against the police chief and the officer because the wrongful arrest of plaintiff occurred in the scope and course of their employment, but did not bar the state law claims against the city under Miss. Code Ann. § 11-46-9(1)(c) because the officer was acting within the scope of his employment when he acted with reckless disregard in the arrest of the mother. Craddock v. Hicks, 314 F. Supp. 2d 648 (N.D. Miss. 2003).

State officials were immune from liability following the death of a 15-year-old who was incarcerated at the Oakley Training School, as a nurse's misdiagnosis of meningitis as a cold virus or flu did not establish "deliberate indifference" or give rise to cause of action; under the Mississippi Tort Claims Act officials and employees had immunity, under Miss. Code Ann. §§ 11-46-7(2) and 11-46-9-(1)(m). Mallery v. Taylor, 805 So. 2d 613 (Miss. Ct. App. 2002).

An employee can be found to be acting outside the course and scope of employment if acting with malice. Bridges v. Pearl River Valley Water Supply Dist. 793 So. 2d 584 (Miss. 2001).

Physicians employed by the University of Mississippi Medical Center were entitled to immunity in a medical malpractice action arising from their conduct during a 10 day period in January 1993 where (1) there was no dispute that the physicians were employees of the medical center acting within the course and scope of their employment, (2) the patient was a Medicaid patient who did not choose any particular doctor, and (3) the physicians were assigned to the patient in accordance with their duties at the medical center as a public hospital and an educational institution. Sullivan v. Washington, 768 So. 2d 881 (Miss. 2000).

Plaintiff's assertion that the police officer was acting within the course of his employment at the time of the accident was fatal to her attempt to hold the officer personally liable because subsection (2) precludes liability for acts of an officer that occur within the course and scope of his duties. Gale v. Thomas, 759 So. 2d 1150

(Miss. 1999).

Statute under which governmental entity and its employees are immune from any claim asserted by prison inmate could not be applied retroactively to bar action brought against prison physicians and other medical personnel following death of prison inmate, which occurred prior to effective date of statute, as state prison physicians and other prison personnel were not protected by sovereign immunity as it existed prior to enactment of statute. Sparks v. Kim, 701 So. 2d 1113 (Miss. 1997).

3. APPLICABILITY.

Physician was entitled to the immunity provided under Miss. Code Ann. § 11-46-7 with respect to a patient's claim of negligence per se because there was no evidence that he acted maliciously when he evaluated her for involuntary commitment for mental health treatment; moreover, the patient did not dispute that the physician was subject immunity under § 11-46-7 and did not explain how an exception for intentional torts applied to a claim for per se negligence in violating a statute or negligently providing mental care. Tebo v. Tebo, 550 F.3d 492 (5th Cir. 2008).

Where a county hospital and its employee were sued in tort for injuries related to a car accident that occurred when the employee was running an errand for her employer, the dismissal of the employee from the action under the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-1, et seq., did not act as a release of her insurance company. The insurance company was contractually obligated to defend or indemnify the county hospital as an additional insured under the language of the insurance policy; Miss. Code Ann. § 11-46-7(5) did not apply. Franklin County Mem'l Hosp. v. Miss. Farm Bureau Mut. Ins. Co. 975 So. 2d 872 (Miss. 2008).

Because defendants, two county attorneys, a sheriff, and the sheriff's deputy, were acting in their official roles in enforcing a facially valid Virginia custody order granting custody of children to the children's mother, immunity under Miss. Code Ann. § 11-46-7(2) applied to the claims of plaintiffs, a father and his adult son who had been granted custody of the children by a Mississippi court. Blake v. Wilson, 962 So. 2d 705 (Miss. Ct. App. 2007).

Dismissal of the decedent's mother's and a student's action against a state university resulting from a shooting on campus was appropriate where Miss. Code Ann. § 11-46-7 (1) provided the exclusive civil remedy against state and governmental entitles and the underlying act of the claims was the fact that the gunman shot the victims; there was no authority suggesting that the university, through an employee, had a duty to warn the victims of the dangerous conditions of the gunman's character. Johnson v. Alcorn State Univ. 929 So. 2d 398 (Miss. Ct. App. 2006).

Where plaintiff parent sued defendant school district in state court alleging her child was sexually assaulted at school and obtained a judgment under the Mississippi Tort Claims Act, her later claims in federal court were properly held as barred due to res judicata; while school districts' sources of funding under Miss. Code Ann. § 37-45-21, 37-47-1 et seq., Miss. Code Ann. § 37-57-1, Miss. Code Ann. § 37-59-3, and Miss. Code Ann. § 37-151-7 were equally divided between local school districts and the state under Miss. Code Ann. § 11-46-7, Miss. Code Ann. § 11-46-16(2), and Miss. Code Ann. § 11-46-17(2), any judgment against the school district would be paid through the Tort Claims Fund and excess liability insurance, and thus, the school district was not considered an arm of the state entitled to Eleventh Amendment immunity. Black v. N. Panola Sch. Dist. 461 F.3d 584 (5th Cir. 2006).

From the time of the resident's injury on May 7, 2001, she was under a duty to exercise due diligence in ascertaining the proper defendant; the warranty deed, which listed Forrest County as the owner of the property, was available to the resident during the entire period, had she chosen to exercise due diligence by examining it; her own

failure to exercise due diligence did not excuse her duty to comply with the procedural requirements of the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-1 et seq. Davis v. Forrest Royale Apts. 938 So. 2d 293 (Miss. Ct. App. 2006).

Doctor was not immune under the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-7(2), from a patient's malpractice suit because the doctor was an independent contractor, rather than an employee of a county hospital, where the doctor's contract was with a private corporation that assigned her to work at the hospital and issued her paycheck. Carpenter v. Reinhard, -- F. Supp. 2d -- (N.D. Miss. July 15, 2005).

Grant of summary judgment against the patient in her medical malpractice action against the physician was proper where the physician was an employee of the state university medical center and therefore an employee of the state of Mississippi. Thus, he was immune from liability under Miss. Code Ann. § 11-46-7(2) of the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-1 et seq. Owens v. Thomae, 904 So. 2d 207 (Miss. Ct. App. 2005).

District court should have granted the motion for judgment notwithstanding the verdict of defendants, a state university and professors, regarding the applicability of the Mississippi Tort Claims Act in a doctoral student's action alleging that defendants' conduct prevented her from receiving her doctoral degree because although the student claimed that the action was in contract, clearly tort claims were before the jury, and the Act's statute of limitations had run. Univ. of S. Miss. v. Williams, 891 So. 2d 160 (Miss. 2004).

4. JOINDER.

Where a doctor working in partnership with a community hospital was sued for medical malpractice, he did nothing to assert immunity under the Mississippi Tort Claims Act (MTCA), Miss. Code Ann. § 11-46-1 et seq., for five years until he moved for summary judgment; because he delayed and actively participated in discovery, he waived MTCA immunity. To be in compliance with the MTCA, plaintiff would have had to sue the partnership, joining the doctor under Miss. Code Ann. § 11-46-7(2) in his representative capacity only, and would have been required to provide ninety-day notice pursuant to Miss. Code Ann. § 11-46-11(1). Estate of Grimes v. Warrington, 982 So. 2d 365 (Miss. 2008).

ATTORNEY GENERAL OPINIONS

Members of Foster Care Review Board enjoy public official immunity for any of their acts arising out of and within course and scope of their duties on the Board pursuant to Section 11-46-9 provided that conduct does not constitute fraud, malice, libel, slander, defamation or criminal offense. Tardy, Jan. 5, 1994, A.G. Op. #93-0972.

Under Section 11-46-7(3), a School District may not require that school district personnel who use their personal vehicles for travel in the course of their employment provide proof of liability insurance coverage on such vehicles. Sadler, February 9, 1995, A.G. Op. #95-0006.

Since Section 11-46-7 creates an exclusive remedy against the state for an employee's negligence, and clearly states that no employee shall be held personally liable for any judgments obtained in any action brought under the Mississippi Tort Claims Act, within the course and scope of his employment, then no state employee's insurer should ever be liable to a plaintiff for injuries sustained as a result of the employee's negligence, thereby obviating the need for the insurer to defend or pay any judgment or settlement. Hardy, February 16, 1996, A.G. Op. #96-0053.

Staff physicians under contract with the University of Mississippi Medical Center are employees of a governmental entity of the State of Mississippi, and the Medical Center is responsible for affording them a defense and paying any judgment against them or

settlement for any claim arising out of an act or omission within the course and scope of their employment, and within the limits of the Mississippi Tort Claims Act. Conerly, September 4, 1998, A.G. Op. #98-0500.

Doctors, nurses and pharmacists employed by the State Department of Health and acting within the scope and course of their employment are covered by the Tort Claims Act. Amy, Jan. 17, 2003, A.G. Op. #02-0746.

A legal defense is provided to doctors, nurses and pharmacists employed by the State Department of Health even though the conduct is alleged to be outside the course and scope of their employment. Amy, Jan. 17, 2003, A.G. Op. #02-0746.

There is no reason for a practitioner to obtain additional liability coverage as long as the acts are within the course and scope of his employment with the State Health Department. Amy, Jan. 17, 2003, A.G. Op. #02-0746.

In a situation in which a complainant files an action against an employer or employee for acts which the employer has determined to be outside the course and scope of the employee's duties for the employer, the employer may choose to seek a determination of that question by the court prior to declining to provide a defense for the employee. Banks, Feb. 17, 2006, A.G. Op. 06-0047.

ALR. Causes of action governed by limitations period in UCC § 2-725. 49 A.L.R.5th 1.

AM JUR. 5 Am. Jur. Proof of Facts 3d, Defamation by Employer, §§ 1 et seq.

LAW REVIEWS. The History and Future of Sovereign Immunity for Mississippi School Districts. 58 Miss. L. J. 275, Fall 1988.

Caught in the Crossfire: Employers' Liability for Workplace Violence, 70 Miss. L.J. 505 (2000).

Checking Up On the Medical Malpractice Liability Insurance Crisis in Mississippi: Are Additional Tort Reforms the Cure?, 73 Miss. L.J. 1001 (2004).

Miss. Code Ann. § 27-43-3

TITLE 27. TAXATION AND FINANCE
CHAPTER 43. AD VALOREM TAXES--NOTICE OF TAX SALE TO OWNERS AND LIENORS

GO TO MISSISSIPPI CODE OF 1972 ARCHIVE DIRECTORY

Miss. Code Ann. § 27-43-3 (2008)

§ 27-43-3. Notice to owners; service of notice; fees

The clerk shall issue the notice to the sheriff of the county of the reputed owner's residence, if he be a resident of the State of Mississippi, and the sheriff shall be required to serve personal notice as summons issued from the courts are served, and make his return to the chancery clerk issuing same. The clerk shall also mail a copy of same to the reputed owner at his usual street address, if same can be ascertained after diligent search and inquiry, or to his post office address if only that can be ascertained, and he shall note such action on the tax sales record. The clerk shall also be required to publish the name and address of the reputed owner of the property and the legal description of such property in a public newspaper of the county in which the land is located, or if no newspaper is published as such, then in a newspaper having a general circulation in such county. Such publication shall be made at least forty-five (45) days prior to the expiration of the redemption period.

If said reputed owner is a nonresident of the State of Mississippi, then the clerk shall mail a copy of said notice thereto in the same manner as hereinabove set out for notice to a resident of the State of Mississippi, except that personal notice served by the sheriff shall not be required.

Notice by mail shall be by registered or certified mail. In the event the notice by mail is returned undelivered and the personal notice as hereinabove required to be served by the sheriff is returned not found, then the clerk shall make further search and inquiry to ascertain the reputed owner's street and post office address. If the reputed owner's street or post office address is ascertained after the additional search and inquiry, the clerk shall again issue notice as hereinabove set out. If personal notice is again issued and it is again returned not found and if notice by mail is again returned undelivered, then the clerk shall file an affidavit to that effect and shall specify therein the acts of search and inquiry made by him in an effort to ascertain the reputed owner's street and post office address and said affidavit shall be retained as a permanent record in the office of the clerk and such action shall be noted on the tax sales record. If the clerk is still unable to ascertain the reputed owner's street or post

office address after making search and inquiry for the second time, then it shall not be necessary to issue any additional notice but the clerk shall file an affidavit specifying therein the acts of search and inquiry made by him in an effort to ascertain the reputed owner's street and post office address and said affidavit shall be retained as a permanent record in the office of the clerk and such action shall be noted on the tax sale record.

For examining the records to ascertain the record owner of the property, the clerk shall be allowed a fee of Fifty Dollars ($ 50.00); for issuing the notice the clerk shall be allowed a fee of Two Dollars ($ 2.00) and, for mailing same and noting such action on the tax sales record, a fee of One Dollar ($ 1.00); and for serving the notice, the sheriff shall be allowed a fee of Four Dollars ($ 4.00). For issuing a second notice, the clerk shall be allowed a fee of Five Dollars ($ 5.00) and, for mailing same and noting such action on the tax sales record, a fee of Two Dollars and Fifty Cents ($ 2.50), and for serving the second notice, the sheriff shall be allowed a fee of Four Dollars ($ 4.00). The clerk shall also be allowed the actual cost of publication. Said fees and cost shall be taxed against the owner of said land if the same is redeemed, and if not redeemed, then said fees are to be taxed as part of the cost against the purchaser. The failure of the landowner to actually receive the notice herein required shall not render the title void, provided the clerk and sheriff have complied with the duties herein prescribed for them.

Should the clerk inadvertently fail to send notice as prescribed in this section, then such sale shall be void and the clerk shall not be liable to the purchaser or owner upon refund of all purchase money paid.

HISTORY: SOURCES: Codes, 1892, § 3818; 1906, § 4333; Hemingway's 1917, § 6967; 1930, § 3258; 1942, § 9942; Laws, 1922, ch. 241; Laws, 1968, ch. 514, § 1; Laws, 1975, ch. 517, § 2; Laws, 1981, ch. 375, § 1; Laws, 1995, ch. 468, § 12; Laws, 2007, ch. 364, § 1, eff from and after July 1, 2007.

NOTES: AMENDMENT NOTES. --The 2007 amendment substituted "Fifty Dollars ($50.00)" for "Twenty Dollars ($20.00)" in the first sentence of the next-to-last paragraph.

CROSS REFERENCES. --Application of this section when lands are sold for nonpayment of municipal taxes, see § 27-43-4.

JUDICIAL DECISIONS

1. In general

2. Failure of clerk to give prescribed notice

1. IN GENERAL.

A complaint to confirm a tax deed to realty was properly dismissed for failure to substantially comply with the applicable process statutes or § 27-43-3, where the owners of the property were never mailed a copy of the summons served by the deputy sheriff, the clerk gave public notice only 43 days, rather than 45 days, prior to expiration of the redemption period, and the notice was fatally defective in attempting

to serve both owners with a single notice. Brown v. Riley, 580 So. 2d 1234 (Miss. 1991).

Appellate court affirmed trial court's judgment in favor of an individual that set aside a tax deed because a chancery clerk did not comply with Miss. Code Ann. § 27-43-3 in that she failed to file a second affidavit that detailed the steps she took to advise the individual of the expiration of his rights of redemption. Norwood v. Moore, 932 So. 2d 63 (Miss. Ct. App. 2006).

When property is sold for unpaid county or municipal ad valorem taxes, the property owner must be given notice of his right to redeem the property within 180 days of, but no less than 60 days prior to, the expiration of the redemption period, and both the chancery clerk and the municipal clerk must provide notice in accordance with § 27-43-3. DeWeese Nelson Realty, Inc. v. Equity Servs. Co. 502 So. 2d 310 (Miss. 1986), appeal dismissed, 484 U.S. 804, 108 S. Ct. 49, 98 L. Ed. 2d 14 (1987).

When construed together, §§ 27-41-55 and 27-43-3 require notice to be given by personal service, mail, and publication before a landowner's rights are finally extinguished by the maturing of a tax deed. DeWeese Nelson Realty, Inc. v. Equity Servs. Co. 502 So. 2d 310 (Miss. 1986), appeal dismissed, 484 U.S. 804, 108 S. Ct. 49, 98 L. Ed. 2d 14 (1987).

On record which showed that corporate landowner had actually received tax redemption notice by mail and by personal service before its property interest was extinguished by the maturing of a tax deed, the corporation was not deprived of its property interest without due process of law. DeWeese Nelson Realty, Inc. v. Equity Servs. Co. 502 So. 2d 310 (Miss. 1986), appeal dismissed, 484 U.S. 804, 108 S. Ct. 49, 98 L. Ed. 2d 14 (1987).

Municipality redeeming land sold for state and county taxes, held not entitled to notice required to be sent to owners and holders of liens. City of Jackson v. Nunn, 178 Miss. 665, 174 So. 578 (1937).

2. FAILURE OF CLERK TO GIVE PRESCRIBED NOTICE.

Voiding of the purchaser's purchase of real estate was proper because the chancery clerk failed to comply with the statutory notice requirement contained in Miss. Code Ann. § 27-43-3. Taking the clerk's affidavit as true, the chancery clerk's office did not heed the admonition concerning the appropriate documentation to verify the due diligence exercised by the chancery clerk's office in attempting to locate the property owner after a tax sale, but prior to the redemption deadline. Reed v. Florimonte, 987 So. 2d 967 (Miss. 2008).

Chancery court erred in finding that the chancery clerk had complied with the statutory requirements of Miss. Code Ann. § 27-43-3 where the clerk did not comply with notice requirements in her efforts to locate the owner of the disputed property; thus, the owner gained interest in the disputed property which gave him standing to bring a claim to challenge the validity of the tax sale. Moore v. Marathon Asset Mgmt., LLC, 973 So. 2d 1017 (Miss. Ct. App. 2008).

Chancellor erred in setting aside the entire tax sale because certain necessary parties (those persons having ownership interests) were not before the court, and the court of appeals erred in affirming the chancellor's judgment in its entirety. Curtis v. Carter, 906 So. 2d 758 (Miss. 2005).

Tax sale of property was void because the three methods of service under Miss. Code Ann. § 27-43-3 were not satisfied; although two methods were completed, posting a notice of redemption on the owner's business was not one of the acceptable methods under Miss. R. Civ. P. 4. Viking Invs.,LLC v. Addison Body Shop, Inc. 931 So. 2d 679 (Miss. Ct. App. 2006).

After tax sale, service by certified mail was attempted, sheriff conducted a diligent

search, and notice in the newspaper was published; however, the chancery clerk failed to file the supporting affidavits required by Miss. Code Ann. § 27-43-3 statute where personal notice was returned undelivered, and that failure rendered the tax deed to the tax sale purchaser void. Lawrence v. Rankin, 870 So. 2d 673 (Miss. Ct. App. 2004).

Chancery clerk did not meet the statutory notice requirements after the first attempt to notify the nonresident reputed landowner by mail was returned undelivered because there was no affidavit from any person who actually undertook further search and inquiry to determine an appropriate address for the nonresident landowner; additionally, had further search and inquiry been conducted, the clerk might have given the resident landowner notice under the resident provisions, as she had previously filed an application for a homestead exemption showing that she resided at the subject property. Roach v. Goebel, 856 So. 2d 711 (Miss. Ct. App. 2003).

When trial court determined that landowners had not received notice of the expiration of the redemption period to redeem their land, which was sold in a tax sale, and there was no record of the clerk and the sheriff having served the statutorily required notice, the trial court did not err in voiding the tax sale to the tax sale purchaser. Alexander v. Womack, 857 So. 2d 59 (Miss. 2003).

Where the record title holder's true address was never on the quitclaim deed because the record title holder's cousin purchased the property in the record title holder's name and the record title holder intentionally gave the record title holder's daughter's address instead of the record title holder's own address; the tax sale was valid in spite of the failure of the clerk to send notice of the tax sale to the record title holder's address, the tax deed properly vested title in the purchaser at the tax sale, the purchaser's subsequent quitclaim deed to the buyers was valid, all clouds upon the title to the property were removed and canceled, and the title to the property was properly vested in the buyers. Rush v. Wallace Rentals, LLC, 837 So. 2d 191 (Miss. 2003).

Even though corporate landowner's address for service of process was on file with the Secretary of State, corporation was not entitled to set aside tax deeds on the ground that the municipal clerk had failed to conduct a diligent search to ascertain the corporation's correct address, where the municipal clerk mailed the tax redemption notice to the address of the ex-wife of the corporation's president, the ex-wife took delivery and mailed delivery receipt back to the clerk, and the notice delivered by the sheriff's office bore the same address as the mailed notice. DeWeese Nelson Realty, Inc. v. Equity Servs. Co. 502 So. 2d 310 (Miss. 1986), appeal dismissed, 484 U.S. 804, 108 S. Ct. 49, 98 L. Ed. 2d 14 (1987).

In an action by the holder of a tax deed to confirm his title to property and a cross-bill by the original owner to cancel the tax deed, the deed would be cancelled where the Chancery Clerk had failed to comply with the statute in that the search for the original owner's proper mailing address had not been diligent and thorough and the required affidavit specifying the acts of search and inquiry made by the clerk had not been filed of record or noted in the tax sale record. Hart v. Catoe, 390 So. 2d 1001 (Miss. 1980).

In an action to remove clouds, cancel deeds, and confirm tax title to a certain lot, the chancellor correctly dismissed the bill of complaint and confirmed tax title in defendant, who had previously purchased the lot at a tax sale, even though neither the owners of the land at the time of the sale nor the lienholders had been served with notice that defendant's tax title would mature in 60 days, unless redeemed; the failure to give such notice did not render the tax title void since, at the time the property in question was assessed and the sale for delinquent taxes was held, there was no statutory requirement for such notice in municipal tax sales. Associates Capital Corp. v. Alexander, 374 So. 2d 218 (Miss. 1979).

The enrolling of taxpayer's property by a city on its assessment roll and subsequent sale for nonpayment of taxes without mailing notice to the taxpayer, when his usual

street and mailing address was readily available, was an excuse for nonpayment of the tax so as to permit the taxpayer to redeem his property upon payment of the taxes, damages and interest. Kron v. Van Cleave, 339 So. 2d 559 (Miss. 1976).

A mistake made by the clerk in giving notice to the reputed owner that the tax title would become absolute unless the land was redeemed on or before September 18, 1953, instead of September 17, 1953, did not invalidate the tax sale, in view of statute providing that failure to give statutory notice shall not affect or render title void. Gray v. Covington, 238 Miss. 674, 119 So. 2d 615 (1960).

Even if a tax deed had been defective or void for failure to advertise the tax sale or to give the land owner notice as to redemption, it would still have operated as color of title and formed a sufficient basis upon which adverse possession could ripen into title, and since defendants had admittedly deprived the complainant of possession of land for considerably more than ten years prior to the complainant's action for confirmation of title, the complainant could not prevail. Trotter v. Roper, 229 Miss. 784, 92 So. 2d 230 (1957).

Under this section [Code 1942, § 9942] a tax sale was not void because of the failure of the chancery clerk to give notice to the owner that the lot had been sold for taxes on April 7, 1952, and that the period for redemption would expire on April 7, 1954. De Moe v. McLeod, 228 Miss. 481, 87 So. 2d 906 (1956), error overruled, 228 Miss. 491, 89 So. 2d 730 (1956).

The failure of the clerk to give notice to a lienor or to note on the record that it was given in the manner prescribed by statute, renders the tax sale void as to such lienor only, but the failure to give such notice to the owner of the land does not affect the validity of sale. Santa Cruz v. State, 223 Miss. 617, 78 So. 2d 900 (1955).

Where a holder of a trust deed prior to the tax sale of land acquired equity of redemption from the maker of the trust deed, there was a merger of the lesser estate in the greater, and the holder of the deed received sole title to the premises and was no longer a lienor and was not entitled to notice of expiration of time of redemption as required by statute, and a failure of the clerk to give notice did not render the tax sale void. Santa Cruz v. State, 223 Miss. 617, 78 So. 2d 900 (1955).

ATTORNEY GENERAL OPINIONS

Miss. Code Section 27-43-3 provides that sheriff shall be allowed fee of $4 for serving notice of tax sale required by Miss. Code Section 27-43-1. Robinson, May 12, 1993, A.G. Op. #93-0312.

Four dollar fee for service of tax sales notices is to be applied under Miss. Code § 27-43-3 which is more specific than Miss. Code Section 25-7-19. Robinson, May 12, 1993, A.G. Op. #93-0312.

Salaried employee of municipality, such as city clerk, may not receive in individual capacity fees collected pursuant to ad valorem tax sales nor may police officer receive fees set forth for sheriff for service of tax sale notices. Hayslett, Jan. 12, 1994, A.G. Op. #93-0961.

Sections 27-43-1 and 27-43-3 require the chancery clerk to give notice to the record owner of the property that the time of redemption is about to expire. Jones, September 27, 1996, A.G. Op. #96-0629.

The notice provisions of Miss. Code Section 27-43-3 may be used as a guideline by tax collectors in satisfying the requirements of Miss. Code Section 27-41-101. Heard, August 28, 1998, A.G. Op. #98-0534.

Where there is a failure to comply with the notice requirements of this section, it is the right of a private landowner to file a suit to have the tax deed declared void. A city as an interested party does have standing to initiate and participate in a lawsuit to declare tax deeds void. Scafide, Nov. 5, 2004, A.G. Op. 04-0530.

ALR. Right of interested party receiving due notice of tax sale or of right to redeem to assert failure or insufficiency of notice to other interested party. 45 A.L.R.4th 447.

AM JUR. 72 Am. Jur. 2d, State and Local Taxation § 929.

CJS. 85 C.J.S., Taxation §§ 1309 et seq.

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MISSISSIPPI CODE of 1972 ANNOTATED

*** CURRENT THROUGH THE 2008 1ST EXTRAORDINARY SESSION ***
*** STATE COURT ANNOTATIONS CURRENT THROUGH FEBRUARY 10, 2009 ***

TITLE 27. TAXATION AND FINANCE
CHAPTER 45. AD VALOREM TAXES--REDEMPTION OF LAND SOLD FOR TAXES

GO TO MISSISSIPPI CODE OF 1972 ARCHIVE DIRECTORY

Miss. Code Ann. § 27-45-3 (2008)

§ 27-45-3. Persons who may redeem land

The owner, or any persons for him with his consent, or any person interested in the land sold for taxes, may redeem the same, or any part of it, where it is separable by legal subdivisions of not less than forty (40) acres, or any undivided interest in it, at any time within two (2) years after the day of sale, by paying to the chancery clerk, regardless of the amount of the purchaser's bid at the tax sale, the amount of all taxes for which the land was sold, with all costs incident to the sale, and five percent (5%) damages on the amount of taxes for which the land was sold, and interest on all such taxes and costs at the rate of one and one-half percent (1- 1/2%) per month, or any fractional part thereof, from the date of such sale, and all costs that have accrued on the land since the sale, with interest thereon from the date such costs shall have accrued, at the rate of one and one-half percent (1- 1/2%) per month, or any fractional part thereof; saving only to infants who have or may hereafter inherit or acquire land by will and persons of unsound mind whose land may be sold for taxes, the right to redeem the same within two (2) years after attaining full age or being restored to sanity, from the state or any purchaser thereof, on the terms herein prescribed, and on their paying the value of any permanent improvements on the land made after the expiration of two (2) years from the date of the sale of the lands for taxes. Upon such payment to the chancery clerk as hereinabove provided, he shall execute to the person redeeming the land a release of all claim or title of the state or purchaser to such land, which said release shall be attested by the seal of the chancery clerk and shall be entitled to be recorded without acknowledgment, as deeds are recorded. Said release when so executed and attested shall operate as a quitclaim on the part of the state or purchaser of any right or title under said tax sale.

HISTORY: SOURCES: Codes, Hutchinson's 1848, ch. 8, art. 2 (15), art. 13 (15), art. 17 (27); 1857, ch. 3, art. 39, 1871, § 1701; 1880, §§ 531, 561; 1892, §§ 3823, 3853; 1906, §§ 4330, 4338; Hemingway's 1917, §§ 6964, 6972; 1930, § 3264; 1942, § 9948; Laws, 1910, ch. 214; Laws, 1928, chs. 40, 79; Laws, 1932, ch. 286; Laws, 1995, ch. 468, § 15, eff from and after passage (approved March 27, 1995).

NOTES: CROSS REFERENCES. --Constitutional provision granting right of redemption from sale of lands for taxes, see Miss. Const. Art. 4, § 79.
Sale of property for municipal taxes, see § 21-33-63.
Enforcement of municipal special improvements assessments, see § 21-41-25.
Redemption from mobile home tax sales, see § 27-53-17.

LexisNexis 50 State Surveys, Legislation & Regulations

Real Estate Right of Redemption

JUDICIAL DECISIONS

1. IN GENERAL.

Where the tax sale was set aside, the chancellor erred in not ordering the property owner to pay the tax sale purchaser the interest due the purchaser as provided by See Miss. Code Ann. § 27-45-3, at one and one half percent per month, together with damages thereon at a rate of five percent annum on such amount due. Lawrence v. Rankin, 870 So. 2d 673 (Miss. Ct. App. 2004).

A chancery clerk did not have the legal authority to execute a tax deed on property where the creditor, who was responsible for paying the taxes on the property, was ready, willing and able to pay the cost of redemption and would have paid the delinquent taxes if the clerk had not erroneously informed the creditor that someone had already redeemed those taxes. Merritt v. Magnolia Federal Bank for Sav. 573 So. 2d 746 (Miss. 1990).

Where, subject to the sale of land for nonpayment of special improvement assessments but prior to the sale's maturity, the state highway commission took a

deed to the property from the owner of record, it acquired only the former owner's equity of redemption; and when the commission failed to redeem the property within the two year statutory period it had no further interest in the lands, and the purchaser at the tax sale became vested with a perfect legal title. Equity Servs. Co. v. Mississippi State Hwy. Comm'n, 192 So. 2d 431 (Miss. 1966).

Sale by the purchaser of tax title of his interest to another who agreed to and did pay the chancery clerk the necessary amount after the redemption period had expired and received from the clerk tax deeds executed and recorded in favor of the purchaser did not constitute a redemption of the land. Bounds v. Brown, 201 Miss. 564, 29 So. 2d 657 (1947).

The process of redemption is so interfered with by the sale as a unit in the aggregate of two or more separate tracts of land as to render such sale void, even though all of the land be owned and assessed to one individual or a single owner. Slush v. Patterson, 201 Miss. 113, 28 So. 2d 738 (1947), error overruled, 201 Miss. 131, 29 So. 2d 311 (1947).

Where the state is not a party to proceeding in which record owner of land is granted the right to redeem property from tax sale, question as to whether such owner is required to pay all intervening taxes as a prerequisite cannot be raised by parties purchasing the land from the state, since such question can only be raised by the state. Beauchamp v. McLauchlin, 200 Miss. 83, 25 So. 2d 771 (1946).

Under this section [Code 1942, § 9948] and Code 1942, § 9935, it is the duty of tax collector, in making out his list to be filed with chancery clerk of land sold to the state, to enter for each separate assessment (1) the date when sold, (2) to whom assessed, (3) the description, (4) the number of acres, and (5) the valuation, after which he should extend on the list opposite each separate assessment the statement (a) of the various items of the original or basic ad valorem taxes including district levies, (b) of the damages, (c) of the fees and (d) of the total taxes and costs. State v. Wilkinson, 197 Miss. 628, 20 So. 2d 193 (1944), error overruled, 197 Miss. 651, 20 So. 2d 836 (1945).

Where land sold to state for taxes is not redeemed, all taxes thereon remain in abeyance until land is sold by state. Howie v. Panola-Quitman Drainage Dist., 168 Miss. 387, 151 So. 154 (1933).

The law in force at the time of the tax sale becomes a part of the contract sale and the rights of the parties are determined thereby. Price v. Harley, 142 Miss. 584, 107 So. 673 (1926).

Where there is the burden of a common lien or charge on land equity has jurisdiction to apportion such burden between the owners of the property. Swalm v. Sauls, 141 Miss. 515, 106 So. 775 (1926).

The filing of a suit to redeem stops the statute of limitations from running. Swalm v. Sauls, 141 Miss. 515, 106 So. 775 (1926).

Redemption statutes are to be liberally construed in favor of redemption. Darrington v. Rose, 128 Miss. 16, 90 So. 632 (1922).

The legislature has authority to provide what shall be a sufficient description of land on the assessment roll where the method is such as to clearly indicate the land assessed. Reed v. Heard, 97 Miss. 743, 53 So. 400 (1910).

The right to redeem cannot be taken away and destroyed by the legislature. It is something more than mere grace. Moody v. Hoskins, 64 Miss. 468, 1 So. 622 (1887).

2. PERSONS ENTITLED TO REDEEM, GENERALLY.

The owner of one lot may maintain a suit to redeem that lot where it and another lot were assessed and sold together for taxes. Swalm v. Sauls, 141 Miss. 515, 106 So. 775 (1926).

Any person interested in land sold for taxes has a right to redeem it. Darrington v. Rose, 128 Miss. 16, 90 So. 632 (1922).

Where parcels of land separately assessed to a single owner have been sold together for the aggregate amount of state and county taxes and conveyed by a single tax deed such sale being void, anyone interested therein is entitled to redeem the whole or any of the parcels so separately assessed, the objection that under this section [Code 1942, § 9948] the redemption is not allowable on part of the land embraced in the tax being without merit in such case. Hewes v. Seal, 80 Miss. 437, 32 So. 55 (1902).

3. --INFANTS.

Where it appeared that owner of land deeded it to his eleven-year-old son, and had the deed recorded, that son was thereafter regarded as the legal owner although the grantor retained possession of the deed until the son married, the deed was delivered as of the time of recording so as to entitle the son to the benefit of the two-year period after reaching majority in which to redeem such land from tax sale which took place about a year after the recording of the deed. Beauchamp v. McLauchlin, 200 Miss. 83, 25 So. 2d 771 (1946).

Although evidence was conflicting, evidence of landowner's birth as shown by his testimony and that of his mother, and by the Bible record made by his father and by records of vital statistics of the state and the certificate of the attending physician, was sufficient to sustain finding that such owner offered to redeem within two years after reaching his majority. Beauchamp v. McLauchlin, 200 Miss. 83, 25 So. 2d 771 (1946).

Offer and request by record owner of land to redeem land from tax sale, within the two-year period allowed a minor in which to redeem, took away from the state the power to convey the title to such land. Beauchamp v. McLauchlin, 200 Miss. 83, 25 So. 2d 771 (1946).

Plaintiffs, who were minors at the time of a tax sale, had a right to redeem their interest in the land, where at the time of the filing of the bill in the cause two years had not expired since any of them had attained majority. Simpson v. Ricketts, 185 Miss. 280, 186 So. 318 (1939).

Where the questions involved in an attack on a tax title, such as questions of improvements and rent and partition, made the statutory remedy inadequate, persons who had reached their majority since the tax sale may resort to the chancery courts to confirm their claim of title to land, to recover rent for its use and for partition and for cancelation of a tax deed to one party defendant and conveyance by him thereof to the other defendant. Simpson v. Ricketts, 185 Miss. 280, 186 So. 318 (1939).

The chancery court was properly resorted to by persons seeking to confirm their claim of title to certain land, to recover rent for its use, for partition, and for cancelation of a tax deed to one party defendant and a conveyance by him thereof to another defendant, where such persons by reason of their minority at the time of the tax sale and their bringing suit prior to the lapse of two years from their attaining majority were entitled to redeem, but the remedy afforded by this section [Code 1942, § 9948] was not adequate. Simpson v. Ricketts, 185 Miss. 280, 186 So. 318 (1939).

An infant owning an undivided interest in land sold for taxes may within two years after attaining his majority redeem his interest in the land from the tax sale. Jones County Land Co. v. Fox, 120 Miss. 798, 83 So. 241 (1919).

An infant's right to redeem land after attaining his majority is a property right which he may vest in his vendee, and the vendee may exercise the same right within the time prescribed by statute. Jones County Land Co. v. Fox, 120 Miss. 798, 83 So. 241 (1919).

Infants owning an undivided interest can redeem only their portion of the land. Wilson v. Sykes, 67 Miss. 617, 7 So. 492 (1890).

If the holder of the tax title sue in ejectment, a tender by an infant who has the right to redeem, of the amount necessary to redeem, will defeat the ejectment. Even after judgment in like case such a tender would stop its enforcement. Price v. Ferguson, 66 Miss. 404, 6 So. 210 (1889).

The right of infants after becoming of age to redeem is unaffected by confirmation proceedings. Metcalfe v. Perry, 66 Miss. 68, 5 So. 232 (1888).

Infants may ask a court of equity to sell a part of the land to enable them to redeem. Johns v. Smith, 56 Miss. 727 (1879).

4. --DECISIONS, UNDER 1932 AMENDMENT, RELATING TO INFANTS.

It is clear hereunder that the legislature had in mind the preservation of the right to redeem, two years after the minor reached his majority, the land which he had inherited under the laws of descent and distribution, or had acquired by will, and that they did not intend by the language used to condone the practice which had already obtained of conveying land to minors in order to secure a long time for its redemption. Hanna v. Ford, 189 Miss. 464, 198 So. 37 (1940).

A minor who acquired land by deed prior to the passage of the provision permitting infants "who have or may hereafter inherit or acquire land by will," the right to redeem the same within two years after attaining full age, was not entitled to the benefit of two years after his attaining majority in which to redeem the land from tax sale to the state, or a purchaser from the state, since this provision applied only to land inherited or acquired by will, and such minor was relegated to the two-year period from the date of the tax sale generally granted by this section [Code 1942, § 9948] to all persons. Hanna v. Ford, 189 Miss. 464, 198 So. 37 (1940).

As amended by Laws 1932, chapter 286, the word "have" although in the past tense, is to be read in connection and in conjunction with the word "inherit," with respect to the savings provision in regard to infancy, and accordingly the savings provision does not apply to a case where the minor acquired land by deed prior to the passage of the act and, therefore, his right to redeem existed only within the two years from the date of the tax sale generally granted by this section [Code 1942, § 9948] to all persons. Hanna v. Ford, 189 Miss. 464, 198 So. 37 (1940).

This section [Code 1942, § 9948], as amended by laws of 1932, chapter 286, doubtless intended to prevent the conveyance of land to minors by deed thereafter for the sole purpose of permitting the land to be sold while the title was in the name of such minor, with the intention on the part of the grantor to continue in possession and enjoyment of the same without the payment of taxes during the period within which the minor would have had to redeem, had the amendment not been adopted so as to limit the right to redeem, within two years after reaching his majority, to only such land as he may have inherited, or acquired by will. Moore v. Rotenberry, 188 Miss. 882, 196 So. 758 (1940).

The amendment was intended to restrict, rather than to enlarge, the saving clause in favor of infants, so as to limit their right to redeem their land within two years after attaining full age to such land as they might, after the passage of the amendment, inherit or acquire by will. Moore v. Rotenberry, 188 Miss. 882, 196 So. 758 (1940).

The amendment to the savings clause in favor of infants contained in the former section hereto, to read "saving only to infants who have or who may hereafter inherit or acquire land by will," has no application to a sale taking place before the enactment of such amendment for the reason that the patentee acquired such rights as the state owned and the state obtained its title before the enactment of such amendment. Moore v. Rotenberry, 188 Miss. 882, 196 So. 758 (1940).

The words "to have or may hereafter inherit or acquire land by will," have reference to the time of the enactment of the statute, and do not relate to any tax sale that may

have been made prior to the passage of the act. Moore v. Rotenberry, 188 Miss. 882, 196 So. 758 (1940).

This provision affording minors whose lands are sold for taxes the right to redeem after they reached their majority, applies only to land that belongs to minors, and in which they have an interest at the time they are sold for taxes, and not that in which they may subsequently acquire an interest. Moore v. Rotenberry, 188 Miss. 882, 196 So. 758 (1940).

Where the land which complainant sought to redeem under the saving clause pertaining to minors belonged to their adult intestate at the time such land was sold for delinquent taxes to the state, the complainant inherited only such rights as their intestate had, that is, the right to redeem the land within two years from the date of sale. Moore v. Rotenberry, 188 Miss. 882, 196 So. 758 (1940).

5. NECESSITY AND SUFFICIENCY OF OFFER TO REDEEM.

An offer and request to redeem when the party is ready and able to do so, where refused either arbitrarily or through unintentional misrepresentation of facts, takes away from the state the power to convey the title to land sold for delinquent taxes. Beauchamp v. McLauchlin, 200 Miss. 83, 25 So. 2d 771 (1946).

Where record owner of land informed chancery clerk of desire to redeem land from tax sale, having sufficient money on his person for such purpose, but clerk referred him to the state land office, and owner conferred with the state land commissioner with the purpose either to redeem or repurchase the land from the state but commissioner informed him that it was too late to redeem the land, such acts of the owner constituted a sufficient offer of redemption. Beauchamp v. McLauchlin, 200 Miss. 83, 25 So. 2d 771 (1946).

Where purchasers of land from tax sale purchaser had notice of the public records affecting their title and the rights of true owner of land shown thereby, and that record owner was in possession of the premises through his tenant when purchasers obtained their deed, purchasers were not innocent purchasers for value so as to preclude decree in favor of record owner in suit seeking to cancel patent issued by the state to the tax sale purchaser, and to annul and cancel a deed from the latter to such purchasers and to obtain an adjudication that such record owner had performed such acts as were necessary to legally redeem the land from the tax sale to the state. Beauchamp v. McLauchlin, 200 Miss. 83, 25 So. 2d 771 (1946).

6. TIME FOR REDEMPTION.

Even if a buyer from a tax sale was a necessary and indispensable party under Miss. R. Civ. P. 19 to a proceeding where the redemption period in Miss. Code Ann. § 27-45-3 was extended for 60 days, the buyer's successor in interest was procedurally barred from bringing its Miss. R. Civ. P. 19 objection on appeal since the issue was not raised. The issue was not heard sua sponte in accordance with Shaw v. Shaw, 603 So. 2d 287 (Miss. 1992), because the buyer was notified by letter of the foreclosure sale and the possibility that the tax redemption period could be extended, this knowledge was imputed to the successor in interest, and neither the buyer nor the successor in interest chose to challenge the joinder issue until after the conclusion of the trial court proceedings. Marathon Asset Mgmt., LLC v. Otto, 977 So. 2d 1241 (Miss. Ct. App. 2008).

Since there was nothing prohibiting the extension of the two-year redemption period in Miss. Code Ann. § 27-45-3, and a liberal construction of § 27-45-3 had been ordered, a chancellor did not err by finding that a 60-day extension of the time period was permissible where a delay was outside of the control of the purchasers at a

foreclosure sale. The purchasers had been ready to redeem during the requisite period, but had been unable to do so due to a delay by the prior owners. Marathon Asset Mgmt., LLC v. Otto, 977 So. 2d 1241 (Miss. Ct. App. 2008).

When trial court determined that landowners had not received notice of the expiration of the redemption period to redeem their land, which was sold in a tax sale, and there was no record of the clerk and the sheriff having served the statutorily required notice, the trial court did not err in voiding the tax sale to the tax sale purchaser. Alexander v. Womack, 857 So. 2d 59 (Miss. 2003).

Automatic bankruptcy stay was lifted for the limited purpose of allowing a Chapter 11 debtor, a secured creditor, and a tax sale purchaser of the debtor's property to litigate in the Mississippi courts the legal effect of the creditor's purported redemption of the property after the two-year redemption period set out in Miss. Code Ann. § 27-45-3 had expired. In re TEV Inv. Props., LLC, -- Bankr. -- (Bankr. N.D. Miss. Aug. 25, 2006).

Purchaser was granted partial summary judgment as to the interest a debtor had in real property that the purchaser bought at a tax sale because the property was not part of a debtor's estate since her right to redeem the tax sale under Miss. Code Ann. § 27-45-3 and 11 USCS § 108(b), which was not tolled by the automatic stay, had expired. Isom v. Isom (In re Isom) -- Bankr. -- (Bankr. N.D. Miss. May 10, 2006).

Pursuant to 11 USCS § 108(b), since the two-year state law redemption period under Miss. Code Ann. § 27-45-3 had not expired before the bankruptcy filing date, a debtor had the balance of the two-year period to redeem the tax sale; however, because the right of redemption was not timely exercised within two years after the filing date, the buyer of the property at a pre-petition tax sale was entitled to partial summary judgment on its claim that the property was not an asset of the bankruptcy estate. Greenpoint Credit, LLC v. Isom (In re Isom) 342 B.R. 743 (Bankr. N.D. Miss. 2006).

The heir of one dying incompetent may exercise the right of redemption which the incompetent, if restored to sanity, might have exercised within two years. Carter v. Klein, 243 Miss. 627, 139 So. 2d 629 (1962), error overruled, 243 Miss. 635, 140 So. 2d 95 (1962).

Where property previously sold for municipal ad valorem taxes was also sold for special improvement taxes to another person, the special improvements tax purchaser acquired complete title upon the failure of the municipal ad valorem tax purchaser to redeem within two years from the date of sale. Shelton v. Reliance Inv. Co., 230 Miss. 51, 92 So. 2d 329 (1957).

Right of redemption may be exercised, within the two years allowed by statute for redemption of land from tax sales, in an equity proceeding making a bona fide attack upon the validity of a tax sale; the method is not limited to that before the chancery clerk as provided in Code 1942, § 9947. Jones v. Seward, 196 Miss. 446, 16 So. 2d 619 (1944).

Where § 3 of chapter 196, Laws 1934, approved April 4th, 1934, if applied to a case where a tax sale, had prior to the enactment thereof, on September 18, 1933, was void and at that time the owner had three years from the day of the sale in which to redeem, would extinguish such right of redemption at the expiration of two years from the date of sale, thereby cutting off five months, fourteen days from the time in which the owner could redeem it, and would be unconstitutional, such section is inoperative to that extent so that the right of the owner to redeem the land from the tax sale would be unaffected thereby; a constitutional defect in such section, as applied to such circumstances, does not render it wholly void but simply requires that its operation be so restricted as to preserve the right of redemption that existed when the land was sold for taxes. Lee v. Smith, 189 Miss. 636, 198 So. 296 (1940).

Under statute providing that owner or any person interested in land sold for taxes may redeem it at any time within two years after date of sale, in order that two full years may elapse, day of sale must be excluded, since law does not recognize any

fractional part of a day in computing period for bar of an action or right by lapse of time. Dougall v. Carriere, 175 Miss. 845, 168 So. 285 (1936).

Land held redeemed from tax sale within time allowed by law, and hence purchaser of land was not entitled to confirm tax title, where sale was made on April 7, 1930, and land was redeemed on April 7, 1932, which was within two years after day of sale. Dougall v. Carriere, 175 Miss. 845, 168 So. 285 (1936).

The owner of land has two years from the date of the sale to redeem tax land. K.C. Lumber Co. v. Moss, 119 Miss. 185, 80 So. 638 (1919).

The time for redemption is two years from the date of sale and not from the day of filing. Henry Brannon & Son v. Pringle, 94 Miss. 215, 47 So. 674 (1908).

The statute allowing two years for redemption from a tax sale is not a statute of limitations within § 104 Const. and a county has no right after expiration of two-year period to redeem such land, although after the tax sale it bought it at a trustee's sale in order to protect a loan made by it on the land prior to the tax sale. Tallahatchie County v. Little, 93 Miss. 88, 46 So. 257 (1908).

7. EFFECT OF REDEMPTION.

Even though the estate retained a right of possession and redemption -- the fee passed to the State of Mississippi on August 28, 2000, and the State became the owner of the land, and after the sale and during the time allowed for redemption, the State possessed an inchoate title to the land, and after the redemption period was over, the Secretary of State had charge of the lands forfeited to the state for nonpayment of taxes. Smith v. Jackson State Univ. 995 So. 2d 88 (Miss. 2008).

When the owner of land sold for taxes redeemed it therefrom, the chancery clerk, through whom the redemption must be made, was required to execute to him a release of all claim or title of the state or purchaser to such land, by virtue of which the tax sale, from which the land was regained, was without further efficacy, and the owner's title and right to possession did not rest on defects in the assessment or sale of the land, so the necessity for an action to cancel the title of the purchaser at the sale no longer existed. Lee v. Smith, 189 Miss. 636, 198 So. 296 (1940).

A redemption inures to the benefit of the real owner no matter by whom made. Jamison v. Thompson, 65 Miss. 516, 5 So. 107 (1888).

A redemption does not confer title. It simply divests all the tax purchaser's rights, title or interest in the land. Greene v. Williams, 58 Miss. 752 (1881).

8. --RELEASE OF LAND FROM TAX SALE.

Where, after the sale of land to the state for delinquent taxes, the record owner applied to the chancery clerk for a release of the land from that sale, it was the clerk's duty to issue the release if, but not unless, he had collected from the record owner the payments required for the redemption of the land, including all taxes and costs which had accrued on the land since the sale. Stegall v. Miles, 194 Miss. 353, 12 So. 2d 537 (1943).

Where, after the sale of land to the state for delinquent taxes, the record owner applied to the chancery clerk for a release and the clerk neglected to collect the taxes due for 1934, such owner was not chargeable with clerk's failure in this respect unless he fraudulently participated therein. Stegall v. Miles, 194 Miss. 353, 12 So. 2d 537 (1943).

ATTORNEY GENERAL OPINIONS

A purchaser at a tax sale is not entitle to a tax deed until the expiration of the redemption period from the time of purchase at the tax sale, even if the purchaser

redeems the property from prior tax sales. Brister, Nov. 14, 1997. A.G. Op. #97-0712.

The legislative intent in amending this section, but not amending § 27-35-63, was to expedite the assessment, levy and collection of ad valorem taxes upon land; thus, upon a redemption of land from a sale to the state for unpaid ad valorem taxes, the redeemer must pay the sums required by § 27-35-63. McLeod, June 11, 1999, A.G. Op. #99-0276.

Upon delivery of a requested tax deed to an individual to whom the property matured after a tax sale, the chancery clerk does not have the authority to require that individual to redeem the taxes due for subsequent years. McGee, May 17, 2002, A.G. Op. #02-0267.

There is no statutory authority for the tax assessor or the chancery clerk to require the holder of a tax deed to pay taxes due prior to his initial purchase since such taxes were paid as a part of the prior unredeemed tax sales; the existence of a prior unredeemed tax sale should not affect the ability of the current owner to pay taxes due. Gex, July 26, 2002, A.G. Op. #02-0402.

ALR. Who may redeem, from a tax foreclosure or sale, property to which title or record ownership is held by corporation. 54 A.L.R.2d 1172.

AM JUR. 72 Am. Jur. 2d, State and Local Taxation §§ 909 et seq.

17 Am. Jur. Legal Forms 2d, State and Local Taxation § 238:73 (certificate of redemption).

22 Am. Jur. Pl & Pr Forms (Rev), State and Local Taxation, Forms 251 et seq. (redemption).

CJS. 85 C.J.S., Taxation §§ 1247, 1248 et seq.