

IN THE COURT OF APPEALS OF MISSISSIPPI

TORSHA A. BROWN

APPELLANT

V.

2008-01430-COA

HARRAH'S ENTERTAINMENT  
d/b/a  
HORSESHOE CASINO-TUNICA

APPELLEE

**REPLY BRIEF OF THE APPELLANT**

**CERTIFICATE OF INTERESTED PERSONS:**

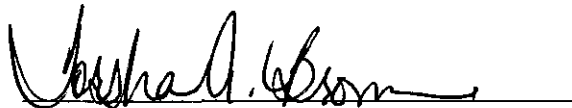
The undersigned appellant (pro se) certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

Here list names of all such persons and identify their connection and interest.

Torsha A. Brown- Appellant (pro se)

Honorable Robert L. Moore-Counsel for defendants

Harrah's Entertainment d/b/a Horseshoe Casino-defendants



Torsha A. Brown—Appellant (pro se)  
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## **Statement of oral argument**

Oral argument is not requested in this case because the circumstances are not extraordinary, and both parties have briefed the Court with information and authorities pertaining to this case.

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**Authorities:**

C & C Trucking Co. v. Smith, 612 So. 2d at 1100. (Miss 1992).

Conley v. State, 790 So.2d 773, 782 (Miss. 2001).

Dawkins v. Redd Pest Control, Inc., 607 So.2d at 1236 (Miss. 1992).

Griffith, Mississippi Chancery Practice s 668 (2d ed. 1950).

Hall v. Cagle, 773 So.2d at 928, 929. (Miss. 2000).

Harvill v. Tabor, 240 Miss. 750, 128 So.2d 863, 865 (Miss. 1961)

Hoffman v. Planters Co., 358 So.2d 1008, 1011 (Miss. 1978).

Hutchinson v. Smith, 417 So. 2<sup>nd</sup> 926, 928 (Miss 1982)

Illinois Central R.R. Co. v. Adams, 922 So. 2d 787, 790 (Miss. 2006).

Lucas v. Buddy Jones Ford, Lincoln Mercury Inc., 518 So. 2d 646, 647 (Miss. 1988).

Mississippi Rules for Civil Procedure Rule 8(a)

Mississippi Rules for Civil Procedure , Rule 26

Nichols v. Tubbs, 609 So.2d 377, 383 (Miss. 1992)

Patterson v. Liberty Assocs., L.P., 910 So. 2d 1014, 1019 (Miss. 2004).

Tunica County Transcript (CI-2005-0392-AS)

**Statement of the Case:**

This case is appealed from The Circuit Court of Tunica County for its finding of summary judgment in favor of Harrah's Entertainment. The appellant seeks reversal and remand of that decision on the grounds that there were acts of negligent omissions and commissions by Harrah's Entertainment committed against Ms. Brown, which are governed by the three-year statute of limitations rather than the one-year statute of limitations.

## **FACTS AND PROCEDURAL HISTORY**

On September 27, 2005, the plaintiff was seated playing blackjack at the Horseshoe Casino in Tunica, Mississippi. She was surrounded by several Horseshoe security officers who approached her among several other patrons at the blackjack table and requested her I.D. The plaintiff asked the officer who appeared to be in charge (wearing a blue blazer) why he needed I.D., and he responded, "because you have to be 21 to be in here."

The plaintiff, who was then 31-years of age and a regular guest at this establishment, stated that she would just leave, and, she along with another guest, Precious Moore, left the table and then attempted to leave the premises through the front door. The plaintiff had her purse in one hand and casino chips in the other hand that she had picked up as she left the table.

The plaintiff was followed, surrounded, and forced against a blackjack table near the front exit, handcuffed and placed under arrest by three female and two male Horseshoe security officers. She was then taken to a security room and handcuffed to a metal bench. The plaintiff asked the security supervisor why she was being arrested and he responded, "You are not supposed to be in our casino."

The security supervisor told the plaintiff that she was being charged with trespassing and disturbing the peace. The contents of the plaintiff's purse as well as the plaintiff were searched by Horseshoe Casino security.

After approximately one hour of being handcuffed to a bench, a Tunica County deputy arrived, and Horseshoe Casino security officers along with the deputy, escorted the

plaintiff to the deputy's patrol car. The plaintiff was transported to the Tunica County Jail where she was placed in a holding cell for several hours before family members arrived and presented fees for her bail.

The plaintiff pleaded not guilty to both charges (trespassing and disturbing the peace) in the Justice Court of Tunica County. Horseshoe Casino was represented by Mr. Charles Graves, Tunica County Prosecuting Attorney, and presented one witness on its behalf, Ms. Gladys Jackson (a 10-year security officer by her own admission), who had participated in the arrest.

The plaintiff appeared pro se before the Justice Court of Tunica County.

Jackson introduced a sworn affidavit that she had signed stating that the plaintiff "became violent and pushed over a blackjack table and said in a loud voice 'I don't have to show you no damn I.D.'" Jackson stated that she could produce no documentation or surveillance of a prior eviction of the plaintiff but told the court, "My supervisor said she was a prior."

Jackson also stated that she could produce no surveillance of the plaintiff's arrest on September 27, 2005, but could show the court the affidavit, that she had signed, which would explain what happened.

After Ms. Jackson's testimony, The Justice Court of Tunica County found that no prior eviction of Ms. Brown had taken place and found that the plaintiff was not trespassing, and as a result, the court dismissed the charge of trespassing.

This finding by The Tunica County Justice Court was admitted under oath by Ms.

Jackson at Ms. Brown's appeal in the Circuit Court of Tunica County. (Page 14)

(Cross Examination) of Court Transcript Docket (CI-2005-0392-AS)

**Question:** "In Justice Court, was I or was I not found not guilty of trespassing? Was I found guilty or not guilty of trespassing?"

**Answer:** "Not guilty"

**Question:** "Okay. So that means that I-- that the Judge found that I had never been prior evicted in the first place. So I was never trespassing in the first place, is that correct?"

**Answer:** "That's what he said."

The plaintiff was found guilty of the charge of disturbing the peace in Tunica County Justice Court after Ms. Jackson's testimony and presentation of an affidavit to the court that Ms. Brown "became violent and pushed over a blackjack table" during her arrest. The plaintiff appealed the guilty verdict to The Circuit Court of Tunica County on grounds that the arrest was unlawful and not valid because she was never trespassing, and also presented testimony to the Circuit Court that she had not become violent nor had she pushed over a blackjack table.

The affidavit that Ms. Jackson had signed on September 27, 2005, was presented to both the Justice Court of Tunica County and also to the Circuit Court of Tunica County during the appeal of the disturbing the peace conviction.

Ms. Jackson then presented the Tunica County Circuit Court with the following testimony regarding the information that was contained in the affidavit that she had signed.

(Page 8 of Direct Examination) of Court Transcript Docket (CI-2005-0392-AS)

**Question:** "Did you see her push over the blackjack table?"

**Answer:** “I didn’t see her just push it over you know. It was—”

**Question:** “Well, tell us how it happened.”

**Answer:** “It was overturned in the process of arresting her.”

(Page 10 of Direct Examination) of Court Transcript Docket (CI-2005-0392-AS)

**Question:** “Well, who pushed the table over?”

**Answer:** “All I know, it was just knocked—overturned, you know, in the process of us trying to arrest her.”

The disturbing the peace conviction was reversed and dismissed.

The plaintiff filed a Complaint (on September 21, 2007) in the Circuit Court of Tunica County on the grounds that the negligent omissions and commissions of Harrah’s Entertainment and its security personnel had caused harm to her on September 27, 2005. Ms Brown stated in the Complaint that she had been falsely arrested on that date. The plaintiff received an order by the trial court dated September 27, 2007 regarding orders setting deadlines for discovery, hearing on preliminary matters and pretrial statement and orders to be approved by attorneys along with an assignment letter for the specific court.

The plaintiff received an answer to the Complaint dated February 7, 2007 and a notice of filing of discovery from the defendant. The plaintiff provided answers to interrogatories on March 4, 2008, with objections to interrogatories 7, 8, 9, 11, and 12. The defendant filed a motion to compel answers to these interrogatories on March 10, 2008.

On March 12, 2008, the plaintiff filed a notice of discovery and requested answers to seven interrogatories from the defendant. The plaintiff then wrote a letter on March 13,

2008 to the defendant in an attempt to settle the case.

On March 31, 2008, the defendant filed a motion for protective order (from providing answers to the plaintiff's seven interrogatories) and also filed a motion for summary judgment.

On April 7, 2008, the plaintiff filed a notice of opposition to the defendant's motion for summary judgment along with a cross-motion for summary judgment.

A hearing was held on June 6, 2008 on the defendant's motion to compel answers to interrogatories from the plaintiff, and the trial court ordered the plaintiff to provide the defendant with answers to interrogatories 7, 8, 9, 11, and 12 within (30) days. After the motion to compel hearing on June 6, 2008, the trial court gave the directive to a court staff member to schedule a date for the defendant's motion for protective order and the cross-motions for summary judgment to be heard. The motions were scheduled to be heard on July 23, 2008.

On June 19, 2008, the plaintiff wrote a letter to the trial court requesting that the court review the situation of whether the defendant's access to all of their requested interrogatories without the plaintiff having access to any of the information requested in her interrogatories during the July 23rd motion hearings would allow the defendant an unfair advantage.

On July 23<sup>rd</sup> 2008 the trial court denied the plaintiff's motion for summary judgment and granted the defendant's motion for summary judgment with prejudice.

### **Summary of Argument:**

The security supervisor along with security officers failed to perform a reasonable investigation into casino records to verify whether the plaintiff was actually barred from



Horseshoe Casino's property prior to arresting her. This flawed investigation was under the direction and supervision of a security supervisor, whose decisions were hasty, reckless, and insufficient and who had been given essential and critical duties for which he was not prepared to perform.

The security supervisor in charge of Ms. Brown's arrest give subordinate officers inappropriate directives, and failed to properly supervise or correct the actions of a male officer who made inappropriate, lewd contact with the plaintiff. This male officer's actions were in plain view of employees, patrons, which would be clearly visible on surveillance footage.

The actions of the security supervisor in charge of the arrest of Ms. Brown on September 27, 2005 show that he did not have an honest belief that Ms. Brown was guilty of breaking the law. He attempted to conceal his error in judgment of hastily and recklessly ordering the arrest of Ms. Brown by giving another improper directive to a subordinate officer by having her to sign the contents of an affidavit, which he had solely and inaccurately drafted. The affiant, a 10-year security officer, admitted under oath that she had not witnessed the plaintiff become violent and push over a blackjack table, as was stated in the affidavit that she had signed.

The company, Harrah's Entertainment, should have more thoroughly trained and monitored its employees to ensure competence in the actions and performance of its security supervisor and other members of its staff. The company failed to properly and reasonably prevent its employees from harming Ms. Brown through their actions and failures to take action.

The Tunica County Justice Court's finding of guilt of disturbing the peace resulted directly from distorted facts contained in an improper, inaccurate affidavit, not from any of Ms. Brown's actions.

Although the plaintiff made a proper and timely discovery request for the production of surveillance evidence pertaining to this case, Harrah's Entertainment has suppressed or destroyed all surveillance footage surrounding Ms. Brown's arrest, which could clearly show the events, which occurred on September 27, 2005.

The actions of Harrah's Entertainment and its employees were negligent, and without probable cause, and these actions caused the plaintiff to lose wages and incur unnecessary expenses, suffer emotional distress and pain and suffering, and also suffer further mental anguish because of fear of losing her job as a teacher after being she was convicted of disturbing the peace.

In order to have probable cause to make an arrest, the person initiating the prosecution must have both "(1) an honest belief on the guilt of the person accused, and (2) reasonable grounds for such belief Harvill v. Tabor, 240 Miss. 750, 128 So.2d 863, 865 (Miss. 1961)); C & C Trucking Co. v. Smith, 612 So. 2d at 1100. (Miss 1992).

Not only did Harrah's Entertainment withhold or destroy vital surveillance evidence, but also the company provided the trial court with blatantly fabricated and unsubstantiated information, engaged in discovery violations, ignored directives in an order issued by the trial court, and also violated the Mississippi Code for Civil Procedure and proceeded with improper motions.

**Argument:**

The defendant attempts to assert that Ms. Brown does not claim that the defendant was negligent in her complaint; however, that assertion by the defense is untrue. In the causation section (of her complaint), in paragraph (9) and in the damages section in paragraph (10), Ms. Brown asserts that the defendant caused injuries to her as a direct and proximate result of the acts of commission and omission of the defendant (in paragraph (9), and further identified the defendant's actions and omissions as negligent in paragraph (10).

Ms. Brown then listed the following damages that she sustained as a direct and proximate result of these negligent actions and omissions of the Defendant.

Past, present and future pain and suffering

Past, present and future emotional distress;

Past, present and future lost wages

In addition, Mr. Moore, counsel for the defendant, acknowledged during the motion hearings that he saw where the negligent acts (were in paragraph (10) of Ms. Brown's complaint) after the trial court read paragraphs (9) and (10) aloud from the complaint. (pages 9-10 of the motion hearings transcript).

Ms. Brown's complaint identified litigable events in which she states, that the defendant committed actions and omissions which were negligent, which occurred on or about September 27, 2005, the same day that she was falsely arrested for trespassing and disturbing the peace. These negligent actions, omissions, and commissions entitle her to recover for her injuries.

Ms. Brown's argument is that though there were both negligent torts and intentional torts committed against her, the basis of her claims are the negligent actions and omissions which were committed against her. She has conceded that though the one-year statute of limitations prevents her from bringing causes of action from the intentional torts committed against her, but that does not cancel the negligent causes of action. *In Hutchinson v. Smith*, 417 So. 2<sup>nd</sup> 926, 928 (Miss 1982) The Supreme Court of Mississippi found, "Where a party has two or more remedies for enforcement of a right, the fact that one remedy is barred by the statute of limitations does not bar the other remedies." Thus, the plaintiff argues that the applicable statutes of limitations should have been considered separately by the trial court for intentional and negligent torts. Though she does assert that she was falsely arrested she also contends that negligent torts were committed by Harrah's Entertainment and its employees, which caused injuries to her before she was arrested, during her arrest, and after she had been taken into custody.

The defendant's arguments attempt minimize their discovery violations and violations of the order of the trial court by stating that they occurred with the trial court's "own local rules." However, the language in this order by the trial court gave specific directives to both parties and consequences for failing to abide by its order. The failure of the defendant to abide by this order by the trial court deprived the plaintiff of her right to due process. The plaintiff had followed the court's order, but the defendant contumaciously disregarded the order of the court. With knowledge that there are guidelines governing motions within Mississippi Rules for Civil Procedure and also with full knowledge of the trial court's order, the defendants flagrantly ignored both.

She met her minimum obligation by disclosing, in general terms, what the defendant did wrong to her, along with, when and where the alleged wrong took place.

The complaint does provide notice, in general terms, to Harrah's Entertainment of when, where, and how Ms. Brown claims to have been injured as required. The requirement of the plaintiff according to, *Illinois Central R.R. Co. v. Adams*, 922 So. 2d 787, 790 (Miss. 2006).

She also met the requirement of Rule 8(a) of the Mississippi Rules of Civil Procedure by setting forth a pleading "which sets forth a claim for relief. . . shall contain a short and plain statement of the claim."

Ms. Brown then briefed the trial court with specific details of what had occurred during the incident on September 27, 2005.

An invitee is defined as a person who goes upon the premises of another in answer to the express or implied invitation of the owner or occupant for their mutual advantage. *Lucas v. Buddy Jones Ford, Lincoln Mercury Inc.*, 518 So. 2d 646, 647 (Miss. 1988); *Hoffman v. Planters Co.*, 358 So.2d 1008, 1011 (Miss. 1978).

A landowner owes a business invitee a duty of reasonable care for the invitee's safety. *Hall v. Cagle*, 773 So.2d at 928, 929. (Miss. 2000)

Because Ms. Brown was a frequent patron of Horseshoe Casino, who received numerous mailings inviting her to participate in gaming, meals, hotel stays, and concerts (even after she was arrested on September 27, 2005), she was an invitee on September 27, 2005 on the premises owned by the defendant. Contrary to the defendant's claims, Ms. Brown had never been barred from the premises of Horseshoe Casino.

Thus, the owner of this property (Harrah's Entertainment) owed a duty of reasonable

care to Ms. Brown's safety in preventing its employees from causing harm and injury to her.

The trial court did abuse its discretion because it had a responsibility to both parties to ensure that all motions, and proceedings were fair. The trial court did not require that the defendant adhere to the rules of the court or to Mississippi Rules for Civil Procedure.

The trial courts order compelling the plaintiff to respond to the defendant's interrogatories while failing to enforce the court's requirement the defendant answer the plaintiff's timely filed interrogatories constituted an abuse of the trial court's discretion in a vital matter of discovery. The plaintiff made the trial court aware of the defendant's failure to abide by the court's order and adhere to the rules of discovery.

On appeal, a trial court's decision regarding discovery violations may be reversed if it has committed an abuse of discretion. *Conley v. State*, 790 So.2d 773, 782 (Miss. 2001).

The plaintiff never received the benefit of receiving answers to her interrogatories as the defendant had. These discovery materials were crucial to the plaintiff's arguments during the summary judgment proceeding and critical to the basis of her entire case. The plaintiff was diligent in her attempts to obtain discovery in an effort to oppose the defendants' motion for summary judgment through her detailed responses and accounts of the events surrounding her arrest on September 27, 2005.

Under the circumstances, the plaintiff was unable to adequately oppose the defendants' motion for summary judgment since the requested information, documentation, and evidence, which both parties knew should have existed and would have supported the plaintiff's claims, lay in the hands of the defendants. The defendants abused the discovery process by withholding the requisite information and evidence, which was not

made available to the plaintiff when it was properly requested in a timely manner prior to the hearing on the summary judgment motions. This information was requested in the form of interrogatories.

The intentional spoliation or destruction of evidence relevant to a case raises a presumption, or, more properly, an inference, that this evidence would have been unfavorable to the case of the spoliator. Such a presumption or inference arises, however, only where the spoliation or destruction was intentional and indicates fraud and a desire to suppress the truth, and it does not arise where the destruction was a matter of routine with no fraudulent intent. *Tolbert v. State*, 511 So.2d 1368, 1372-73 (Miss. 1987)(quoting *Washington v. State*, 478 So.2d 1028, 1032-33 (Miss. 1985)).

Ms. Brown argues that the trial court abused its discretion by failing to afford the plaintiff a sufficient opportunity to conduct discovery and by failing to acknowledge that the magnitude of the evidence, which was being withheld by the defendant violated her rights to due process. She further claims that this abuse of discretion is grounds for reversal..

*Conley v. State*, 790 So.2d 773, 782 (Miss. 2001).

Mississippi Rules for Civil Procedure, Rule 26, provides guidelines for the use of protective orders.

#### GENERAL PROVISIONS GOVERNING DISCOVERY

(d) Protective Orders. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending, or in the case of a deposition the court that issued a subpoena therefore, may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

- (1) that the discovery not be had;
- (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;
- (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;
- (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;
- (5) that discovery be conducted with no one present except persons designated by the court;
- (6) that a deposition after being sealed to be opened only by order of the court;
- (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;
- (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court;
- (9) the court may make any other order which justice requires to protect the party or witness from annoyance, embarrassment, oppression or undue burden or expense, including provision for payment of expenses attendant upon such deposition or other discovery device by the party seeking same.

Ms. Brown argues that the defendant's basis of their improperly filed motion for protective order was "to prevent the defendant from incurring the needless and unnecessary expense of responding to the plaintiff's discovery requests" was not an acceptable basis to violate the order of the court regarding deadlines for discovery, hearing on preliminary matters and pretrial statement). There was an egregious abuse of



the discovery process by the defendants

Nichols v. Tubbs, 609 So.2d 377, 383 (Miss. 1992).

1) (b) states, "Prior to service of motions for extension of discovery, protective orders and/or to compel discovery for whatever reason, all counsel shall be under a duty to confer in good faith to determine to what extent such discovery disputes can be resolved before presenting the issue to the assigned judge. No such motion shall be heard by the assigned judge unless counsel for the moving party shall incorporate in his motion a certificate that he has conferred in good faith with opposing counsel in an effort to resolve the dispute and has been unable to do so." (4) "That failure by any party and/or attorney to comply with any one or more of the provisions contained hereinabove shall subject such party and/or attorney to the imposition of appropriate sanctions including the assessment of costs, expenses and attorney's fees."

and ignore Miss. Rules for Civil Procedure.

The plaintiff never received the benefit of receiving answers to her interrogatories as the defendant had. These discovery materials were crucial to the plaintiff's arguments during the summary judgment proceeding and critical to the basis of her entire case. The plaintiff was diligent in her attempts to obtain discovery.

The trial court's allowance of the defendant's motion for protective order to override the court's order on preliminary matters court regarding deadlines for discovery, hearing on preliminary matters and pretrial statement) was an abuse of it's discretion because it failed to give adequate consideration to the fact that the defendant had refused to adhere to the very discovery in their failure to answer the plaintiff's interrogatories, that the plaintiff had been compelled and ordered by the trial court to respond to.

In Dawkins v. Redd Pest Control, Inc., 607 So.2d at 1236,

The Supreme Court of Mississippi stated the following with regard to discovery:

"While the importance of the information must be weighed against the hardships and cost of production and its availability through other means, it is preferable for the court to impose partial limitations on discovery rather than an outright denial. Any record which indicates a failure to give adequate consideration to these concepts is subject to the attack of abuse of discretion, regardless of the fact that the order shows no such abuse on its face."

The trial court failed to facilitate discovery that was fair to the plaintiff because it did not use its authority to stress the importance of, and encourage the defendants to provide responses to the plaintiff's interrogatory requests, even after it had ordered the plaintiff to answer all of the defendant's interrogatories.

The plaintiff abided by the order of the trial court and contends that the trial court had an established protocol in an order to both parties concerning motions for protective order and motions to compel. She made an attempt to raise the issues regarding discovery along with the other violations which had been committed by the defendants; however the trial court stated that the court had heard enough and refused to consider any more arguments and issues that the plaintiff attempted to raise. Thus, the plaintiff argues that she was not allowed to raise many of her issues at the trial court level because the trial court refused to hear the majority of her arguments. She did not provided a written response to the defendant's motions (for protective order and motion to compel

because both of these motions went clearly against the order of the trial court and the rules of the court. The trial court had an order which 1) (b) states, "Prior to service of motions for extension of discovery, protective orders and/or to compel discovery for whatever reason, all counsel shall be under a duty to confer in good faith to determine to what extent such discovery disputes can be resolved before presenting the issue to the assigned judge. No such motion shall be heard by the assigned judge unless counsel for the moving party shall incorporate in his motion a certificate that he has conferred in good faith with opposing counsel in an effort to resolve the dispute and has been unable to do so." (4) "That failure by any party and/or attorney to comply with any one or more of the provisions contained hereinabove shall subject such party and/or attorney to the imposition of appropriate sanctions including the assessment of costs, expenses and attorney's fees."

Thus, her argument regarding these motions being improper is not "moot" because there was already an order regarding this issue, which was ordered and adjudicated by the trial court.

This order had specific requirements with which the defendants ignored and also the trial court had set forth sanctions for failure to comply with its established order. The defendant refused to make a good-faith effort to comply with that order when they filed either of these motions.

The Supreme Court of Mississippi has explained that:

The person who disobeys the order of a court of general jurisdiction does so at his peril. It is no answer that the order was improvidently or erroneously granted. Griffith, Mississippi Chancery Practice s 668 (2d ed. 1950).

If a party could disobey a decree by a court of general jurisdiction, and defend on the ground that in his opinion the decree was erroneous, appellees would be constitutionally free to ignore all of the procedures of the law and respect for judicial process.

The plaintiff contends that the defendant ignored the order of the trial court and minimized their actions ignoring that order as "it's (the trial court's) own local rules."

The defendant has not presented any evidence to the Court, they have just made unfounded assertions and allegations. The plaintiff further contends that the defendant fails to provide the Court with any defense for the negligent actions and omissions of the employees of Harrah's Entertainment. The defendant also fails to provide the Court with any evidence of its allegations that the plaintiff was ever evicted from the premises of Horseshoe Casino or that the plaintiff had been involved in any other wrongdoing at because no such evidence exists. If the defendant has the means and equipment to zone in on the slightest hint of theft or other wrongdoing in its establishment, then it would be reasonable for them to produce some evidence to support their claims, allegations, and to reasonably explain their actions, rather than hide that evidence. The defendant refuses to address the negligent conduct on behalf of its employees because they are unable to provide a plausible explanation as to why Harrah's Entertainment failed to properly and reasonably prevent its employees from harming Ms. Brown through its employees' actions and failures to take action and also through the company's actions and failures to take action. Rather than evidence, the defense improperly introduced an affidavit, which was questionably even in existence at the trial court level. This "affidavit" attempts to asserts alleged details surrounding Ms. Brown's arrest on September 27, 2005 by an individual who did not participate in Ms. Brown's arrest thus having no personal

knowledge of the situation. Ms. Brown contends that this affiant was not the supervisor who ordered and supervised Ms. Brown's arrest. Though Harrah's Entertainment has refused to supply Ms. Brown with the names of the security personnel involved in her arrest, she does know that a (casino floor) security supervisor, not an upper level (Security Shift Supervisor) administered directives during her arrest. Thus, the content of Jimmy Joyner's affidavit is hearsay because he has no personal knowledge of the information that he attests to on September 27, 2005. Furthermore, he could not possibly have personal knowledge of Ms. Brown being violent, abusive or being evicted from the premises because those statements are complete fabrications.

Ms. Brown's claims of negligence met the requirements of negligence claims in the State of Mississippi "A plaintiff in a negligence suit must prove by a preponderance of the evidence (1) duty, (2) breach of duty, (3) causation, and (4) injury. To recover, a plaintiff must prove causation in fact and proximate cause." *Patterson v. Liberty Assocs., L.P.*, 910 So. 2d 1014, 1019 (Miss. 2004).

### **Conclusion:**

For the reasons expressed in both my principal brief and in my reply brief, and on the basis of the record and the authorities cited, I, Torsha A. Brown, appellant in this case, respectfully request that this case be reversed and remanded by this Honorable Court to the Tunica County Circuit Court so that it may be heard by a jury.

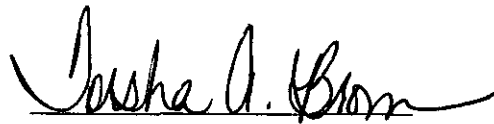
Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Torsha A. Brown", written in a cursive style.

Torsha A. Brown  
1110 East Tyler  
West Memphis, AR 72301

### **CERTIFICATE OF SERVICE**

I do certify that a true and exact copy of the foregoing document has been mailed by United States mail, postage paid, to Mr. Robert Moore, attorney for the defendant, 100 North Main Building, Suite 3400, Memphis, TN 38103-0534, this the 17<sup>th</sup> day of March 2009.

A handwritten signature in black ink, appearing to read "Torsha A. Brown", written over a horizontal line.

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West Memphis, AR 72301

**IN THE COURT OF APPEALS OF THE  
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TORSHA A. BROWN

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V.

2008-01430-COA

HARRAH'S ENTERTAINMENT

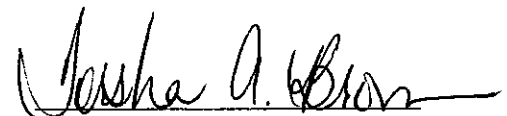
APPELLEE

d/b/a

HORSESHOE CASINO-TUNICA

**CERTIFICATE OF SERVICE**

I do certify that a true and exact copy of the Appellant's Brief <sup>Reply</sup> has been mailed by United States mail, postage paid, to the Trial Court, The Honorable Albert B. Smith, P.O. Drawer 478, Cleveland MS, 38732, on this the 17<sup>th</sup> day of March, 2009.



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