

**IN THE SUPREME COURT OF MISSISSIPPI  
NO. 2008-CP-01449**

**GWENDOLYN JENKINS SIMPSON**

**APPELLANT**

**V.**

**JULIE TILLMAN WATSON  
TILLMAN FURNITURE COMPANY**

**APPELLEES**

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**BRIEF OF APPELLEE**

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**ORAL ARGUMENT NOT REQUESTED**

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**CERTIFICATE OF INTERESTED PERSONS**

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

1. Gwendolyn Jenkins Simpson, Appellant.
2. Julie Tillman Watson, Appellee.
3. Tillman Furniture Company, Appellee.
4. Toby J. Gammill, Esquire and Whitney W. Gladden, Esquire, Wilkins, Stephens & Tipton, P.A., One LeFleur's Square, 4735 Old Canton Road, Post Office Box 13429, Jackson, Mississippi 39236-3429, Attorneys for Appellees.
5. Honorable Lamar Pickard, Copiah County Circuit Court, Post Office Box 310, Hazlehurst, Mississippi 39083.

SO CERTIFIED, this, the 13 day of February, 2009.

BY: \_\_\_\_\_

  
TOBY J. GAMMILL (MSB #   
WHITNEY GLADDEN (MSB # 

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## **STATEMENT OF THE ISSUES**

1. Whether the Defendants' Motion for Summary Judgment was properly granted when the Plaintiff failed to appear at the properly noticed hearing.<sup>1</sup>

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<sup>1</sup>The Motion for Summary Judgment was granted because the Plaintiff failed to meet her burden of proof; specifically, she failed to show that her injuries were related to the incident in question.

## **STATEMENT OF THE CASE**

### **I. NATURE OF THE CASE**

This case is a premises liability action. The Complaint alleged that the Plaintiff has been under continuous medical care since a falling from a broken chair which gave way underneath her during a visit to the Defendants' furniture showroom. The allegations, set forth in the Complaint and two Amended Complaints, include negligence, breach of duty, unprofessional practice, and reckless endangerment, with demands for damages totaling nearly two million dollars (\$2,000,000.00).

### **II. COURSE OF THE PROCEEDINGS**

The pro se Plaintiff filed her lawsuit on December 14, 2007, six days before the statute of limitations in this matter expired. R. at 9; R.E. 2. The Defendants were listed as Tillman Furniture Company and Julie Tillman Watson. R. at 9; R.E. 2. The Defendants filed a Motion to Dismiss Julie Tillman Watson for failure to state a claim against her, as the original Complaint made no allegations concerning Ms. Watson. R. at 49-51; R.E. 3. At the hearing of the Motion to Dismiss, the Court instructed the Plaintiff to amend the Complaint to reflect her allegations against Ms. Watson. Two Amended Complaints were filed on May 2, 2008, and included allegations against Ms. Watson in one and Tillman Furniture in the other, including negligence, breach of duty, reckless endangerment, and unprofessional practice. Separate Answers were filed on behalf of both Defendants on June 2, 2008. R. at 69-77; R.E. 4.

A mediation was held June 17, 2008, but was unsuccessful. Following the mediation, the Plaintiff filed a second Amended Complaint without leave of Court to do so. In her Second Amended Complaint, the Plaintiff demanded additional damages totaling nearly two

million dollars (\$2,000,000.00). R. at 12; R.E. 5. Defendants filed a Response in Opposition to the Plaintiff's Amended Complaint for Damages, asking the Court to strike her Amended Complaint. R. at 78-84; R.E. 6. This issue became moot when the Court granted the Defendants' Motion for Summary Judgment. The Defendants' Motion for Summary Judgment was filed on July 3, 2008. R. at 85-95; R.E. 7. A hearing date of July 21, 2008 was assigned by the Court and noticed by letter from the Court dated July 2, 2008, setting the hearing for July 21, 2008. *See Correspondence from Sherry Davis* (July 2, 2008), attached hereto as Exhibit A.<sup>2</sup> Both the Plaintiff and Defendants fully briefed the Court in the Motion and Responses. The attorney for the Defendants appeared at the hearing. The Plaintiff failed to appear for the hearing, and the Court, ruling on the written submissions of the parties, granted the Defendants' Motion for Summary Judgment. R. at 13; R.E. 8. It is this grant of summary judgment that the Plaintiff now appeals.

### **SUMMARY OF THE ARGUMENT**

This matter is simple and straightforward. Oral argument is not required for a motion for summary judgment to be granted. According to Mississippi Rule of Civil Procedure 78, the Court may decide motions based on the written submissions of the parties, without the necessity of an oral hearing. In the underlying lawsuit, the Circuit Court desired an oral hearing on the Defendants' Motion for Summary Judgment, but the Plaintiff failed to appear after being properly noticed. Therefore, the Plaintiff's argument that she deserves her day in court should be summarily dismissed, as the Court has the prerogative to grant motions based on the written submissions of the parties.

Plaintiff argues that she was not able to appear for the hearing (conceding proper

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<sup>2</sup>A Motion to Amend the Record was filed with this Court on or about February 13, 2009.

notice), and as a result of missing her opportunity to be heard, she should be either granted a jury trial or simply be granted a judgment in her favor for damages. This argument is without merit and the trial court's grant of summary judgment should be affirmed.



## **ARGUMENT**

### **I. STANDARD OF REVIEW**

The Court of Appeals “conducts a *de novo* review of the record on appeal from a grant of a motion for summary judgment.” *Pace v. Financial Sec. Life of Mississippi*, 608 So. 2d 1135, 1138 (Miss. 1992)(citing *Short v. Columbus Rubber & Gasket Co.*, 535 So. 2d 61, 63 (Miss. 1988)). According to Mississippi Rule of Civil Procedure 56, summary judgment “shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” *Miss. R. Civ. P.* 56. The language of this rule “mandates the entry of summary judgment, after adequate time for discovery and upon motions, against the party who fails to make a sufficient showing to establish the existence of an essential element to that party’s case, and upon which that party will bear the burden of proof at trial.” *Celotex v. Catrett*, 477 U.S. 317, 322 (1986). *See also Williams v. Bennett*, 921 So.2d 1269 (Miss. 2006).

### **II. THE NECESSITY OF ORAL ARGUMENT IS UNDER THE DISCRETION OF THE TRIAL JUDGE.**

“A court has the discretion to dispense entirely with oral argument on a motion, and can rule based only upon the brief written statements of reasons in support and in opposition to the motions.” *Hosey v. Mediamolle*, 963 So. 2d 1267, 1270 (Miss. App. 2007)(citing *Miss. R. Civ. P.* 78). In *Hosey*, at the trial judge’s request, there was no court reporter present at the hearing of the defendant’s motion for summary judgment. *Id.* The plaintiff did not object. *Id.* On appeal, the plaintiff complained that because there was no transcript of the dispositive motion hearing, he was at a significant disadvantage. *Id.* Because the issue was

brought for the first time on appeal, the Court found that the issue was procedurally barred.

However, the Court went on to discuss the lack of merit in Hosey's case. *Id.* In the discussion, the Court noted that "a hearing is not necessary to make a decision on a motion for summary judgment." *Id.* The Court in *Hosey*, as in the present matter, has no duty to a plaintiff to hear oral argument, and any argument to the contrary cannot stand.

The Mississippi Court of Appeals recently ruled on this issue. In *Lott v. Purvis*, 2007-CA-02082-COA (February 10, 2009), following the failure of Lott and her attorney to appear at the hearing on the defendant's motion for summary judgment, the circuit court granted the motion for summary judgment in favor of the defendants. *Id.* at ¶ 1. On appeal, the Court held that notwithstanding Lott's failure to appear at the hearing, the evidence was considered and the Court found nothing to establish a causal connection. *Id.* at ¶ 15. There was no genuine issue of material fact as to the causation element of negligence, and the lower court's grant of the defendants' motion for summary judgment was affirmed. *Id.* at ¶ 16.

Likewise, in the present case, the Copiah County Circuit Court held that the Plaintiff failed to meet her burden of proof based on the motion and responses filed with the Court. When the Plaintiff failed to show for the hearing, the Court made its decision based on the written submissions of the parties, finding that there was no causal connection between the incident at issue and the Plaintiff's injuries. Just as in *Lott*, the Plaintiff's failure to appear was not a factor in the Court's decision. Therefore, the Circuit Court's grant of the Defendants' Motion for Summary Judgment should be affirmed.

### **III. PLAINTIFF'S PRO SE STATUS DOES NOT EXCUSE HER FROM COMPLIANCE WITH THE RULES.**

"[P]ro se litigants must be held to substantially the same standards of litigation

conduct as members of the bar.” *Perry v. Andy*, 828 So. 2d 143, 146 (Miss. 2003)(citing *Ivy v. Merchant*, 666 So. 2d 445, 449-50(Miss. 1995)). *Perry* discussed the issue of untimely service of process by the pro se plaintiffs. *Id.* After examining federal jurisprudence , the court found that “pro se status in and of itself does not excuse plaintiffs’ failure to comply with Rule 4 service of process requirements.” *Id.* at 148. The Court recognized that the 7<sup>th</sup> Circuit, the 11<sup>th</sup> Circuit, and several District Courts all essentially held that ignorance of the rules does not constitute good cause for not complying with them. *Id.* at 148-49 (citations omitted). Adopting that reasoning, the Court held that the plaintiffs’ seven day delay in service after the 120-day service deadline had expired was not excusable. *Id.* at 149.

Likewise, the plaintiff in this matter should not be excused from the same standard of conduct expected from an attorney merely because she has chosen not to retain counsel. Plaintiff had proper notice of the hearing. She was aware of the date and time of the hearing, as evidenced by her numerous attempts to contact the court regarding her absence. In *Wyssbrod v. Wittjen*, 798 So. 2d 352 (Miss. 2001), an attorney contacted the court administrator and informed the Court that he would not be present for the hearing as ordered by the court. *Id.* at 361. The Court, noting that the attorney knew of his obligation to attend the hearing, found the attorney in direct contempt. *Id.* The Plaintiff in this matter had notice of the hearing. She failed to send a representative in her place. She failed to request an extension of time or a continuance of the hearing. For these reasons, the Plaintiff should not be granted a jury trial or an award of damages because she missed the hearing, as argued in her appeal. The trial court’s grant of the Defendant’s Motion for Summary Judgment should be affirmed.

### CONCLUSION

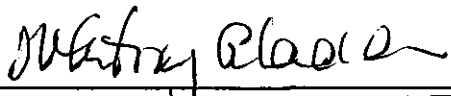

Because a trial judge has the prerogative to rule on motions based on the written submissions of the parties, the lower court's ruling on Defendants' Motion for Summary Judgment without hearing oral argument from the Plaintiff was not in error. Accordingly, the ruling of the lower court should be affirmed.

THIS, the 13 day of February, 2009.

Respectfully submitted,

JULIE TILLMAN WATSON AND TILLMAN  
FURNITURE COMPANY

WILKINS, STEPHENS & TIPTON, P.A.

BY:   
TOBY J. GAMMILL (MSB #   
WHITNEY GLADDEN (MSB 

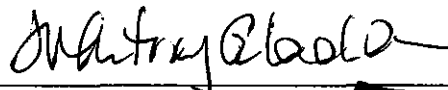
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Phone: 601-366-4343  
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**CERTIFICATE OF SERVICE**

I, Whitney Gladden, attorney for appellee, do hereby certify that I have this day mailed, by United States mail, postage prepaid, a true and correct copy of the above and foregoing *Brief for Appellee* to the following:

Gwendolyn Jenkins Simpson  
5014 28<sup>th</sup> Street #1613  
Gulfport, MS 39501  
*Appellant*

THIS, the 13 day of February, 2009.



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TOBY J. GAMMILL (MSB [REDACTED])  
WHITNEY GLADDEN (MSB [REDACTED])

**CERTIFICATE OF VIRUS-FREE COMPUTER DISK**

I certify that the computer disk accompanying this brief has been scanned and is  
virus free.

  
\_\_\_\_\_  
WHITNEY GLADDEN (MSB # )



**22<sup>nd</sup> CIRCUIT COURT DISTRICT**

**COUNTIES OF  
CLAIBORNE, COPIAH AND JEFFERSON**

POST OFFICE BOX 310  
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TELEPHONE: 601-884-3311  
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LAMAR PICKARD  
Circuit Judge

SHERRY M. DAVIS  
Court Administrator  
E-Mail: [sherry.davis@copiahcounty.org](mailto:sherry.davis@copiahcounty.org)

**SENT VIA U. S. MAIL ON**

**July 2, 2008**

Gwendolyn J. Simpson  
5014 28<sup>th</sup> Street, #1613  
Gulfport, Mississippi 39501  
AND  
100 Belle Street  
Crystal Springs, Mississippi 39059

Re: Gwendolyn Jenkins Simpson vs. Julie Tillman Watson, et al;  
Cause Number 2007-0474;  
In the Circuit Court of Copiah County, MS

Dear Ms. Simpson,

We are in receipt of the Defendants' Motion for Summary Judgment, in which the Defendants are asking that this Court review said Motion on the Defendants' Motion via the briefs submitted due to the impending trial date of July 22, 2008, and the fact that this Court has no other motion dates between now and July 21, 2008.

Therefore, it is necessary that you provide the Judge's Office with a copy of your brief in response to the Defendants' Motion, if you so desire to provide one, by the date of July 9, 2008; so that, the Judge may have sufficient time to review and hopefully, issue a ruling on the pending Motion prior to July 21, 2008. However, in the event that the Court cannot rule on this pending Motion or the Judge desires some oral argument, I will place this matter onto the Court's Motion Docket for the date of Monday, July 21, 2008, 2:00 p.m., here in Copiah County at our temporary location at the Hazlehurst Police Department on Whitworth Street in Hazlehurst, Mississippi, for the Judge to issue a ruling at that time.

Our regards to you,

Sincerely,

Sherry M. Davis  
Court Administrator

/smd

cc: ~~Honorable Edna Stevens~~ (for filing)  
✓Toby J. Gammill, Esquire  
Matt Kidder, Esquire




**AMENDED CERTIFICATE OF SERVICE**

I, Whitney Gladden, attorney for appellee, do hereby certify that I have this day mailed, by United States mail, postage prepaid, a true and correct copy of the above and foregoing *Brief for Appellee* to the following:

Hon. Lamar Pickard  
Copiah County Circuit Court  
Post Office Box 310  
Hazlehurst, Mississippi 39083

Gwendolyn Jenkins Simpson  
5014 28<sup>th</sup> Street #1613  
Gulfport, MS 39501  
*Appellant*

THIS, the 17 day of February, 2009.

  
\_\_\_\_\_  
TOBY J. GAMMILL (MSB [REDACTED])  
WHITNEY GLADDEN (MSB [REDACTED])