IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

Court of Appeals Cause No. 2009-CA-00020
Circuit Court of Alcorn County, Mississippi Cause No. CV2007-000642FA

CHARLES BLANTON
APPELLANT

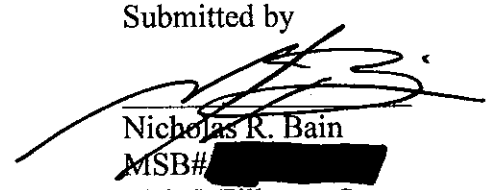
v.

GARDNERS SUPERMARKET
d/b/a ROGER'S SUPERMARKET
FICTITIOUS DEFENDANT "A" AND
FICTITIOUS DEFENDANT "B"
APPELLEE

BRIEF OF THE APPELLANT CHARLES BLANTON

ORAL ARGUMENT REQUESTED

Submitted by



Nicholas R. Bain
MSB# [redacted]
516 N. Fillmore St.
Corinth, MS 38834
662-287-1620

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI

CHARLES BLANTON

V. **CAUSE NO. 2009-CA-00020**

GARDNERS SUPERMARKET
d/b/a ROGER'S SUPERMARKET
FICTITIOUS DEFENDANT "A" AND
FICTITIOUS DEFENDANT "B"

CERTIFICATE OF INTERESTED PARTIES

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

1. Charles Blanton, Appellant

2. Gardner's Supermarket d/b/a
   Roger's Supermarket, Appellee

3. Hon. Paul Funderburk
   Alcorn County Circuit Court Clerk

4. Hon. Richmond H. Culp
   Counsel for Appellee

SO CERTIFIED, this the 8 day of July, 2009

Nicholas R. Bain
MSB# [redacted]
516 N. Fillmore St.
Corinth, MS 38834

TABLE OF CONTENTS

TABLE OF AUTHORITIES

A. MISSISSIPPI CASES

STATEMENT REGARDING ORAL ARGUMENT

Appellant specifically requests an oral argument in this case as he believes that it would be helpful to the court. However, in the event the Court believes oral argument would not be helpful or beneficial to the Court then Appellant does not request an oral argument.

STATEMENT OF THE ISSUES

1. Whether the Trial Court erred in granting Defendant's Motion for Summary Judgment?

STATEMENT OF THE CASE

I. Nature of the Case

This cause has been appealed to the Mississippi Supreme Court and assigned to the Mississippi Court of Appeals from the Circuit Court of Alcorn County, Mississippi. Charles Blanton, Appellant, filed a Complaint against Gardner's Supermarket d/b/a Roger's Supermarket, Fictitious Defendant "A' and Fictitious Defendant "B" in Cause No. CV-2007-642-FA in the Circuit Court of Alcorn County. The complaint asserted that the Defendant negligently maintained the premises of its business, and therefore proximately caused Plaintiff's injuries.

II. Course of Proceedings and Disposition of Lower Court

Your Appellant filed a complaint alleging that while leaving the Defendant's place of business he slipped on a slippery substance on the ground and sustained personal injuries. The Complaint further alleged that the Defendant at all times was negligent because it failed to maintain the premises in a safe and reasonable manner.

The Defendant (Appellee) answered the complaint specifically denying any and all allegations and asserting all applicable affirmative defenses. Thereafter both parties began the discovery process which consisted primarily of interrogatories propounded to the parties and depositions of any and all potential witnesses.

After the discovery process concluded the Defendant moved for a summary judgment to be granted in its favor. The Defendant primarily alleged that no genuine issue of material fact, as to the location of Plaintiff's fall or the known condition of the premises at the time of the fall, existed. The Plaintiff responded that a genuine issue of

material fact existed because the parking lot was in a defective condition, and such condition facilitated the accumulation of ice and snow.

Subsequently, the Circuit Court of Alcorn County held that the Motion for Summary Judgment was well-taken and same was granted on December 9, 2008.

This appeal follows.

III Statement of the Facts

On December 22, 2004 in Corinth, Alcorn County, Mississippi the area experience a winter storm which consisted primarily of ice, snow, and rain. During the early hours of December 23, 2004 this material froze and accumulated on the ground and other surfaces. Later that morning, the Appellant and his wife drove to Roger's Supermarket, located at 410 Cass Street, Corinth, Mississippi, to purchase various and sundry items. Your Appellant completed his purchases and exited the grocery store. While crossing the parking lot, your Appellant noticed that employees of Roger's were removing accumulated snow and ice from the entrance way. Your Appellant then slipped and fell evidently on this accumulated ice and snow. Your Appellant suffered personal injuries as a result of the fall. (Pl. Resp. to Def Mot. Summ. J. 1-2)

SUMMARY OF THE ARGUMENT

On December 22, 2004, Charles Blanton, Plaintiff below, drove to Rogers' Supermarket in Corinth, Mississippi to purchase groceries for the upcoming holiday. Mr. Blanton parked in the Supermarket's parking lot, and then proceeded to the entrance of the store. After purchasing his goods and items, Mr. Blanton left the store and once again traversed the icy parking lot.

However, in order to get to his car he had to walk over a depression that drains water the length of the parking lot. This drainage was not a naturally flowing occurrence, instead it was made that way to cause excess water to flow off the parking lot. When Mr. Blanton crossed this depression he slipped and fell injuring himself.

The Appellee, Defendant below, filed a Motion for Summary Judgment in the Alcorn County Circuit Court. The Trial Court stated that Mr. Blanton conceded to slipping and falling on ice and that this fall occurred some forty-two (42) feet from the entrance sidewalk. Therefore the court found that no genuine issue of material fact existed and granted the Defendant's motion for summary judgment.

However the trial court should not have granted summary judgment, because Mr. Blanton's contention, that the accumulation of snow and ice was not a natural occurrence because the parking lot was designed in such a defective condition that it facilitated the accumulation of water, was a matter for the jury to decide.

Therefore summary judgment was improper and this matter should be reversed

ARGUMENT

I. Whether the Trial Court erred in granting Defendants Motion for Summary Judgment?

STANDARD OF REVIEW

The law is well-settled that this Honorable court should review a denial or granting of a summary judgment *de novo*. Hardy v. Brock, 826 So. 2d 71 (Miss. 2002). In addition, Summary Judgments must also be viewed with a skeptical eye and if a trial court should err it is better to err on the side of denying the motion. Titan Indemnity Co. v. Estes, 825 So. 2d 651, (Miss. 2002). Lastly, in reviewing an award of summary judgment, this court views all evidence in the light most favorable to the non-movant including "admissions in pleadings, answers to interrogatories, depositions, affidavits, etc.," Daniels v. GNB, Inc., 629 So. 2d 595 (Miss. 1993).

LAW AND AUTHORITY

Appellee, hereinafter Roger's, made an application for Summary Judgment to the Honorable Circuit Court of Alcorn County, and alleged solely that the facts of this case fell squarely within the "natural condition' rule. (Def. Mot. Summ. J. 3). Our state's highest court has held that business owners and proprietors are not required to clear *naturally* accumulated ice and snow from their parking lots. Fulton v. Robinson Industries, 664 So. 2d 170 (Miss. 1995) (emphasis added). In Fulton, the court delineated the following three black letter conclusions regarding the law of slip and fall cases:

> 1) if an invitee is injured by a natural condition on a part of the business that is immediately adjacent to its major entrance and exit, then there is a jury question as to the openness and the obviousness of the danger.
>
> (2) if an invitee is injured by a natural condition on a remote part of the business premises, and the danger was known and appreciated by the injured party, then there is no jury question.
>
> (3) if an invitee is injured by an artificial/man-made condition on an adjacent or internal part of the business premises, then there is a jury question as to the openness and obviousness of the danger.
>
> *Id.* At 175.

Roger's entire Motion for Summary Judgment and its Memorandum in Support of

Motion for Summary Judgment argued and alleged that the second conclusion above applied to the facts in this case. (Def. Mot. Summ. J. 3). This rule of law can be divided essentially into a three part test. First, there must be a natural condition. Second, the alleged injury must have occurred on a remote part of the business's premises. Lastly, the danger must have been appreciated by the plaintiff. Rogers submitted in its Motion for Summary Judgment that all these elements were present therefore it was entitled to a judgment as a matter of law. *Id.*

In support of this allegation Roger's relies largely on the case of Lawrence v. Wright, 922 So. 2d 1(Miss. App. 2003). In Lawrence, the Plaintiff had traveled from her home in Corinth, Mississippi to the nearby town of Burnsville, Mississippi. When arriving in Burnsville the Plaintiff stopped at R&W Salvage Grocery, parked her car, and entered the store without incident. Approximately one (1) week prior the area had experienced freezing rain, sleet, and snow, and although the weather on this particular day was sunny and clear, the temperature was still below freezing and segments of ice were still present on the ground. After the plaintiff made her purchases at R&W she left the store and proceeded to return to her car. On her way back she slipped on a patch of ice and broke her leg. *Id.* at 2.

The Plaintiff sued seeking compensation for her damages. After discovery and other pretrial matters the defendants filed for and were granted Summary Judgment. *Id.* In its application of the law, the Court of Appeals held that the Plaintiff fell because of a natural condition on a remote part of the parking lot; therefore, no jury question existed and summary judgment was proper. *Id.* at 3

Roger's submitted in its Motion for Summary Judgment that the facts in the case at bar are "eerily similar" to those in Lawrence. (Def. Mot. Summ. J. 3). In its motion

Roger's states essentially that Mr. Blanton fell on ice about forty-eight (48) feet from the entrance of the supermarket and that this fall was on a remote area of the business's premises. *Id.* This same argument is made by Roger's in the hearing on the motion. (Summ. J. Hr'g Tr. 2, Nov. 13 2008).

Your appellant submits that he conceded both in his Response to the Motion for Summary Judgment and his argument during the hearing as to the location of the fall and that he slipped on ice. (Pl. Res. Mot. Summ. J.2 and Hr'g Tr.15). However he maintained that the ice accumulated due to the drainage and design of the parking lot.

In addition you appellant submits now that the trial court was correct in finding that there was no dispute as to where Mr. Blanton fell or any dispute that he fell on ice. (Order). However, the trial court did err in granting summary judgment in favor of Rogers' because a genuine issue of material fact exists as to whether the parking lot was defective in such away as to aid in the accumulation of snow and ice.

From the outset of this litigation the plaintiff has maintained that Roger's did not keep the premises in a reasonably safe condition. (Compl. 2). Chief among this allegation was the claim that the parking lot was designed in such a way as to facilitate the accumulation of water, and on rare occasions, ice. (Res. Mot. SJ). In fact the following is an excerpt from J.T. Trussell, a representative of Roger's, who was deposed and asked about design of the parking lot:

> Q: Okay.... There is a naturally—maybe not naturally, but it was made to flow in that depression that runs through the length of the parking lot?
>
> A. We have a drainage there.
>
> Q. Yes, sir.

A. We have that there.

Q. But the drainage runs down in front of the store; isn't that correct?

(Defense counsel made and objection to the form)

A. I think it does.

(Exhibit A)

The deposition continued as follows:

Q. So, if water falls on the parking lot, it is going to flow to this drain that you marked D1; is that correct?

A. If there was any puddled, it would, but I don't believe there is any puddles that much (sic).

(Exhibit B)

Mr. Trussell went on to state that he very rarely saw puddles because the business's traffic kept them knocked off. *Id.* However as Roger's stated in its Motion for Summary Judgment the ice accumulated during the overnight hours of December 22 and 23, 2004. (Def. Mot. Summ. J, 2). Your Appellant submits that Roger's was not open during this time and consequently no traffic was present to "knock off" the puddles, which subsequently turned to ice, the same ice that Mr. Blanton fell on hours later.

In addition your Appellant submits that he signed a sworn affidavit attached to his Response to Defendant's Motion for Summary Judgment. (Exhibit C). In this affidavit Mr. Blanton stated that Rogers' Supermarket maintained their parking lot in such a shape that it facilitated the puddling and accumulation of water and subsequently ice. *Id.*

Lastly, during the hearing on Defendant's Motion for Summary Judgment, Mr. Blanton argued that a genuine issue of material fact existed as to the design of the parking

lot. (Hr'g Tr. 14). Specifically, counsel for Mr. Blanton, stated that. "[I]t's the plaintiff's contention, that the parking lot was in such a defective condition because it allowed the accumulation of water."*Id.*

There is no mention in the record where Plaintiff's contention was addressed and/or resolved by the trial court.

Therefore the facts in this case are distinguishable from Lawrence, because here there is evidence and facts that point to the parking lot being designed as to effectively aid in the accumulation of water and consequently creating a man-made condition. Whereas, in Lawrence there was absolutely no evidence that the accumulation of ice and snow was artificially aided. 922 So. 2d 1. In fact in its opinion the Court stated, "Neither the owners of R&W nor the owner of the strip mall parking lot caused the ice to accumulate." *Id.* at 3. This statement intimates that if there had been some showing that the owners had maintained the property in such a way as to cause the water to accumulate, then reversal would have been mandated.

The law is well settled that summary judgments should only be granted when it appears beyond all reasonable doubt that the non-movant would be unable to prove any facts to support his claim. McFadden v. State, 580 So. 2d 1210 (Miss. 1991). Admittedly, the record is thin as to the amount of evidence showing the defective condition of Rogers' parking lot. However in the case of Downs v. Choo, where a plaintiff was injured while slipping on a banana peel, the plaintiff argued that it was *possible* that one of the store's employees negligently dropped the banana causing his injury. 656 So. 2d. 84 (Miss. App. 1995). (emphasis added). The plaintiff in Downs did not provide any evidence to support his claim that the proprietor knew the banana was on the floor. *Id.* at

92. Yet the Supreme Court of Mississippi, held that there was a dispute and an issue of fact as to the timely and non-negligent removal of the banana. *Id.* at 86.

Mr. Blanton submits that he provided the court below with more evidence than the plaintiff in Downs did. Furthermore this evidence is not mere conjecture or speculation; it is fact! It is a fact that the parking lot slopes and water drains through the length of the parking lot. The trial court and now this court has been presented with a sworn statement from a Roger's representative stating this very truth. (Exhibit A) Couple this fact with the fact that the ice was present on the parking and a reasonable inference can be drawn that the parking was designed in such a way as to facilitate the accumulation of water and ice, thereby creating an unnatural, artificial and man-made condition. This issue is in dispute and the trial court should have allowed it to be submitted to a jury.

A summary judgment can only be given where the Plaintiffs evidence is so lacking that reasonable jurors would be unable to reach a verdict in favor of the Plaintiff. Tate v. Southern Jitney Jungle, 640 So. 2d 1347 (Miss. 1995). Therefore, unless this court is convinced, viewing all of the evidence in favor of Mr. Blanton, as well as the inferences that can be drawn from the evidence, that no reasonable juror could find on behalf of Mr. Blanton, then the granting of summary judgment by the Alcorn County Circuit Court was error. Your Appellant respectfully suggests that he has presented enough evidence to meet this burden and that the lower court's order granting summary judgment should be reversed.

CONCLUSION

Charles Blanton, Appellant in this cause, would respectfully ask this court to reverse and remand his case to the Circuit Court of Alcorn County, Mississippi.

This request is based on the fact that your Appellant has contended from the conception of this case that Roger's parking lot was defective, and that this defect created unnatural accumulation of ice and snow. This contention was never addressed by the trial court and was never conceded to by the Appellee. Therefore, your Appellant submits that a material issue of genuine facts exists and summary judgment was improper.

Your Appellant respectfully requests that this Court, upon consideration of the brief presented herein, and consideration of the facts and law relevant to the issues presented, reverse and remand this case to the Circuit Court of Alcorn County, Mississippi.

CERTIFICATE OF SERVICE

I, **Nicholas R. Bain**, attorney for appellant, **Charles Blanton**, certify that I have this day served a copy of foregoing by United States mail with postage prepaid on the following persons at these addresses:

Hon. Richmond H. Culp
Mitchell, McNutt and Sams
P.O. Box 7120
Tupelo, MS 38802

This the 6 day of July, 2009.

Nicholas R. Bain