

**SUPREME COURT OF MISSISSIPPI  
COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

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**NO. 2009-CA-00824**

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**JOSEPH W. BLACKSTON, M.D., J.D.**

**APPELLANT**

**VS.**

**CHRISTOPHER B. EPPS, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY,  
KENTRELL M. LIDDELL, INDIVIDUALLY AND IN HER OFFICIAL  
CAPACITY, AND MISSISSIPPI DEPARTMENT OF CORRECTIONS**

**APPELLEES**

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**BRIEF OF APPELLANT**

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**ORAL ARGUMENT REQUESTED**

**LOUIS H. WATSON, JR.**

**MBN [REDACTED]**

**NICK NORRIS**

**MBN [REDACTED]**

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**SUPREME COURT OF MISSISSIPPI**  
**COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**NO. 2009-CA-00824**




**Joseph W. Blackston v. Christopher Epps, et al**

**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 may evaluate possible disqualification or recusal.

1. Joseph W. Blackston, Appellant;
2. Louis H. Watson, Jr., Attorney for Appellant;
3. Nick Norris, Attorney for Appellant;
4. Christopher Epps, Appellee;
5. Kentrell M. Liddell, Appellee;
6. Mississippi Department of Corrections, Appellee;
7. James T. Metz, Attorney for Appellee;
8. Honorable William F. Coleman, Circuit Court Judge.

This the 22<sup>nd</sup> day of November, 2010.

  
\_\_\_\_\_  
LOUIS H. WATSON, JR.  
MBN   
NICK NORRIS  
MBN 

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**STATEMENT REGARDING ORAL ARGUMENT**

This case presents a very important issues before the Court: whether the Circuit Court erred in granting Defendant's Motions to Dismiss and for Summary Judgment. Oral argument is warranted.

**SUPREME COURT OF MISSISSIPPI  
COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**NO. 2009-CA-00824**

**Joseph W. Blackston v. Christopher Epps, et al**

**STATEMENT OF THE CASE**

On May 25, 2007, the Appellant filed his complaint against the Appellees alleging claims for tortuous interference with business and/or contractual relationship, intentional and/or negligent infliction of emotional distress, and defamation. (R. at 3). On November 19, 2007, the Appellees filed their motion to dismiss and/or for summary judgment seeking to dismiss all of Appellant's claims. *Id.* at 20. On November 13, 2008, the trial court entered an Order granting Defendant's Motion to Dismiss on all claims. *Id.* at 41.

**STATEMENT OF THE FACTS**

In October 1998, Appellant was a member of the University Medical Center's ("UMC") full-time faculty. *Id.* at 38. He was Assistant Professor of Medicine, in the Department of Medicine, Division of General Internal Medicine. *Id.* In May 2003, Appellant gave notice at UMC and interviewed for position as "hospitalist" physician with Baptist Medical Center, in Jackson, Mississippi. *Id.* Appellant ruptured his Achilles tendon which required emergency surgery with approximately 10-12 weeks of rehab required. *Id.* While recuperating, Appellant was contacted about a job with MS

Department of Corrections as Medical Director. *Id.* In June 2003, Dr. Blackston met with Commissioner Epps, and Special Asst. Attorney General Joe Goff, with the Mississippi Department of Corrections (hereinafter “MDOC”) and was approved for position of Director of Medical Compliance for contract between MDOC and Correctional Medical Services, Inc. (hereinafter “CMS”). Staff initially consisted of the Appellant, and Lynda Powell, RN. *Id.*

In July 2003, Dr. Blackston began work with MDOC. Oriented with correctional officers and underwent training with MDOC. *Id.* Almost immediately Commissioner Epps was critical of CMS, though Epps was primarily the person responsible for CMS selection as preferred vendor. *Id.* Major issue (among others) was CMS discontinuation of massive use of sleeping pills and other sedative drugs which were clearly being misused and over-prescribed to inmates. *Id.* at 39. Epps asserted this discontinuation was causing “inmates to be suicidal” and likely was responding to pressures from legislators and family members. *Id.* Additionally, besides disrupting the status quo, sedated inmates are much easier to control/manipulate than those who are not. *Id.* Appellant assured Commissioner Epps that discontinuation of these medications was not injurious to inmates’ well being and was actually more appropriate medical care, as well as consistent with inmate civil rights. *Id.*

In September 2003, Commissioner Epps reneged on the promise to CMS to

provide housing for medical staff at Parchman, citing costs to maintain these older small houses (many 50-80 yrs old). *Id.* Commissioner Epps demanded immediate compliance with requirement for nursing staff to administer all medications (including insulin shots) at Parchman, though this required CMS to hire scores of additional RN staff, and security refused to aggregate inmates on the basis of medical condition (though this is done at CMCF and other locations within MDOC) – thus nursing staff have to give insulin shots to inmates often large geographic distances apart at Parchman. *Id.*

In December 2003, Commissioner Epps demanded investigation into inmates who are being returned to CMCF and other large facilities, from Walnut Grove Youth Correctional Facility (“WGYCF”), ostensibly because of mental health reasons. *Id.* After detailed review of large numbers of documents, discussions with officials at CMCF, with CMS, and WGYCF staff, it appeared only a small number of inmates had needed to be transferred out of WGYCF because of true mental health issues. *Id.* However, because Epps wanted to keep private prisons happy, and because of his close relationship with Carl Reddix, MD (a Jackson OB/Gyn who has the lucrative medical contract at WGYCF) – Reddix determined that a new contract needed to be drafted to allow Reddix to provide limited mental health services at WGYCF. *Id.* Epps demanded that Appellant search for a psychologist to provide these services to Reddix on a part time basis, and the contract was re-written to provide Reddix with an additional \$400,000 annually, out of



which he has to expend funds for only a social worker, and a psychiatrist one day per week. *Id.*

It was later discovered that WGYCF had been sending private prison inmates to CMCF on a bus on Saturdays to be seen by the psychiatrist (who was under contract with CMS) – the psychiatrist has no way of knowing which inmates are from WGYCF and which are from CMCF (i.e., those he was actually contractually obligated to treat and those from WG who Carl Reddix was contractually obligated to provide medical care for). *Id.* at 40. After some investigation it was discovered that Department Commissioner Emmitt Sparkman directed the authorities at WGYCF to send these private prison inmates to CMCF to be treated at CMS expense. *Id.*

CMS attempted to implement hospice care at Parchman. This was blocked by MDOC primarily because they will not provide staff, location, or support at the only hospital prison in the system. *Id.* From January to March 2004, a main focus was the MDOC litigation by the ACLU involving care for HIV positive inmates at Parchman. This has been going on for almost nine (9) years. *Id.* ACLU sent their expert to view the prison, talk to inmates, review medical records, query staff, and then provide an opinion to ACLU lawyers. *Id.* As Director of Medical compliance, Appellant testified on behalf of MDOC before United States Magistrate Judge Jerry Davis. Appellant assisted MDOC attorneys, especially lead attorney Leonard Vincent, in depth with case. *Id.*

Commissioner Epps' behavior became even more toxic. *Id.* at 41. He concocted a scheme wherein he used his political connections to pass a bill in the legislature which requires that medical providers are only to pay the prevailing Medicaid rate (a very low amount) for inmates. *Id.* This helped Epps directly, because of the estimated \$1.5-2.0 million spent directly on healthcare for "state inmates in county jails, which MDOC was bound by law to provide, but also indirectly: Epps demanded that CMS was to pay MDOC half of all money saved by CMS on the "difference" between what University Medical Center (hereinafter "UMC") and other providers are charging CMS, and the now Medicaid rate. *Id.* This virtually insures that UMC will not provide any medical services to any state or CMS inmates. *Id.*

In the summer of 2004, Joe Goff announced he was leaving the Mississippi Attorney General's office and MDOC to work for MDOT. At the MDOC reception for Mr. Goff, Commissioner Epps commented to all present that he (Epps) "never let the truth stand in the way of good testimony." *Id.* CMS offered Appellant a job. Appellant informed Epps that CMS had spoken to him about it, and, without disclosing the details, advised him that it involved a substantial increase in pay. *Id.* Appellant also advised him that it would allow Appellant to continue to have direct patient contact, as opposed to a purely administrative role. *Id.* Appellant informed him that Appellant was considering this offer, but that he would notify him immediately if Appellant decided to accept. *Id.*

In July 2004, CMS hired Kentrell Liddell, MD directly out of her family medicine residency program at UMC. *Id.* Liddell went to work at CMCF and worked for approximately six (6) weeks before she was promised a job as medical director for MDOC by Commissioner Epps. *Id.* at 42. Liddell announced her termination with CMS, informing Mr. Linton and Dr. Ivens that she had been offered Appellant's job with MDOC. *Id.* This was prior to any notification on Appellant's part to the Commissioner that Appellant would accept the CMS offer to work at CMCF. *Id.* Appellant did not confront the Commissioner with this fact, but everyone in the office of Medical Compliance was fully aware. *Id.*

On September 1, 2004, Appellant began work at CMCF as medical director. Dr. Liddell began work with MDOC as Director of Medical Compliance. *Id.* One of her first orders was to change her own designation to "Chief Medical Officer." *Id.* Liddell claimed work done by Appellant and others with MDOC as her own, in a public statement to a large assembly of CMS medical personnel. *Id.* An inmate named Larry, whose last name Appellant cannot remember, was diagnosed with lymphoma. *Id.* He was hospitalized at UMC, but when the time for his release from MDOC custody came, he remained an inpatient. *Id.* MDOC maintained the inmate as officially in custody despite being past his release date. *Id.* CMS incurred tens of thousands of dollars in expenses in care for this patient even though he was no longer officially an inmate. *Id.*

In October 2004, because of temporary shortage in availability of flu shots country wide, Epps instructed CMS, ostensibly through Governor Barbour, that CMS was not to administer flu shots to eligible MDOC prisoners, even though CMS has already purchased the flu shots at their own costs. *Id.* Pat Maxey, a long tenured employee of MDOC, and the only white staffer remaining in the Office of Medical Compliance, was fired without notice by Liddell from the office of Medical Compliance. *Id.* She was reassigned to be compliance officer for Walnut Grove prison. This requires her to drive one hour each way daily to the facility from her home in Jackson.

Liddell constantly criticized CMS staff for their alleged lack of appropriate medical care. *Id.* She took any and all claims by inmates, inmate families, or other “interested persons” as factual without ever attempting to verify these assertions. *Id.* After CMS’s staff reviewed the medical records, pharmacy records, specialty care records, in detail, virtually all of these issues (99%) revealed all care provided was appropriate. *Id.* Inmate Gary Johns, a non-violent prisoner in his late 40’s, serving time on a drunk driving charge, was diagnosed with advanced stomach cancer, and had no treatment options except to be made comfortable. *Id.* He had several episodes of massive upper GI bleeding. *Id.* Appellant and others pled with Liddell and Epps to facilitate this man’s conditional medical release. *Id.* During a visit to the facility, Liddell remarked

personally to Appellant “everything was taken care of” and that the inmate would be released soon. *Id.* No action was ever taken by MDOC to release the inmate, and later he died of massive GI hemorrhage. *Id.*

In January 2005, Dr. Keith Ivens, medical director for CMS in Mississippi, was transferred (fired) at the direction/complaint of Epps and Liddell. *Id.* A board-certified general surgeon, Stanford university trained, with many years of correctional experience, was dumped by CMS because of Epps’ and Liddell’s personal dislike. *Id.* Ivens was transferred to northern Michigan where CMS has a contract. In February 2005, Larry Linton, Regional Vice President for CMS in Mississippi, left in disgust over the firing of Ivens, and of continued abuse by Epps. *Id.* A military veteran with 20+ years of experience in corrections, Linton rejoined CMS approximately 10 months later in another state. *Id.*

In March 2005, CMS offered position of Regional (statewide) Medical Director to Appellant, but Appellant declined. *Id.* Appellant did not wish to have the ongoing direct interaction with Liddell and Epps, which was a necessity of this position. Appellant would instead prefer to continue in his present administrative and clinical role. *Id.* at 44. Appellant served as “interim” Regional medical Director for approximately five (5) months while CMS performed a search for replacement, naming Clayton “Mark” Ramsue, MD, as RMD. Ramsue was bright, motivated, and African American, so it was

felt he may have some success in dealing with Liddell's bizarre personality and constant demands. *Id.* Ramsue quickly understood that Liddell was out of control, and did his best to insulate the remainder of CMS staff from her assaults, occasionally without success. *Id.*

In 2005, a female inmate was sent to CMCF by the warden who knowingly ordered transfer of the inmate to be treated by Dr. Merrill Merritt, to the CMS contracted OB/Gyn. *Id.* This female inmate was a county inmate and was not on the CMS "count", and was the financial responsibility of the county and not CMS. This was only discovered when Dr. Merritt's bill was refused by CMS accounting. In spring 2005, Liddell demanded "liquidated damages" from CMS. Based on MDOC's calculations, it was in violation of their contractual duties. *Id.* The basis of liquidated damages was outlined contractually, and relied on sampling of various performance measures. A detailed review of Liddell's assertions revealed highly flawed methodology by her office (MDOC) in calculating these figures. It was readily apparent MDOC affirmatively ignored/excluded data in favor of CMS and focused only on a few "cherry-picked" areas where performance was non-compliant. CMS challenged MDOC's demand in a lengthy rebuttal letter. MDOC was furious. *Id.*

In June 2005, CMCF Health Services Administrator (H.S.A) Marquett Williams (black) quit CMS, citing total frustration with Liddell's constant harassment.

Williams was transferred to a correctional contract in Memphis, then later held a top position with the medical services division for the Georgia Department of Corrections. *Id.* at 45. On July 1, 2005, CMS announced to MDOC it would not seek to extend the contract for a fourth year, citing millions of dollars in losses in Mississippi. This was primarily a result of MDOC consistently and continuously diverting costs to CMS which are properly and legally attributable to either county or private prisons. This was done in order to specifically financially injure CMS and also to patronize Epps' relationships with the county and private facilities, including medical vendors like his friend Carl Reddix, who benefit directly from this financial "dumping" of sick inmates. *Id.*

In the fall of 2005, MDOC released the "Request for Proposals (RFP) for medical contract. CMS refused to even bid on the contract. Epps promised to give a pharmacy contract to Ms. Dale Guins, who owns a local Mississippi company. *Id.* Guins has provided pharmacy services to Madison county jail, and has worked with Carl Reddix to provide prepackaged medications to Reddix's jail contracts. *Id.* Epps later reneged on the promise to use Guin's company, based in Gluckstadt, Mississippi, and the contract was awarded to Wexford, a company in Philadelphia, Pennsylvania. In the spring of 2006, MDOC announced Wexford was awarded the contract for medical services with MDOC. Many medical staff left or made plans to leave because of the uncertainty of continued employment. *Id.* Several in leadership (Appellant, Dr. Felda

Jones, Levin Jones) urged many of the qualified people to stay. *Id.* Later Liddell held a meeting and directly insulted several of these employees, indicating to many of them that they would be summarily terminated, and openly criticized others in front of their colleagues. *Id.*

In April 2006, medical staff discovered that Wexford was to provide only onsite medical services. *Id.* at 46. Liddell announced to all medical staff that she had personally contracted with “two physicians from every medical specialty” to provide either onsite or offsite specialty care to inmates. *Id.* This turned out to be a massive misrepresentation, as in reality many of the specialties who contracted with CMS refused to continue to do business with Liddell/MDOC, and since the inception of the Wexford contract several more specialists have discontinued their services to inmates ( Hinds County Cardiology, Central Surgical Associates, Dr. Gary Davis, Nephrology, Dr. Tom Reich, ENT, and even Dr. Mel Merritt of OB/Gyn. *Id.*

In April 2006, there was a visit with a representative of the Attorney General’s office, Mr. Bartlett. *Id.* He wanted to know all about the medical care of Edgar Ray Killen. Killen had filed motion for release from MDOC custody based on his medical condition. Appellant reviewed Killen’s status in detail with Mr. Bartlett, including providing a detailed visit to the grounds, tour of facility, etc. *Id.* Mr. Bartlett informed Appellant that no date was set for trial, but he would let Appellant know. In May 2006,



3 days prior to trial, Appellant received verbal notice from Warden Jackie Parker that Appellant was to be summoned to Circuit Court in Neshoba County in regard to trial of Edgar Killen. Appellant contacted Neshoba County Sheriff's office to notify them that Appellant had not been served, and could not accept "faxed" service of process because Appellant had serious conflicts that same day. *Id.*

The next day Appellant was informed through Warden Parker that, per Dr. Liddell, Appellant was "ordered to cooperate with MDOC or else" and that Dr. Liddell had contacted the Attorney General's office and also the attorney for CMS, in order to further intimidate the Appellant. Appellant contacted Lynn Murray, with the law firm of Brunini, Grantham, Grower and Hewes, and informed him fully of the facts. *Id.* at 47. Appellant also contacted Mr. Bartlett of the AG's office. Appellant informed him that Appellant fully intended to provide testimony in this matter and had no reservations on doing so, but required sufficient advance notice of the hearing. *Id.* Appellant requested to speak to either Mr. Hood or the Assistant Attorney General, who was handling the case for the state. Neither responded to Appellant's request. *Id.* Appellant sent a letter, via fax and certified mail, to AG's office informing them of the events. Appellant still did not receive any call from AG's office, but subsequently received a letter stating they had "attempted to contact Mr. Epps but were unsuccessful." *Id.*

On May 30, 2006, the national medical director for Wexford, and Dr. Emil

Dameff, regional medical director for Wexford, came to Appellant's office at CMCF and personally instructed Appellant that he would not be offered any position with Wexford, despite the RFP requirement that all clinical positions will be maintained for a minimum of six months. *Id.* When asked the reason for this, they stated this was the sole request of Dr. Liddell, who had instructed them to hire only a "minority" physician for the position of medical director at CMCF. Appellant was informed that Wexford "may" offer Appellant a temporary position as a physician at SMCI, but this would only be for a few weeks. Appellant informed Wexford that Appellant would possibly be interested in this position if they decided to offer it. *Id.* In June 2006, Wexford retracted its offer of temporary physician employment at SMCI, stating the position had been given to another physician who was previously terminated from employment with CMS. *Id.*

### **STANDARD OF REVIEW**

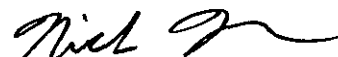
When reviewing a grant of a motion for summary judgment, the Supreme Court "...conducts *de novo* review of orders granting or denying summary judgment and looks at all the evidentiary matters before it—admissions in pleadings, answers to interrogatories, depositions, affidavits, etc." *Aetna Cas. and Sur. Co. v. Berry*, 669 So.2d 56, 70 (Miss.1996) (citing *Mantachie Natural Gas v. Miss. Valley Gas Co.*, 594 So.2d 1170, 1172 (Miss.1992)). The Supreme Court also conducts *de novo* review of orders granting motions to dismiss pursuant to Miss. R. Civ. P. 12(b)(6). *Arnona v. Smith*, 749

race should not be allowed whether the employee is employed by a private corporation or the State. Miss. Code Ann. § 25-9-149, 57-71-19, 57-77-27, 57-10-519, 79-1-9. The Mississippi Constitution specifically requires the legislature to protect employees' civil rights, such as, the right to not be discriminated against on the basis of race under 42 U.S.C. § 1981 and Title VII of the Civil Rights Act of 1964. Miss. Const. Art. 7 § 191. For the trial court to find Liddell was acting within the scope of her employment when she required a contractor to institute a policy of race discrimination would contradict the clear intentions of the State of Mississippi to prohibit race discrimination whether the employee is employed by the State or a private corporation.

### CONCLUSION

The Circuit Court was incorrect in granting Appellees' Motions to Dismiss and for Summary Judgment. As such, the Circuit Court's Orders granting the Motion to Dismiss and Motion for Summary Judgment should be reversed and remanded for trial.

Respectfully submitted,

  
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**CERTIFICATE OF SERVICE**

I, Nick Norris, attorney for Appellants, hereby certify that I have this day served, via United States Mail, First Class, postage prepaid, a true and correct copy of the foregoing Brief of Appellants to the following:

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Honorable William F. Coleman  
1843 Springdale Drive  
Jackson, MS 39211  
CIRCUIT COURT JUDGE

This the 22<sup>nd</sup> day of November, 2010

  
\_\_\_\_\_  
LOUIS H. WATSON, JR  
MBN [REDACTED]  
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MBN [REDACTED]