

IN THE SUPREME COURT OF MISSISSIPPI

CITY OF JACKSON, MISSISSIPPI

APPELLANT

VS.

CAUSE NO. 2009-CA-01610

**MARY GRAY AND PEGGY PETTAWAY
AS CO-ADMINISTRATORS OF THE ESTATE OF
ALICE FAYE CALUSELL, DECEASED, AND ON
BEHALF OF ALL WRONGFUL DEATH
BENEFICIARIES OF ALICE FAYE CLAUSELL,
DECEASED, KIMBERLY CLAUSELL, LILLIAN BYRD
AND CHRIS CLAUSELL**

APPELLEES

**On Appeal from the Circuit Court of
Hinds County, Mississippi
Cause Number 251-07-755 Consolidated with
Cause Number 251-07-784
Honorable William Coleman**

Brief of Appellee Chris Clausell

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APPELLEES

CERTIFICATE OF INTERESTED PERSONS

Pursuant to Miss.R.App. 28(a)(1), 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 disqualifications or recusal:

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I. STATEMENT OF THE FACTS¹

On April 21, 2007, officers of the Raymond and City of Jackson Police Departments (“Jackson Police Department”) were involved in a high speed police pursuit of a vehicle being driven by Alice Wilson, defendant herein. The hot pursuit of Alice Wilson was initiated by Officer Randy Razor of the Raymond Police Department. Officers of the Jackson Police Department joined in the high speed pursuit which began on Highway 18 and ended at the intersection of Capitol and Congress Street in Jackson, Mississippi when the Wilson vehicle collided with the Clausell vehicle, killing Alice Clausell. At the time of the collision, the Wilson vehicle, being pursued by the police officers, was traveling east on East Capitol Street. The plaintiffs’ (Clausell) vehicle was travelling south on Congress Street. Alice Wilson, defendant herein, ignored a red traffic signal and failed to yield the right of way to the Clausell vehicle. The Clausell vehicle was occupied by Lillian Byrd and Alice Clausell. As a result of the collision, Alice Clausell died and Kimberly Clausell and Lillian Byrd were severely injured. A proximate cause of the death of Alice Clausell was the reckless conduct of the officers of the Jackson Police Department. There were no outstanding warrants for Alice Wilson nor was she engaged in illegal activity that would have justified the high speed pursuit through the crowded streets of Jackson. There were no valid reasons for the police to conduct the chase because a police helicopter was following the Wilson vehicle during the high speed chase. Officer Razor admitted in his testimony that if he had been informed of the sky patrol pursuit that he would have terminated the ground chase immediately. T.E. 2, pp. 94-95; R. @136.

According to Officer Razor, the Jackson Police Department did not completely withdraw from and suspend all following, tracking and attempts to apprehend Alice Wilson. Of significant

¹ The District Court Findings of Fact are adopted by Chris Clausell. See pp. 2-3 of the District Court’s “Opinion and Order,” R. @ 135.

importance is the fact that as many as seven Jackson Police vehicles continued in the support activities of the pursuit. According to Officer Razor, there were as many as four or five Jackson Police cars at the intersection of Capitol and Lamar at the time of the accident. The large number of police vehicles at the intersection of Capitol and Lamar prompted Alice Wilson to turn left from Lamar Street on to East Capitol resulting in the path that ultimately caused the death of Alice Clausell. Had the conglomeration of Jackson Police vehicles not formed at the intersection of Capitol and Lamar, there would have been no reason for Alice Wilson to turn on to Capitol Street headed for the collision with the Clausell vehicle. T.E. 2, pp. 90-100.

After Wilson turned left onto Capitol Street, the Jackson Police Department vehicles stationed at the corner of Lamar and Capitol re-engaged the pursuit behind Officer Razor with their emergency lights flashing. T.E. 2, pp. 90-93; T.T. @ 174-206. R. @ 137. The City of Jackson police officers did re-engage and continued the pursuit from the corner of Lamar and Capitol to the accident scene. T.E. 2, pp. 90-94; T.T. @ 174-206. R. @ 137. At the time Officer Razor began his pursuit of Alice Wilson, he did not know nor was he informed of any prior arrests or convictions or outstanding warrants for Alice Wilson. T.E. 2, pp. 81, 102-103. There were no valid reasons to pursue Alice Wilson in a high speed chase through the crowded streets of Jackson. Officer Razor had no plan on how to stop Alice Wilson or to otherwise terminate the high-speed chase. T.E. 2, pp. 81, 103-104.

II. SUMMARY OF THE ARGUMENT

1. Mississippi Tort Claims Act.

Plaintiffs' claims are under the Mississippi Tort Claims Act which provides as follows:

“A governmental entity and its employees acting within the course and scope of their employment or duties shall not be liable

for any claims: [omissions] c: Arising out of any act or omission of an employee of a governmental entity engaged in the performance or execution of duties or activities relating to police or fire protection *unless the employee acted in reckless disregard of the safety and well-being of any person not engaged in criminal activity at the time of injury.*" R. @ 138.

2. Jackson Police Officers Did Not Terminate High Speed Chase.

Dennis Waller, plaintiffs' expert witness on police procedure involving pursuit, was of the opinion that Coleman and Spann should have terminated the chase prior to arriving at the one-way Amite Street. Waller also testified that Spann and Coleman violated Jackson Police Department General Order 600-20 by not stopping or proceeding in a direction away from Wilson and instead driving parallel to the path of Wilson, arriving at Capitol and Lamar prior to Wilson, being present at that intersection and further following Wilson on Capitol Street.

Further, the testimony and evidence is clear that the Jackson Police re-engaged in the chase and took other actions to prompt Wilson to continue her flight.

3. Jackson Police Officers Knowingly Violated General Order 600-20.

In violation of the City of Jackson's General Order, neither Coleman nor Spann obtained approval to join in the pursuit of Sergeant Razor when he entered the jurisdictional limits of the Jackson Police Department. After Coleman and Spann joined Razor, the General Order was violated by having three police cars in pursuit of the vehicle. R. @ 135-138.

If Coleman and Spann did in fact "terminate" the chase upon Wilson entering Amite Street, the issue then becomes whether the action of traveling the parallel route with the chased vehicle, violating the standing order, covering approximately the same distance as the chased vehicle, being present at the intersection of Capitol and Lamar when Wilson approached and

then following her on Capitol Street to the scene of the collision equate to a continuation of the chase thus contributing to the collision. Clearly, Coleman and Spann did not “terminate” the chase in accordance with the intent and substance of the General Orders. The officers were aware from the time the chase was in the Ellis Avenue area that Metro One helicopter was on the scene and could trail the Explorer without being in obvious pursuit. The officers were also aware that the offenses were not felonies. The Jackson Police officers knowingly violated their own policies and procedures.

4. The Jackson Police Officers Acted in Reckless Disregard of the Safety of Others.

The Court found as a matter of fact that under the totality of all the circumstances that Jackson officers acted in reckless disregard of the safety of others and that they did not terminate the chase and contributed to the cause of plaintiffs’ injuries and death. R. @ 135-138.

III. STANDARD OF REVIEW

The standard of review for a judgment entered following a bench trial is comprised of two directives, one for review of the facts as determined by the Court and another for review of the errors of law which include the proper application of the Mississippi Tort Claims Act (“MTCA”).

The standard of review for a judgment entered following a bench trial is well settled. A circuit court judge sitting without a jury is accorded the same deference with regard to his findings as a chancellor, and his findings are safe on appeal where they are supported by substantial, credible, and reasonable evidence. *Maldonado v. Kelly*, 768 So.2d 906, 908 (Miss. 2000) (quoting *City of Jackson v. Perry*, 764 So.2d 373, 376 (Miss. 2000)).

The Mississippi Supreme Court reviews errors of law, which include the proper application of the Mississippi Tort Claims Act, *de novo*. See *City of Ellisville v. Richardson*, 913

So.2d 973 (Miss. 2005) and *City of Jackson v. Brister*, 838 So.2d 274 (Miss. 2003). The MTCA is the exclusive remedy for filing a lawsuit against governmental entities and its employees. *City of Jackson v. Lipsey*, 834 So.2d 687 (Miss. 2003); *City of Jackson v. Sutton*, 797 So.2d 977, 980 (Miss. 2001). See also *Maldonado*, 768 So.2d at 909.

The trial court did not err by finding the City of Jackson liable. The Court's ruling was clearly supported by substantial, credible and reasonable factual evidence. The learned trial judge followed and applied Mississippi jurisprudence. The judgment of the Circuit Court should be affirmed.

IV. THE LAW AND DISCUSSION

The City of Jackson bases its entire appeal on two **factual** issues: (1) the City of Jackson contends that its officers were not in pursuit of Wilson but were merely monitoring the Raymond officer to render assistance and (2) the Jackson police officers terminated the pursuit prior to the collision and is not responsible because of its termination. The Circuit Court reviewed all of the testimony, the exhibits and written submissions of the attorneys and found that neither of these factual positions of the City of Jackson were supported by the evidence and found the City of Jackson liable in accordance with Mississippi law. It is respectfully submitted that the Circuit Court's decision should be affirmed. **The City of Jackson's appeal is not based upon the misapplication of Mississippi law to the facts, but is based upon a disagreement with the Honorable Circuit Judge concerning the facts.** It is respectfully submitted that such an appeal is without merit and has no legal or factual support in the record. The judge's findings of fact should not be disturbed simply because of a disagreement in the way the facts are perceived.

The District Court highlighted the relevant sections of the General Orders of the Jackson Police Department concerning guidelines for vehicular pursuits. R. @ 139. The evidence

establishes that the officers of the City of Jackson knowingly ignored the General Orders issued by the department. Such actions are considered under Mississippi law to be reckless. *City of Jackson vs. Perry*, 764 So.2d 373, (Miss. 2000); *City of Jackson v. Lipsey*, 834 So.2d 687 (Miss. 2001); *Turner v. City of Ruleville*, 735 So.2d 226, (Miss. 1999); *Simpson v. City of Pickens*, 761 So.2d 855, (Miss. 2000); and *Johnson v. City of Cleveland*, 846 So.2d 1031 (Miss. 2003). It is a matter of law that any violation of a statute, rule and/or regulation is “reckless per se”.

The evidence establishes the intentional violations of the following Department Orders and Policies:

“II. **POLICY**

Vehicular pursuit of a fleeing suspect can present a danger to the lives of the public, officers, and suspects involved in the pursuit. It is the responsibility of the agency to assist officers in the safe performance of their duties. To fulfill these obligations, it shall be the policy of this law enforcement agency to regulate the manner in which vehicular pursuits are undertaken and performed.

III. **DEFINITIONS**

E. Termination of Pursuit: Complete withdrawal from and suspension of all following, tracking and attempts to apprehend.

IV. **PROCEDURES**

A. Initiation of a pursuit:

1. The decision to initiate a pursuit must be based on the pursuing officer’s conclusion that the immediate danger to the officer and the public created by the pursuit is less than the immediate or potential danger to the public should the suspect remain at large.”

The Jackson police department had no reason to pursue Alice Wilson. Officer Razor testified that he knew of no outstanding warrants for Alice Wilson, knew of no prior arrests or

convictions of Alice Wilson and had not been informed of any criminal activity conducted by Alice Wilson that would have prompted the high speed chase. T.E. 2, pp. 81, 102-103. There were no valid reasons to pursue Alice Wilson in a high speed chase through the crowded streets of Jackson, especially when a police helicopter was observing and tracking the Wilson vehicle. There was no immediate danger to the police officer or the public presented by Alice Wilson's conduct. The immediate danger to the officers and the public created by the pursuit was greater than the immediate or potential danger to the public should Alice Wilson remain at large. Clearly, the evidence establishes that the Jackson Police Department intentionally violated General Order No. 600-20.

“IV. **PROCEDURES**

A. Initiation of Pursuit:

3. In deciding whether to initiate a pursuit, the officer shall take into consideration:
 - a. Road, weather and environmental conditions;
 - b. Population density and vehicular and pedestrian traffic;
 - d. The seriousness of the offense; and...”

The Jackson police department knew of the population density in downtown Jackson and the pedestrian traffic that would be present at the time of the incident. The police officers knew that Wilson had not committed a serious offense and that there was no need for the hot pursuit, especially in light of the fact that Wilson was being tracked by the police helicopter. Officer Razor testified that he had no plan on how to stop Alice Wilson or to otherwise terminate the high speed chase. T.E. 2, pp. 81-82, 103-104. According to Officer Razor, the Jackson Police Department was never requested to become involved in the high speed pursuit of Alice Wilson.

T.E. 2, pp. 82-84. This is confirmed by Officer Coleman who testified that no one requested that the Jackson Police assist Officer Razor in the high speed chase. T.T. @ 174-206.

Clearly, the Jackson Police Department violated General Order No. 600-20 when they intentionally failed to consider the seriousness of the Wilson offense or lack thereof, and the population density and vehicular and pedestrian traffic in the crowded streets of Jackson, Mississippi.

“IV. PROCEDURES

B. Pursuit Operations:

5. Unless circumstances dictate otherwise, a pursuit shall consist of no more than two police vehicles, a primary and secondary unit. All other personnel shall stay clear of the pursuit unless instructed to participate by a supervisor.”

Officer Razor testified that there were between five and seven Jackson Police vehicles assisting him in the high speed pursuit of the Wilson vehicle. The Jackson Police Department Orders and Policies specifically state that a pursuit shall consist of no more than two police vehicles. Clearly, the Jackson Police Department violated its own rules and regulations by stationing police vehicles at various intersections which intimidated Ms. Wilson to continue her high speed flee. This intentional activity is considered under Mississippi law to be reckless. The evidence is clear that at least three vehicles were involved in the pursuit of the Wilson vehicle. R. @ p. 141.

“IV. PROCEDURES

F. Termination of the Pursuit:

1. The primary pursuing unit shall continually reevaluate and assess the pursuit situation, including all of the initiating factors, and terminate the pursuit whenever he or she reasonably believes the risks associated with

continued pursuit are greater than the public safety benefit of making an immediate apprehension.

4. A pursuit may be terminated if the suspect's identity has been determined, immediate apprehension is not necessary to protect the public or officers, and apprehension at a later time is feasible.
6. The termination of the pursuit will consist of the complete withdrawal from and suspension of all following, tracking and attempts to apprehend. The officer(s) will either come a complete stop in a safe location and await further instructions from the supervisor or travel in the opposite direction of travel from the pursuit."

Wilson's identity had been obtained and the police helicopter was tracking Wilson's every movement. The immediate apprehension of Wilson was not necessary to protect the public or officers, and apprehension at a later date was clearly feasible in light of the identification of Ms. Wilson and the police helicopter observations which were intended to track Ms. Wilson to her final destination. R. @ pp. 136, 137, 141.

The City of Jackson argues that it terminated its pursuit when Officer Razor pursued the Wilson vehicle down a one way street in the wrong direction. However, the testimony reflects that while the Jackson offices temporarily terminated the pursuit, the officers re-engaged the pursuit at the corner of East Capitol and North Lamar. T.E. 2, pp. 90-93. The Jackson police officers did not completely withdraw from and suspend all following, tracking and attempts to apprehend Wilson. The Jackson police officers did not come to a complete stop in a safe location and await further instructions from the supervisor or travel in the opposite direction from the pursuit. The testimony reveals that the Jackson police officers continued the pursuit behind Officer Razor beginning at the intersection of Capitol and Lamar. Clearly, the Jackson police officers violated General Order No. 600-20 of the Jackson Rules and Regulations.

“IV. **PROCEDURES**

G. Interjurisdictional Pursuits

3. When a pursuit of another agency enters this jurisdiction, officers are prohibited from becoming involved in another agency pursuit, unless they are first authorized by a supervisor.
4. Before a supervisor authorizes any officer to engage in the pursuit of another agency, that supervisor shall attempt to ascertain the nature of the emergency and the actual need for assistance.”

The Jackson Police Department Rules and Regulations under General Order No. 600-20 prevent the Jackson Police Department from becoming involved in another agencies pursuit unless they are first authorized by a supervisor. Both Officer Razor and Officer Coleman testified that they knew of no such authorization to enter into the pursuit. T.E. 2, pp. 82-84.

The trial judge, in his findings of facts and conclusions of law addressed the factual and legal issues and was of the opinion that immunity afforded under the Mississippi Tort Claims Act does not apply if the employee acted in reckless disregard for the safety and well-being of any person not engaged in criminal activity at the time of the injury. In *City of Ellisville v. Richardson*, 913 So.2d 973 (Miss. 2005), the Supreme Court enumerated 10 factors to support a finding of reckless disregard in connection with police pursuits. The Circuit Court considered each factor and determined that under the totality of all the circumstances the Jackson officers acted in reckless disregard of the safety of others and that they did not in fact terminate the chase and negligently contributed to the cause of plaintiffs’ injuries and death. Although reasonable minds might differ on the conclusion of whether or not the officers in question acted in reckless disregard, it is beyond Court’s power to disturb the findings of the trial judge if supported by substantial evidence. *Brister*, 838 So.2d at 277-78.

The facts of the case *sub judice* are analogous to *Brister* and *City of Ellisville*, where the Supreme Court held that there was substantial evidence to support a finding of reckless disregard. In *Brister*, police pursued an unknown suspect who had been accused of check forgery. The pursuit in *Brister* lasted less than 60 seconds over a distance of less than a mile in a residential area and resulted in the suspect's crash into another vehicle. In *Brister*, the trial court based its findings on various factors including that the chase was contrary to a police department's general order, the officers were engaged in active pursuit up until the collision, the pursuit should have been terminated after the officers realized the suspect would not stop, and that the officers did not properly balance the public's safety versus immediate apprehension of check forger.

The trial court in the present matter considered ten factors as enumerated in *City of Ellisville v. Richardson*, 913 So.2d 973 (Miss. 2005), in support of its finding of reckless disregard. It is appropriate for the trial courts to consider all ten factors, and to look at the totality of the circumstances when analyzing whether someone acted in reckless disregard. The evidence in this case reveals that the chase lasted for approximately eleven miles, occurred in a residential area on a hilly, curvy, two-lane road with medium levels of traffic. The officers in question traveled this road frequently and had prior knowledge that it was a residential area and continued to pursue Wilson after she had run oncoming traffic off the road, and had disregarded several traffic signals. Nevertheless, the Jackson police elected to continue the pursuit while Wilson weaved in and out of traffic at excessive speeds and endangered the safety of innocent citizens.

There is ample evidence to support violations of the City of Jackson's General Order and policies. The chase was not the result of a serious crime being committed at the moment. The

vehicles were exceeding the speed limit in a residential neighborhood, with a low probability of apprehending the suspect. Jackson's General Orders were clearly violated, as they were in *Brister*, where the Court found that the officers did not properly balance the public's safety versus immediate apprehension of the suspect. See *Brister*, 838 So.2d @ 281.

The Circuit Judge clearly based his findings on substantial, credible, and reasonable evidence. Applying the appropriate legal standard and recent caselaw is all that is necessary. Had a jury tried this case, it could have reasonably found that all of these circumstances establish more than simple negligence. The learned trial judge found by looking at the totality of the circumstances that the officers acted with reckless disregard to public safety. That is exactly what Mississippi caselaw requires. Applying this precedent, as this Court is required, there is substantial and credible evidence to support a finding of reckless disregard in the case *sub judice*.

The court must balance the competing interests of the community's safety with the expectation that police will apprehend criminals. The Circuit Court found that it is unreasonable to believe that pursuit could be terminated and the effect of termination be realized by the fleeing defendant given the distance from the point where the pursuit began and the point of collision. It is especially unreasonable when the officers testified that the pursuit was terminated but they continued to follow Wilson, directly or indirectly. In other words, the officers continued to engage in a course of conduct in which all the indicia of pursuit was present up to the point of collision. Moreover, pursuit was initiated and maintained despite the fact that the officers did not know whether Wilson had committed a felony or a misdemeanor.

Based on Mississippi standard of review, the Circuit Judge's findings are safe on appeal if they are supported by substantial, credible, and reasonable evidence. Furthermore, in a bench trial such as the case at bar, when the trial judge sits as the finder of fact, he has the sole

authority for determining the credibility of witnesses. *Yarborough v. Camphor*, 645 So.2d 868, 869 (Miss. 1994); *Bryan v. Holzer*, 589 So.2d 648, 659 (Miss. 1991); *Bell v. Parker*, 563 So.2d 594, 597 (Miss. 1990).

Dennis Waller, plaintiffs' expert witness, who had previously testified on over 100 occasions on related subject matter, concluded that the officers' conduct presented an extreme and unreasonable danger to the public. General Order 600-20 requires that a pursuit may only be initiated when the officer knows that a felony has been committed and the officer has probable cause to believe that the individual who committed the felony and the suspect's escape is more dangerous to the community than the risk posed by the pursuit. The officers failed to ascertain this information in clear violation of the established police department policy. It is clear that the officers never should have initiated the high speed chase, much less continued it right up to the time of the collision.

District of Columbia v. Hawkins, 782 A.2d 293 (D.C.Ct.App. 2001), is instructive in determining the reckless disregard standard in the present matter. That court considered the following to determine whether a police chase constitutes reckless disregard: (1) length of chase; (2) type of neighborhood; (3) characteristics of the streets; (4) the presence of vehicular or pedestrian traffic; (5) weather conditions and visibility; and (6) the seriousness of the offense for which the police are pursuing the vehicle. Here, the circuit judge considered many of these factors in making his determination.


Mississippi's controlling caselaw on the subject of reckless disregard is clearly established. Mississippi courts have held that reckless disregard is more than ordinary negligence, but less than an intentional act. An officer's conduct although normally shielded by immunity, when coupled with reckless disregard, may allow for a finding of liability. Certainly

if the Court found in *Maye v. Pearl River County*, 758 So.2d 391, 395 (Miss. 1999), that the deputy sheriff's actions amounted to recklessness when he merely backed his automobile into an oncoming vehicle when he could not see "cars coming into the lot," then clearly in the present matter recklessness was properly found by the Circuit Judge. The plaintiffs have shown, and the trial judge so found, that the officers initiated a high speed chase with "conscious indifference" knowing they had not complied with Order 600-200 which was the existing governing policy of the police department at that time. Without adhering to that policy, the officers should have reasonably expected the possibility of adverse consequences including a fatal accident. Plaintiffs clearly proved reckless disregard to the general public safety. If the Supreme Court found reckless disregard based on the facts of *City of Jackson v. Perry*, 764 So.2d 373 (Miss. 2000), *City of Jackson v. Brister*, 838 So.2d 274 (Miss. 2003) and *City of Ellisville v. Richardson*, 913 So.2d 973 (Miss. 2005) then certainly the present judgment should be upheld. Overwhelming evidence exists that the officers acted in reckless disregard is all that is required under *Turner*, *Perry*, *Maye*, *Brister* and *Richardson*.

V. CONCLUSION

The Circuit Court's decision and judgment should be sustained. The Jackson Police officers did not terminate their high speed chase of Wilson in violation of General Order 600-20. The police officers acted in reckless disregard for public safety.

RESPECTFULLY SUBMITTED, this the 11 day of September, 2010.



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CERTIFICATE OF SERVICE

The undersigned certifies that she has this day via United States Mail, postage prepaid, a true and correct copy of the foregoing Appellee's Brief on the following:

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So certified, this the 15 day of September, 2010.


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