

IN THE SUPREME COURT OF MISSISSIPPI  
NO. 2009-CA-01610

CITY OF JACKSON, MISSISSIPPI

APPELLANT

VS.

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

APPELLEES

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APPEAL FROM THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF  
HINDS COUNTY, MISSISSIPPI

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**BRIEF OF APPELLEES**

ORAL ARGUMENT REQUESTED

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**CERTIFICATE OF INTERESTED PERSONS**

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

1. MARY GRAY, APPELLEE
2. PEGGY PETTAWAY, APPELLEE
3. KIMBERLY CLAUSELL, APPELLEE
4. LILLIAN BYRD, APPELLEE
5. CHRIS CLAUSELL, APPELLEE
6. JOE TATUM, COUNSEL FOR APPELLEES, MARY GRAY, PEGGY PETTAWAY, KIMBERLY CLAUSELL, AND LILLIAN BYRD
7. EDWARD MARKLE, ATTORNEY FOR APPELLEE, CHRIS CLAUSELL
8. CITY OF JACKSON, APPELLANT
9. PIETER TEEUWISSEN, COUNSEL FOR APPELLANT
10. KIMBERLY BANKS, COUNSEL FOR APPELLANT

11. ALICE WILSON, DEFENDANT IN LOWER COURT ACTION<sup>1</sup>
12. WADE G. MANOR, ATTORNEY FOR ALICE WILSON
13. HONORABLE WILLIAM F. COLEMAN, CIRCUIT COURT JUDGE



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JOE N. TATUM  
COUNSEL OF RECORD FOR APPELLEES

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<sup>1</sup>The trial court found Alice Wilson, a named defendant, liable and assessed her with fifty percent (50%) liability for the wrongful death of Alice Faye Clausell and injuries suffered by Kimberly Clausell and Lillian Byrd. She did not appeal this judgment and as such, is not a party to this appeal.

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**STATEMENT OF REQUEST FOR ORAL ARGUMENT**

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Pursuant to Rule 34(b) of the Mississippi Rules of Appellate Procedure, appellees request to be heard orally. Oral argument would be extremely beneficial in deciding this matter since it would allow extensive discussion of the specific facts of this case which is necessary to reach a fair and just outcome in this matter. The diverse insight gathered during oral argument would aid this Court in rendering an equitable decision in this matter. As such, appellees request this Court grant oral argument to the parties.

## TABLE OF CONTENTS

	PAGES
CERTIFICATE OF INTERESTED PERSONS .....	i-ii
STATEMENT OF REQUEST FOR ORAL ARGUMENT .....	iii
TABLE OF CONTENTS .....	iv
TABLE OF AUTHORITIES .....	v-vi
STATEMENT OF THE ISSUES .....	vii
I. STATEMENT OF THE CASE .....	1-9
A. Nature of the Case, Course of Proceedings and Disposition in the Court Below .....	1-2
B. Statement of the Facts .....	2-9
II. SUMMARY OF ARGUMENT .....	9
III. ARGUMENT .....	10-30
A. STANDARD OF REVIEW .....	10
B. <b>THERE IS SUFFICIENT EVIDENCE TO SUPPORT         THE JUDGMENT AGAINST THE CITY OF JACKSON.</b> .....	11-30
1. <b>The City of Jackson officers are not entitled to             immunity since they acted with reckless disregard             for the safety and well-being of Alice Clausell,             Kimberly Clausell and Lillian Byrd.</b> .....	11-25
2. <b>The reckless actions of the City of Jackson officers caused the             death of Alice Clausell and injuries suffered by Kimberly Clausell             and Lillian Boyd.</b> .....	26-30
CONCLUSION .....	30
CERTIFICATE OF SERVICE .....	31-32

## TABLE OF AUTHORITIES

CASES	PAGES
<u>Andrew Jackson Life Ins. Co. v. Williams</u> , 566 So.2d 1172 (Miss. 1990) . . . . .	23,25,27
<u>City of Ellisville v. Richardson</u> , 913 So.2d 973 (Miss. 2005) . . . . .	12,13,14,15,17,18,23,24
<u>City of Jackson v. Brister</u> , 838 So.2d 274 (Miss. 2003) . . . . .	11,12,13,14,18,28,29
<u>City of Jackson v. Lipsey</u> , 834 So.2d 687 (Miss. 2003) . . . . .	10,11,12
<u>City of Jackson v. Internal Engine Parts Group, Inc.</u> , 903 So.2d 60 (Miss. 2005) . . . . .	10
<u>City of Jackson v. Spann</u> , 4 So.3d 1029 (Miss. 2009) . . . . .	26
<u>Dean v. Walker</u> , 2009 WL 4855985 (S.D. Miss) . . . . .	14
<u>Donald v. Amoco Prod. Co.</u> , 735 So.2d 161 (Miss. 1999) . . . . .	26
<u>Dr. Pepper Bottling Company of Mississippi v. Bruner</u> , 148 So.2d 199 (Miss. 1962) . . . . .	27
<u>Foster v. Bass</u> , 575 So.2d 867 (Miss. 1990) . . . . .	26
<u>Glover v. Jackson State Univ.</u> , 968 So.2d 1267 (Miss. 2007) . . . . .	26
<u>May v. Harrison County Dept. of Human Servs.</u> , 883 So.2d 74 (Miss. 2004) . . . . .	10
<u>Miss. Dep't of Safety v. Durn</u> , 861 So2d 990 (Miss. 2003) . . . . .	11,12,13,14
<u>Johnson v. Alcorn State University</u> , 929 So.2d 398 (Miss. App. 2006) . . . . .	26
<u>Jackson Public Sch. Dist. v. Smith</u> , 875 So.2d 1100 (Miss. Ct. App. 2004) . . . . .	10
<u>Morin v. Moore</u> , 309 F.2d 316 (5th Cir. 2002) . . . . .	26
<u>Omnibank of Mantee v. United Southern Bank</u> , 607 So.2d 76 (Miss. 1992) . . . . .	10
<u>Turner v. City of Ruleville</u> , 735 So.2d 226 (Miss. 1999) . . . . .	12
<u>Williams v. Tolliver</u> , 759 So.2d 1195 (Miss. 1999) . . . . .	23

## STATUTES

Miss. Code Ann. §11-46-7(1)(Supp. 2008) .....	11
Miss. Code Ann. §11-46-9 (Supp. 2008) .....	11
Miss. Code Ann. §11-46-13(1) (Rev. 2002) .....	10

## **STATEMENT OF THE ISSUES**

**WHETHER THERE EXISTS SUFFICIENT EVIDENCE TO SUPPORT THE  
JUDGMENT AGAINST THE CITY OF JACKSON?**

## I. STATEMENT OF THE CASE

### A. NATURE OF THE CASE, COURSE OF PROCEEDINGS AND DISPOSITION IN THE COURT BELOW

This is a civil action seeking monetary damages for the April 21, 2007, wrongful death of Alice Clausell and serious injuries suffered by Lillian Byrd and Kimberly Clausell, hereinafter collectively known as “*Clausells*”, which resulted from the reckless disregard and wilful acts of Alice Wilson, hereinafter “*Wilson*”, Officer Raymond Razor of the Raymond Police Department, hereinafter “*Officer Razor*”, and Officer Terrence Spann, hereinafter “*Officer Spann*”, and Officer Stephen Coleman of the Jackson Police Department, hereinafter “*Officer Coleman*”. (CP p. 8-14).<sup>2</sup> This matter was tried before Honorable William F. Coleman beginning March 9, 2009, pursuant to the Mississippi Tort Claim Act and at the conclusion of the bench trial, the Court found Wilson fifty percent (50%) liable for the damages suffered by the Clausells, City of Raymond thirty percent (30%) liable for the actions of Officer Razor and City of Jackson twenty percent (20%) liable for the actions of Officers Spann and Coleman. (CP p. 135-142).

Damages were awarded in the total amount of \$1,000,000.00 in compensatory damages and \$100,000.00 in punitive damages for the wrongful death of Alice Clausell, and \$500,000.00 in compensatory damages and \$100,000.00 in punitive damages for Lillian

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<sup>2</sup>This footnote is intended to explain the Appellees’ record cites. “CP” is referencing the trial clerk’s papers such as pleadings. “TT” is referencing the trial transcript for testimony from witnesses who testified live at the trial of this case. If a witness testified by deposition, such testimony is referenced by “TT” and then the exhibit number of the deposition, such as Exhibit 2.

Byrd and Kimberly Clausell, individually. (Id.) Apportioning fault, the trial court found that the Estate of Alice Clausell was entitled to recover \$200,000.00 from the City of Jackson and Lillian Byrd and Kimberly Clausell were each entitled to recover \$100,000.00 from the City of Jackson. (Id.) After entered its judgment, the trial court applied the settlement amount tendered by the City of Raymond and reduced the award to the Clausells to \$240,000.00. (CP, p. 162).

Feeling aggrieved, the City of Jackson appealed the May 22, 2009, Order and Opinion of the trial court. (C.P. p. 165-166) The issues raised by the appeal focus on whether there existed sufficient evidence to support the total judgment against the City of Jackson in the amount of \$240,000.00.

#### B. STATEMENT OF THE FACTS

On Saturday, April 21, 2007, at approximately 5:30 p.m., Randy Razor, who was employed by the City of Raymond Police Department as a patrol officer, noticed Alice Wilson driving a gold SUV carelessly on Highway 18 within the Raymond city limits. (TT, Exhibit 2, p. 21, ln. 21 - p. 22, ln. 8)(TT, p. 23, ln. 11 - p. 26, ln. 3). It was a clear and sunny day and there was nothing blocking Officer Razor's view of Wilson. (TT, Exhibit 2, p. 37, ln. 1 - 15). He observed Wilson "*swerving in and out of traffic*" and decided to "*follow her with my blue lights and siren*". (TT, Exhibit 2, p. 25, ln. 12 - p. 26, ln. 3). Once he entered traffic and initiated his blue lights and sirens, passing traffic stopped which allowed Officer Razor to take control of the roadway and get behind Wilson. (TT, Exhibit 2, p. 27, ln. 18 - 23).

Despite engaging his blue lights and siren, Wilson refused to pull her vehicle over

and kept driving. (TT, Exhibit 2, p. 29, ln. 11 - p. 30, ln. 2). As Officer Razor began following her with his blue lights on, Wilson increased her speed and began running through red traffic lights. (TT, Exhibit 2, p. 30, ln. 3 - 21). A reasonable inference can be drawn that Wilson knew she was being followed by Officer Razor as evidenced by the fact that she only increased her speed and began running through traffic lights after Officer Razor started pursuing her. The pursuit negatively affected her behavior and escalated her to reckless driving.

Officer Razor continued to pursue Wilson North on Highway 18 toward the Jackson city limits. (TT, Exhibit 2, p. 40, ln. 9 - 17). While pursuing Wilson on Highway 18 toward Jackson, Officer Razor communicated the details of the pursuit to Brad Gambill, dispatcher for the Hinds County Sheriff's Department. (TT, Exhibit 2, p. 28, ln. 13 - 18). Officer Razor told the dispatcher that Wilson ran several red traffic lights as he pursued her on Highway 18. (TT, Exhibit 8). Wilson ran the red traffic lights at the intersection of Highway 18 and Maddox Road, Chadwick Drive and Greenway Drive. (Id.).

The sheriff department dispatcher relayed this information directly to the dispatcher for the City of Jackson, who communicated the details of the pursuit to Terrence Spann, hereinafter "*Officer Spann*", and Stephen Coleman, hereinafter "*Officer Coleman*", officers of the Jackson Police Department. (TT, Exhibit 14, 14A and R.E. Tab 7). The Jackson police dispatcher repeatedly informed the officers that Wilson ran traffic lights from Maddox Road and Highway 18. (TT, Exhibit 12). Maddox Road is approximately six miles from the downtown Jackson area located near the intersection of Congress Street and Capitol Street. (Id.).

Andy Robinson, tactical flight officer for Metro One law enforcement helicopter, hereinafter "*Robinson*", heard the dispatch call from the City of Jackson over his radio. (TT, p. 116, ln. 8 - 22). He heard "*there was an automobile that was not stopping in the area of Highway 18 and Thousand Oaks*" and "*worked with my pilot to maneuver the helicopter into that area to try to get an observation of that situation.*" (TT, p. 118, ln. 14 - 26).

Metro One provides helicopter law enforcement services to various law enforcement agencies in Hinds and Madison Counties. (TT, p. 116, ln. 12 -15). They help to keep law enforcement officers and the public safe by "*providing an aerial observation platform that allows the police officer to have the advantage of being able to see from above things that he would not otherwise be able to see from the ground.*" (TT, p. 117, 10 - 20).

Consistent with his purpose, Robinson obtained a visual of the pursuit and observed a gold SUV being pursued by three police vehicles, two of which were Jackson Police Department vehicles. (TT, p. 119, ln. 18 - 28). After three or four attempts, Robinson made contact with the Jackson officers and advised them of his presence and received verbal confirmation from the officers that they were aware of his presence. (TT, p. 121, ln. 11 - p. 122, ln. 3).

As Robinson was attempting to obtain a visual of the pursuit from the air, Officer Razor continued to pursue Wilson toward the intersection of Highway 18 and Highway 80 which is where Officer Stephen Coleman was posted. (TT, Exhibit 2, p. 44, ln. 15 - 17). Officer Coleman engaged his blue lights and siren, and joined the pursuit of Wilson. (*Id.*) Believing the Jackson officers were not going to join the pursuit, Officer Razor was "*shocked that they was in the pursuit with me.*" (TT, Exhibit 2, p. 59, ln. 23 - p. 60, ln. 8). Officer

Razor did not have a plan as to how to apprehend Wilson but believed, “*since JPD was in the pursuit with me, I thought maybe they would use stop sticks*” to end the pursuit and apprehend Wilson. (TT, Exhibit 2, p. 81, ln. 13 - 22).

Officer Coleman obtained the tag number of Wilson’s vehicle when she reached the intersection Highway 18 and Dixon Road. (TT, p. 176, ln. 15-18). Shortly after beginning his pursuit, Officer Coleman relayed the information to the Jackson dispatcher and was not made aware of any serious crimes committed by Wilson. (TT, p. 177, ln. 9 - 15). With the tag number, Officer Coleman was able to conduct an investigation and determine who owned the vehicle. (TT, p. 67, ln. 18 - 26). As such, there was no objective reason to continue the pursuit since he had the tag number and had no knowledge of any serious crimes committed by Wilson. She had no prior arrests or convictions. (TT, p. 102, ln. 23 - p. 103, ln. 3).

Despite being pursued by police officers from Raymond and Jackson, Wilson refused to pull her vehicle over and kept driving. As she approached Dixon Road, Terrence Spann, officer of the Jackson Police Department, engaged his blue lights and sirens and joined the pursuit. (TT, Exhibit 2, p. 45, ln. 7 - 11)(TT, p. 219, 6 - 13). Neither Officer Spann or Officer Coleman were aware of any serious criminal offenses committed by Wilson. (TT, p. 177, ln. 9-15).

The pursuit began in a commercial area and continued into residential area near Dixon Road. (TT, Exhibit 2, p. 50, ln. 1 -9). As the pursuit continued, Wilson showed no intention of stopping her vehicle. (TT, Exhibit 2, p. 54, ln. 14 - 16). A reasonable inference can be drawn that Wilson’s knowledge that she was being followed by three police vehicles negatively affected her behavior and continued to escalate reckless driving.

As Wilson approached the *two way split* at Amite Street and Capitol Street situated in downtown Jackson, she veered onto Amite Street the wrong way and was followed by Officer Razor. (TT, Exhibit 2, p. 62, ln. 17 - p. 68, ln. 7). Once the Jackson officers saw Wilson and Officer Razor travel down Amite Street the wrong way, they changed course and continued their pursuit by going East on Capitol Street. (*Id.*). Wilson and Officer Razor continued to travel on Amite Street toward Lamar Street, where they turned right and headed toward Capitol Street. (*Id.*)(TT, Exhibit 2, p. 68, ln. 10 - p. 69, ln. 1). Wilson turned from Amite Street onto Lamar Street to avoid oncoming traffic at the intersection of Amite Street and Lamar Street. (TT, Exhibit 2, p. 90, ln. 7 - 11).

When Wilson turned on Lamar Street, the Jackson officers were waiting for her at the intersection of Capitol Street and Lamar Street, with “*their patrol car’s blue lights on*”. (TT, Exhibit 2, p. 90, ln. 19 - 25)(TT, Exhibit 2, p. 68, ln. 10 - 24). The Jackson officers’ patrol cars were in plain view for Wilson to see. The trial court could have reasonably inferred as it did that the presence of Jackson officers at the intersection of Capitol Street and Lamar Street caused Wilson to become more erratic and escalated her reckless driving as testified to by Raymond officer Razor. Wilson and Officer Razor turned onto Capitol Street where the pursuit was joined by Jackson officers. (TT, Exhibit 2, p. 92, ln. 5 - 25).

Shortly before 6:00 p.m., Kimberly Clausell, her mother, Alice Clausell, and sister, Lillian Boyd, hereinafter “*Clausells*”, left the University Medical Center and began traveling toward downtown Jackson in a red Nissan Sentra. (TT, p. 25, ln. 27 - p. 26, ln. 24). Earlier in the day, the Clausells went to the University Medical Center to visit Maggie Forest. (TT, p. 24, ln. 3-23). As they approached the intersection of Congress Street and Capitol Street,

the traffic light turned green and they proceeded through the light. (TT, p. 27, ln. 14-23).

When the Clausells proceeded through the light, Wilson slammed into the vehicle in which the Clausells were traveling, killing Alice Clausell and seriously injuring Lillian Byrd and Kimberly Clausell. (TT, Exhibit 2, p. 70, ln. 24 - p. 71, ln. 7). After the collision, Wilson got out of her vehicle and was arrested by Officer Razor with the aid of a Jackson officer. (TT, Exhibit 2, p. 73, ln. 16 - p. 74, ln. 7). Officer Razor testified, *"I grabbed her and put her on the ground, I had one arm. The JPD officer had the other arm."* (TT, Exhibit 2, ln. p. 74, ln. 3 - 7).

At the time of the fatal collision, the Jackson Police Department had in effect *General Order 600-20*, which established the standard of care to be used by officers when engaged in pursuit (TT, Exhibit 1). General Order 600-20 was issued on June 1, 2004, and is the vehicle pursuit policy for the Jackson Police Department. (TT, p. 60, ln. 27 - p. 61, ln. 8). It provides officers with guidelines and directives as to how and when to engage in vehicle pursuit. (TT, p. 61, ln. 9 - 18). General Order 600-20 is modeled after the pursuit policy promulgated and adopted by the Internal Association of Chiefs of Police. (TT, p. 54, ln. 24 - p. 55, ln. 6).

Consistent with the nationally accepted standards of police practice, General Order 600-20 requires officers to balance the immediate danger that is created by a pursuit versus the potential danger to the public if the pursuit is terminated. (TT, p. 62, ln. 28 - p. 63, ln. 8). Dennis Waller, the Clausells' expert in police pursuit tactics, summarized this balance by stating, *"if the pursuit is creating a lesser danger to the public than what you're trying to control or prevent, then you should continue. If the actions of the pursuit are increasing*

*the danger to the public, then the guidelines say you are to terminate.”* (TT, p. 63, ln. 9-13).

Considering the totality of the circumstances surrounding the pursuit, he opined that the actions of the Jackson officers were reckless and inconsistent with General Order 600-20 and the nationally accepted standards of police practice and training. (TT, p. 78, ln. 29 - 79, ln. 10). He concluded that the officers *“failed to consider their obligation to protect individuals, the general public, as opposed to enhance that danger to the general public by being involved in the police pursuit.”* (Id.)

He further opined that it was appropriate for the Jackson officer to initially engage in the pursuit, but *“as soon as they had knowledge that the driver had previously ran through red lights and as soon as that vehicle started to run through a number of red lights in the City of Jackson, at that point it should have been terminated, and they should have advised Raymond to terminate the pursuit.”* (TT, p. 73, ln. 12-21). Sergeant Steve McDonald, commander for the Jackson Police Department, testified that he along with the other supervisors had full authority to tell Officer Razor to terminate the pursuit but failed to do so. (Exhibit 20, p. 83, ln. 6-17).

Contrary to the opinions rendered by Dennis Waller, the City of Jackson denies engaging in the pursuit but rather asserts that it merely assisted Officer Razor in the pursuit of Wilson such that General Order 600-20 is inapplicable. This assertion by the City of Jackson is contradictory to General Order 600-20 which takes as its purpose to *“establish guidelines for making decisions with regard to vehicular pursuits,”* and defines vehicular pursuit as *“an active attempt by an officer in authorized emergency vehicle to apprehend a fleeing suspect who is actively attempting to elude the police.”* (TT, Exhibit 1). The General

Order further mandates that “*all officers engaged in a pursuit which was initiated by another agency, must obey all aspects of this General Order.*” (Id.)

## **II. SUMMARY OF ARGUMENT**

Assessing the probative value of the evidence and making credibility determinations, the trial court, sitting as the trier of fact, properly found that the record evidence and trial testimony clearly indicated that the City of Jackson acted in reckless disregard for the safety of Clausell while pursuing Wilson. Specifically, the trial court properly held there existed substantial and credible evidence that the City of Jackson acted in reckless disregard for the Clausells when it pursued Wilson in violation of Jackson Police Department General Order 600-20, and failed to terminate the chase upon receiving information which could lead to the apprehension of Wilson and these reckless acts ultimately led to the injuries suffered by the Clausells. The City of Jackson had reasonable means to apprehend Wilson since it obtained the tag number for the vehicle driven by Wilson earlier in the pursuit and the Metro One helicopter was on the scene and available to follow Wilson without being in obvious pursuit. Therefore, the judgment of the trial court should be affirmed.

### III. ARGUMENT

#### A. STANDARD OF REVIEW

In an action brought pursuant to the Mississippi Tort Claims Act, hereinafter “*MTCA*”, the circuit court sits as the finder of fact and has the sole authority for determining the credibility of witnesses when it sits as the trier of fact. Miss. Code Ann. § 11-46-13(1) (Rev. 2002); City of Jackson v. Lipsey, 834 So.2d 687, 691 (Miss. 2003). A circuit court judge sitting without a jury is accorded the same deference with regard to his findings as a chancellor, and his findings, along with all reasonable inferences which may be drawn therefrom are safe on appeal where they are supported by substantial, credible and reasonable evidence. City of Jackson v. Internal Engine Parts Group, Inc., 903 So.2d 60, 63 (Miss. 2005); May v. Harrison County Dept. of Human Servs., 883 So.2d 74, 77 (Miss. 2004). Put another way, this Court ought and generally will affirm a trial court sitting without a jury on a question of fact unless, based upon substantial evidence, the court was manifestly wrong. Jackson Public Sch. Dist. v. Smith, 875 So.2d 1100 (Miss. Ct. App. 2004).

The premise underlying this standard of review is that the trial court heard the testimony and observed the demeanor of the witnesses and from this made the tough and necessary credibility determination. Omnibank of Mantee v. United Southern Bank, 607 So.2d 76, 83 (Miss. 1992). According, this Honorable Court should not disturb the findings of the trial judge unless he abused his discretion, was manifestly wrong, clearly erroneous or an erroneous legal standard was applied.

**B. THERE IS SUFFICIENT EVIDENCE TO SUPPORT THE JUDGMENT AGAINST THE CITY OF JACKSON.**

MTCA provides the exclusive remedy for tort actions brought against a governmental entity or its employees. Miss. Code Ann. § 11-46-7(1)(Supp. 2008). Although the MTCA waives sovereign immunity for tort actions, it also prescribes certain exemptions from this statutory waiver under which a governmental entity retains its sovereign immunity:

- (1) A governmental entity and its employees acting within the course and scope of their employment or duties shall not be liable for any claim:
  - (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 the injury.

Miss. Code An. § 11-46-9 (Supp. 2008). Police officers acting in the course and scope of their employment who act without reckless disregard for the safety and well-being of others are entitled to immunity. City of Jackson v. Brister, 838 So.2d 274 281 (Miss. 2003).

**1. The City of Jackson Is Not entitled to Immunity Since Its Officers Acted with Reckless Disregard for the Safety of Alice Clausell, Kimberly Clausell and Lillian Byrd.**

Reckless disregard is the result of wilful or wanton conduct which requires knowingly and intentionally doing a thing or wrongful act. City of Jackson v. Lipsey, 834 So.2d 687, 692 (Miss. 2003). Reckless disregard is more than mere negligence, but less than an intentional act. City of Jackson vs. Brister, 838 So.2d 274, 280 (Miss. 2003); Miss. Dep't of Safety v. Durn, 861 So2d 990, 994-995 (Miss. 2003). This Court has defined reckless disregard as:

the voluntary doing by a motorist of an improper or wrongful act, or with knowledge of existing conditions, the voluntary refraining from doing a proper or prudent act when such act or failure to act evinces an entire abandonment of any care, and heedless indifference to results which may follow and the reckless taking of chance of accident happening without intent that any occur.

Turner v. City of Ruleville, 735 So.2d 226, 229 (Miss. 1999). This Court has further enumerated ten (10) factors which should be employed by the trial court when determining reckless disregard in connection with police pursuits and they are as follows:

1. The length of the chase;
2. Type of neighborhood;
3. Characteristics of the streets;
4. The presence of vehicular or pedestrian traffic;
5. Weather conditions and visibility;
6. The seriousness of the offense for which the police are pursuing the suspect;
7. Whether the officer proceeded with sirens and blue lights;
8. Whether the officer had available alternatives which would lead to the apprehension of the suspect besides pursuit;
9. The existence of police policy which prohibits pursuit under the circumstances; and
10. The rate of speed of the officer in comparison to the posted speed limit.

City of Jackson v. Brister, 838 So.2d 274, 280 (Miss. 2003); Mississippi Dep't of Pub. Safety v. Durn, 861 So.2d 990, 995 (Miss. 2003); City of Jackson v. Lipsey, 834 So.2d, 692-93 (Miss. 2003); City of Ellisville v. Richardson, 913 So.2d 973, 977-78 (Miss. 2005).

In Brister, this Court found that a police officer acted in reckless disregard when the officer pursued a suspect at high rates of speed through a heavily populated area that included apartment complexes. Brister, 838 So.2d at 281. When evaluating the case, this Court placed emphasis on the fact that the police officers violated a departmental policy which clearly indicated that a pursuit can only be initiated when the suspect's escape is more dangerous to the community than the risk posed by the pursuit. Id. at 280. Specifically, the Mississippi Supreme Court stated:

[T]he fact here that the officers did not intend that a . . . accident would result as a direct consequence of their high speed chase in violation of Jackson Police Department existing written policy is of no concern. [Plaintiff] need only show that the officer's actions rose to the level of recklessness . . . . [I]t is sufficient that [Plaintiff] has shown, . . . that the officers initiated a high speed chase with "conscious indifference" knowing they had not complied with Order 600-20 which was the existing governing policy of the [Jackson] Police Department at the time.

Id. at 280-81.

Like Brister, the Mississippi Supreme Court in Mississippi Dep't of Pub. Safety v. Durn, 861 So.2d 990 (Miss. 2003) found a state trooper, pursuing a suspect, acted with reckless disregard when he caused an automobile accident while attempting to pass a vehicle on its left side in a congested area with limited visibility.

In City of Ellisville v. Richardson, 913 So.2d 973 (Miss. 2005), this Court, after applying the ten factors used to support a finding of reckless disregard, held that there was substantial evidence to support the trial court's finding of reckless disregard since the police pursuit violated policy and there was low probability of apprehending the suspect. The

policy required officers to terminate pursuit whenever when the risk posed by the pursuit is more dangerous than the risk of suspect's escape to the community.

The United States District Court for the Southern Division of Mississippi, Dean v. Walker, 2009 WL 4855985 (S.D. Miss), when deciding a motion for summary judgment, found that there existed a genuine issue of material fact as to reckless disregard where the deputy had other means of ending the pursuit rather than attempting dangerous driving maneuvers on the highway.

Reading Brister, Durn, City of Ellisville, and Dean together makes it clear that this Court when analyzing the case *sub judice*, should weigh the aforementioned ten factors by looking at the totality of the circumstances and evaluating the actions of the police officer using an objective standard. Applying the reasoning of Brister, and City of Ellisville, cases which found reckless disregard where an officer violates department policy, the totality of the circumstances analysis weighs heavily in favor of reckless disregard where an officer violates established department policies.

**A. City of Ellisville v. Richardson, 913 So.2d 973(Miss. 2005), is similar and relevant to the case *sub judice*.**

The City of Jackson argues in its brief that City of Ellisville v. Richardson, 913 So.2d 973(Miss. 2005), is distinguishable from the case at bar because “*not a single fact in City of Ellisville is similar to the facts of the instant matter.*” (Brief of Appellant, p. 14). This assertion is clearly erroneous since City of Ellisville is a police pursuit case that applies the ten factors adopted by this Honorable Court to establish a finding of reckless disregard.

The Mississippi Supreme Court, in City of Ellisville, held that there was substantial evidence to support the trial court's finding of reckless disregard since the police pursuit violated policy and there was low probability of apprehending the suspect. Like the City of Jackson policy, the policy cited in City of Ellisville required officers to terminate pursuit whenever when the risk posed by the pursuit is more dangerous than the risk of suspect's escape to the community. As such, City of Ellisville provided credible guidance to the trial court as to the weight it should place on violations of City of Jackson pursuit policy which makes it relevant and applicable to the case *sub judice*.

**B. Applying the City of Ellisville Factors, a reasonable Fact Finder Can Conclude That the Jackson Officers Acted In Reckless Disregard in the Pursuit of Wilson.**

The City of Jackson vigorously asserts that its officers were not involved in the pursuit of Alice Wilson. However, the best evidence of Jackson's actual involvement in the pursuit of Wilson along with Officer Razor, is the City of Jackson's officer's own words in describing their conduct as a pursuit. In their post pursuit narrative reports, the City of Jackson officers described their conduct as follows:

1. Lieutenant Steve McDonald: "... Officer Coleman advised over the radio that he was **terminating the pursuit** because of the suspect actions at that time...I again advised dispatch that the pursuit was terminated..." (TT, Exhibit 9 and R. E. Tab 3)

2. Officer Terrence Spann: "After seeing that Wilson and Raymond Police were traveling east on Amite Officer Coleman and I **terminated the pursuit** at Capitol and Robinson...."(TT, Exhibit 10 and R. E. Tab 4)

3. Officer Stephen Coleman: “Once I noticed her traveling the wrong way on Amite, I immediately advised dispatch I was **terminating the pursuit**,....”(TT, Exhibit 11 and R. E. Tab 5)

4. Sgt. Amy Barlow: “As I approached Gallatin Street on Capitol Street I heard Officer Coleman **terminate the pursuit** because the suspect vehicle was traveling the wrong way on Amite Street. Immediately after I heard Lt. McDonald also **terminate the pursuit** for the same cause.”(TT, Exhibit 12 and R. E. Tab 6)

As shown above by the City of Jackson’s officers own written statements describing their conduct, there is no doubt that Officers Coleman and Spann were involved in the pursuit of Wilson along with the Raymond Police Officer. Furthermore, they never terminated the pursuit within the meaning General Order 600-20 before Wilson crashed her vehicle into the Clausell vehicle. In order for a Jackson Police Officer to terminate a pursuit, General Order 600-20(F)(6) states as follows:

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 to 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. (TT, Exhibit 1 and R. E. Tab 2)

Officer Spann nor Officer Coleman complied with General Order 600-20(F)(6) by either coming to a complete stop in a safe location or traveling in the opposite direction of travel from the pursuit. Instead the Jackson officers continued their pursuit parallel on Capitol street in violation fo General Order 600-20 Section (E)(1). (TT, Exhibit 1) The only

reason the Jackson officers did not follow the fleeing SUV east on Amite street is that they, unlike the City of Raymond officer, knew Amite was a one way street.

City of Jackson Officers Coleman and Spann both arrived at the intersection of Lamar and Capitol streets before the fleeing SUV which makes it impossible for them to have stopped for a red traffic light at Gallatin and Capitol streets, and other traffic lights at Mill and Farish streets as testified to by Jackson Officer Stephen Coleman at trial. (TT, Exhibit 2, p. 68, ln. 10-16)

Applying the City of Ellisville factors, the trial court reasonably concluded that the Jackson officers acted in reckless disregard in pursuit of Wilson. At least six of the ten factors enumerated above are present as indicated below:

1. *Length of the chase.* Once the pursuit reached Jackson, it lasted for approximately six minutes and covered approximately six miles. (TT, p. 93, ln. 7 - 19)
2. *Type of neighborhood.* Highway 18 is a four lane highway located near a highly populated area that consisted of retail businesses and residential neighborhoods. There are several large volume retail businesses off Highway 18, including but not limited to Wal-Mart and the Metro Center Mall. There are also several neighborhood streets which intersect with Highway 18.
3. *Characteristics of the streets.* Highway 18 is well-paved and proceeds North and South over several small hills.
4. *The presence of vehicular or pedestrian traffic.* Considering the fact that the pursuit occurred on Saturday in the vicinity of large volume retail businesses, a reasonable inference can be drawn that there was vehicular and pedestrian traffic during the pursuit. Furthermore, there was traffic present as evidenced by the fact that the Clausells were victims of the pursuit.
5. *Weather conditions and visibility.* The weather was clear and visibility was good. There was no rain, sleet or fog.

6. *The seriousness of the offense for which the police are pursuing the suspect.* The pursuit was initiated by one officer's report of erratic driving when there were no claims that the suspect committed any criminal acts other than simple traffic violations.
7. *Whether the officer proceeded with sirens and blue lights.* The record evidence indicates that the officers properly engaged their sirens and blue lights.
8. *Whether the officer had available alternatives which would lead to the apprehension of the suspect besides pursuit.* As an alternative to the pursuit to the pursuit, the officers could have used the license plate to identify Wilson or relied solely on the services of Metro One to follow and later apprehend Wilson.
9. *The existence of police policy which prohibits pursuit under the circumstances.* City of Jackson actively participated in the pursuit in violation of General Order 600-20 by engaging in a pursuit involving more than "two police vehicles, a primary and secondary unit," following the "pursuit on parallel streets," and failing to terminate the pursuit in a timely manner. This factor is discussed in more detail *supra*.
10. *The rate of speed of the officer in comparison to the posted speed limit.* There is no clear record evidence that the Jackson officers were traveling at excessive rates of speed. During the entire pursuit, they only exceeded the speed limit by 10 mph.

Like City of Ellisville and Brister, cases where reckless disregard was found where six of the ten factors existed, six of the factors support a finding of reckless disregard in the case *sub judice*. Therefore, applying City of Ellisville and Brister and considering the totality of the circumstances, these facts taken as a whole certainly would permit a finding that the Jackson officers acted in reckless disregard of the safety and well-being of the Clausells. Therefore, the judgment of the trial court should be affirmed.

C. General Order 600-20 was applicable to the pursuit of Wilson.

The City of Jackson is wrong in its assertion that General Order 600-20 was not applicable to the pursuit of Wilson since General Order 600-20 purposes to “*establish guidelines for making decisions with regard to vehicular pursuits,*” and defines vehicular pursuit as “*an active attempt by an officer in authorized emergency vehicle to apprehend a fleeing suspect who is actively attempting to elude the police.*” (TT, Exhibit 1). A plain language reading of General Order 600-20 make it clear that it applies where an officer actively attempts to apprehend a fleeing vehicle. Further, as shown above, the City of Jackson officers and supervisors themselves described their conduct in chasing Wilson as a pursuit. See *supra*

In McCoy v. City of Florence, 949 So.2d 69 (Miss. Ct. App. 2006), the deceased children were involved a police chase that began in the City of Florence and continued into the City of Richland. The trial court granted summary judgment in favor of The City of Richland and reasoned that its officers were not involved in the pursuit. The Mississippi Court of Appeals affirmed the decision of the trial court because there existed no evidence the City of Richland participated in the pursuit. Specifically, the Court held “*there is no other evidence regarding Richland’s involvement in the pursuit. That Richland police officers prevented traffic from entering Highway 49 is not involvement in a pursuit. At best, they were bystanders. Accordingly, we find that Richland was not involved in pursuit of Corey.*” Id. at 79.

Reading and interpreting McCoy and General Order 600-20 together, it is clear the act of pursuit which gives rise to liability is synonymous with the definition of vehicular

pursuit given in General Order 600-20. To invoke General Order 600-20, the pursuit must be more than the act of blocking traffic and objectively establish active participation.

Contrary to McCoy, the Jackson officers in the case *sub judice* actively participated in the pursuit of Wilson by joining the pursuit and following Wilson between five to six miles within the Jackson city limits and assisting with her arrest. Furthermore, General Order 600-20 explicitly states that “*all officers engaged in a pursuit which was initiated by another agency, must obey all aspects of this General Order.*” (TT, Exhibit 1). Therefore, it is clear that the trial court was correct when it determined that General Order 600-20 applies to this case since the Jackson officers actively participated in the pursuit of Wilson and General order 600-200 explicitly governed the pursuit initiated by Officer Razor in Raymond and continued into Jackson.

D. The City of Jackson violated General Order 600-20 during the pursuit of Wilson.

General Order 600-20 mandates that a pursuit should not “*consist of no more than two police vehicles, a primary and secondary unit.*” (TT, Exhibit 1). It also indicates that an officer “*shall not normally follow the pursuit on parallel streets.*” (Id.) The termination of a pursuit requires that a “*complete withdrawal from and suspension of all following, tracking and attempts to apprehend. The officer(s) will either come to 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.*” (Id.) General Order 600-20 also makes is clear that “*all officers engaged in a pursuit which was initiated by another agency, must obey all aspects of this General Order.*” (Id.)

The City of Jackson asserts its officers did not violate General Order 600-20 because its officers merely “*monitored intersections and assisted with traffic as a safety measure.*” (Brief of Appellant, p. 16). The City of Jackson relies heavily on the testimony of Sergeant Amy Barlow and Lieutenant Steve McDonald, to support their assertion. Both Sergeant Barlow and Lieutenant McDonald testified that the City of Jackson was merely assisting Officer Razor and never actively pursued or assisted in the arrest of Wilson. However, neither Sergeant Barlow or Lieutenant McDonald were present at the scene of the chase and thus the trial court was justified in giving their testimony little weight.

On the other hand, Officer Razor, who was present during the entire chase, observed several Jackson officers “*in the pursuit with me.*” (TT, Exhibit 2, p. 59, ln. 23 - p. 60, ln. 8). He further testified that a Jackson officer helped him arrest and handcuff Wilson after the collision. (TT, Exhibit 2, ln. p. 74, ln. 3 - 7). Consistent with the testimony given by Officer Razor, Officer Stephen Coleman of the Jackson Police Department testified that he joined the pursuit and followed closely behind the vehicle driven by Officer Razor until the pursuit entered Amite Street the wrong way. (TT, p. 176, ln. 19 - p. 178, ln. 6). Officer Coleman veered onto Capitol Street and continued to pursue Wilson by traveling on a parallel street. (TT, p. 88, ln. 18 - p. 190, ln. 20).

When Wilson turned on Lamar Street, Jackson officers were waiting for her near the intersection of Capitol Street and Lamar Street, with “*their lights on*”. (TT, Exhibit 2, p. 90, ln. 19 - 25)(TT, Exhibit 2, p. 68, ln. 10 - 24). Wilson and Officer Razor turned onto Capitol Street where the pursuit continued with the City of Jackson officers. (TT, Exhibit

2, p. 92, ln. 5 - 25). Furthermore, Andy Robinson, who obtained a visual of the pursuit via helicopter, observed Wilson being pursued by three police vehicles, two of which were Jackson Police Department vehicles. (TT, p. 119, ln. 18 - 28).

Dennis Waller, an expert in police pursuit tactics, opined that the actions of the Jackson officers were reckless and inconsistent with General Order 600-20 and the nationally accepted standards of police practice and training. (TT, p. 78, ln. 29 - 79, ln. 10). He concluded that the officers “*failed to consider their obligation to protect individuals, the general public, as opposed to enhance that danger to the general public by being involved in the police pursuit.*” (Id.)

He further opined that it was appropriate for the Jackson officer to initially engage in the pursuit, but “*as soon as they had knowledge that the driver had previously ran through red lights and as soon as that vehicle started to run through a number of red lights in the City of Jackson, at that point it should have been terminated, and they should have advised Raymond to terminate the pursuit.*” (TT, p. 73, ln. 12-21). The power with the City of Jackson to order the City of Raymond officer to terminate his pursuit of Wilson cannot be understated. Lieutenant Steve McDonald candidly admitted that he could have ordered Raymond to cease its pursuit well before the fatal collision when it was well known that Wilson had ran several red lights on Highway 18 several miles from the collision scene. (TT, Exhibit 20, p. 83, ln. 3-25). Yet he failed to do so knowing of Wilson’s reckless driving and danger to other drivers. With this testimony from the City of Jackson the trial judge was well within his right to find that the City of Jackson’s actions were the proximate cause of the injuries to the Plaintiffs.

It is clear there exists conflicting evidence regarding the City of Jackson's level of participation in the pursuit of Wilson. Where one party swears to one version of the matter in issue and the other party swears just the opposite, there exist issues of fact that should be decided by the trier of fact. Williams v. Tolliver, 759 So.2d 1195, 1198 (Miss. 1999).

The trier of fact is in the best position to evaluate and weigh the truthfulness of each witnesses' testimony. Andrew Jackson Life Ins. Co. v. Williams, 566 So.2d 1172 (Miss. 1990). The demeanor, tone of voice, attitude and appearance of the witnesses are all primarily for inspection and review by the trier of fact. It not only has the right and duty to determine the truth or falsity of the witness, but also has the right to evaluate and determine what portions of the testimony of any witness it will accept or reject. Id. (quoting Travelers Indem. Co. v. Rawson, 222 So.2d 131, 134 (Miss. 1969)).

Considering the fact that there exists conflicting evidence as to the extent of participation by the City of Jackson in the pursuit of Wilson, there is substantial evidence upon which the trial judge, as the finder of fact, could find that the City of Jackson actively participated in the pursuit in violation of General Order 600-20 by engaging in a pursuit involving more than "*two police vehicles, a primary and secondary unit,*" following the "*pursuit on parallel streets,*" and failing to terminate the pursuit in a timely manner.

Furthermore, The Mississippi Supreme Court, in City of Ellisville v. Richardson, 913 So.2d 973, 977-78 (Miss. 2005), held that there was substantial evidence to support

the trial court's finding of reckless disregard where the police pursuit violated policy and there was low probability of apprehending the suspect. Like City of Ellisville, the trial court in this matter determined that the City of Jackson violated General Order 600-20 and there was a low probability of apprehending the suspect since the chase lasted approximately eleven (11) miles. Therefore, consistent with City of Ellisville, the trial court determined the Jackson officers acted in reckless disregard for the safety and well-being of the Clausells.

- E. The trial court did not err when it determined that Wilson was pursued for approximately six miles in the City of Jackson.

The City of Jackson asserts that the trial court erred when it determined Wilson was pursued by the Jackson officers for approximately six miles and cited the testimony of Officer Coleman to support this assertion. On the contrary, plaintiff's expert, Dennis Waller, after conducting his investigation, estimated that the Jackson officers engaged in the pursuit for "*approximately five or six miles.*" (TT, p. 93, ln. 7 - 19). Considering the differences in the testimony of Officer Coleman and Dennis Waller, there was sufficient evidence upon which the trial judge, as the finder of fact, could have found that the Jackson officers engaged in the pursuit for six miles.

- F. The trial court did not err when it determined that the Jackson officers failed to terminate their pursuit.

The City of Jackson argues that the Jackson officers terminated their pursuit prior to the collision. General Order 600-20 indicates that the termination of a pursuit requires that a "*complete withdrawal from and suspension of all following, tracking and attempts*

*to apprehend. The officer(s) will either come to 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.”* (Exhibit 1)

Officer Coleman testified that he and Officer Spann terminated their pursuit after Wilson and Officer Razor entered Amite Street the wrong way, however, he admits that pursuant to General Order 600-20, he never came to a complete stop in a safe location or began traveling in the opposite direction of travel from the pursuit. (TT, p. 184, ln. 27 - 187, ln. 1). Rather, he continued the pursuit on parallel streets, contrary to General Order 600-20(F)(6). (Id.)

Officer Razor agreed that the Jackson officers did not follow him when he proceeded down Amite Street the wrong way but contrary to the testimony of Officer Coleman, he testified that the Jackson officers rejoined the pursuit when he and Wilson entered Capitol Street. (TT, p. 72, ln. 7 - p. 74, ln. 7).

Considering the fact that the Jackson officers admit that they fail to terminate the pursuit as required by General Order 600-20 and Officer Razor testified that the Jackson officers were engaged in pursuit immediately prior to the accident, there was sufficient evidence upon which the trial judge, as the finder of fact, could have found that the Jackson officers failed to terminate their pursuit.

Under Mississippi law, it is well established that the fact finder is the judge of the weight and credibility of testimony and is free to accept or reject all or some of the testimony given by each witness. Andrew Jackson Life Ins. Co. v. Williams, 566 So.2d 1172 (Miss. 1990).

**2. The reckless actions of the City of Jackson officers caused the death of Alice Clausell and injuries suffered by Kimberly Clausell and Lillian Boyd.**

An essential part of a personal injury claim is to demonstrate, not only the extent of the injury, but that the actions of the defendant was the proximate cause of the injury. Donald v. Amoco Prod. Co., 735 So.2d 161, 174 (Miss. 1999). Proximate cause requires the fact finder to determine whether the reckless disregard was both the cause in fact and legal cause of the damage suffered by Clausells. City of Jackson v. Spann, 4 So.3d 1029 (Miss. 2009). Cause in fact is established where the act and omission was a substantial factor in bringing about the injury and without it the harm would not have occurred. Johnson v. Alcorn State University, 929 So.2d 398, 411 (Miss. App. 2006).

To be held liable, a person need not be the sole cause of the injury. It is sufficient that his negligence concurring with one or more efficient causes is the proximate cause of the injury. Foster v. Bass, 575 So.2d 867, 992 (Miss. 1990). If the injuries are brought about by more than one tortfeasor, cause in fact is based upon whether the negligence of a particular defendant was a substantial fact in causing the harm. Glover v. Jackson State Univ., 968 So.2d 1267, 1277 (Miss. 2007). Once cause in fact is established, legal cause exists so long as the damage is the type, or within the classification, of damage the actor should reasonable foresee to result from his action. Id..

Legal cause requires proof of foreseeability. Foreseeability means that a person of ordinary intelligence should have anticipated the dangers that his acts may create for others. Morin v. Moore, 309 F.2d 316, 326 (5th Cir. 2002).

Proximate cause of an injury can be established by direct or positive evidence or

by circumstantial evidence. Dr. Pepper Bottling Company of Mississippi v. Bruner, 148 So.2d 199 (Miss. 1962). When reasonable minds might differ on the matter, the question of what is proximate cause of an injury is usually a question for the fact finder. Bruner, 148 So.2d at 284.

Under Mississippi law, it is well established that the fact finder is the judge of the weight and credibility of testimony and is free to accept or reject all or some of the testimony given by each witness. Andrew Jackson Life Ins. Co. v. Williams, 566 So.2d 1172 (Miss. 1990). In short, once a witness is determined to be qualified to render expert testimony, questions of weight and credibility of the testimony are determined by the trier of fact. Brown v. McQuinn, 501 So.2d 1093 (Miss. 1986).

Since reasonable minds might differ on proximate cause in this matter, this Court must examine whether there exists substantial evidence to support the trial court's finding that the Clausells' damages were caused by the reckless actions of the City of Jackson.

There is no issue as to whether the injuries suffered by the Clausells were foreseeable since General Order 600-20 expressly acknowledges the risk to the public associated with police pursuits and warns about them. (TT, Exhibit 1).

The City of Jackson alleges that there exists no cause in fact because Wilson continued the same pattern of behavior after Officer Razor began to pursue her.

**However, Officer Razor testified that Wilson's increased her speed and risky traffic maneuvers after the officers began pursuing her. (TT, Exhibit 2, p. 30, ln. 3 - 21).**

With this testimony, the trial judge was more than justified in finding that the Jackson officers' conduct was also a concurring proximate cause of the injuries to plaintiffs herein

and that Wilson's knowledge that she was being followed by numerous police officers negatively affected her behavior and escalated her reckless driving.

The City of Jackson, in its brief, also alleges that there exists no record evidence that Wilson was aware that she was being pursued. This assertion is ludicrous since Officer Razor testified that Wilson increased her speed when he began pursuing her and the pursuit lasted eleven (11) minutes and spanned at least six miles.

The City of Jackson also relies heavily on Ogburn v. City of Wiggins, 919 So.2d 85 (Miss. 2005). In Ogburn, the Mississippi Court of Appeals upheld the trial court's ruling that plaintiff failed to prove proximate cause where the pursued vehicle was driving in the wrong lane of traffic at an excessive speed before the pursuit commenced and the same behavior continued after he began the pursuit.

Ogburn is easily distinguishable from the case *sub judice*, since Officer Razor testified that Wilson increased her speed and risky traffic maneuvers after the officers began pursuing her. Therefore, it is clear that Ogburn should be disregarded.

Rather than Ogburn, the case *sub judice* is analogous to City of Jackson v. Brister, 838 So.2d 274 (Miss. 2003), a case that found reckless disregard where plaintiff's expert gave credible testimony that the officers acted in extreme and unreasonable danger to the public. The expert based his opinion on the following:

- 1) the chase was contrary to General Order 600-20;
- 2) the officers were still engaged in active pursuit up to the collision;
- 3) pursuit should have been terminated after the officers turned onto Ridgewood Road and realized the suspect would not stop;
- 4) the officers did not attempt to obtain the license plate number which would have eliminated the need for continued pursuit; and
- 5) the officers did not properly balance the public's safety versus

immediate apprehension of a check forger.

Id. at 279.

This Court determined that the trial court based its ruling on substantial, credible and reasonable evidence. Specifically, the Court held that *“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 our caselaw requires.”* Id. at 279.

Like Brister, Dennis Waller, plaintiff’s police pursuit tactical expert, gave credible testimony that the officers acted in extreme and unreasonable danger to the public.

Specifically, he testified as follows:

- 1) *Chase was contrary to General Order 600-20.* Considering the totality of the circumstances surrounding the pursuit, Dennis Waller opined that the actions of the Jackson officers was reckless and inconsistent with General Order 600-20 and the nationally accepted standards of police practice and training. (TT, p. 78, ln. 29 - 79, ln. 10). He concluded that the officers *“failed to consider their obligation to protect individuals, the general public, as opposed to enhance that danger to the general public by being involved in the police pursuit.”* (Id.)
- 2) *Officers were still engaged in active pursuit up to the collision.* He opined that the Jackson officers did not terminate their pursuit as evidenced by the fact that the officers were the first persons on the scene of the crash and assisted with the arrest of Wilson. (T.T., p. 69, ln. 6 - 29)
- 3) *Pursuit should have been terminated prior to the collision.* He further opined that it was appropriate for the Jackson officer to initially engage in the pursuit, but *“as soon as they had knowledge that the driver had previously ran through red lights and as soon as that vehicle started to run through a number of red lights in the City of Jackson, at that point it should have been terminated, and they should have advised Raymond to terminate the pursuit.”* (TT, p. 73, ln. 12-21).

- 4) *Officers did not properly balance the public's safety versus immediate apprehension of Wilson. Wilson had no criminal background. (TT, p. 63, ln. 17 - 22).*

Considering the testimony of police pursuit expert Dennis Waller, the trial court could have reasonably found the officers acted with reckless disregard to public safety causing injury to the Clausells. Therefore, the judgment of the trial court should be affirmed.

### CONCLUSION

The trial court, after considering the evidence and testimony presented at trial, properly found that the City of Jackson acted in reckless disregard for the safety of Alice Clausell, Lillian Byrd and Kimberly Clausell and such reckless disregard, proximately caused the wrongful death of Alice Clausell and the serious injuries suffered by Lillian Byrd and Kimberly Clausell. Therefore, the judgment entered by the trial court against City of Jackson in favor of Alice Clausell, Lillian Byrd and Kimberly Clausell should be affirmed.

SO BRIEFED, the 29th day of November, 2010.

RESPECTFULLY SUBMITTED,

MARY GRAY AND PEGGY PETTAWAY,  
ET AL, APPELLEES

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CERTIFICATE OF SERVICE

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THIS, the 29th day of November, 2010.

  
\_\_\_\_\_  
JOE N. TATUM

## CERTIFICATE OF FILING

I, Joe N. Tatum, do certify that I have hand delivered the original and three copies of the Brief of Appellees Mary Gray and Peggy Pettaway and an electronic diskette containing same on November 29, 2010, addressed to Ms. Kathy Gillis, Clerk, Supreme Court of Mississippi, 450 High Street, Jackson, Mississippi 39201.

DATED: This the 29<sup>th</sup> day of November, 2010.

  
JOE N. TATUM