

IN THE SUPREME COURT OF MISSISSIPPI

CASE NO. 2009-CP-00950

MARVIN ARTHUR

APPELLANT

VS.

TUNICA COUNTY, MISSISSIPPI  
AND, TUNICA COUNTY SHERIFF'S DEPT.

APPELLEES

*On Appeal from the Circuit Court of  
Tunica County, Mississippi  
Circuit Court No. 2008-0335*

---

BRIEF OF APPELLEES

---

(ORAL ARGUMENT NOT REQUESTED)

Daniel J. Griffith, MS Bar No. [REDACTED]  
GRIFFITH & GRIFFITH  
P. O. Drawer 1680  
Cleveland, MS 38732  
Telephone: 662-843-6100  
Facsimile: 662-843-8153  
Attorney for Appellees,  
Tunica County, Mississippi

IN THE SUPREME COURT OF MISSISSIPPI

CASE NO. 2009-CP-00950

APPELLANT

MARVIN ARTHUR

VS.

TUNICA COUNTY, MISSISSIPPI  
AND, TUNICA COUNTY SHERIFF'S DEPT.

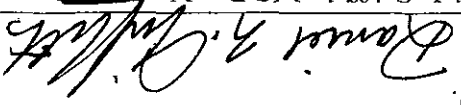
APPELLEES

CERTIFICATE OF INTERESTED PERSONS

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

1. The Honorable Albert B. Smith, III, Circuit Court of Tunica County, Mississippi, Trial Judge;
2. Tunica County, Mississippi, Appellee;
3. Marvin Arthur, Appellant;
4. Daniel J. Griffith, Griffith and Griffith Attorneys, Cleveland, Mississippi, Attorney for Appellees;
5. Andrew T. Dulaney, Dulaney Law Firm, Tunica, Mississippi, Attorney for Appellees;

CERTIFIED this 5th day of October, 2009.

  
\_\_\_\_\_  
Daniel J. Griffith, MS Bar No. [REDACTED]  
Attorney for Appellees

IN THE SUPREME COURT OF MISSISSIPPI

CASE NO. 2009-CP-00950

APPELLANT

MARVIN ARTHUR

VS.

APPELLEES

TUNICA COUNTY, MISSISSIPPI  
AND, TUNICA COUNTY SHERIFF'S DEPT.

ORAL ARGUMENT IS NOT REQUESTED

The instant appeal presents a question of established law, procedurally waived by the *Pro Se* Appellant in lieu of remarks disrespectful of the lower court and counsel. Oral argument is not requested.

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS .....	ii
ORAL ARGUMENT IS REQUESTED .....	iii
TABLE OF CONTENTS .....	iv
TABLE OF AUTHORITIES .....	v, vi
BRIEF OF APPELLEES .....	i
I. Statement of the Issues .....	i
II. Statement of the Case .....	i
A. Nature of the Case .....	i
B. Course of Proceedings and Disposition in Lower Court .....	2
C. Standard of Review .....	2
III. Statement of the Facts .....	2
IV. Summary of the Argument .....	2
V. Argument .....	3
1. The Tunica County Sheriff's Department is not a cognizable entity .....	3
2. Dismissal was proper because Mr. Arthur did not serve a Notice of Claim .....	3
VI. Conclusion .....	3
CERTIFICATE OF SERVICE .....	4

# TABLE OF AUTHORITIES

## Table of Cases:

*Arceo v. Tolliver*, 949 So.2d 697, 697 (Miss. 2006) ..... 3

*Broome v. City of Columbia*, 952 So.2d 1050(Miss. Ct. App. 2007) ..... 2

*Brown v. Thompson*, 927 So.2d 733 (Miss. 2006) ..... 3

*City of Jackson v. Brister*, 838 So.2d 274, 277-78 (Miss. 2003) ..... 2

*City of Jackson v. Estate of Stewart*, 939 So.2d 758 (Miss. 2005) ..... 2

*Miss. Bar v. Lummumba*, 912 So.2d 871 (Miss. 2005) ..... 2

*Parker v. Harrison County Bd. of Supervisors*, 987 So.2d 435 (Miss. 2008) ..... 3

*Stuart v. Univ. of Miss. Med. Ctr.*, 2009 Miss. LEXIS 396 ..... 3

*Welsh v. Mounger*, 912 So.2d 823 (Miss. 2005) ..... 2

*Miss. Code Ann. §11-46-11* ..... 3

## STATUTES

OTHER

<i>Miss. R. App. P. 28(k)</i> .....	4
<i>Miss. R. App. P. 38</i> .....	4

IN THE SUPREME COURT OF MISSISSIPPI

CASE NO. 2009-CP-00950

APPELLANT

MARVIN ARTHUR

VS.

APPELLEES

TUNICA COUNTY, MISSISSIPPI  
AND, TUNICA COUNTY SHERIFF'S DEPT.

BRIEF OF APPELLEES

*I. Statement of the Issues*

1. The Tunica County Sheriff's Department is not a cognizable entity.
2. Dismissal was proper because Mr. Arthur did not file a Notice of Claim.

*II. Statement of the Case*

A. Nature of the Case

*Pro Se* Plaintiff Marvin Arthur seeks damages for alleged injuries which arise from his claim that he had to jump out of the way of a Tunica County law enforcement vehicle en route to a felony call on June 13, 2008. No Notice of Claim was served upon either of the Defendants. The procedural dates relevant to the instant appeal are listed as follows:

Date of Alleged Incident = June 13, 2008 [Complaint, R 4-7].

Notice of Claim = None

Suit Filed = December 4, 2008 [Complaint, R 4-7].

Dismissal Entered = May 5, 2009 [Dismissal, R 76].

Appeal Filed = June 9, 2009 [Notice of Appeal, R 89].

## **B. Course of Proceedings and Disposition in Lower Court**

Mr. Marvin Arthur filed a suit for damages against Tunica County, Mississippi, and the Tunica County Sheriff's Department without serving a prior Notice of Claim as required by the MTCA. The lower court dismissed Mr. Arthur's case. Mr. Arthur argues that his untimely appeal should be excused because he was misled by the court clerk. Mr. Arthur argues further that he was not given an adequate opportunity to argue his theories of harmless errors and improper venue before dismissal. Tunica County, Mississippi, and the Tunica County Sheriff's Department respectfully submit this brief in opposition to Mr. Arthur's appeal.

### **C. Standard of Review**

This appeal is resolved upon issues of law and should be reviewed under a *de novo* standard. Broom v. City of Columbia, 952 So. 2d 1050 (Miss. Ct. App. 2007)(Citing City of Jackson v. Bristle, 838 So. 2d 274, 277-78 (Miss. 2003).

### **III. Statement of the Facts**

The Defendant County is a political subdivision of the State of Mississippi. The Defendant Sheriff's Department is not a separate entity from the Defendant County. Mr. Arthur seeks damages for an alleged governmental tort. Mr. Arthur did not serve a Notice of Claim.

### **IV. Summary of the Argument**

The disrespectful tone and language of this *pro se* appellant to the lower court and counsel should be disregarded or stricken.<sup>1</sup> The issues upon which this case was dismissed (without prejudice) by the lower court are matters of clearly established law which have not even been

---

<sup>1</sup>City of Jackson v. Estate of Stewart, 939 So. 2d 758 (Miss. 2005)(Disrespectful language stricken from the record); See Also: Miss. Bar v. Lumbumba, 912 So. 2d 871 (Miss. 2005); and, Welsh v. Mounger, 912 So. 2d 823 (Miss. 2005)(Attorney sanctioned and reprimanded for repeating false allegations).



<sup>5</sup>Parker v. Harrison County Bd. of Supervisors, 987 So. 2d 435 (Miss. 2008)(Affirms summary judgment where the plaintiff provided no Notice of Claim); See Also: Arceo v. Tolliver, 949 So. 2d 691, 697 (Miss. 2006)(Tolliver I).

<sup>6</sup>Stuart v. Univ. of Miss. Med. Ctr., 2009 Miss. LEXIS 396 (Decided Aug. 20, 2009)(“The notice requirements in the MTCA are substantive requirements, which are no more or less important than a statute of limitations.”).

<sup>7</sup>Miss. Code Ann. § 11-46-11(1), states, in relevant part: “After all procedures within a governmental entity have been exhausted, any person having a claim for injury arising under the provisions of this chapter against a governmental entity or its employee shall proceed as he might in any action at law or in equity; provided, however, that ninety (90) days prior to maintaining an action thereon, such person shall file a Notice of Claim with the chief executive officer of the governmental entity.”

<sup>8</sup>Brown v. Thompson, 927 So. 2d 733(Miss. 2006)(recognizing that the MTCA requires that a governmental entity, including a political subdivision, be named as a defendant, unless the action is brought solely against an employee acting outside the scope of his employment, and holding that the proper defendant in a MTCA suit was the county, and not the county's sheriff's department, because the latter is not a political subdivision for purposes of the MTCA).

Tunica County, Mississippi, and the Tunica County Sheriff's Department respectfully submit

## VI. Conclusion

satisfy the substantive requirements of § 11-46-11.<sup>4</sup> Dismissal was proper.<sup>5</sup>

Mr. Arthur did not serve a Notice of Claim before filing suit.<sup>3</sup> Hence, Mr. Arthur failed to

### **2. Dismissal was proper because Mr. Arthur did not serve a Notice of Claim.**

a claim arising from the actions of a Tunica County Deputy.<sup>2</sup> Dismissal was proper.

There is no dispute that the Tunica County Sheriff's Department is not the proper party for

### **1. The Tunica County Sheriff's Department is not a cognizable entity.**

## V. Argument

lower court should be affirmed.

addressed. Put simply, Mr. Arthur cannot sue the Tunica County Sheriff's Department and he cannot proceed with complying with the substantive requirements of Miss. Code Ann. §11-46-11. The

that the disrespectful language of Mr. Arthur's brief be disregarded or stricken and that sanctions be awarded for this frivolous appeal. This is a clear case of a trial court efficiently and correctly applying the law. *Miss. R. App. P. 28(k)* allows sanctions for disrespectful language in a party's brief. *Miss. R. App. P. 38* allows an award of sanctions for frivolous appeals in civil cases.

RESPECTFULLY SUBMITTED this 5th day of October, 2009.

TUNICA COUNTY, MISSISSIPPI, AND  
TUNICA COUNTY SHERIFF'S DEPT.

By: *Daniel J. Griffith*  
Daniel J. Griffith, MS Bar No. [REDACTED]

Of Counsel:

GRIFFITH & GRIFFITH

123 South Court Street  
P. O. Drawer 1680  
Cleveland, MS 38732  
Telephone: 662-843-6100  
Facsimile: 662-843-8153

CERTIFICATE OF SERVICE

I, Daniel J. Griffith, attorney of record for Appellants, Tunica County, Mississippi and the Tunica County Sheriff's Department, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the above and foregoing *Brief of Appellees* to:

Honorable Albert B. Smith, III  
Circuit Court Judge, 11<sup>th</sup> Judicial District  
P. O. Box  
Cleveland, MS 38732

Mr. Marvin Arthur  
4158 Casino Center Drive  
Robinsonville, MS 38664  
*Pro Se Plaintiff*

SO CERTIFIED this 5<sup>th</sup> day of October, 2009.

*Daniel J. Griffith*  
Daniel J. Griffith