

IN THE SUPREME COURT OF MISSISSIPPI

No. 2010-CA-00844

PAULETTE L. KNIGHT

APPELLANT

VS.

PICAYUNE TIRE SERVICES, INC.

APPELLEE

APPEAL FROM THE CIRCUIT COURT OF PEARL RIVER COUNTY, MISSISSIPPI

BRIEF OF THE APPELLANT
(ORAL ARGUMENT NOT REQUESTED)

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CERTIFICATE OF INTERESTED PERSONS

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 Mississippi Supreme Court and/or the Judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Paulette L. Knight, Plaintiff
2. Picayune Tires Services, Inc., Defendant
3. Harold Richardson, owner/officer of Picayune Tire Services, Inc.
4. Dee Aultman, Counsel for Picayune Tire Services, Inc.
5. James M. Priest, Jr., Plaintiff's counsel
6. Honorable Prentiss G. Harrell, Circuit Court Judge.

SO THIS CERTIFIED this 30th day of November, 2010.

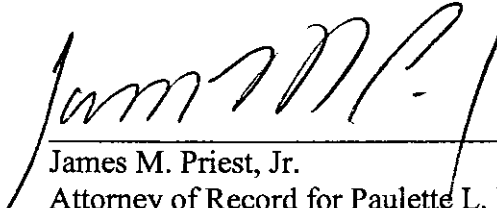

James M. Priest, Jr.
Attorney of Record for Paulette L. Knight

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STATEMENT OF THE ISSUE

The following issue is presented by this appeal:

The circuit court erred in granting summary judgment in favor of Picayune Tire Services, Inc. because genuine issues of material fact existed regarding whether an unreasonably dangerous condition existed upon the Defendant's premises.

STATEMENT OF THE CASE

This is a premises liability case arising from a December 10, 2005 incident in which Plaintiff/Appellant Paulette L. Knight fell at Defendant/Appellee Picayune Tire Services, Inc.'s store and suffered personal injuries.

I. Nature of the case, course of proceedings, and disposition in the court below

Paulette L. Knight filed suit against Picayune Tire Services, Inc. in the Circuit Court of Pearl River County asserting negligence claims against Picayune Tire for causing or allowing an unreasonably dangerous condition to exist upon its business premises and for failing to warn Ms. Knight of such condition. (See Complaint, R. at 1-4). The parties conducted some discovery, and Picayune Tire filed a motion for summary judgment on the basis that no evidence existed that an unreasonably dangerous condition existed upon its premises at the time Plaintiff was injured. (R. at 17-54). Plaintiff responded to the motion for summary judgment arguing that genuine issues of material facts existed as to whether an unreasonably dangerous condition existed. (R. at 57-60).

During a hearing on Picayune Tire's motion (R. at 55), the circuit court took no additional evidence, heard no additional argument and stated that it would grant Defendant's motion. The circuit court entered judgment granting Defendant's motion finding that "Plaintiff has failed to show that there was any unreasonably dangerous condition of the Defendant's premises that caused her fall nor was any negligence on the part of the Defendant." (R.E. 2; R. at 61-62). Plaintiff filed a timely notice of appeal. (R. at 64-65).

II. Statement of facts relevant to the issues presented for review

On December 10, 2005, Paulette Knight drove her vehicle to the Picayune Tire's place of business to have a tire put on a rim. (R. at 34, Dep. of Paulette L. Knight at 54:3-16).¹ Plaintiff parked her car on the driveway/parking lot in front of one of service bays and went inside the store. *Id.* at 55:2-8. Defendant's employee told her that she had parked in the right place. *Id.* at 55:5-8. Plaintiff walked out of the store and went back to her car to retrieve her wallet. *Id.* at 55:2-8. Plaintiff fell as she was returning to the store. *Id.* at 55:17-56:5. When the fall occurred, Plaintiff was returning from her car to the store by a different path because two women were standing on the sidewalk which Plaintiff had used when she had previously exited the store to go to her car. (R. at 34, 49, Plaintiff's Dep. at 55:13-18, 117:17-23).

Plaintiff's fall occurred as she was walking beside a truck parked on the parking lot. (R. at 34, Plaintiff's Dep at 55:21-56:1). She was close enough to the truck that when she fell, her arm became pinned in the truck's wheel well. (R. at 34, Plaintiff's Dep. at 56:2-3). Plaintiff's fall was caused by her tripping over a seam on the parking lot surface which appears to have been created by an irregularly shaped concrete patch. (R. at 105, Plaintiff's Dep. at 105:12; R. at 51 to 54, photographs attached as Exhibits 1, 2, 3 and 4 to transcript of Plaintiff's deposition). As a result of the fall, Plaintiff was transported to the hospital by ambulance (R. at 35, Plaintiff's Dep. at 61:2-11) and suffered injuries to her back and knees (R. at 40-47; Plaintiff's Dep at 80-109).

SUMMARY OF THE ARGUMENT

The Plaintiff presented evidence that she was injured on the Defendant's business premises when she tripped in the Defendant's parking area. Plaintiff presented evidence that the

¹Defendant attached the complete transcript of Plaintiff's deposition testimony as Exhibit A to its Motion for Summary Judgment. (R. at 20-54). Deposition testimony is cited herein by line and page number where appropriate.

surface of the parking area was in disrepair although a repair had apparently been attempted through the placement of a large irregularly shaped concrete patch. The patch itself appeared to be the obstacle over which the Plaintiff tripped. The circuit court determined as a matter of law that an unreasonably dangerous condition did not exist on the Defendant's premises. However, the determination of whether an unreasonably dangerous condition was present should have been properly submitted to a jury.

ARGUMENT

Genuine issues of material fact existed as to whether an unreasonably dangerous condition existed on the Defendant's business premises, and it was therefore error for the circuit court to grant summary judgment to the Defendant.

The issue in this case is remarkably uncomplicated. Plaintiff presented evidence that she was injured due to a defect in the surface of the defendant business' parking area. This was not a defect that a customer should normally expect to exist. Therefore it was for the jury to determine whether the defect constituted an unreasonable danger, and summary judgment was not appropriate.

I. Standard of Review

This Court reviews a grant for summary judgment de novo. Kuiper v. Tarnabine, 20 So. 3d 658, 660-61 (Miss. 2009). Summary judgment is appropriate only where the evidence presented shows "that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Miss. R. Civ. P. 56(c). This "evidence must be viewed in the light most favorable to the party against whom the motion has been made." Price v. Purdue Pharma Co., 920 So. 2d 479, 483 (Miss. 2006). "The moving party has the burden of demonstrating that no genuine issue of material fact exists, and the non-moving party must be given the benefit of the doubt concerning the existence of a material fact." Green v. Allendale Planting Co., 954 So. 2d 1032, 1037 (Miss. 2007) (quoting Howard v. City of Biloxi, 943 So. 2d

751 (Miss. Ct. App. 2006)). “The existence of a genuine issue of material fact will preclude summary judgment.” Massey v. Tingle, 867 So. 2d 235, 238 (Miss. 2004). “All motions for summary judgment should be viewed with great skepticism” and the trial court should err on the side of denying the motion. Ratliff v. Ratliff, 500 So. 2d 981, 981 (Miss. 1986).

II. Genuine issues of material fact exist as to whether an unreasonably dangerous condition existed.

“The owner or operator of business premises owes a duty to an invitee to exercise reasonable care to keep the premises in a reasonably safe condition and, if the operator is aware of a dangerous condition, which is not readily apparent to the invitee, he is under a duty to warn the invitee of such condition.” Jerry Lee's Grocery, Inc. v. Thompson, 528 So. 2d 293, 295 (Miss. 1988); see Mayfield v. the Hairbender, 903 So. 2d 733, 737 (Miss. 2005) (owner owes invitee duty “to keep the premises reasonably safe and when not reasonably safe to warn only where there is hidden danger or peril that is not in open view”). Picayune Tire’s motion for summary judgment was based on the premise that an unreasonably dangerous condition did not exist as a matter of law, and the circuit court granted summary judgment on that basis.

The existence of an unreasonably dangerous condition is a fact issue for the jury unless the dangers “are usual and [are those] which customers normally expect to encounter on the business premises, such as thresholds, curbs and steps.” Tate v. Southern Jitney Jungle Co., 650 So. 2d 1347, 1351 (Miss. 1995); see Downs v. Choo, 656 So. 2d 84, 86 (Miss. 1995) (finding jury issue existed as to whether premises owner was negligent in failing to remove dangerous condition); Baptiste v. Jitney Jungle Stores of America, Inc., 651 So. 2d 1063, 1067 (1995) (reversing summary judgment in light of evidence that defendants had allowed obstacles to exist at entrance of business premises).

In this case, the Plaintiff presented evidence of the following facts:

- Picayune Tire allowed the parking area in front of its store to exist in a state of disrepair.
- In an apparent repair attempt, a large irregularly shaped concrete patch had been applied to the surface of the parking area.
- Picayune Tire's employee told Plaintiff that she should park outside of the marked parking spaces in front of the store's service bays.
- The defects in the parking area surface were obscured from the Plaintiff by the other vehicles in the parking area.
- The Plaintiff fell when she tripped over the irregularly shaped concrete patch.

In light of this evidence, a material issue of genuine fact existed as to whether an unreasonably dangerous condition issued. "The question of whether an owner or occupier of a premises was negligent for failure to repair an alleged dangerous condition is ordinarily for the jury to decide." Mayfield, 903 So. 2d at 739 (reversing summary judgment in case where plaintiff alleged that broken, uneven pavement created an unreasonable danger). The circuit court should have allowed the case to proceed to trial so that a jury could such a determination.

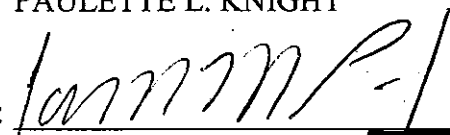
CONCLUSION

The issue presented by this appeal is elementary. The circuit court simply erred when in entered summary judgment by disregarding the Plaintiff's evidence that an unreasonably dangerous condition existed upon Picayune Tire's premises. That issue should have been appropriately left to the jury for determination. Therefore, the Court should reverse and remand this case for trial.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I have served a copy of the foregoing via first class U.S. Mail, postage prepaid, upon:

Honorable Prentiss G. Harrell
Pearl River County Circuit Court Judge
Post Office Box 488
Purvis, Mississippi 39475-0488

Dee Aultman
Aultman, Tyner, Ruffin & Sweatman, Ltd.
Post Office Box 607
Gulfport, Mississippi 39502

This 30th day of November, 2010.


James M. Priest, Jr.