

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2010-CA-00945

BONNIE SMITH

APPELLANT

V.

HARRISON COUNTY, MISSISSIPPI

APPELLEE

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

APPELLEE BRIEF

ORAL ARGUMENT NOT REQUESTED

KAREN J. YOUNG, ESQ.
JOSEPH R. MEADOWS, ESQ.
MEADOWS LAW FIRM
1902 21ST AVENUE (39501)
P.O. BOX 1076
GULFPORT, MS 39502
TELEPHONE: (228) 868-7717
FACSIMILE: (228) 868-7715
EMAIL: kyoung@datasync.com

COUNSEL FOR APPELLEE

IN THE SUPREME COURT OF MISSISSIPPI

NO. 2010-CA-00945

BONNIE SMITH

APPELLANT

V.

HARRISON COUNTY, MISSISSIPPI

APPELLEE

CERTIFICATE OF INTERESTED PERSONS

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. Bonnie Smith, Appellant.
2. Tamekia R. Goliday, Counsel for Appellant.
3. Shantrell Nicks, Counsel for Appellant.
4. Harrison County, Mississippi, Appellee
 - (a) Supervisor Connie Rockco
 - (b) Supervisor Marlin Ladner
 - (c) Supervisor William Martin
 - (d) Supervisor Kim B. Savant
 - (e) Supervisor W. S. Swetman III
5. Karen J. Young, Counsel for Appellee
6. Joseph R. Meadows, Counsel for Appellee
7. Roger T. Clark, Circuit Court Judge


KAREN J. YOUNG
Counsel of Record for Appellee

TABLE OF CONTENTS

Certificate of Interested Persons	i
Table of Contents	ii
Table of Citations	iii
Statement Regarding Oral Argument	iv
Statement of Issues	v
Statement of the Case	1
Statement of Facts	3
Summary of the Argument	7
Argument	8
Conclusion	12
Certificate of Service	13

TABLE OF CITATIONS

<u>Entex, Inc. v. McGuire</u> , 414 So. 2d 437(Miss.1982)	8,9
<u>Heigle v. Heigle</u> , 771 So. 2d 341,345(Miss.2000)	8
<u>Hudson v. Courtesy Motors, Inc.</u> , 794 So. 2d 999,1002(Miss.2001)	7,8
<u>Jenkins v. Ohio Casualty Ins. Co.</u> , 794 So. 2d 228,232(Miss.2001)	8
<u>Mississippi Chemical Corp. v. Rogers</u> , 368 So. 2d 220(Miss.1979)	7,10
<u>O'Cain v. Harvey, Feeman and Sons, Inc.</u> , 303 So. 2d 824(Miss.1991)	7,9
<u>Satchfield v. R.R. Morrison and Son, Inc.</u> , 872 So. 2d 661(Miss.2004)	9
<u>Simmons v. Thompson Machinery of Mississippi, Inc.</u> , 631 So. 2d 798,801(Miss. 1994) ...	8
<u>Thomas v. Global Boat Builders and Repairmen, Inc.</u> , 482 So. 2d 1112,1117(Miss.1987) ..	9

Mississippi Statues:

Miss. R. Civ. P. 56(c)	8
------------------------------	---

STATEMENT REGARDING ORAL ARGUMENT

Oral argument is not necessary in this case, in that the facts and issues have been fully briefed and can be decided upon without oral argument.

STATEMENT OF THE ISSUE

Whether or not Judge Roger Clark, Circuit Court Judge, erred in granting Summary Judgment by holding the Plaintiff's Complaint sought damages for bystander recovery liability under Mississippi Law.

STATEMENT OF THE CASE

On April 19, 2007, Plaintiff, Bonnie Smith, filed her civil lawsuit against Harrison County, Mississippi, seeking damages for emotional distress she claims she sustained while working for Health Assurance, LLC, an independent contractor providing medical services to the Harrison County Adult Detention Center (hereinafter, "HCADC").

Plaintiff claims that on February 4, 2006, while working as a nurse, she was forced to witness the beating of Jessie Lee Williams at the HCADC during booking, which ultimately led to his death. Plaintiff was not an employee of Harrison County, Mississippi, and was not related to Jessie Lee Williams. In Plaintiff's Complaint, Plaintiff seeks damages "for psychological/psychiatric injuries" she suffered "as a result of observing this horrific event."

Harrison County moved for summary judgment on the basis that under Mississippi Law there can be no cause of action for "bystander liability" when there is no close relationship between the Plaintiff and the victim. The Honorable Roger Clark, Circuit Court Judge, granted Summary Judgment on April 23, 2010.

Judge Clark noted that the Plaintiff, in her Response to Motion for Summary Judgment, agreed with Harrison County, that she had no cause of action for bystander recovery under Mississippi Law. However, Plaintiff claims her Complaint asserted "viable claims for negligence, emotional distress and mental anguish." (RE 75,76).

Judge Clark opined that:

Smith provides no proof of fact or statement of law that removes her case from one of bystander recovery. Whatever intent or malice was exhibited the night Jesse Lee Williams was beaten, it was not directed at Smith, and she failed to articulate any breach of duty owed to her by Harrison County. (RE 76).

Plaintiff filed this Appeal stating the Judge erred by granting Summary Judgment because Harrison County owed Plaintiff, an independent contractor, a duty to provide her with a reasonably safe place to work and knowingly breached that duty causing emotional injury to Plaintiff.

STATEMENT OF FACTS

Plaintiff filed her Complaint on April 19, 2007. In paragraph 3 of Plaintiff's Complaint, she states the following:

On February 4, 2006, the Plaintiff was employed by a contractor providing medical services to the Harrison County Jail. While on duty, Plaintiff observed the beating of the jail inmate which ultimately led to his death. The beating was inflicted by Harrison County Sheriff Department deputies. As a result of observing this traumatic event, Plaintiff suffered psychological/psychiatric injuries. The Plaintiff has received medical treatment as a result of her injuries.

In paragraph 4 of the Complaint, Plaintiff states:

The Plaintiff received the injuries as a direct proximate result of the actions of the Defendant. The Defendant employed the individuals who beat the jail inmate. The Defendant, by and through its Sheriff, knew, or should have known, that injuries would have occurred.

There are no other allegations against Harrison County. In the Complaint, Plaintiff did not state that Harrison County owed her a duty to provide her with a reasonably safe place to work. The fact is that the Complaint does not state that any actions of Harrison County caused Plaintiff to incur emotional distress damages. The Complaint clearly states that "as a result of observing this traumatic event, the Plaintiff suffered psychological/psychiatric injuries." Although it bears no legal significance in this case, it is interesting to note that in Plaintiff's Complaint, she also makes no reference that she attempted to stop the alleged beating of Jessie Lee Williams, which occurred on February 4, 2006. If witnessing the abuse to Jessie Lee Williams was as traumatic to Plaintiff as she claims, the Plaintiff should have reported the beating as it occurred to her supervisory physician on call, or the Warden at the jail, or any other person with authority at the jail. (CP 8,9).

On February 4, 2006, Plaintiff was employed by Health Assurance LLC, who was an independent contractor providing medical service to inmates at the HCADC. Harrison County owed no duty to Plaintiff on February 4, 2006. Plaintiff's Complaint is strictly one for bystander recovery, and there are no allegations of any type of premises liability claims. Plaintiff now alleges that

Harrison County owes Plaintiff, an independent contractor, a duty to provide her with a reasonably safe place to work and knowingly breached that duty causing emotional injury to her. Plaintiff's statement of the issues, is not a statement that was set forth anywhere in Plaintiff's Complaint. Plaintiff is attempting to some how carve out a theory of liability different than that of the bystander recovery rule, because Plaintiff admittedly concedes there exists no bystander liability. This statement is set forth in Plaintiff's Memorandum Brief in Opposition of Defendant Harrison County's Motion for Summary Judgment. (CP 44,45).

In Plaintiff's Memorandum Brief in Opposition to Defendant Harrison County's Motion for Summary Judgment, she states that, "where there is physical harm or mental assault that requires medical treatment, a legal cause of action can exist."

Plaintiff suffered no physical harm on February 4, 2006. There was no mental assault committed by Harrison County on February 4, 2006. The individual deputies who were alleged to have beaten Jessie Lee Williams on February 4, 2006, pled guilty to certain crimes. The Defendant, the Harrison County Board of Supervisors, were never charged with a crime for the actions of these deputies. Furthermore, there has never been an acknowledgment or court order for that matter stating that the individual deputies' actions were done in the course and scope of their employment with Harrison County, or done with notice by the Harrison County Board of Supervisors. The Sheriff of Harrison County at the time, George Payne, was never charged with a crime for the actions of the deputies which occurred on February 4, 2006. There is absolutely no evidence anywhere which suggests that George Payne or the individual Board members of Harrison County had knowledge that the beating of Jessie Lee Williams was going to occur thereby some how not providing Plaintiff with a reasonably safe place to work.

Notwithstanding the above, it is clear that Judge Roger Clark was accurate in his Opinion where he states that, "In order to successfully pursue a negligent claim against Harrison County, Plaintiff bears the burden of establishing a duty, its breach, causation and damages. Smith provides no proof of fact or statement of law that removes her case from one bystander recovery. Whatever intent or malice exhibited the night Jessie Lee Williams was beaten, it was not directed at Smith, and she has failed to articulate any breach of a duty owed to her by Harrison County. (RE 2 and CP 76).

Furthermore, the Plaintiff's psychologist, Jake Epker, states Plaintiff does not suffer from post-traumatic stress disorder. Dr. Epker states, "While there are signs of anxiety present, her profile is most consistent with a diagnosis of major depressant disorder. While she endorsed some symptoms that can be associated PTSD, she does not meet full diagnostic criteria at this time. Because of her personality style, she is likely having difficulty breaking out of a maladaptive pattern of focusing on her self, the impact this has had on her, what she should have done differently, etc." (CP 65)

Dr. Epker made the following observation:

It will be important for a therapist to also focus on her helping her shift from the narcissistic pattern in which she is responding to the impact the incident has had. The patient expressed great concern for patients and consideration should be given utilizing her ability and desire to care for others as leverage against the narcissistic tendencies that are manifest here. It will be important for the patient to return to gainful employment as soon as possible. Returning to work will serve to improve the patient's confidence, self-esteem and sense of usefulness. In addition, this could prove beneficial in helping to change some of the maladaptive problems that are currently present. (CP 65).

The fact is that the Plaintiff did not know Jessie Lee Williams until she was called upon to treat Jessie Lee Williams on February 4, 2006. Dr. Epker's report states that the Plaintiff apparently evaluated Mr. Williams, observed several cuts and dried blood in his ears. The

Complaint sets forth no family or other personal relationship between Plaintiff and Jessie Lee Williams. There was simply no legal duty owed to Plaintiff by Harrison County on February 4, 2006, and the Trial Judge, Honorable Roger Clark, did not err in granting Summary Judgment.

SUMMARY OF ARGUMENT

In order to avoid Summary Judgment, Plaintiff must prove there is a factual issue, which is a material one, one that matters in an outcome determinative sense ...the existence of a 100 contested issues of fact will not thwart summary judgment when there is no genuine dispute regarding the material issues of fact." Hudson v. Courtesy Motors, Inc., 794 So. 2d 999,1002(Miss.2001).

Plaintiff is not entitled to recovery under bystander recovery liability under Mississippi law. There was no close relationship between the Plaintiff and Jessie Lee Williams on February 4, 2006, nor was there any type of relationship whatsoever. Plaintiff had never met Jessie Lee Williams before February 4, 2006. Plaintiff admits that the bystander recovery rule does not give her basis for liability in this case. Instead, Plaintiff claims that her case is one of "premises liability" as in the court cases of O'Cain v. Harvey, Freeman and Sons, Inc., 303 So. 2d 824(Miss.1991) and Miss. Chemical Corp. v. Rogers, 368 So. 2d 220(Miss.1979). However, Plaintiff's reliance on those two cases is misplaced, as ruled by Judge Clark in his award of Summary Judgment. The two cases cited by Plaintiff, pertain to premises liability actions wherein a landlord or property owner owed persons coming upon his premises a duty of due care. In the case before the Court, Harrison County owed no duty to Plaintiff, Bonnie Smith as it pertains to her viewing of a traumatic incident which occurred at the jail on February 4, 2006. This case is nothing more than a case of bystander recovery and not one of premises liability, and Judge Clark was correct in granting Summary Judgment in this case. Specifically, Plaintiff's Complaint did not ever mention the issue of premises liability or any type of such duty owed by Harrison County to Plaintiff. Plaintiff's Complaint strictly seeks damages for the Plaintiff's alleged trauma from viewing the

alleged beating of Jessie Lee Williams on February 4, 2006. The Judgment of Judge Clark should be affirmed.

ARGUMENT

A. Standard of Review

1. Miss. R. Civ. P. 56(c)

Pursuant to Miss. R. Civ. P. 56(c) summary judgment shall be granted if “the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact”. Hudson v. Courtesy Motors, Inc., 794 So. 2d 999,1002(Miss. 2001); Jenkins v. Ohio Casualty Insurance Company, 794 So. 2d 228,232(Miss. 2001); Heigle v. Heigle, 771 So. 2d 341,345(Miss. 2000). The burden of demonstrating that no genuine issue of fact exists is on the moving party. The “presence of fact issues in the record does not per se entitle a party to avoid summary judgment. The court must be convinced that the factual issue is a material one, one that matters in an outcome determinative sense. . . the existence of a hundred contested issues of fact will not thwart summary judgment where there is no genuine dispute regarding the material issues of fact”. Hudson, 794 So. 2d 999, 1002 (quoting Simmons v. Thompson Machinery of Mississippi, Inc., 631 So. 2d 798,801(Miss. 1994).

B. No Close Relationship Between Plaintiff and Jessie Lee Williams

In Entex, Inc. v. McGuire, 414 So. 2d 437(Miss. 1982), the Mississippi Supreme Court set the standard for determining whether a Defendant owes a duty of care to a bystander Plaintiff:

In determining, . . . whether Defendant should reasonably foresee the injury to Plaintiff, or, . . . whether Defendant owes Plaintiff a duty of care, the courts will take

into account such factors as the following: (1) Whether Plaintiff was located near the scene of the accident as contrasting with one who was a distance away from it; (2) Whether the shock resulted from a direct emotional impact upon Plaintiff from a sensory and contemporaneous observance of the accident, as contrasted with learning of the accident from others after its occurrence; (3) Whether Plaintiff and victim were closely related, as contrasted with an absence of any relationship or the presence of only a distance relationship.

In the Mississippi Supreme Court decision of O'Cain v. Harvey Freeman and Sons, Inc., 303 So. 2d 824(Miss. 1991), the Court held that in Entex, the "Court set out the criteria which one must meet on a claim of emotional trauma by a bystander". *Id* at 829. Numerous Mississippi cases have reaffirmed the factors which must be proven in accordance with the Entex decision, as they relate to bystander recovery for emotional distress in the State of Mississippi. In Thomas v. Global Boat Builders and Repairmen, Inc., 482 So. 2d 1112,1117(Miss. 1987), the Mississippi Supreme Court affirmed the dismissal of an emotional distress lawsuit where the Plaintiff was not related to the victim.

In 2004, the Mississippi Supreme Court decided Satchfield v. R.R. Morrison and Son, Inc., 872 So. 2d 661(Miss. 2004), where the Court was called upon to again discuss bystander recovery for emotional distress damages, and the Court reaffirmed its position that there must be a close relationship between the Plaintiff and the victim before liability will attach. At issue in Satchfield, was whether a witness to a service station gasoline explosion which killed six (6) people unrelated to him, could recover emotional distress damages. The issue was whether or not the Defendants owed a duty of care to the Plaintiff, or rather, whether he was a "foreseeable Plaintiff". The lower Court found that because it was undisputed that Plaintiff was not injured as a result of the fire and explosion and was not related to any of the victims' summary judgment was proper. In an attempt

a traumatic event and claims bystander recovery liability. If Plaintiff's theory was to be adopted, all nurses in E.R.s or elsewhere, who witness traumatic events or cases, could sue for negligence.

Plaintiff again cites O'Cain v. Harvey Freeman and Sons, Inc., 603 So. 2d 824(Miss.1991), which Honorable Roger T. Clark found to be misplaced. In Judge Clark's Opinion, he notes that there is no bystander recovery for the Plaintiff. (RE 2). The Court noted that O'Cain's landlord did have a duty to warn of material and known defects in the premises and that there was a dispute of material fact regarding the landlord's notice of the defective locks in the apartment. The Court also noted that the question of whether the criminal act of burglarizing Plaintiff's apartment was an intervening cause wouldn't relief the landlord of any liability. Judge Clark stated that: "O'Cain established a duty owed to her and created a genuine issue of material fact as to breach of that duty. Smith has not." (RE 3). Thus, both the Rogers and O'Cain cases are misplaced. Both of those cases are premises liability cases which deal with dangerous or latent defects on premises of which a landowner has a duty to notify or warn against such dangers. That is not the case in this situation. In Plaintiff's Brief, she notes other court cases which were filed against Harrison County pertaining to alleged deputy malfeasance. Those cases also pertain to alleged incidences at the jail which lawsuits were not filed until after Plaintiff witnessed the Jessie Lee Williams' alleged beating. Prior to the Jessie Lee Williams incident in February 2006, there was no court order stating that the deputies at the Harrison County Jail were performing acts of misfeasance or whether such acts which were occurring outside the course and scope of their employment with the Harrison County Sheriff. Plaintiff in this case, Bonnie Smith, was a nurse who was employed by Health Assurance LLC. Plaintiff claims that it was widespread knowledge that HCADC deputies abused prisoners. If true, then Plaintiff knew about such actions or should have been warned by her employer of such actions. The fact is, there was no such widespread knowledge and until the beating of Jessie Lee Williams, the actions of these deputies had not been called into question. Furthermore, deputies' abuse of a prisoner is completely different than a premises liability cause

of action. Again, this is merely an incident where Plaintiff witnessed a traumatic event, which is nothing more than bystander recovery liability.

CONCLUSION

Judge Clark did not err in granting Summary Judgment to Harrison County in this case. Plaintiff's Complaint strictly seeks damages for her viewing the alleged beating of Jessie Lee Williams on February 4, 2006, while she was a nurse at the Harrison County Adult Detention Center. Plaintiff worked for an independent contractor, Health Assurance LLC, and was not employed by the Harrison County Board of Supervisors. This is not a case of premises liability where a landlord or premises owner owes a duty to one coming upon its premises. This is strictly a case of bystander recovery liability, wherein Plaintiff admittedly does not have a cause of action in this case. Judge Clark's decision granting Summary Judgment should be affirmed.

CERTIFICATE OF SERVICE

I, Karen J. Young of Meadows Law Firm, do hereby certify that a true and correct copy of the above and foregoing Appellee Brief of Harrison County, Mississippi was duly mailed by United States Postal Service, postage prepaid, to:

Tamekia Goliday, Esq,
Attorney for Plaintiff
P.O. Box 13632
Jackson, MS 39236-3632

Honorable Roger T. Clark
Circuit Court Judge
P.O. Box 1461
Gulfport, MS 39502

SO CERTIFIED this the 2nd day of November, 2010.


KAREN J. YOUNG

KAREN J. YOUNG, ESQ.
MSB [REDACTED]
JOSEPH R. MEADOWS, ESQ.
MSB [REDACTED]
MEADOWS LAW FIRM
P.O. BOX 1076
GULFPORT, MS 39502
(228) 868-7717; FAX: (228) 868-7715