

IN THE SUPREME COURT OF MISSISSIPPI  
NO. 2010-CA-00945

BONNIE SMITH

APPELLANT

VS.

HARRISON COUNTY, MISSISSIPPI

APPELLEE

---

*Appeal from the Circuit Court of the First Judicial District  
of Harrison County, Mississippi*

**APPEAL BRIEF**

---

ORAL ARGUMENT REQUESTED

HONORABLE TAMEKIA GOLIDAY  
GOLIDAY LAW FIRM  
Post Office Box 13632  
Jackson, Mississippi 39236-3632  
TEL: (601) 368-1800  
FAX: (769) 233-8095  
EMAIL: [trgoliday@yahoo.com](mailto:trgoliday@yahoo.com)

COUNSEL FOR APPELLANT

IN THE SUPREME COURT OF MISSISSIPPI  
NO. 2010-CA-00945

BONNIE SMITH

APPELLANT

VS.

HARRISON COUNTY, MISSISSIPPI

APPELLEE

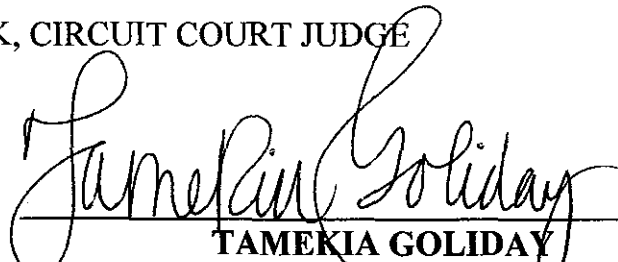
---

**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
5. KAREN J. YOUNG, COUNSEL FOR APPELLEE
6. ROGER T. CLARK, CIRCUIT COURT JUDGE

  
\_\_\_\_\_  
**TAMEKIA GOLIDAY**  
Counsel of Record for Appellant

IN THE SUPREME COURT OF MISSISSIPPI  
NO. 2010-CA-00945

BONNIE SMITH

APPELLANT

VS.

HARRISON COUNTY, MISSISSIPPI

APPELLEE

---

**STATEMENT OF REQUEST FOR ORAL ARGUMENT**

---

Pursuant to Rule 34(b) of the Mississippi Rules of Appellate Procedure, appellant, Bonnie Smith, hereinafter “*Smith*”, requests to be heard orally. Oral argument would be extremely beneficial since this appeal deals with an issue our Appellate Courts have not explicitly addressed which is *whether an employer can be held liable to an independent contractor for emotional distress and mental anguish where there has been no physical injury*.

Oral argument would allow dialog as to whether the tenets of equity and fairness require that our common law is interpreted broadly to assess liability to an employer for emotional distress and mental anguish where its conduct toward an independent contractor evokes outrage or revulsion. Oral argument would also allow extensive discussion of the specific facts of this case and ultimately, the effect this case has on the general duties owed by an employer to an independent contractor. The diverse insight garnered during oral argument would aid this Court in rendering a fair and equitable decision in this matter. As such, Smith requests this Court grant oral argument in this matter.

## TABLE OF CONTENTS

	PAGES
CERTIFICATE OF INTERESTED PERSONS .....	i
STATEMENT OF REQUEST FOR ORAL ARGUMENT .....	ii
TABLE OF CONTENTS .....	iii
TABLE OF AUTHORITIES .....	iv
STATEMENT OF THE ISSUES .....	vii
I. STATEMENT OF THE CASE .....	1
A. Nature of the Case, Course of Proceedings and Disposition in the Court Below . . . . .	1
B. Statement of the Facts .....	2
II. SUMMARY OF ARGUMENT .....	3
III. ARGUMENT .....	4
A. STANDARD OF REVIEW	
B. THE TRIAL COURT ERRED WHEN IT GRANTED SUMMARY JUDGMENT SINCE HARRISON COUNTY OWED A DUTY TO BONNIE SMITH TO PROVIDE HER WITH A REASONABLY SAFE PLACE TO WORK AND IT KNOWINGLY BREACHED THAT DUTY CAUSING INJURY TO HER.	
C. THE TRIAL COURT ERRED WHEN IT GRANTED SUMMARY JUDGMENT SINCE THERE EXISTS A VIABLE CLAIM FOR EMOTIONAL DISTRESS.	
CONCLUSION .....	16
CERTIFICATE OF SERVICE .....	17

## TABLE OF AUTHORITIES

CASES	PAGES
<u>ABC Mfg. Corp. v. Doyle</u> , 749 So.2d 43 (Miss. 1999) .....	5
<u>Adams v. U.S. Homecrafters, Inc.</u> , 744 So.2 736 (Miss. 1999) .....	13
<u>Allred v. Fairchild</u> , 916 So.2d 529 (Miss. 2005) .....	12
<u>American Nat. Ins. Co. v. Hogue</u> , 749 So.2d 1254 (Miss. Ct. App. 2000) .....	10
<u>Belmont Homes v. Stewart</u> , 792 So.2d 229 (Miss. 2001) .....	8
<u>Brown v. Credit Center, Inc.</u> , 444 So.2d 358 (Miss.1983) .....	4
<u>Busick v. St. John</u> , 856 So.2d 304 (Miss. 2003). ....	11
<u>Caruso v. Picayune Pizza Hut, Inc.</u> , 598 So.2d 770 (Miss. 1992) .....	10
<u>Cothorn v. Vickers, Inc.</u> , 759 So.2d 1241 (Miss. 2000) .....	5
<u>Davis Christian Brotherhood Homes of Jackson, Mississippi, Inc.</u> , 957 So.2d 390 (Miss. App. 2007). ....	11
<u>Delahoussaye v. Mary Mahoney's, Inc.</u> , 696 So.2d 689 (Miss. 1997). ....	5, 10
<u>Dennis v. Searle</u> , 457 So.2d 941 (Miss.1984). ....	5
<u>Donald v. Amoco Production Co.</u> , 735 So.2d 161 (Miss. 1999) .....	8, 11
<u>Gamble v. Dollar General Corporation</u> , 852 So.2d 5 (Miss. 2003) .....	12, 13
<u>Gray v. Abs Global, Inc.</u> , 850 So.2d 180 (Miss. Ct. App. 2003). ....	6
<u>Grice v. Fedex Ground Package System, Inc.</u> , 925 So.2d 907 (Miss. Ct. App. 2006). ....	15
<u>Heigle v. Heigle</u> , 771 So.2d 341 (Miss. 2000) .....	4

<u>Horne v. Town of Moorhead</u> , 228 So.2d 369, 372 (Miss. 1969) .....	9
<u>Johnson v. Alcorn State University</u> , 929 So.2d 398 (Miss. App. 2006). ....	11
<u>Kenneth-Murray Corp. v. Bone</u> , 622 F.2d 887 (5th Cir. 1980) .....	5
<u>McIntosh v. Deas</u> , 501 So.2d 367 (Miss. 1987) .....	10
<u>Meena v. Wilburn</u> , 603 So.2d 866 (Miss. 1992). ....	7
<u>Miss. Dept. of Wildlife, Fisheries &amp; Parks v. Miss. Wildlife Enforcement Officers' Ass'n, Inc.</u> , 740 So.2d 925, 929 (Miss. 1999) .....	4
<u>Mississippi Chemical Corp. v. Rogers</u> , 368 So.2d 220 (Miss. 1979). ....	6
<u>National Screen Serv. Corp. v. Poster Exchange, Inc.</u> , 305 F.2d 647 (5th Cir.1962) .....	5
<u>O'Cain v. Harvey Freeman and Sons, Inc.</u> , 603 So.2d 824 (Miss. 1992) .....	7
<u>Pearl River County Board v. South East Collection</u> , 459 So.2d 783 (Miss.1984) .....	4
<u>Presswood v. Cook</u> , 658 So.2d 859 (Miss. 1995) .....	10
<u>Reeves v. Sanderson Plumbing Prods. Inc.</u> , 530 U.S. 133 (2000) .....	5
<u>Rein v. Benchmark</u> , 865 So.2d 1134 (Miss. 2003). ....	8
<u>Satchfield v. R.R. Morrison &amp; Son, Inc.</u> , 872 So.2d 661 (Miss. 2004) .....	9
<u>Summers v. St.Andrew's Episcopal School, Inc.</u> , 759 So.2d 1203 (Miss. 2000) .....	12, 13
<u>Tucker v. Hinds County</u> , 558 So.2d 869 (Miss.1990) .....	4
<u>Wayne Gen. Hosp. v. Hayes</u> , 868 So. 2d 997 (Miss. 2004) .....	5
<u>Whitten v. Cox</u> , 799 So.2d 1 (Miss. 2000) .....	13
<u>Williams v. Tollier</u> , 759 So.2d 1195 (Miss. 1999) .....	5

<u>Williamson v. Keith</u> , 786 So.2d 390 (Miss. 2001) .....	4
---	---

## **RULES**

Miss. R. Civ. P. 56(c) .....	5
------------------------------	---

## **STATUTES**

42 U.S.C.A. § 1983 .....	8
--------------------------	---

## **STATEMENT OF THE ISSUES**

**WHETHER THE TRIAL COURT ERRED WHEN IT GRANTED SUMMARY JUDGMENT IN FAVOR OF HARRISON COUNTY, MISSISSIPPI WHERE HARRISON COUNTY OWED A DUTY TO BONNIE SMITH, AN INDEPENDENT CONTRACTOR, TO PROVIDE HER WITH A REASONABLY SAFE PLACE TO WORK AND IT KNOWINGLY BREACHED THAT DUTY CAUSING EMOTIONAL INJURY TO HER?**



## **I. STATEMENT OF THE CASE**

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

This case involves a civil action brought by Bonnie Smith, seeking monetary damages for emotional injuries caused by the reckless and outrageous conduct of Harrison County, Mississippi, hereinafter "*Harrison County*", which lead to the savage beating and ultimate murder of Jessie Lee Williams, hereinafter "*Williams*". (CP 8-9) Smith was forced to watch Harrison County, by and through its agents and employees, brutally attack and murder Williams which caused her severe emotional and psychological injury and damage. (CP 85-87)

On June 16, 2008, Harrison County motioned for summary judgment alleging that Smith's claims arise under the theory of bystander liability for which she is unable to recover because there was no close relationship between her and Williams. (CP 23 - 33) On the contrary, Smith argued that the facts surrounding this case support claims of mental anguish and negligence. (CP 34-66) On or about April 23, 2010, the lower court reasoned that Harrison County owed no duty to Smith, and granted summary judgment in favor of Harrison County. (CP 75-77) Smith filed a motion for reconsideration which was denied on June 18, 2010. (CP 79-136)(CP 142)

Feeling aggrieved, Smith timely filed this appeal from the April 23, 2010, judgment granting summary judgment in favor of Harrison County and the June 18, 2010, order denying the motion for reconsideration filed by Smith. This appeal raises the issue of

whether an employer can be held liable to an independent contractor for emotional distress and mental anguish where there has been no direct physical injury to the independent contractor.

B. STATEMENT OF THE FACTS

Bonnie Smith was employed by Health Assurance, LLC as a nurse. She was assigned as an independent contractor to provide medical services to the inmates at the Harrison County Adult Detention Center, hereinafter “HCADC”. (CP 85-87) The agents and employees of the HCADC had a widespread history and reputation of using excessive force to subdue and control the inmates and detainees. (CP 79-136) The Harrison County Sheriff, George Payne, Jr., was well aware of the history of violence at the HCADC and failed to develop and implement policies and procedures to eliminate the use of excessive force by the agents and employees of HCADC. Id. Harrison County has been sued numerous times as a result of using excessive force on its inmates and detainees. Id.

On February 4, 2006, Smith, while on duty at HCADC, was forced to watch the brutal and savage beating of Jessie Lee Williams. (CP 8-9)(CP 85-87) The agents and employees of HCADC, despite the protests and pleas for mercy by Smith, beat Williams to death. Smith was forced to watch the entire horrific attack. Id. She begged the agents and employees to stop beating Williams and attempted to render him medical care after the officers beat him nearly unconscious. Id. Williams died moments later in her arms. Id.

As a result of the reckless and outrageous conduct of defendant, Harrison County, and its agents and employees, Smith suffered emotional and psychological injury for which she sought medical treatment and incurred medical bills and loss wages. (CP 44-66)

## **II. SUMMARY OF ARGUMENT**

Trial court erred when it granted summary judgment in favor of Harrison County since Harrison County owed a duty to Bonnie Smith, an independent contractor, to provide her with a *reasonably safe place to work* and it knowingly breached that duty causing emotional injury to her. The Harrison County Sheriff, George Payne, Jr., was well aware of the history of violence at HCADC and failed to develop and implement policies and procedures to eliminate the use of excessive force by its agents and employees.

Prior to the savage death of Williams, plaintiff was unaware of the history of violence at HCADC. As an independent contractor, she expected that Harrison County would provide her with a reasonably safe place to work or give warning of the history of excessive force used on detainees. Rather than providing Smith with a reasonably safe place to work or warning her regarding the use of excessive force on detainees, on February 4, 2006, Harrison County, by and through its agents and employees, brutally and savagely beat Jessie Lee Williams to death in front of Smith. This conduct was outrage and repulsive.

Under Mississippi law, Harrison County had a duty to provide Smith with reasonably safe place to work or give warning of the history of excessive force used on detainees. It knowingly and maliciously breached this duty causing Smith to suffer emotional distress and mental anguish. As such, Harrison County is liable for the injuries suffered by Smith.

### III. ARGUMENT

#### A. STANDARD OF REVIEW

The appellate standard for reviewing the grant or denial or summary judgment is the same standard as that of the trial court under Rule 56(c) of the Mississippi Rules of Civil Procedure. Heigle v. Heigle, 771 So.2d 341, 345 (Miss. 2000). The Court employs a *de novo* standard of review of a lower court's grant or denial of summary judgment and the evidence must be viewed in the light most favorable to the party against whom the motion has been made. Miss. Dept. of Wildlife, Fisheries & Parks v. Miss. Wildlife Enforcement Officers' Ass'n, Inc., 740 So.2d 925, 929 (Miss. 1999); Williamson v. Keith, 786 So.2d 390, 393 (Miss. 2001).

Rule 56 states, in relevant part, that summary judgment "shall be rendered forthwith 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 and that the moving party is entitled to summary judgment as a matter of law." Miss. R. Civ.P. 56(c). The moving party has the burden of persuading this Court that no genuine issue of material fact exists and the non-movant should be given the benefit of every reasonable doubt. Tucker v. Hinds County, 558 So.2d 869, 872 (Miss.1990). All evidentiary matters should be viewed in the light most favorable to the non- moving party. Pearl River County Board v. South East Collection, 459 So.2d 783, 785 (Miss.1984); Brown v. Credit Center, Inc., 444 So.2d 358, 362 (Miss.1983).

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 sufficient to require denial of a motion for summary judgment. Williams v. Tollier, 759 So.2d 1195, 1198 (Miss. 1999); Dennis v. Searle, 457 So.2d 941 (Miss.1984). Furthermore, when there is the slightest doubt over whether a factual issue exists, the court should resolve the matter in favor of the non-moving party. Cothorn v. Vickers, Inc., 759 So.2d 1241, 1245 (Miss. 2000).

This Court should not resolve factual disputes by weighing conflicting evidence, since it is the province of the trier of fact to assess the probative value of the evidence. Kenneth-Murray Corp. v. Bone, 622 F.2d 887, 892 (5th Cir. 1980); Delahoussaye v. Mary Mahoney's, Inc., 696 So.2d 689 (Miss. 1997). In reviewing the evidence, this Court must draw all reasonable inferences in favor of the nonmoving party, and avoid credibility determinations and weighing of the evidence. Reeves v. Sanderson Plumbing Prods. Inc., 530 U.S. 133 (2000)<sup>1</sup>.

In doing so, the Court must disregard all evidence favorable to the moving party that the trier of fact is not required to believe. Id. Summary judgment is improper where the court merely believes it unlikely that the non-moving party will prevail at trial. National Screen Serv. Corp. v. Poster Exchange, Inc., 305 F.2d 647, 651 (5th Cir.1962). As such, this Court should reverse the judgment granting summary judgment in favor of Harrison County, Mississippi if the record demonstrates that there exists genuine issues of material fact.

---

<sup>1</sup>The Mississippi Supreme Court has repeatedly noted that the United States Supreme Court's analysis of Fed. R. Civ. P. 56 is persuasive evidence of its interpretation of Miss. R. Civ. P. 56. Galloway v. Travelers Ins. Co., 515 So.2d 678, 683 (Miss. 1987).

**B. THE TRIAL COURT ERRED WHEN IT GRANTED SUMMARY JUDGMENT SINCE HARRISON COUNTY OWED A DUTY TO BONNIE SMITH TO PROVIDE HER WITH A REASONABLY SAFE PLACE TO WORK AND IT KNOWINGLY BREACHED THAT DUTY CAUSING INJURY TO HER.**

Smith, as an independent contractor, was assigned to provide medical services to the inmates at HCADC. An independent contractor is a “*person who contracts with another to do something for him but who is not controlled by the other nor subject to the other’s right to control with respect to his physical conduct in the performance of the undertaking.*” Gray v. Abs Global, Inc., 850 So.2d 180, 184 (Miss. Ct. App. 2003).

The general rule is that an owner has a duty to furnish the employees of a an independent contractor with a “*reasonably safe place to work or give warning of danger.*” Mississippi Chemical Corp. v. Rogers, 368 So.2d 220, 222 (Miss. 1979). In sum, one who employs an independent contractor is liable for his own negligence. Id.

The owner is relieved of his duty to give warning to the independent contractor or his employees if the independent contractor is aware of the danger. Id. The owner has no duty to protect the independent contractor or his employees from dangers arising out of or intimately connected with the work to be performed by the independent contractor. Id. However, it should be “*remembered that liability rests, not upon the ground for danger, but upon the ground of negligence*”. Mississippi Chemical Corp. v. Rogers, 368 So.2d 220, 222 (Miss. 1979).

*There exists a genuine issue of material fact as to whether Smith has a viable claim for negligence against Harrison County since the injuries suffered by Smith were not*

*intimately connected with the work she was contracted to perform and she lacked knowledge of the subject dangers.* To succeed on a claim for negligence, Smith must prove duty, breach, causation and damages. Meena v. Wilburn, 603 So.2d 866, 869 (Miss. 1992). She must show (1) the existence of a duty to conform to a specific standard of care for the protection of others against the unreasonable risk of injury, (2) a breach of that duty, (3) causal relationship between the breach and alleged injury and (4) injury or damages. Id. Duty and breach of duty are essential to finding negligence and must be demonstrated first. Id. (citing Strantz v. Pinion, 652 So.2d 738, 742 (Miss. 1995)).

In O'Cain v. Harvey Freeman and Sons, Inc., 603 So.2d 824 (Miss. 1992), plaintiff sued defendant landlord for emotional distress stemming from the burglary of her apartment and rape of her roommate. The trial court entered summary judgment in favor of the defendant and plaintiff appealed. The Mississippi Supreme Court determined that there was no bystander liability because the plaintiff did not actually witness the rape, although she was aware her roommate was being assaulted in an adjacent room. However, the Court decided to extend to the plaintiff “*the benefit of a reasonable doubt*”, and “*proceed on the notion that her claim is for something other than bystander recovery.*” Id. at 830. The Court found that the matter was “*a straight negligence action,*” and plaintiff “*must prove the traditional elements of her claim*” – duty, breach, causation and damages. Id. at 831.

1. *Harrison County had a duty to protect Smith from reasonably foreseeable injury.*

The standard of care applicable in cases of alleged negligent conduct is whether the party charged with negligence acted as a reasonable and prudent person would have under the same or similar circumstances. Donald v. Amoco Production Co., 735 So.2d 161, 175 (Miss. 1999). A person may be liable for another person's injury if the cause of an injury is of such character and done in such a situation that the actor should have reasonably anticipated some injury as a probable result. Rein v. Benchmark, 865 So.2d 1134 (Miss. 2003).

Whether a duty exists is generally a question of law to be determined by the court. Belmont Homes v. Stewart, 792 So.2d 229 (Miss. 2001). In the case *sub judice*, Harrison County's duty was statutorily imposed. 42 U.S.C.A. § 1983 prohibits the use of excessive force by law enforcement officers. Specifically, it prohibits the use of force that evinces wantonness and unjustified infliction of harm to an inmate. Section 1983 established the duty of Harrison County with regard to its treatment of Williams: Harrison County and its agents and employees had a duty not to use excessive force when handling and interacting with Williams and this duty is clearly established by federal law. Section 1983 clearly indicates that Harrison County had a duty not to savagely beat and kill Williams.

The agents and employees of Harrison County had a widespread history of using excessive force to subdue and control the inmates and detainees. Prior to the savage death of Williams, Smith was unaware of the history of violence at HCADC.



As an independent contractor, she expected that Harrison County would provide her with a reasonably safe place to work or give warning of the history of excessive force used on inmates and detainees. Rather than providing Smith with a reasonably safe place to work, Harrison County, by and through its agents and employees, brutally and savagely beat Jessie Lee Williams to death in her presence.

Furthermore, Harrison County had the duty to protect Smith from reasonably foreseeable injury. In order for Harrison County to be liable to Smith, its actions must have been of such character and done in such a situation that by the usual course of events some injury, not necessarily the particular injury would result. Horne v. Town of Moorhead, 228 So.2d 369, 372 (Miss. 1969).

In the case *sub judice*, the emotional injury to Smith is foreseeable. There is no doubt that the witnessing the brutal murder of Williams was a traumatic and life changing experience for Smith. Satchfield v. R.R. Morrison & Son, Inc., 872 So.2d 661 (Miss. 2004)(witnessing the violent death of a person is a traumatic and life changing experience).

A reasonable and prudent person would under the same or similar circumstances would anticipate emotional injury to employees and independent contractors that witnessed a brutal and malicious killing and would take actions to prevent the violence or at a minimum, warn of the violence. Therefore, it is clear that Harrison County owed a duty to Smith to protect her from foreseeable injury.

2. *A genuine issue of material fact exists as to whether Harrison County breached its duty to Smith.*

Breach of duty is an issue to be decided by the finder of fact once sufficient evidence is presented in a negligence case. American Nat. Ins. Co. v. Hogue, 749 So.2d 1254, 1259 (Miss. Ct. App. 2000); Delahoussye v. Mary Mahoney's, Inc., 696 So.2d 689, 690 (Miss. 1997)(negligence is almost always an issue for the finder of fact to decide except in the clearest cases); Presswood v. Cook, 658 So.2d 859, 862 (Miss. 1995)(the question of negligence is determined by the fact finder); Caruso v. Picayune Pizza Hut, Inc., 598 So.2d 770 (Miss. 1992)(where the facts are disputed, negligence is an issue for the fact finder); McIntosh v. Deas, 501 So.2d 367 (Miss. 1987)(where the facts are undisputed and where reasonable minds may reach different conclusions, negligence is a question for the finder of fact).

In Presswood, the owner of a truck brought a negligence action against the owner of a boat and trailer for injuries suffered while hitching the boat trailer to the tow ball of the truck. Presswood v. Cook, 658 So.2d 859 (Miss. 1995) The defendant moved for summary judgment and the trial court granted the motion. Id. Plaintiff appealed and the Mississippi Supreme Court reversed the decision and held that the trial judge may determine the duty owed to plaintiff but the finder of fact must determine whether the defendant breached that duty. Id.

Presswood makes it clear that breach of duty is an issue to be decided during trial by the finder of fact. As such, the order of the trial court granting summary judgment in favor

of Harrison County should be reversed and this matter remanded for further proceedings since there exists a genuine issue of material fact as to whether Harrison County breached the duty owed to Smith.

3. *A genuine issue of material fact exists as to whether Harrison County caused Smith's injury.*

An essential part of a personal injury claim is to demonstrate, not only the extent of the injury, but that the negligence of the defendant was the proximate cause of the injury. Donald v. Amoco Prod. Co., 735 So.2d 161, 174 (Miss. 1999). Proximate cause exists where there is foreseeability and cause in fact. Davis Christian Brotherhood Homes of Jackson, Mississippi, Inc., 957 So.2d 390, 404 (Miss. App. 2007). 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). Causation is generally determined by the jury. Busick v. St. John, 856 So.2d 304, 307 (Miss. 2003).

There exists cause in fact since Smith would not have suffered emotional and psychological injury but for the violent actions of Harrison County and its agents and employees. The foreseeability of her injuries are discussed *supra*. Consistent with Busick, there exists a jury question as to whether the actions of Harrison County caused Smith's damages. Therefore, at a minimum there exists a jury question as to whether Harrison County caused Smith's emotional and psychological injury which is clearly documented by her relevant medical records and bills, in addition to her resulting loss wages.

Harrison County as set forth in Mississippi law had a duty to provide Smith with reasonably safe place to work or give warning of the history of excessive force used on detainees and prisoners and it breached this duty which caused Smith to suffer emotional damages.

It failed to take any action to prevent the violence that lead to the death of Williams or warn Smith about the propensity for violence at the HCADC. Therefore, it is clear that Harrison County failed to provide Smith with a safe work environment and the injuries she suffered were foreseeable.

Like O'Cain, this Court should extend to the plaintiff “*the benefit of a reasonable doubt*”, and “*proceed on the notion that her claim is for something other than bystander recovery.*” Plaintiff asserted viable claims for negligence which preclude summary judgment. As such, this Honorable Court should reverse the trial court’s order granting summary judgment in favor of Harrison County, Mississippi and remand this matter for further proceedings.

**C. THE TRIAL COURT ERRED WHEN IT GRANTED SUMMARY JUDGMENT SINCE THERE EXISTS A VIABLE CLAIM FOR MENTAL ANGUISH.**

Where there is physical harm or mental assault that requires medical treatment, a legal cause of action can exist. Gamble v. Dollar General Corporation, 852 So.2d 5, 11 (Miss. 2003); Summers v. St. Andrew’s Episcopal School, Inc., 759 So.2d 1203, 1211 (Miss. 2000); Allred v. Fairchild, 916 So.2d 529 (Miss. 2005)(defendant is liable for the full

measure of the reasonably foreseeable consequences of his actions). It is clear under Mississippi law, a plaintiff can assert a claim for mental anguish which results from either simple negligence or an intentional tort so long as the emotional distress was a reasonably foreseeable result of the defendant's conduct. Adams v. U.S. Homecrafters, Inc., 744 So.2d 736, 743 (Miss. 1999)(a claim of mental anguish based on simple negligence does not require evidence of physical manifestation).

Where there is something about the defendant's conduct which evokes outrage or revulsion, done *intentionally or even unintentionally* yet the results being reasonably foreseeable, courts can comfortably assess damages for mental and emotional distress, even though there has been no physical injury. Summers v. St. Andrew's Episcopal School, Inc., 759 So.2d 1203, 1211 (Miss. 2000); Adams v. U.S. Homecrafters, Inc., 744 So.2d 736, 743 (Miss. 1999)(in cases in which there is evidence of willful, malicious, outrageous or intentional wrongs, and the emotional distress is a foreseeable result, a court can assess damages for mental and emotional distress).

In Whitten v. Cox, 799 So.2d 1 (Miss. 2000), the plaintiffs were confronted by an armed man who fired shots at them, pointed his weapon at them and handcuffed one of them. The Mississippi Supreme Court held that there was sufficient evidence to support the claims for emotional distress and to award substantial compensatory evidence. The Court held that the defendant's violent actions "*certainly merit legal redress.*" Id. at 13.

In Gamble v. Dollar General Corporation, 852 So.2d 5 (Miss. 2003), the defendant accusing the plaintiff of shoplifting and grabbed her by her panties in an attempt to search

her for the merchandise. The Mississippi Supreme Court held that there was a “*credibility issue for injury with regard to the offensive, outrageous, injurious or malicious nature of the Thornton’s conduct*” when she assaulted plaintiff and caused her mental distress. Id. at 11. The jury awarded damages for mental distress and the Court upheld the award. Id.

Reading Whitten and Gamble together, it becomes clear that acts of physical violence and aggression constitute offensive and outrageous conduct which merit an award of damages for mental distress. At a minimum, acts of physical violence and aggression by Harrison County create a jury question as to whether the conduct is offensive and outrageous as to support an award of damages for mental anguish.

In the case *sub judice*, Bonnie Smith, suffered mental and psychological injury as a result of watching the agents and employees of Harrison County beat Jessie Lee Williams to death. Damages may be awarded in favor of Smith where there is something about the defendant’s conduct which evokes outrage or revulsion, done *intentionally or even unintentionally* so long as her emotional injury is reasonably foreseeable. Like Whitten and Gamble, cases that hold emotional distress can be awarded where there is evidence of physical violence, the actions of Harrison County were of such violent nature as to merit legal redress.

Similar to the case *sub judice*, the violence in Whitten and Gamble did not result in bloodshed or physical injuries. As such, there exists a jury question as to whether the savage murder of William evokes outrage and revulsion as to support an award of damages for

CERTIFICATE OF SERVICE

I, Tamekia Goliday, *attorney for the appellant*, Bonnie Smith, do hereby certify that I have forwarded by United States mail, postage prepaid, a true and correct copy of the **APPEAL BRIEF** to:

Honorable Karen J. Young  
MEADOWS LAW FIRM  
Post Office Drawer 1076  
Gulfport, Mississippi 39502

Honorable Roger T. Clark  
CIRCUIT COURT JUDGE  
Post Office Box 1461  
Gulfport, Mississippi 39502

This, the 30th day of September, 2010.

  
TAMEKIA R. GOLIDAY