

IN THE SUPREME COURT OF MISSISSIPPI
BEFORE THE MISSISSIPPI COURT OF APPEALS

FERDINAND MCAFEE

APPELLANT

VS.

CASE NUMBER: 2010 - CA - 01282

RODRIGO GALVEZ, M.D.;
BRENTWOOD BEHAVIORAL HEALTHCARE
OF MISSISSIPPI; JOHN DOE INDIVIDUAL
DEFENDANTS 1 THROUGH 10 AND
JOHN DOE CORPORATE DEFENDANTS
1 THROUGH 10

APPELLEE

BRIEF OF APPELLANT

SUBMITTED BY

BRANDON I. DORSEY, PLLC
POST OFFICE BOX 13427
JACKSON, MISSISSIPPI 39236 - 3427
TELEPHONE: (601) 605 - 9006
FACSIMILE: (601) 605 - 9353

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record for Appellant, namely Ferdinand McAfee, hereby certify that the following list of parties have an interest in the outcome of the instant criminal action. These representations are made in order that the Judges of this Honorable Court may evaluate the possible disqualification(s) and/or recusal pursuant to Rule 28.1.1 of the Mississippi Rules Of Appellate Procedure, to wit:

1. Ferdinand McAfee, Appellant
2. Whit Johnson, III., Esquire
CURRIE JOHNSON GRIFFIN GAINES & MYERS
Post Office Box 750
Jackson, Mississippi 39205 - 0750
3. John D. Price, Esquire
WISE CARTE CHILD & CARAWAY
Post Office Box 651
Jackson, Mississippi 39205 - 0651
4. Honorable William E. Chapman, III.
CIRCUIT COURT JUDGE - DISTRICT # 20
Post Office Box 1626
Canton, Mississippi 39046
5. Carol B. Swiley, Clerk
CIRCUIT COURT OF RANKIN COUNTY
Post Office Box 1599
Brandon, Mississippi 39043

6. Brandon I. Dorsey, Esquire
BRANDON I. DORSEY, PLLC
Post Office Box 13427
Jackson, Mississippi 39236 - 3427
Attorney Appointed For Appellant

Respectfully submitted,

FERDINAND MCAFEE, APPELLANT

BY: Brandon I. Dorsey
BRANDON I. DORSEY, MSB # 100291
ATTORNEY FOR APPELLANT

STATEMENT REGARDING ORAL ARGUMENTS

Appellant, Ferdinand McAfee, by and through the undersigned attorney of record, namely Brandon I. Dorsey, BRANDON I. DORSEY, PLLC, Post Office Box 13427, Jackson, Mississippi 39236 - 3427, does not request that this Honorable Court grant oral argument in these premises.

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS	i - ii
STATEMENT REGARDING ORAL ARGUMENTS	iii
TABLE OF CONTENTS	iv
TABLE OF AUTHORITIES	v
STATEMENT OF THE ISSUES	1
STATEMENT OF THE CASE	1
A. NATURE OF THE CASE	1
B. FACTS OF THE CASE	1 - 2
C. SUMMARY JUDGMENT STANDARD	2 - 3
ARGUMENT	3 - 4
CONCLUSION	4

TABLE OF AUTHORITIES

CASE LAW

1. Brown v. Credit Center, Inc., 444 So.2d 358 (Miss. 1983).
2. Doe v. Stegall, 757 So.2d 204 (Miss. 2000).
3. Donald v. Reeves Transport Co., 538 So. 2d 1191, 1195 (Miss. 1989)
4. Owen v. Pringle, 612 So.2d 668 (Miss. 1993)
5. Pearl River County Board v. South East Collection, 459 So.2d 783, 785 (Miss. 1984)
6. Smith v. Sanders, 485 So.2d 1051, 1054 (Miss. 1986)

STATUTES / RULES

1. Rule 56 Of The Mississippi Rules Of Civil Procedure

IN THE SUPREME COURT OF MISSISSIPPI
BEFORE THE MISSISSIPPI COURT OF APPEALS

FERDINAND MCAFEE

APPELLANT

VS.

CASE NUMBER: 2010 - CA - 01282

RODRIGO GALVEZ, M.D.;
BRENTWOOD BEHAVIORAL HEALTHCARE
OF MISSISSIPPI; JOHN DOE INDIVIDUAL
DEFENDANTS 1 THROUGH 10 AND
JOHN DOE CORPORATE DEFENDANTS
1 THROUGH 10

APPELLEE

STATEMENT OF THE ISSUES

- I. WHETHER THE LOWER COURT ERRED IN GRANTING SUMMARY
JUDGMENT OF AND AGAINST APPELLANT

STATEMENT OF THE CASE

A. NATURE OF THE CASE

The instant case is submitted to this Honorable Court to determine whether the lower court erred in granting summary judgment of and against Appellant, namely Ferdinand McAfee.

B. FACTS OF THE CASE

That Appellant asserted in his Complaint that he was admitted to Brentwood on or about July 19, 2006 complaining of not being able to sleep due to receiving a decadron shot from MEA. Initially, he presented to St. Dominic, but was refused treatment and was subsequently removed from "that" facility. Subsequent thereto, he

presented to Brentwood, but was negligently diagnosed as a paranoid schizophrenic, despite Dr. Galvez and Dr. Gupta failing to complete the necessary battery of examinations in order to accurately proffer such diagnosis.

That as a result of this incorrect diagnosis, Appellees caused Appellant's employer, namely WAPT, to become advised of "the diagnosis" in violation of the applicable provisions of HIPPA, and as a direct and proximate result thereof, WAPT refused Appellant's continued employment with their company.

C. STANDARD FOR SUMMARY JUDGMENT

Summary judgment shall be entered if the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment motion is the functional equivalent of a motion for directed verdict and merely occurs at an earlier stage in the proceedings. *Smith v. Sanders*, 485 So.2d 1051, 1054 (Miss. 1986); *Brown v. Credit Center, Inc.*, 444 So.2d 358 (Miss. 1983).

Summary judgment is only proper only where there is no genuine issue of material fact and the movement is entitled to a judgment as a matter of law. *Owen v. Pringle*, 612 So.2d 668 (Miss. 1993). The party seeking summary judgment bears the burden of showing that there is no genuine issue of material fact to be tried. *Pearl River*

County Board v. South East Collection, 459 So.2d 783, 785 (Miss. 1984). That a motion for summary judgment lies only where there is no genuine issue of material fact; summary judgment is not a substitute for the trial of disputed issues. When doubt exists concerning whether there is a fact issue, the non - moving party should be given the benefit of every reasonable doubt. Donald v. Reeves Transport Co., 538 So. 2d 1191, 1195 (Miss. 1989). The Mississippi Supreme Court has acknowledged that a trial judge has some discretion in determining whether to grant summary judgment, holding “even where the moving party seems to have discharged the burden of demonstrating that no genuine issue of material fact exists, the trial judge is not required to grant summary judgment.” Donald v. Reeves Co., 538 So.2d 1191 (Miss. 1989). Moreover, the Court has opined that “if there is to be error at the trial level, it should be in denying summary judgment and in favor of a full trial. Id. 538 So.2d 1195. See also, Doe v. Stegall, 757 So.2d 204 (Miss. 2000).

ARGUMENT

Appellant asserts that the lower court erred in granting summary judgment in these premises. Appellant contends that he consulted with an expert, qualified to testify, in accordance with applicable rules that Defendants breached the required standard of care. There is no dispute that Appellant maintained a doctor - patient relationship with Appellees. There is no dispute that Appellees owed Appellant a duty

to exercise the standard of care required under existing applicable law. Moreover, Appellant asserts that he disclosed the identity of such expert to Defendants as well as tendered in his response to Pleadings that such expert opined that Defendants breached the applicable standard of care.

CONCLUSION

For the foregoing reasons, Appellant asserts the lower court has erred and should therefore, be reversed and same shall be rendered and/or in the alternative remanded to the lower court.

Respectfully submitted,

FERDNAND MCAFEE, APPELLANT

BY: Brandon I. Dorsey
BRANDON I. DORSEY, MSB # [REDACTED]
ATTORNEY FOR DEFENDANT

OF COUNSEL:

BRANDON I. DORSEY, PLLC
POST OFFICE BOX 13427
JACKSON, MISSISSIPPI 39236 - 3427
TELEPHONE: (601) 605 - 9006
FACSIMILE: (601) 605 - 9353

CERTIFICATE OF SERVICE

I, Brandon I. Dorsey, do hereby certify that I have on this day caused to be served, via United States mail, postage prepaid, a true and correct copy of the above and foregoing document to the following person:

Whit Johnson, III., Esquire
CURRIE JOHNSON GRIFFIN GAINES & MYERS
Post Office Box 750
Jackson, Mississippi 39205 - 0750

John D. Price, Esquire
WISE CARTE CHILD & CARAWAY
Post Office Box 651
Jackson, Mississippi 39205 - 0651

SO CERTIFIED, this the 6th day of January of 2011.

Brandon I. Dorsey
BRANDON I. DORSEY