
IN THE SUPREME COURT OF MISSISSIPPI

NO. 2010-TS-01829

ZENOBIA FAUL, AS GUARDIAN AND NEXT
FRIEND OF THE MINOR CHILD A.F.

APPELLANT

VERSUS

JOHNNY LEE ADKINS AND ESTHER
PEARLMAN (FORMERLY ESTHER ADKINS)

APPELLEES

**ON APPEAL FROM THE CIRCUIT COURT OF HARRISON COUNTY, MISSISSIPPI
FIRST JUDICIAL DISTRICT
CAUSE NO. A2401-07-263**

APPELLANT'S BRIEF

(ORAL ARGUMENT 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. The 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.

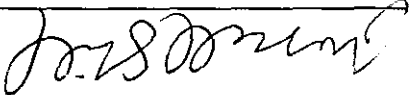
1. Zenobia Faul, as Guardian and Next Friend of the Minor Child A.F., Appellant
2. Russell S. Gill and RUSSELL S. GILL, P.L.L.C., Attorney for Appellant
3. Johnny Lee Adkins, Appellee
4. Esther Pearlman (formerly Esther Adkins), Appellee
5. James F. Thompson, Attorney & Counselor at Law, Attorney for Appellee
Johnny Lee Adkins
6. Brett K. Williams and DOGAN & WILKINSON, PLLC, Attorney for Appellee
Esther Pearlman (formerly Esther Adkins)
7. State Farm Fire and Casualty Insurance Company, Appellee, Esther
Pearlman's, Home Owner's Insurance Company, which hired attorney for
Appellee

Respectfully submitted, this the 17th day of June, 2011.

ZENOBIA FAUL, AS GUARDIAN AND NEXT
FRIEND OF THE MINOR CHILD A.F.,
APPELLANT

BY:

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STATEMENT REGARDING ORAL ARGUMENT

In accordance with Rule 34 of the Mississippi Rules of Appellate Procedure, Zenobia Faul-Appellant requests that an oral argument be permitted in this case. It has been found by this court to be error when the trial court does not have a hearing on a Motion for Summary Judgment if there are material facts at issue. See *Partin v. North Mississippi Medical Center, Inc.*, 929 So.2d 924 (Miss. Ct. App. 2005) (citing *Croke v. Southgate Sewer Dist.*, 857 So.2d 774, 778(¶¶ 10, 12) (Miss. 2003) and *Adams v. Cinemark USA, Inc.*, 831 So.2d 1156, 1163 (¶ 26) (Miss. 2002).) Appellant contends that there are material facts at issue. This court would benefit from hearing arguments of counsel as to the material facts at issue.

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STATEMENT OF THE ISSUES

Appellant Zenobia Faul, as Guardian and Next Friend of the Minor Child A.F. presents the following issues for the Honorable Court's consideration:

1. Whether the trial court erred in granting Defendant Esther Pearlman's Motion for Summary Judgment and denying Plaintiff's Motion for Reconsideration, thereby dismissing with prejudice all claims arising out of Defendant Esther Pearlman's negligence, negligence *per se*, and negligent supervision of Plaintiff in Defendant Esther Pearlman's home, as well as all claims for damages arising therefrom.

2. Whether the trial court erred in granting Defendant Esther Pearlman's Motion for Summary Judgment unilaterally without a hearing or opportunity for counsel to present further exhibits obtained by subpoena from the Gulfport Police Department prior to the scheduled hearing.

3. Whether the trial court erred in dismissing Defendant Esther Pearlman.

4. Whether the trial court usurped the province of the jury by deciding issues of fact.

STATEMENT OF THE CASE

I. Nature of the Case and Course of Proceedings Below

This appeal to the Supreme Court of Mississippi stems from an order and judgment entered by the Honorable Roger T. Clark, Circuit Court Judge for the First Judicial District of Harrison County, on October 7, 2010, whereby the motion for reconsideration filed by Plaintiff, Zenobia Faul, as Guardian and Next Friend of the Minor Child A.F. ("Faul") was denied and summary judgment was granted to the Defendant, Esther Pearlman (formerly Esther Adkins) ("Pearlman"), and final judgment entered in favor of Pearlman pursuant to Mississippi Rule of Civil Procedure 56. (R. at 142-46)¹; (R.E. at 19-23)².

This matter had been previously set for oral argument on Pearlman's motion for summary judgment on July 12, 2010, the day before the trial in this case was to begin. (R at 132); (R.E. at 12). However, on Friday, July 9, 2010, the Circuit Court *sua sponte* canceled the hearing on the motion for summary judgment and took the case off the trial docket for Tuesday, July 13, 2010. (R. at 132); (R.E. at 12). Judge Roger T. Clark entered his decision on July 14, 2010, and ruled in favor of Pearlman granting her summary judgment, without hearing the parties' oral argument and during the time period in which Faul was allowed to supplement her opposition to Pearlman's motion for summary judgment with additional exhibits and affidavits according to M.R.C.P. 56(c). (R. at 127-28); (R.E. at 9-10). The final judgment was entered on July 16, 2010. (R. at 130); (R.E. at 11). Plaintiff filed her Motion for Reconsideration on July 22, 2010. (R. at 132-38); (R.E. at 12-18). The parties had their

¹ "R." is the abbreviation used by Appellant Faul to cite to the page number of the Record prepared by the Circuit Court of Harrison County, Mississippi, First Judicial District.

² "R.E." is the abbreviation used by Appellant Faul to cite to Appellant's Record Excerpts, which are submitted herewith pursuant to M.R.A.P. 30.

oral argument on August 26, 2010 (T. at 22)³; (R.E. at 60), and the Circuit Court entered its judgment in favor of Pearlman on September 24, 2010 (R. at 142-45); (R.E. at 19-22), with the final judgment entered on October 7, 2010 (R. at 146); (R.E. at 23). Subsequent to the Circuit Court's entry of its final judgment, Appellant Faul timely filed her Notice of Appeal on November 2, 2010. (R. at 147-149); (R.E. at 24-26).

II. Statement of the Facts

Between June 20, 2003 and June 20, 2004, the minor child A.F. was periodically under the supervision, care and control of Esther Pearlman, who resided at 2401 Palmer Drive, Gulfport, Mississippi, at the time. (Pearlman Dep. 27:5-12) (R. at 175); (R.E. at 35). During this period, A.F. resided with her guardian, Zenobia Faul (Z. Faul Dep. 7:20-23) (R. at 477); (R.E. at 50), who periodically placed A.F. under the supervision, care, and control of Pearlman (Z. Faul Dep. 17:5-7; Pearlman Dep. 27:5-12) (R. at 479; 174-75); (R.E. at 51; 35), who owed A.F. a duty to properly supervise her and protect her from harm while in Pearlman's supervision, care and control.

At the same time, Pearlman was in a romantic relationship with, and then married to, Johnny Lee Adkins ("Adkins"). (Pearlman Dep. 8:10-16) (R. at 170); (R.E. at 33). While in Pearlman's home and while the minor child A.F. was under Pearlman's care, custody, and control, Adkins committed several criminal sexual acts upon the person of A.F., who was only ten or eleven years old. (Adkins T. 8:11-15); (R.E. at 54).

As a result of Adkins' activities, the Grand Jury of Harrison County issued a multi-count indictment in March 2005 charging Adkins with one count of sexual battery under

³ "T." is the abbreviation used by Appellant Faul to cite to the page number of the Transcript Excerpts of proceedings on August 26, 2010.

Miss. Code Ann. § 97-3-95, and three counts of touching a child for lustful purposes under Miss. Code Ann. § 97-5-23. (Adkins Dep., Ex. 1) (R. at 222-24); (R.E. at 39-41).

Adkins subsequently pled guilty to one count of touching a child for lustful purposes and was sentenced to fifteen years under the supervision of the Mississippi Department of Corrections. (Adkins Dep., Ex. 2) (R. at 225-27); (R.E. at 42-44). The court suspended ten years of that sentence, requiring Adkins to serve five years in the custody and control of the Mississippi Department of Corrections. (Adkins Dep., Ex. 2) (R. at 225); (R.E. at 42).

Pearlman was negligent in general and especially in her supervision of the minor child A.F., allowing her husband, Adkins, to commit criminal sexual acts upon A.F. while in Pearlman's own home. (Adkins T. 8:3-6); (R.E. at 54).

SUMMARY OF THE ARGUMENT

The Circuit Court erred in granting Pearlman's Motion for Summary Judgment and denying Faul's Motion for Reconsideration, thereby dismissing with prejudice all claims arising out of Pearlman's negligence, negligence *per se*, and negligent supervision of the minor child A.F. in Pearlman's home, as well as all claims for damages arising therefrom. The summary judgment should not have been granted because there were issues of material fact as to whether Pearlman had actual or constructive knowledge of Adkins' acts or propensities to commit criminal sexual acts on minor children. These issue of material fact should have been decided by a jury.

The Circuit Court erred in granting Pearlman's Motion for Summary Judgment unilaterally without a hearing or opportunity for Faul's counsel to present further exhibits obtained by subpoena from the Gulfport Police Department prior to the scheduled hearing as provided for in M.R.C.P. 56(c). The Circuit Court also erred in not deeming Pearlman's Motion for Summary Judgment abandoned because it was not heard ten days before trial.

The Circuit Court erred in dismissing Pearlman from the complaint in this case because the Motion for Summary Judgment should not have been granted while there were issues of disputed material fact.

The Circuit Court usurped the province of the jury by deciding issues of fact. With regard to negligence and reasonable foreseeability, those issues are generally for a jury, not the court, to decide.

ARGUMENT

- I. **The Circuit Court erred in granting Defendant Esther Pearlman's Motion for Summary Judgment and denying Plaintiff's Motion for Reconsideration, thereby dismissing with prejudice all claims arising out of Defendant Esther Pearlman's negligence, negligence *per se*, and negligent supervision of Plaintiff in Defendant Esther Pearlman's home, as well as all claims for damages arising therefrom.**

A. Standard of Review

In *Cowan v. Miss. Bureau of Narcotics*, the Mississippi Court of Appeals stated the following regarding standard of review: "This Court employs a *de novo* standard of review of a lower court's grant or denial of a summary judgment and examines all the evidentiary matters before it – admissions in pleadings, answers to interrogatories, depositions, affidavits, etc." *Cowan*, 2 So.3d 759, 763 (Miss. Ct. App. 2009) (quoting *McMillan v. Rodriguez*, 823 So.2d 1173, 1176-77 (Miss. 2002)). The Mississippi Supreme Court has also held that it "reviews orders granting summary judgment *de novo*, without deference to the trial court." *Palmer v. Biloxi Regional Medical Center, Inc.*, 649 So.2d 179, 181 (Miss. 1994) (citing *W.B. Crain v. Cleveland Lodge 1532, Order of Moose, Inc.*, 641 So.2d 1186 (Miss. 1994); *Davis v. Davis*, 558 So.2d 814 (Miss. 1990); *Huff v. Hobgood*, 549 So.2d 951 (Miss. 1989); *Short v. Columbus Rubber and Gasket Co.*, 535 So.2d 61 (Miss. 1988); *Pearl River County Board of Supervisors v. Southeast Collections Agency, Inc.*, 459 So.2d 783 (Miss. 1984)).

Further, "[i]n *Brown v. Credit Center, Inc.*, 444 So.2d 358 (Miss. 1983) this Court stated that summary judgment is not a substitute for the trial of disputed fact issues. If any doubt exists as to any fact issue the non-moving party should get its benefit, and should ultimately be given the benefit of every reasonable doubt." *Shelton v. American Ins. Co.*, 507 So.2d 894, 896 (Miss. 1987) (quoting *Brown*, 444 So.2d at 362). The Court must "presume

that all evidence in the non-movant's favor is true." *Downs v. Choo*, 656 So.2d 84, 85 (Miss. 1995) (citing *Daniels v. GNB, Inc.*, 629 So.2d 595, 599 (Miss.1993). "If the evidence, so viewed, is such that reasonable and fair-minded jurors might differ on the material facts, the law commands that the Court deny the motion." *Dailey v. Methodist Medical Center*, 790 So.2d 903, 915-16 (Miss. Ct. App. 2001) (quoting *Harris v. Shields*, 568 So.2d 269, 275 (Miss. 1990)). "Summary judgment should only be granted when it is shown, beyond a reasonable doubt, that the non-movant would be unable to prove any facts to support his claim." *Downs*, 656 So.2d at 85-86 (citing *McFadden v. State*, 580 So.2d 1210, 1214 (Miss. 1991)).

The above rules and cases will be applied below to show that the Circuit Court committed reversible error by granting Pearlman's motion for summary judgment without a hearing and without allowing Faul to supplement her opposition to the motion for summary judgment with affidavits as provided for in M.R.C.P. 56(c), and by deciding issues of material fact that should have been decided by a jury.

B. The Circuit Court erred in granting Defendant Esther Pearlman's Motion for Summary Judgment when there were genuine issues of material fact that should have been decided by a jury.

The Circuit Court erred in granting Pearlman's motion for summary judgment because Faul showed there were genuine issues of material fact as to whether Pearlman had actual or constructive knowledge of Adkins' acts or propensities to commit criminal sexual acts on minor children.

The Circuit Court, in its order granting summary judgment in favor of Pearlman (R. at 127-28); (R.E. at 9-10) and its order denying Faul's Motion for Reconsideration (R. at 142-45); (R.E. at 19-22), found that there was no proof offered that Pearlman had actual or constructive knowledge of Adkins' acts or propensities to commit sexual crimes on minor children. However, an examination of the record shows that evidence of Perlman's actual or

constructive knowledge was offered. This evidence should have been taken as true and Pearlman's motion for summary judgment denied. See *Downs*, 656 So.2d at 85.

In her deposition, Pearlman testified that A.F. would, on occasion, be alone with Adkins. (Pearlman Dep. 47:14-22); (R. at 180); (R.E. at 37). Pearlman also testified:

Q: So you did watch her [A.F.] 100 percent of the time that she was at your home?

A: Yes. I may not have been in the same room 100 percent of the time, but *I knew where she [A.F.] was and what she was doing.*

(Emphasis added.) (Pearlman Dep. 43:24 - 44:3); (R. at 179); (R.E. at 36).

This admission raises a question of material fact as to whether or not Pearlman knew or should have known about Adkins' acts or propensities.

Adkins pled guilty to unlawful touching of a minor, A.F. During his hearing, he testified:

THE COURT: The indictment ... charges that ... on or between June, 2003 and June, 2004, that you did ... for the purpose of gratifying your lust or indulging your depraved licentious sexual desires, did unlawfully, willfully, or feloniously, handle touch or rub with your hand the breast of AF, a child who was at the time in question under the age of 16 years. Did you do that Mr. Adkins?

THE DEFENDANT: Yes, your Honor, I did.

(Adkins T. 7:8-21); (R.E. at 53).

Adkins further testified that the unlawful touching, of which there were "at least two" incidents, took place in the living room of the home he shared with Pearlman. (Adkins T. 8:3-6, 11-15); (R.E. at 54). A.F. testified that Pearlman was home when Adkins committed his first criminal sexual act on A.F. (A.F. Dep. 33:12-14); (R. at 260); (R.E. at 46) and when Adkins committed his second or third criminal act on A.F. (A.F. Dep. 33:24 - 34:7); (R. at 260-61); (R.E. at 46-47).

In Detective Lieutenant Chayo Ing's investigative report, Det. Lt. Ing wrote that A.F. "further stated on another occasion Adkins had taken what she described as 'sexy' photographs of her with use of a digital camera." (R. at 323); (R.E. at 29). These "'photo sessions' occurred on more than one occasion" and occurred in Pearlman and Adkins' home. (R. at 324); (R.E. at 30). The Gulfport Police Department found a camera memory card with images of A.F. "in provocative positions." (R. at 307); (R.E. at 28).

Pearlman's testimony that she "knew where she [A.F.] was and what she was doing" (Pearlman Dep. 44:2-3); (R. at 179); (R.E. at 36), which should be taken as true because it is favorable to Faul (see *Downs*, 656 So.2d at 85), raises a genuine issue of material fact as to whether or not Pearlman had actual or constructive knowledge of Adkins' acts or propensities. Accordingly, the Circuit Court should have denied Pearlman's motion for summary judgment.

II. The Circuit Court erred in granting Defendant Esther Pearlman's Motion for Summary Judgment unilaterally without a hearing or opportunity for counsel to present further exhibits obtained by subpoena from the Gulfport Police Department prior to the scheduled hearing.

The Circuit Court erred in granting Pearlman's motion for summary judgment without a hearing because under Mississippi law, a hearing is required when there are genuine issues of material fact. In addition, since the motion for summary judgment was not heard ten days prior to trial, it should have been deemed abandoned under Uniform Circuit and County Court Rule 4.03(5). The Circuit Court also erred by canceling the hearing on the motion for summary judgment during the time period in which Faul had the right to supplement her opposition to the motion with additional affidavits as provided for by M.R.C.P. 56(c). Along with canceling the hearing, the Circuit Court took the trial in this

case off the docket for July 13, 2010, and issued its order granting Pearlman's motion on July 14, 2010. (R at 132); (R.E. at 12).

A. *The Circuit Court erred in granting Pearlman's Motion for Summary Judgment without a hearing.*

In *Partin v. North Mississippi Medical Center, Inc.*, 929 So.2d 924 (Miss. Ct. App. 2005), the court has established that the granting of a summary judgment motion without a hearing is error, but the court has made some allowances of harmless error when there is no genuine issue of material fact. *Partin*, 929 So.2d at 934-35 (citing *Croke v. Southgate Sewer Dist.*, 857 So.2d 774, 778(¶¶ 10, 12) (Miss. 2003) and *Adams v. Cinemark USA, Inc.*, 831 So.2d 1156, 1163 (¶ 26) (Miss. 2002).)

In this case, as shown in Section I.B., above, a genuine issue of material fact exists as to whether or not Pearlman had actual or constructive knowledge of Adkins' acts or propensities to commit criminal sexual acts on minor children. Since this genuine issue of material fact exists, the Circuit Court committed reversible error by granting Pearlman's motion for summary judgment without a hearing. See *Partin*, 929 So.2d at 934-35.

B. *The Circuit Court erred in granting Pearlman's Motion for Summary Judgment because it should have been deemed abandoned since it was not heard ten days prior to trial.*

Pearlman's motion for summary judgment should have been deemed abandoned because it was not heard ten days prior to trial as required by Rule 4.03(5) of the Uniform Circuit and County Court Rules Rule 4.03(5) states: "All dispositive motions *shall* be deemed abandoned unless heard at least ten days prior to trial." (Emphasis added.)

The motion for summary judgment was not scheduled to be heard until July 12, 2010, one day before the trial was scheduled to begin. (R. at 132); (R.E. at 12). Since a hearing on the motion for summary judgment was required as detailed in Sections I.B. and

II.A., above, the Circuit Court was required by the “shall” language in U.C.C.R. 4.03(5) to deem the motion for summary judgment abandoned.

However, the Circuit Court stated in its order denying Faul’s motion for reconsideration that “Rule 4.03 of the Uniform Circuit and County Court Rules should not prevent the presentation of valid dispositive motions merely because there is a trial date.” (R. at 144-45); (R.E. at 21-22). The “shall” language in Rule 4.03 is not discretionary. The Circuit Court was required to deem the motion for summary judgment abandoned and did not do so. Therefore, the Circuit Court erred in granting Pearlman’s motion for summary judgment.

C. The Circuit Court erred in granting Pearlman’s Motion for Summary Judgment because Faul had the right to supplement her opposition with additional affidavits prior to the day of the hearing, but could not because of the Circuit Court’s actions.

The hearing on Pearlman’s motion for summary judgment was scheduled for Monday, July 12, 2010. On Friday, July 9, 2010, the Circuit Court canceled the hearing and took the trial in this case off the docket for Tuesday, July 13, 2010. The Circuit Court then issued its order granting Pearlman’s motion for summary judgment on July 14, 2010.

Rule 56(c) of the Mississippi Rule of Civil procedure allows Faul, as the non-moving party, to supplement her opposition to the motion for summary judgment with opposing affidavits prior to the day of the hearing.⁴ Faul should have been allowed to file additional affidavits until the end of the business day on Friday, July 9, 2010. However, on July 9, 2010, while Faul still had time, the Circuit Court canceled the hearing on the motion for summary judgment and took the trial off the docket. (R. at 132); (R.E. at 12). Although the written order did not issue until July 14, 2010, the Circuit Court had clearly made its

⁴ “The adverse party prior to the day of hearing may serve opposing affidavits.” M.R.C.P. 56(c)

decision by July 9, 2010 as evidenced by the case's removal from the docket. (R. at 127-28); (R.E. at 9-10).

If allowed an opportunity to supplement, even more incriminating evidence showing Pearlman knew of Adkins' propensity to commit criminal sexual acts would have been included in Faul's opposition to the motion for summary judgment. The Gulfport Police department discovered a letter written to Adkins by Pearlman, and attached to the back of the door of Pearlman's/Adkins' bedroom. (R. at 449); (R.E. at 31). This letter was produced by the Gulfport Police Department just days before the scheduled summary judgment hearing of July 12, 2010. (R. at 136); (R.E. at 16).

However, the trial court unilaterally cancelled the hearing and this fact was telephonically communicated to counsel for A.F. the week previous to this hearing. (R. at 132); (R.E. at 12). Counsel for A.F. never had the chance to show the evidence to the trial court before the unilateral grant of summary judgment. The letter was offered in the Motion for Reconsideration hearing. However, the trial court still let the summary judgment stand. (R at 132); (R.E. at 12).

The letter from Pearlman to Adkins reads as follows:

"Mr. Adkins, I'm sorry you don't feel close to me. You don't have to be married to me either!! I suppose that is how you're to treat me (your wife). #1- You're a cheater #2-You go look at girls because I'm out of town #3- I can't trust you #4- If you loved me you wouldn't treat me that way. I guess you'll have another x-wife!" (Appendix); (R. at 136); (R.E. at 16).

The Circuit Court canceling the hearing and making its decision on the motion for summary judgment while Faul still had time to supplement her opposition with additional affidavits was reversible error.

III. The Circuit Court erred in dismissing Defendant Esther Pearlman.

The Circuit Court erred in granting Pearlman's motion for summary judgment and dismissing her from the case because there were genuine issues of material fact and because it granted the motion without a hearing and without giving Faul the opportunity to supplement her opposition with additional affidavits prior to the hearing, as detailed in Sections I.B and II, above.

IV. The Circuit Court usurped the province of the jury by deciding issues of fact.

The Circuit Court erred by deciding issues of fact that are the province of the jury. As explained in Section I.B., above, genuine issues of material fact existed, and Pearlman's motion for summary judgment should not have been granted.

The Mississippi Supreme Court "has held that negligence is almost always an issue for a jury to decide 'except in the clearest cases.'" *Delahoussaye v. Mary Mahoney's, Inc.*, 696 So.2d 689, 690 (Miss. 1997) (citing *Caruso v. Picayune Pizza Hut*, 598 So.2d 770, 773 (Miss. 1992); *Bell v. City of Bay St. Louis*, 467 So.2d 657, 664 (Miss. 1985)). The case at hand is not one of the "clearest cases" because there is evidence, detailed in Section I.B., above, that Pearlman had actual or constructive knowledge of Adkins' acts or propensities to commit criminal sexual acts on minor children. The issue of reasonable foreseeability is "to be decided by the finder of fact once sufficient evidence is presented in a negligence case." *Hankins Lumber Co. v. Moore*, 774 So.2d 459, 464 (Miss. Ct. App. 2000) (citing *American Nat. Ins. Co. v. Hogue*, 749 So.2d 1254, 1259 (Miss. Ct. App. 2000)).

For these reasons, Pearlman's motion for summary judgment should have been denied, and the case at hand should have been allowed to proceed to trial so that a jury could decide the issues of negligence and reasonable foreseeability.

CONCLUSION

The trial court erred in granting Pearlman's Motion for Summary Judgment and finding that no genuine issues of material fact existed; in deciding the Motion for Summary Judgment without a hearing; in not deeming the Motion for Summary Judgment abandoned since it was not heard ten days before trial and in not giving Faul the opportunity to supplement her opposition with additional affidavits; in dismissing Pearlman from the lawsuit; and in deciding issues of fact, thereby usurping the province of the jury.

For the reasons stated herein, Appellant Zenobia Faul, as Guardian and Next Friend of the Minor Child A.F., respectfully requests this Court to reverse the decision of the Circuit Court and remand the case for trial.

Respectfully submitted, this the 17th day of June, 2011.

ZENOBIA FAUL, AS GUARDIAN AND NEXT
FRIEND OF THE MINOR CHILD A.F.,
APPELLANT

BY:



RUSSELL S. GILL

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CERTIFICATE OF SERVICE

Pursuant to M.R.A.P. 31(c), I hereby certify that I have delivered, via overnight mail, the original and three (3) true and correct copies of the above and foregoing Appellant's Brief to Betty W. Sephton, Clerk, Mississippi Supreme Court, Gartin Justice Building, 450 High Street, Jackson, Mississippi 39201.

I further certify that I have this date delivered, via overnight mail, a true and correct copy of the above and foregoing Appellant's Brief to the following:

Brett Williams, Esq.
734 Delmas Ave.
Pascagoula, MS 39567
Attorney for Esther Pearlman

James F. Thompson, Esq.
1904 22nd Ave.
Gulfport, MS 39501
Attorney for Johnny Lee Adkins

I further certify that I have this date delivered, via United States Postal Service first class mail, a true and correct copy of the above and foregoing Appellant's Brief to the Honorable Roger T. Clark, Harrison County Circuit Court, P.O. Box 1461, Gulfport, MS 39502.

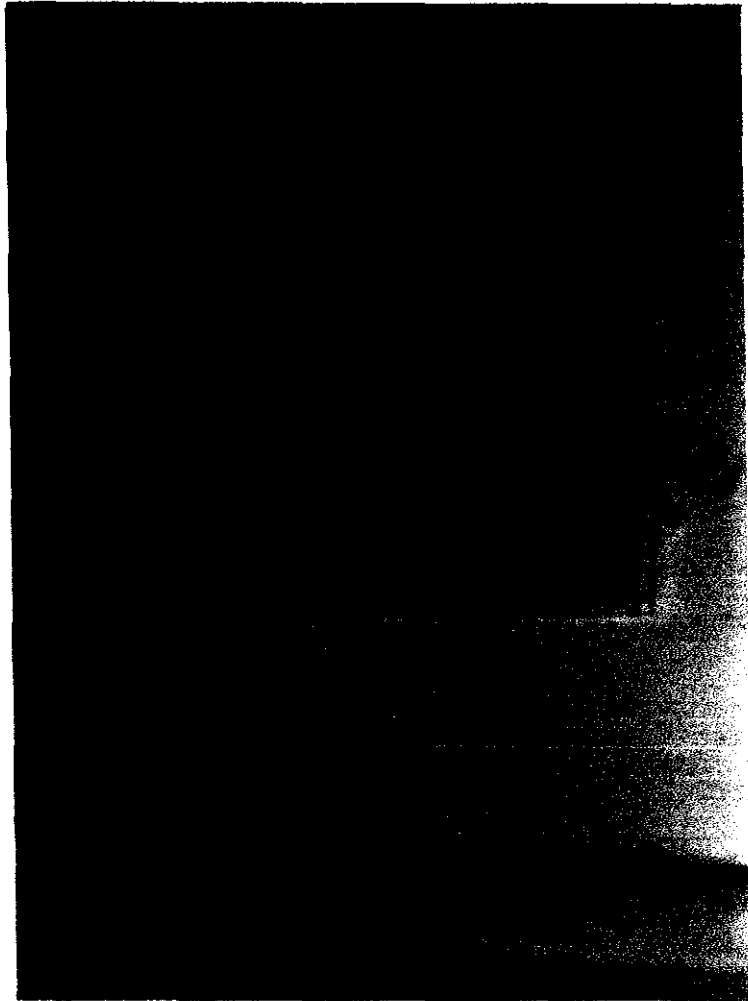
I further certify that, pursuant to M.R.A.P. Rule 28(m), I have also mailed an electronic copy of the above and foregoing on an electronic disk and state that this brief was written in Microsoft Word format.

SO CERTIFIED, this the 17th day of June, 2011.



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Mr. Addicks,

I'm sorry you don't
 put stock in me.
 you don't have to
 be married to me
 either!
 I suppose that is
 how you're to treat
 me (you wife).

#1 - John & Charlotte
 #2 - George & Jack
 & on out 9
 from

#3 - & Jan T

Trust you
 #4 - & I will have
 fine you

couldn't treat me that

WAAA I know she'll have

GULFPORT POLICE DEPARTMENT

DETECTIVE INVESTIGATIVE REPORT

Case Number: 04-035680

Type Incident/Crime: <p style="text-align: center;">Sexual Battery Touching of a Child for Lustful Purposes</p>	Date of this Report: <p style="text-align: center;">01-25-05</p>	Date of Original Report: <p style="text-align: center;">10-05-04</p>
Suspect/Victim Name: <p style="text-align: center;">SUS: Johnny Lee Adkins</p>	Connected Case Number(s): 	

EVIDENCE LIST

- ITEM 1 one (1) Pionex Tech Monitor, model #P70S, SN 91CPC0000108
- ITEM 2 one (1) Pionex CPU, SN 7001846250
- ITEM 3 one (1) HP Pavilion CPU, model #a420n, SN MXK350131B
- ITEM 4 one (1) HP keyboard, model #KB-0028, SN CF34304485,
- ITEM 5 one (1) KDS-USA monitor, model #986N, SN FEVL42304087U,
- ITEM 6 one (1) Compaq Presario CPU, SN X634BBS20620,
- ITEM 7 one (1) Logitech Deluxe 104 Keyboard, SN SCC84344617,
- ITEM 8 one (1) Lexmark Z22 inkjet printer, SN 21205112599,
- ITEM 9 one (1) HP Photo Smart all in one printer, model 2410, SN MY385C2245
- ITEM 10 one (1) Kodak MAX HQ disposable camera with 17 remaining images,
- ITEM 11 one (1) stenographers pad,
- ITEM 12 one (1) handwritten note tacked on the inside of the bedroom door,
- ITEM 13 one (1) micro cassette recorders containing a taped recording between Esther Adkins and ex-spouse.
- ITEM 14 one (1) Celestron Skymaster case and binoculars,
- ITEM 15 one (1) Sony Hi-8 Handy Cam, model 31781, SN 3-066-404-21, eight (8) VH8 tapes,
- ITEM 16 one (1) pair of child's size 16 cotton underwear white with purple stripes later identified as belonging to Ashley Faul,
- ITEM 17 one (1) computer carrying case,
- ITEM 18 one (1) HP Pavilion lap top, SN TW02503Z15,
- ITEM 19 one (1) Nokia brand cellular telephone with camera model #3650,
- ITEM 20 one (1) Sprint camera/palm pilot/cellular telephone unit, SN HBSAD3461A004,
- ITEM 21 one (1) Palm Pilot, model #M550, SN 00T6PBB2ABNA,
- ITEM 22 one (1) Palm IIIx SN 10FG1A8970UE,
- ITEM 23 one (1) Dazzle computer car reader, SN 31620222705069,
- ITEM 24 one (1) GE cordless telephone, model #2-9782A, SN 60043700,
- ITEM 25 ninety five (95) recorded videotapes,
- ITEM 26 twenty five (25) computer CD's,

R.E. 009

Reporting Officer: <p style="text-align: center;">4034 Det. Lt. Chayo Ing</p>	Division: <p style="text-align: center;">Detectives</p>	Reviewing Supervisor: <p style="text-align: center;">3737 Det. Capt. Danny Holloway</p>
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Investigating Detective:

27 Det. Lt. Ing

PLAINTIFF'S
EXHIBIT

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RULE 56. SUMMARY JUDGMENT

(c) Motion and Proceedings Thereon. The motion shall be served at least ten days before the time fixed for the hearing. The adverse party prior to the day of the hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone, although there is a genuine issue as to the amount of damages.