

2011-CA-00147 E

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STATEMENT OF THE ISSUE

1. Did the Circuit Court correctly conclude that the Mississippi Department of Mental Health is immune from liability, pursuant to the “discretionary acts” provision of the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-9(1)(d), for a property damage claim arising from an accidental fire at a house rented by five clients of the North Mississippi Regional Center?
2. Did the Mississippi Department of Mental Health owe to the owners and insurer of a house rented by five clients of the North Mississippi Regional Center a duty to prevent accidental fires?
3. Did the owners and insurer of a house rented by five clients of the North Mississippi Regional Center present any proof that an employee of the North Mississippi Regional Center proximately caused a fire which destroyed the house?

STATEMENT OF THE CASE

A. Course of Proceedings and Disposition Below

In their Complaint filed in January 2008, Appellants Mississippi Farm Bureau Insurance Company (“Farm Bureau”), John Lagrone (“Lagrone”), and Jimmy Moore (“Moore”) sought damages for a fire occurring in April 2007 at a house owned by Lagrone and Moore and insured by Farm Bureau. R. 1-4. At the time of the fire, Lagrone and Moore leased the house to five adult clients of the North Mississippi Regional Center (“the Regional Center”), a part of Appellee Mississippi Department of Mental Health (“the Mental Health Department”). R. 2 and 16-19.

The Mental Health Department answered the Complaint and raised as an affirmative defense the immunities afforded by the Mississippi Tort Claims Act. R. 5.

After the completion of discovery, the Mental Health Department sought summary judgment. R. 10-55. Farm Bureau, Lagrone and Moore likewise sought summary judgment. R. 88-125.

Following oral argument (T. 3-36), the Circuit Court granted summary judgment in favor of the Mental Health Department on January 14, 2011. R. 180-83. The Circuit Court concluded that the Mississippi Tort Claims Act provided immunity to the Mental Health Department for the discretionary acts of its employee present at the house at the time of the fire. R. 181-83.

Farm Bureau, Lagrone and Moore timely filed their Notice of Appeal. R. 184.

B. Statement of the Facts

In 2007, Lagrone and Moore owned a rental house insured by Farm Bureau located at 1312 Beanland Avenue in Oxford. R. 2-3. They rented the house to five individuals pursuant to a written Lease Agreement. R. 2 and 16-19. On April 22, 2007, the house caught fire and burned. R. 2.

The tenants under the Lease Agreement were clients of the Regional Center. They rented the house as a community group home for developmentally-disabled individuals on the cusp of complete independence. A staff member from the Regional Center stayed in the home with the clients to assist with their daily living activities. R. 2.

At the time of the fire, Christy Blount Beckwith (a Direct Care Worker) worked in the home. Beckwith had worked with the Regional Center for several years and had undergone training at the time of her employment and throughout her tenure. She first worked in a 10-person home where the clients lived in a more restricted and controlled environment. She then moved to group homes in Oxford, ultimately working in the 5-person group home on Beanland Avenue. R. 22-30 and 36-41.

The Mental Health Department is a state agency responsible for providing services for the mentally ill, emotionally disturbed, alcoholic, drug dependant, and intellectually disabled persons

in Mississippi.¹ The Mississippi Legislature has specifically authorized the Mental Health Department to “establish and promulgate reasonable minimum standards” and policies.² The Mental Health Department has jurisdiction and control of the Regional Center.³

Among other things, the Regional Center develops and implements programs to assure “whenever possible the maintenance of an individual [with a developmental disability] in his or her own community or referral to his or her least restrictive environment” and to “improve [his or her] social, academic, and survival skills to their fullest potential.” R. 136-37. More specifically, through its Alternative Living Arrangements (“ALA”) Program, the Regional Center provides alternatives to institutionalized living quarters through a “home-like environment designed to foster independent living through supervision and training in independent living skills.” R. 138 and 148. “Residents are expected to participate in the operation and upkeep of the home environment in preparation for a greater degree of independent functioning.” R. 138. The Regional Center makes decisions concerning appropriate living arrangements for clients based on the particular skills gained. R. 139.

The Regional Center’s goal is to get each client to the least restricted life-style possible. R. 25-26 and 140. Beckwith has described her typical day as follows:

You assist those clients to be sure that they don’t put too many clothes in the washer. You don’t do that for them. You just assist them. They can cook their own meals. You assist them as far as being sure that they get to and from work. They don’t drive. You drive them. They do their own housecleaning. They do their own laundry as far as putting it away. They wash it. They put it away. They do their own ironing. But you’re there in case they was to have an accident or an emergency. You need to be there to take them

¹ See Miss. Code § 41-4-1 *et seq.*

² *Id.* at § 41-4-7(g).

³ *Id.* at § 41-4-11(2).

where they need to go or assist in case one of them has a seizure. I mean, they still do need assistance and they need medical care. And you need to see to it that they don't take too much medication. Or, you know, if they need to go somewhere, they need to get to a job, they need to be sure that they're there on a timely manner.

R. 26-27.

On the day of the fire, Beckwith was assisting the clients in preparing dinner, which included hamburgers and hotdogs on an outside grill, baked beans in the oven and french fries on the stove. She and the clients had placed a pan on the stove to cook the french fries once they finished grilling. While standing outside, Beckwith heard something inside the house, walked through the living room to the kitchen and saw the kitchen engulfed in flames. She immediately began the fire evacuation plan for the house, including having one of the clients call 911 and meeting at a pre-designated location. Beckwith does not know what caused the fire in the kitchen. R. 31-35, 42-46 and 117-19. The fire totally destroyed the house (R. 3), but no one was injured. R. 31-32 and 119.

SUMMARY OF THE ARGUMENT

The Mental Health Department exists to provide services to Mississippi residents who are intellectually disabled. Through the Regional Center and its related programs, the Mental Health Department strives to provide its clients with the skills necessary to function as independent members of society. The group home on Beanland Avenue in Oxford housed five advanced clients who operated independently in many respects. Christy Beckwith served as one of the direct care workers assigned to live in the group home in case of accidents and emergencies. She, along with the other direct care workers, used her judgment and discretion in deciding the degree and extent of independence to provide the tenant-clients. The fire in April 2007 was unfortunate. However, the discretionary function exception to the Mississippi Tort Claims Act clearly exempts the Mental Health Department from any liability for damages to Lagrone, Moore and Farm Bureau.

The Mental Health Department did not owe any duty to Lagrone, Moore and Farm Bureau. The purpose of the Mental Health Department, as set forth by statute and as outlined in its manuals and handbooks, relates to the safety and security of its patients. The responsibilities and guidelines adopted by the Regional Center (and under which Christy Beckwith worked) were designed to protect the clients and to provide them with new skills and abilities as they progressed toward self-sufficiency. None of the guidelines existed for the purpose of protecting a group home property owner (or its insurer) who had entered a lease with certain Regional Center clients.

Finally, Lagrone, Moore and Farm Bureau offered no evidence that Christy Beckwith caused the fire. In fact, they offered no evidence of any cause for the fire or the manner in which Christy Beckwith's conduct led to the fire. They have not indicated what Beckwith should have done differently to prevent the fire from occurring.

ARGUMENT

A. The Mental Health Department is not liable for its employee's discretionary acts.

Governmental entities are exempt from liability in certain situations.⁴ This exemption is "an entitlement not to stand trial rather than a mere defense to liability Therefore, immunity is a question of law and is a proper matter for summary judgment under Miss. R. Civ. P. 56."⁵ This Court reviews *de novo* findings concerning governmental tort immunity.⁶

⁴ *Id.* at § 11-46-9.

⁵ *Mitchell v. City of Greenville*, 846 So.2d 1028, 1029 (Miss. 2003).

⁶ *Fortenberry v. City of Jackson*, 2011 WL 448354 at *2 (Miss. February 10, 2011).

A governmental entity's acts can be ministerial, discretionary or neither.⁷ The Mississippi Tort Claims Act ("MTCA") exempts a governmental entity and its employees from tort liability "[b]ased upon the exercise or performance [of] . . . a discretionary function or duty on the part of a governmental entity or employee thereof, whether or not the discretion be abused."⁸ Under the "public policy approach" used in Mississippi, immune discretionary conduct includes those acts "which promote some social, economic or political policy."⁹

Notably, as provided by statute, immunity under the Act applies even when the employee is found to have abused its discretion. This provision promotes the intent of the Tort Claims Act: "to promote efficient and timely decision-making [by government officials] without fear of liability. This . . . works to encourage free participation and hinder fear that goes with risk-taking situations and the exercise of sound judgment."¹⁰

The Mississippi Supreme Court has adopted a two-part analysis to determine when governmental conduct is discretionary: (i) whether the activity involved an element of choice or judgment; and, if so, (ii) whether the choice or judgment in supervision involves social, economic, or political policy alternatives.¹¹

⁷ *Miss. Dept. of Mental Health v. Shaw*, 45 So.3d 656, 658-59 (Miss. 2010).

⁸ Miss. Code § 11-46-9(d) (*see* Appendix).

⁹ *Shaw*, 45 So.3d at 659.

¹⁰ *Id.* (citing *Miss. Dep't of Transp. v. Cargile*, 847 So. 2d 258, 268 (Miss.2003)).

¹¹ *Id.* (citing *Bridges v. Pearl River Valley Wather Supply Dist.*, 793 So. 2d 584, 588 (Miss. 2001)).

A duty is discretionary if it requires the use of judgment or discretion.¹² Here, there is no dispute that Beckwith's work activities necessarily involved elements of choice or judgment each day she supervised the clients assigned to the group home on Beanland Avenue. She constantly determined when she should permit the clients to act alone and when she should assist them in their daily living activities, all in an effort to achieve the agency's goal: maximum client independence.

Just as clearly, the choice and judgments required of Beckwith "emanate[d] from, [and] relate[d] to, matters of human welfare", thus falling squarely into the social policy alternatives category of the second prong of the two-part analysis.¹³ The group home program sought to "integrate [its clients] into society as a whole, requiring a multitude of discretionary decisions by staff members"¹⁴ Beckwith permitted the Beanland home clients to undertake virtually all daily activities without her direct involvement, limiting her role to driving and assisting in cases of emergency. The policy adopted by the Regional Center reflected a desire to decrease the clients' dependence on the State and to increase their ability to be self-sufficient.

The Mississippi Supreme Court faced a similar (but more tragic) situation in *Dancy*. There, Glen Dancy, a mentally-ill patient at the East Mississippi State Hospital, sought damages from the Mental Health Department for injuries he suffered after escaping supervision while on a field trip to Wal-Mart.¹⁵ On Dancy's appeal of summary judgment, the Court recognized that the Mental Health Department had a goal of placing its patients "in the least restrictive environment that their

¹² *Dancy v. East Miss. State Hospital*, 944 So.2d 10, 16 (Miss. 2006) (holding that activities involving "element of choice or judgment" satisfied first criteria).

¹³ *Id.* at 17.

¹⁴ *Id.*

¹⁵ *Id.* at 11.

condition will allow” and “to provide each patient treatment in areas that will help them grow into a more stable and responsible person.”¹⁶ Affirming the summary judgment, the Court concluded that “the choice and judgments required of state workers emanate from, or relate to, matters of human welfare,” and the goal of this program was to “integrate these patients into society as a whole,” therefore “unquestionably” involving social policy.¹⁷

The Mississippi Legislature has specifically authorized the Mental Health Department to “establish and promulgate reasonable minimum standards” and policies.¹⁸ The Mental Health Department (directly and through the Regional Center) has adopted those policies and empowered its direct care workers in group homes to use their discretion in observing clients with the purpose of increasing their independence.

In *Shaw*, the Mississippi Supreme Court recently distinguished decisions that are and are not grounded in policy. In that case, Ellisville State School held a fundraiser known as “Camp Fear” - - a Halloween event similar to a haunted house.¹⁹ Shaw, a patron at the event, missed one of the steps coming from the house, fell and sustained injuries, ultimately bringing suit against the School and the Mental Health Department.²⁰

Shaw argued that Camp Fear was a “commercial enterprise” and that “one operating a commercial establishment not remotely connected to the statutory mission of the institution cannot

¹⁶ *Id.* at 11-12, n 4.

¹⁷ *Id.* at 17.

¹⁸ Miss. Code § 41-4-7(g).

¹⁹ *Shaw*, 45 So.3d at 657.

²⁰ *Id.*

take advantage of the exemption.”²¹ However, the Supreme Court noted that Camp Fear was one of the school’s fundraisers and the proceeds “furthered its mission of providing services for its clients.”²² In reversing the denial of summary judgment, the Court concluded that Camp Fear involved social and economic policy decisions and “so was a discretionary function that qualifies under the MTCA.”²³ In explanation, the Court provided this example:

The decision by a bus driver to allow a claimant to exit a school bus at a particular intersection does not implicate policy, and is merely a judgment call, and thus not immunized by this exemption. However, a school board’s decision to allow children to de-board buses during thunderstorms, at busy intersections, during nuclear attacks, etc., is a policy decision which may not be second guessed, even where ordinary care is not utilized by the board. Thus, if the board has decided that children may be let off at all intersections, then the driver’s decision to do so is immunized as discretionary – i.e., as involving judgment-plus-policy considerations.²⁴

The group home at issue in this lawsuit was used solely for the purpose of, as in *Shaw*, “providing care for, and treatment of, mentally retarded persons.”²⁵ The clients lived in the home and learned to do household chores to gain skills and become more self-sufficient, thus fulfilling the Mental Health Department’s purpose. The Regional Center direct care workers assigned to the home made regular decisions guided by the goals adopted to further the Mental Health Department’s social public policy decisions. The Circuit Court correctly concluded that the Mental Health Department is immune from liability for the claims related to the house fire.

²¹ *Id.* at 660.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

Lagrone, Moore and Farm Bureau attempt to impose on Christy Beckwith a “ministerial” duty “to be present in the group home in order to prevent an accident or an emergency”, to keep the residents “under constant supervision”, to prevent them from cooking “without supervision” and to require all food preparation to “be visible to staff. *See* Appellants’ Brief, pp. 3-4. Neither the ALA Handbook nor Christy Beckwith’s testimony support the imposition of these absolute duties.

Beckwith lived in the home with these five advanced clients to assist in their move toward total independence. She was there “in case of” accidents or emergencies, not to absolutely prevent them from occurring. R. 26. The clients were under constant supervision when she delivered them to work, but not in the sense that she constantly kept them within her eyesight within the group home. R. 12. The clients could cook for themselves to a certain level. R. 43. Finally, the ALA Handbook did not prohibit food preparation without supervision or require food preparation to be visible to the staff. Instead, consistent with the goals of the Mental Health Department, the Handbook expressly permitted the staff to exercise their judgment in determining “the degree of freedom or independent movement” for a client, especially when “that client is being prepared to move to a less restrictive environment.” R. 149.²⁶

Similarly, the decision in *Mississippi Department of Mental Health v. Hall*,²⁷ offers no help to the owners and insurers of the group home. In that case, the Mississippi Supreme Court concluded that the statutory duty owed by the Mental Health Department to psychiatric patients at the East Mississippi State Hospital included the obligation “to provide patients with mental health

²⁶ The reference to the prohibition concerning the handling of fuel or flammable substances is a red herring. There is no evidence that Christy Beckwith permitted one of the tenant-clients to handle any such substance in this case.

²⁷ 936 So.2d 917 (Miss. 2006).

care and treatment in accord with contemporary professional standards.”²⁸ As the result of expert testimony that the hospital had failed to comply with these duties owed to the patient (*e.g.*, not locking doors, using security screens and monitoring unusual behavior), the Supreme Court affirmed judgment for the patient. However, the affirmative statutory duties imposed on the East Mississippi Mental Hospital do not apply to the Regional Center. Moreover, the Regional Center has not otherwise violated any duty owed to its clients. To the contrary, as the result of proper planning and training, Christy Beckwith safely evacuated all of the clients from the home during the fire.

B. The Mental Health Department owed no duty to the house owners and insurer.²⁹

The first requirement of tort liability is establishing a duty owed by the alleged tortfeasor to the alleged tort victim.³⁰ The existence of a duty is an issue of law for the Court to decide.³¹

Lagrone, Moore and Farm Bureau cite certain statutes and portions of manuals and handbooks which they suggest create some obligation on the part of Christy Beckwith to protect their property. However, contrary to their suggestion, the purpose of the guidelines in these manuals was not for the protection of third-party property owners but for the benefit of the clients of the Mental

²⁸ *Id.* at 925.

²⁹ This Court may affirm the Circuit Court on other grounds if it reached the right conclusion but for the wrong reason. *Harbit v. Harbit*, 3 So.2d 156, 163 (Miss. App. 2009) (citing *Mason v. S. Mortg. Co.*, 828 So.2d 735, 738 (¶ 15) (Miss.2002) (“An appellate court may affirm a trial court on other grounds if it finds that the trial court reached the right result despite its flawed or erroneous premises.”). The Mental Health Department raised the lack of duty as grounds for summary judgment before the Circuit Court. R. 127; T. 5 and 11-12.

³⁰ Lagrone and Moore entered a lease agreement with the five clients who occupied the home, not with the Regional Center. R. 16-19. They have not alleged, nor could they, any contractual obligation owed to them by the Mental Health Department.

³¹ *Donald v. Amoco Production Co.*, 735 So.2d 161, 174 (Miss. 1999), *cited in Knox v. Mahalitic*, __ So.2d __, 2011 WL 1122940 at *3 (Miss. App. March 29, 2011).

Health Department through the Regional Center.³² To the extent the statutes, manuals and handbooks create an affirmative “duty”, the obligations exist for the sake of the clients. Lagrone, Moore and Farm Bureau can identify no duty owed to them by the Mental Health Department.

C. The Mental Health Department did not cause the fire which destroyed the house.³³

Lagrone, Moore and Farm Bureau contend that Christy Beckwith’s conduct proximately caused the fire. To recover under their negligence theory, Lagrone, Moore and Farm Bureau must have established (i) a duty owed to them by the Mental Health Department; (ii) a breach of that duty; (iii) damages; and (iv) a causal connection between the breach and the damages, such that the breach is the proximate cause of Plaintiffs’ damages.³⁴ Specifically, to avoid summary judgment, they bore the burden of presenting to the Circuit Court significant probative evidence that the Mental Health Department (acting through its employee) was negligent.³⁵

Lagrone, Moore and Farm Bureau presented the Circuit Court with no evidence to suggest that Beckwith caused the fire through her own acts or omissions. First, Plaintiffs have never established a specific cause and origin for the fire. R. 51-54. Second, even if we assume that the fire originated on the stove, neither Lagrone nor Moore has any first hand knowledge that Beckwith caused the fire or any admissible evidence to establish that she caused the fire. *Id.* Beckwith did not turn on the stove to heat the grease for the french fries and does not know who did, assuming that

³² Miss. Code Ann. § 41-4-1; R. 136-41 and 148-49.

³³ The Mental Health Department also raised the lack of proof as to causation as a grounds for summary judgment. *See* R. 127 and T. 5 and 12-13.

³⁴ *Watson Quality Ford, Inc. v. Casanova*, 999 So.2d 830, 835 (Miss. 2008).

³⁵ *Mississippi Dept. of Transp. v. Cargile*, 847 So.2d 258, 262 (Miss. 2003).

ignited grease caused the fire. R. 31-35 and 42-46. Similarly, Farm Bureau presented no cause and origin analysis or evidence to suggest the cause of the fire and Christy Beckwith's role in that cause.

Under their theory, Lagrone, Moore and Farm Bureau would hold the Mental Health Department strictly liable for the accidental fire, regardless of who or what caused it. However, Lagrone, Moore and Farm Bureau only sought recovery for negligence and did not state a claim for strict liability in tort. R. 3. In addition, strict liability in tort is limited to "ultrahazardous" or "abnormally dangerous" activity.³⁶ Without appropriate proof (lacking here), Lagrone, Moore and Farm Bureau cannot impose liability for the fire on the Mental Health Department.

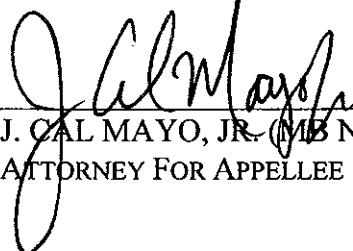
CONCLUSION

For any of these reasons, this Court should affirm the judgment of the Lafayette County Circuit Court in favor of the Mississippi Department of Mental Health.

THIS, the 23rd day of May, 2011.

Respectfully submitted,

MISSISSIPPI DEPARTMENT OF MENTAL HEALTH


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³⁶ See *Donald*, 735 So.2d at 171 (holding that Mississippi has only recognized this type liability in the disposal and use of dynamite and other explosives).

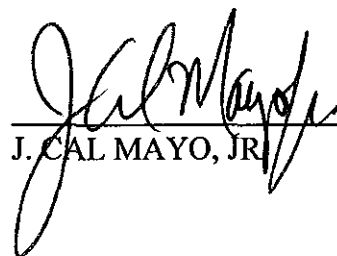
CERTIFICATE OF SERVICE

I, J. Cal Mayo, Jr., attorney for Defendant Mississippi Department of Mental Health, do
certify that I have this day delivered this document to the following persons:

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THIS, the 23rd day of May, 2011.



J. CAL MAYO, JR.

Appendix

11-46-9. Governmental entities and employees; exemption from liability

(1) A governmental entity and its employees acting within the course and scope of their employment or duties shall not be liable for any claim:

(d) Based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a governmental entity or employee thereof, whether or not the discretion be abused;