2011-CA-00328-SCT

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

WAYNE COUNTY SCHOOL DISTRICT — **APPELLANT**

v. — **CASE NO.: 2011-CA-00328**

ERNESTINE WORSHAM, INDIVIDUALLY, AND ON BEHALF OF ZE'METRICE DENISON, A MINOR — **APPELLEE**

ON APPEAL FROM THE CIRCUIT COURT OF WAYNE COUNTY, MISSISSIPPI

HONORABLE LESTER F. WILLIAMSON, JR., CIRCUIT JUDGE

REPLY BRIEF OF APPELLANT

Of Counsel to Appellant:

Lonnie D. Bailey, Esq. (MSB #[redacted]
F. Ewin Henson III, Esq. (MSB[redacted]
UPSHAW, WILLIAMS,
BIGGERS & BECKHAM, LLP
309 Fulton Street
Post Office Drawer 8230
Greenwood, Mississippi 38935-8230
Telephone: (662) 455-1613
Fax: (662) 455-7884

Rick Norton, Esq.
Brad A. Touchstone, Esq.
BRYAN NELSON, P.A.
P.O. Box 18109
Hattiesburg, MS 39404-8109
Telephone: (601) 261-4100
Fax: (601) 261-4106

ORAL ARGUMENT REQUESTED

STATEMENT REGARDING ORAL ARGUMENT

The Appellant, Wayne County School District ("Wayne Co."), respectfully requests the Court to hear oral argument in this case. Wayne Co. submits that the decisional process will be significantly aided by oral argument. The issue of whether an individual member of a board of supervisors can unilaterally create a restricted speed zone on a county road is unique and has never been addressed by this Court. Oral argument will aid the Court in understanding how the trial court's erroneous legal ruling led to a cascade of further error resulting in a judgment which is manifestly unjust if allowed to stand.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

CONSTITUTIONS, STATUTES AND RULES

REPLY BRIEF OF APPELLANT

I. INTRODUCTION

The Brief of Appellee is wanting in substantive legal arguments which either countermand Wayne Co.'s positions or establish support for the trial court's rulings. The Brief of Appellee is, however, replete with citations to matters that are not contained within the record[1], inappropriate or misleading characterization of witness testimony, and inappropriate or misleading characterization of the trial court's rulings.

In essence, Worsham urges the Court to ignore legislative mandates and judicial requirements in order to find a way to affirm an unsupported, excessive judgment. Worsham fails completely in her attempt to justify the trial court's erroneous ruling that an individual supervisor could single-handedly create a 30 mph speed zone on County Farm Road. She completely ignores controlling case law from this Court which establishes that Worsham's negligence, not Middleton's, was the sole proximate cause of the collision and, consequently, Worsham's damages. Worsham's brief misses the point or intentionally ignores Wayne Co.'s argument regarding the trial court's unsupported damages assessment. Finally, as to the trial court's erroneous denial of Wayne Co.'s motion for new trial, Worsham completely ignored Wayne Co.'s argument.

For all of the foregoing reasons, and those set out in our initial Brief of Appellant, the Court should reverse the judgment of the Circuit Court of Wayne County and render judgment in favor of Wayne Co. Alternatively, the Court should reverse the judgment and remand this case to the Circuit Court of Wayne County for a new trial on all issues.

---

1 These matters are the subject of a separate motion to strike portions of the Brief of Appellee in which we ask the Court to strike the extra-record citations and to refrain from considering them when deciding this case.

II. ARGUMENT

A. Improprieties in the Brief of Appellee

Throughout the Brief of Appellee she mischaracterizes the testimony of witnesses and the trial court's rulings. Moreover, in several instances she includes citations to evidentiary matters which were not before the trial court and which are not included in the record before this Court. While Wayne Co. is reluctant to point out these improprieties in the Brief of Appellee, the cumulative effect of the mischaracterizations and extra-record citations is a skewed perspective of the facts developed below and the issues to be determined by this Court. Wayne Co. has been left little choice but to catalog the inappropriate portions of the Brief of Appellee to insure that the Court is alerted to the flaws in Worsham's arguments so that it can reach the correct decision in this case.

1. Mischaracterization of Witness Testimony

In her Statement of Relevant Facts, at page 7[2] of her Brief, Worsham states that "Worsham's inability to fully extend her arm beyond a 90-degree angle will undoubtedly impact her in her future career as a Nurse." She then cites to Tr. 121:22-29; 122:1-5.[3] The testimony cited does not support this bold supposition. Rather, Worsham candidly admitted that she had not discussed her purported limitations with her teachers, nurses in the program, a counselor or even a physician. Tr. 118:24-29, 119:3-20.

---

2 The pages of the Brief of Appellee served on Wayne Co.'s counsel were unnumbered. The reference to page 7 means the 7th page of actual text in the Brief following the Table of Authorities.

3 It became obvious during review of the Brief of Appellee to prepare Appellant's Reply Brief that all of her citations to the trial transcript were citations to an unofficial version of the transcript which was transcribed for the parties for use in preparing post-trial motions. In the official transcript filed with this Court, the cited pages and lines contain testimony about the presence of the 30 mph speed limit signs on County Farm Road. We believe that the testimony that Worsham intended to cite is found in the official transcript at Tr. 119:10-22.

In another instance in her Argument at pages 19-20 of the Brief of Appellee Worsham argues that "[h]owever during trial Middleton estimated her distance from Worsham approximately 87 feet away from Worsham when she first saw her." (Tr. 63:21).[4] In fact, Middleton's testimony was that she was approximately 87 feet from the driveway when she saw Worsham start to pull forward out of the driveway in front of the school bus. Tr. 61:23-29, 62:1-9.

In her Statement of Relevant Facts, at pages 4-5, Worsham again mischaracterizes the testimony in an apparent attempt to convince the Court that the accident occurred entirely in the eastbound lane of County Farm Road, contrary to all of the evidence in the record. She states: "Middleton veered left into the eastbound lane prior to collision, causing her vehicle to cross into Worsham's lane, the eastbound lane of County Farm Road and plow right into her vehicle." In fact, a fair reading of the cited testimony and the other evidence shows that the collision occurred primarily in the westbound lane and that only a small portion (1 to 2 feet) of the school bus and Worsham's vehicle had crossed the "imaginary center line" separating the west and east bound lanes of County Farm Road. Tr. 32:27 through 33:28, 197:5-12. In other words, Worsham had not cleared the center line and occupied the eastbound lane of traffic as her brief seems to suggest. Middleton did not run her down in the opposite lane and "plow right into her vehicle" as her brief intimates.

2. **Mischaracterization of the Trial Court's Rulings.**

In her Statement of the Case[5] and Argument[6], Worsham argues that Wayne Co. is procedurally barred from raising the issue of the legality of the unilaterally posted 30 mph speed

---

4 The cited testimony is in the official transcript at Tr. 62:9.

5 Brief of Appellee at page 3.

6 Brief of Appellee at pages 9-12.

limit signs because she "successfully argued [in the trial court] that Wayne County was procedurally barred from raising this issue" because it was not pled with enough specificity in Wayne Co.'s answer. Brief of Appellee at page 3. (Explanatory material added). While Wayne Co. will address the merit of this argument below, it is important to note here that Worsham's argument is a significant mischaracterization of what the trial court actually ruled.

The trial court did not deny Wayne Co.'s motion for summary judgment because "Wayne County did not properly raised (sic) the legality of the speed limit of County Farm Road"[7] as argued by Worsham. Nowhere in the trial court's October 5, 2010 Order does the trial court hold that Wayne Co. was procedurally barred from raising the speed limit legality issue. The trial court did not use the phrase "procedurally barred". R.E. 4-12, R. 114-122. In truth, the trial court considered the issue on the merits[8] and determined (erroneously) that the speed limit was legally reduced to 30 mph and thus denied Wayne Co.'s motion for summary judgment on that basis. Indeed, the trial court wrote that "[t]hus, the **real issue** before this Court is whether a speed zone put in place by a Board Supervisor, in response to constituent complaints, is constructively adopted as a special speed zone." (Emphasis supplied.) R.E. 11, R. 121. It is abundantly clear that the trial court did not consider the issue "procedurally barred", as argued by Worsham. This is evident from the fact that, **at trial**, the trial court allowed testimony from former Wayne County Supervisor Fred Andrews

---

7

At page 11 of Brief of Appellee, the sentence that includes this argument is contained in a quote from M.R.C.P. 9(d). Obviously, this case-specific argument is not a part of the Mississippi Rules of Civil Procedure.

8

"Although the Motion for Leave to Amend to File Answer has been denied, the Court thinks it is appropriate to address the merits of the Motion for Partial Summary Judgment." R.E. 8, R. 118.

which addressed only the speed zone legality issue.[9] Tr. 165-174. In both its Order filed 11/24/10, R.E. 13-2, R. 123-131 and its Amended Judgment (Previously Styled "Order") filed 2/17/11, R.E. 22-31, R. 143-152, the trial court wrote extensively on the merits of the speed zone legality issue. There would have been no need for this judicial effort if the issue was "procedurally barred".

3. Extra-Record Evidentiary Citations

Worsham's Brief of Appellee contains numerous citations to matters which were not in evidence at trial and are not included in the record on appeal. The evidentiary matters set out below should be stricken from the Brief of Appellee and should not be considered by this Court in deciding this case. *See, Potts v. Miss. Dept. of Transportation*, 3 So.3d 810, 815 (Miss. App. 2009) ("'the case must be decided on the facts contained in the record and not on assertions in the brief'"); *Burnett v. Burnett*, 792 So.2d 1016, 1019 (Miss. App. 2001) (granting motion to strike portions of Appellant's brief containing facts not found in the record.)

At page 5 of the Brief of Appellee, Worsham refers to testimony from the deposition of Fred Andrews, page 13, lines 13-25 and page 14, lines 1-8, which was purportedly attached as Attachment "A".[10] This testimony was not in evidence before the trial court, is not a part of the record and should not be considered by this Court.

At page 6 of the Brief of Appellee, Worsham cites from the deposition of Natasha Middleton, page 54, lines 18-25 and page 55, line 1. This deposition was not in evidence before the trial court, is not a part of the record and should not be considered by this Court in deciding this case.

---

9 Worsham did not object to this testimony.

10 The copy of Brief of Appellee served on counsel for Wayne Co. did not have any attachments. If the deposition testimony was attached to the original brief filed with the Court, it should be stricken.

At page 17 of the Brief of Appellee, Worsham refers to testimony from the deposition of Fred Andrews (without a supporting citation). This unsupported assertion was not in evidence before the trial court, is not a part of the record and should not be considered by this Court in deciding this case.

At page 19 of the Brief of Appellee, Worsham again cites from the deposition of Natasha Middleton, page 54, lines 18-25 and page 55, line 1, purportedly attached as Attachment "B".[11] This deposition was not in evidence before the trial court, is not a part of the record and should not be considered by this Court in deciding this case.

B. The Trial Court Erred in Finding that a Single Member of the County Board of Supervisors Can Unilaterally Post Reduced Speed Limit Signs on a County Road Without Following the Statutory Requirement for Establishing Reduced Speed Limits.

Worsham makes two arguments in her effort to buttress the trial court's erroneous conclusion of law that a single member of a county board of supervisors can unilaterally adopt a restricted speed zone. First, she claims that Wayne Co. is procedurally barred from raising the issue in this Court. Second, she makes a half-hearted attempt to defend the trial court's illogical analogy of the establishment of a restricted speed zone to the public acquisition of a private road through the common law doctrine of prescription. There is no procedural bar. An unrelated common law principle applicable to public acquisition of private roadways cannot trump specific statutory limitations on the powers of local government and express statutory direction for the establishment of restricted speed zones.

1. The Non-Existent Procedural Bar.

Wayne Co. has demonstrated, *supra*, that the trial court did not find that Wayne Co. was procedurally barred from raising the legality of the restricted speed zone at trial. Indeed, the trial

---

11 Again, the copy of the Brief of Appellee served on counsel for Wayne Co. did not have any attachments.

court noted that this was the "real issue" in this case. R.E. 11, R. 121.

In Worsham's Brief of Appellee, she argues that Wayne Co. was required to plead a specific denial on this issue in its Answer. In support of this argument, Worsham misapplies the controlling case on this matter; *Niles v. Sanders*, 218 So.2d 428 (Miss. 1969). While Worsham cited *Montgomery v. State*, 910 So.2d 1169, 1172 (Miss. App. 2003) which quoted the appropriate portion of the *Niles* case as it pertains to the burden of pleading, she nonetheless misapplied or simply ignored the entire holding of the Court in *Niles* on this issue. In *Niles*, the Court stated that:

> If the existence of such a special speed restriction **is alleged and denied**, or its legality is put in issue by responsive pleading, proof should then be required, the burden resting on the party having the affirmative, as in other cases of disputed fact. (Emphasis supplied.)

Id. at 431.

Moreover, Worsham argues that Wayne Co. never raised the issue of the legality of the speed limit signs in its initial answer, robbing her of adequate notice of the defense. This is simply not the case. Wayne Co. explicitly *denied* in its original Answer that either it or Middleton was guilty of any negligence *per se* for exceeding the illegally restricted speed limit. A.R.E. 11-21; R. 16-26.

While there was no specific denial that the speed limit signs were not adopted pursuant to a duly enacted ordinance, Wayne Co. finds no authority in Mississippi law requiring such an affirmative burden be placed on it in this case. In fact, the Court in *Niles* explained that the special speed restriction need only be alleged and *denied*, or simply *put at issue* in a responsive pleading to require proof from the party relying on special speed restriction having the affirmative (i.e. Worsham), as in all other cases of disputed fact. *Id.* By denying guilt for negligence *per se*, Wayne Co. certainly put the speed limit at issue in its responsive pleading. The lack of an ordinance on which to base a negligence *per se* claim is not an affirmative defense as contemplated in M.R.C.P.

8(b). The burden of proof rests upon Worsham to prove her case that Wayne Co. violated a statute designed to protect her, which was the proximate cause of her injuries. *Snapp v. Harrison*, 699 So. 2d 567, 571 (Miss. 1997); *Brennan v. Webb*, 729 So.2d 244, 249 (Miss. Ct. App. 1998). This, she did not do.

Worsham further suggests that Wayne Co. was required to plead a special matter as contemplated under M.R.C.P. 9(d). This is incorrect. Wayne Co.'s position was that there was no ordinance and, in fact, it is *Worsham* that arguably relied on an "ordinance of a municipality or a county, or a special, local, or private statute" to lay her claims for negligence *per se* against Wayne Co. *See*, M.R.C.P. 9. Therefore, it is only Worsham that was required to meet the obligations under M.R.C.P. 9, as Wayne Co.'s reliance on the *lack* of such an ordinance does not prompt the same pleading requirements. Simply put, Wayne Co. was not required to plead that an ordinance or official act was defective as a defense in this matter. Rather, under the law it is allowed to show the simple lack of any such act or ordinance. Wayne Co. is not now procedurally barred from raising this issue on appeal merely because it did not specifically plead the lack of a restrictive speed ordinance as a special matter as contemplated by Rule 9(d), M.R.C.P.

Moreover, Worsham's argument that Wayne Co. was somehow procedurally barred from challenging the legality of the restricted speed zone is moot. Even if there was legal merit to her arguments regarding a procedural bar, she waived them when she failed to object to the testimony of former supervisor Fred Andrews at trial.

Rule 15(b), M.R.C.P. provides that:

> When issues not raised by the pleadings are tried by expressed or implied consent of the parties, they shall be treated **in all respects** as if they had been raised in the pleadings. (Emphasis supplied).

Consequently, even if the trial court's refusal to allow Wayne Co. to amend its answer was legally

correct (which it was not) **and** even if the trial court had found that Wayne Co.'s failure to more specifically raise the lack of a valid ordinance earlier in the litigation gave rise to a procedural bar (which it did not), Worsham's consent to allow the issue to be tried by the trial court, as evidenced by her failure to object to Mr. Andrews' testimony on the subject, requires that the pleadings be considered as amended to conform to the evidence admitted on the subject. Indeed, it is clear from the transcript that a significant portion of this one-day trial was devoted to the issue of whether the speed limit restriction was valid.

2. The Trial Court Applied an Erroneous Legal Standard in Deciding Worsham's Negligence *Per Se* Claim.

In an apparent recognition that her "procedural bar" argument lacks merit, Worsham urges that the trial court correctly analogized the unauthorized placement of speed limit signs by a single supervisor to the public acquisition of a private road by prescription. While Wayne Co. sufficiently demonstrated in its initial Brief of Appellant that the trial court erred on this question of law, a brief discussion of Worsham's argument is in order.

First, even though she purports to discuss the merits of Wayne Co.'s defense to the negligence *per se* claim, Worsham completely ignores the substance of Wayne Co.'s argument. She makes no reference to the legislative mandate in Miss. Code Ann. § 63-3-511 that a board of supervisors may only reduce the speed limit on a road within its jurisdiction if it meets certain conditions which include an engineering and traffic study and the adoption of an ordinance, none of which was done in this instance.

In advocating that this Court ignore the specific mandate of the Legislature in favor of a common law rule that applies to a wholly unrelated subject matter, Worsham makes the curious argument that the Court should also ignore the judicially-imposed requirements for establishing a

public road by prescription. At page 13 of the Brief of Appellee Worsham urges that "[t]he defendant has made much ado over the fact that the speed limit signs had only been in place from 2001 to 2010. To the contrary, this is not an adverse possession where a time frame of ten (10) years is statutorily mandated requirement. There is no magic to ten (10) years in the context of accepting the posted speed limits by prescription." If Wayne Co. understands the argument of Worsham, it goes something like this:

- The Court should ignore the legislative requirements of § 63-3-511;
- Instead, the Court should resolve the validity of a purportedly restricted speed zone by adopting a common law principle which applies to the public acquisition of private real estate; **but**
- The Court should ignore Worsham's inability to prove an outcome-determinative factor to establish acquisition by prescription; i.e. the requisite ten (10) year period of public use.

In the cases cited by Worsham (and those which she neglected or ignored), the Court made it clear that prescription requires public use for more than ten (10) years. *See*, *Armstrong v. Itawamba Co.*, 195 Miss. 802, 815-17, 16 So.2d 752, 756-57 (1944); *Turner v. Duke,* 736 So.2d 495 (Miss. App. 1999); *Myers v. Blair*, 611 So.2d 969, 973 (Miss. 1992) ("There is no proof of any public use under a claim of right for the requisite ten year prescription period. Accordingly, the chancellor committed manifest error by concluding there was a public easement by prescription.") Consequently, even if the logic of the trial court's analogy made legal sense (which it does not), there **is magic** to ten (10) years in the context of accepting the posted speed limits by prescription. What is lacking is evidence that the ten (10) year period was met.

C. The Trial Court Erred in Finding that Middleton was Negligent *Per Se* for Driving at a Speed Greater than the Invalidly Posted Speed Limit of Thirty (30) Miles Per Hour.

1. Plaintiff Did Not Prove Violation of a Statute or Ordinance.

Worsham apparently misunderstood Wayne Co.'s position with regard to this issue. Wayne Co. did not argue and does not contend that Worsham is not a member of the class intended to be protected by properly enacted speed limitations. All motorists are members of such a class. Wayne Co.'s position is that Worsham did not prove that there was a valid speed limitation on County Farm Road that Middleton exceeded. That issue has been exhaustively briefed in our initial Brief of Appellant and *supra.* It bears repeating, however, that there is no evidence in the record that Middleton violated a duly-enacted local ordinance or a Mississippi statute with respect to the speed of her school bus prior to the accident.

2. Plaintiff did not Prove that the Purported Violation was the Proximate Cause of Her Injuries.

Again, it appears that Worsham misapprehended the substance of Wayne Co.'s argument regarding proximate causation. Worsham argues strenuously that there were disputed issues of fact regarding the distance between the school bus and the intersection when Worsham decided to pull into the intersection in front of the bus. The cases cited by Worsham -- *Junakin v. Kuykendall*, 237 Miss. 255, 114 So.2d 661 (1959) and *Caves v. Smith*, 259 So.2d 688 (Miss. 1972) -- admittedly both hold that where there is disputed testimony about whether a vehicle on a through highway had approached so closely as to constitute an immediate hazard there is a question for the jury.

In the instant case, however, the trial court resolved the factual disputes **against Worsham**. R.E. 28, R. 149 ("Accordingly, Middleton's bus clearly owned the right of way, and being so close, posed an immediate hazard to Worsham at the point in time when she decided to enter the roadway.") Wayne Co. does not challenge this finding by the trial court. Rather, Wayne Co. agrees

unreservedly that the school bus had approached the intersection so closely as to constitute an immediate hazard to Worsham.

Where Worsham missed the point is Wayne Co.'s position, supported fully by the decisions of this Court cited in our initial Brief of Appellant, that the trial court erred in its application of the law to this fact finding. The cases -- *Vines v. Windham*, 606 So.2d 128 (Miss. 1992); *McKinzie v. Coon*, 656 So.2d 134 (Miss. 1995); *Stribling v. Hauerkamp*, 771 So.2d 415 (Miss. App. 2000); *Griffin v. Harkey*, 215 So.2d 866 (Miss. 1968) -- make it clear that when a driver pulls from a private drive into a through highway in front of a vehicle that has approached so closely as to constitute an immediate hazard, the sole proximate cause of the ensuing collision is the negligence of the driver who pulls into the through highway.[12] Worsham could not establish the proximate cause element of a negligence *per se* claim. The trial court, consequently, committed an error of law in holding that Middleton was a contributing cause to the accident.

Worsham did not comment on *Vines*, *McKinzie*, *Stribling* or *Griffin*, much less attempt to distinguish them from the instant case. For these reasons, the Court should reverse the judgment against Wayne Co. and enter a judgment of dismissal in its favor.

D. Alternatively, the Damage Awards to Worsham and Denison Were Not Supported by Substantial, Credible and Reasonable Evidence.

Worsham failed to comprehend the errors committed by the trial court which require reversal of its damages assessment. In a bench trial, the court's damages assessment, and this Court's review of it, involve more than just comparing ratios of medical expenses to jury verdicts from prior decisions which appears to be Worsham's only argument. Rather, as noted in our initial Brief of

---

12

Wayne Co. acknowledges that this rule does not necessarily obtain where the vehicle on the through highway is traveling at an excessive rate of speed. As previously established, however, there is no evidence in the record that Middleton's speed was excessive.

Appellant, the findings of a circuit judge sitting without a jury must be supported by substantial, credible and reasonable evidence. *Mississippi Department of Human Services v. S. W.*, 974 So.2d 253, 257 (Miss. App. 2007), citing *Jones v. Mississippi Transp. Comm'n*, 920 So.2d 516, 518 (Miss. 2003).

The cases cited by Worsham for comparison are factually distinguishable. In both *Kinnard v. Martin*, 223 So.2d 300 (Miss. 1969) and *Philco Distributors, Inc. v. Herron*, 195 So.2d 473 (Miss. 1967)[13], the plaintiff called one or more treating physicians to testify about the injuries, future medicals and the like. Here, of course, Worsham failed to call treating physicians, expert witnesses, rehabilitation experts or any other damages witnesses, except her and her mother. In *Gatewood v. Sampson*, 812 So.2d 212 (Miss. 2002), a case in which the plaintiff was shot in the back of the head, plaintiff put on evidence, in addition to his medical expenses, lost wages and future medicals, that he continued, up to the time of trial, to suffer from depression, dizziness, headaches, recurring nightmares and post-traumatic stress syndrome. 812 So.2d at 223. *Gatewood* seems to be a more appropriate case, than the instant case, in which to apply the quote from *Philco Distributors* that "[t]he amount of a doctor's bill does not *per se* indicate the seriousness of the injuries of the patient."[14] 195 So.2d at 481.

In *Jackson Public School Dist. v. Smith*, 875 So.2d 1100, 1104 (Miss. App. 2004) the Court of Appeals discussed the variables to be considered by the finder of fact in arriving at a damages

---

13

Worsham neglected to point out in the Brief of Appellee that in *Philco Distributors* this Court affirmed with a remittitur of the damage award or a conditional new trial on damages only, finding the jury's verdict excessive. Presumably this was merely an oversight.

14

Of course, in these days of rapidly escalating medical expenses this quoted language stands equally well for the opposite proposition, in this case.

award and noted that "[e]ach suit for personal injury must be decided by the facts shown in that particular case." *Jackson Public School District* would seem to be a more apt case for comparison than *Kinnard*, *Philco Distributors* or *Gatewood*. In *Jackson Public School District* the plaintiff was run over by a school bus and injured. As a result, he incurred several surgeries, wound debridements, permanent scarring and $33,000 in medical expenses. He presented medical testimony to support his claims. The physicians testified, however, that he suffered no permanent impairment that would significantly interfere with the use of his injured hand. In a bench trial, the Circuit Court awarded plaintiff $850,000. The Court of Appeals found this award to be excessive, unreasonable and contrary to the overwhelming weight of the evidence.[15] 875 So.2d at 1105.

Worsham did not even attempt to address, much less justify, the specific errors by the trial court in arriving at its exorbitant damage assessment which were pointed out in our initial Brief of Appellant. The damages assessment was not supported by substantial, credible and reasonable evidence and should not be allowed to stand.

E. <u>Alternatively, the Trial Court Erred in Denying Defendant's Motion for New Trial.</u>

The trial court abused its discretion when it denied Wayne Co.'s motion for new trial after being apprised of the domino effect of its erroneous ruling that there was a legal speed limit reduction on County Farm Road. The Brief of Appellee falls short of demonstrating that the trial court's refusal to grant a new trial can be sustained. As the Brief of Appellee contains nothing more than a "Does to; Does Not" type argument on this point, in the interest of judicial economy, Wayne Co. will not prolong this brief with further argument.

15

The Court of Appeals remitted the award to $400,000 or a conditional new trial on damages alone. By citing *Jackson Public School District*, Wayne Co. does not suggest that a $400,000 remittitur would be an appropriate resolution of the instant case. Rather, *Jackson Public School District* is cited only to demonstrate that on analogous facts, an $800,000 damages assessment is excessive.

III. CONCLUSION

The trial court applied an erroneous legal standard when it decided that it could disregard legislative mandate and, by analogy to prescriptive easement, hold that a single supervisor could cause a reduced speed limit to be adopted by simply placing signs at the end of County Farm Road. That legal error led the trial court to a finding of negligence *per se* by Middleton, notwithstanding that there was no evidence in the record of actual negligence and no proof of proximate cause. The error was further compounded by an unnecessary and unsupported damages assessment.

For all of the foregoing reasons here, and in our initial Brief of Appellant, the judgment of the Circuit Court of Wayne County should be reversed and rendered here in favor of Wayne County School District. Alternatively, the judgment should be reversed and remanded for a new trial.

This the 27th day of September, 2011.

Respectfully submitted,

UPSHAW, WILLIAMS,
BIGGERS & BECKHAM, LLP

Attorneys for Wayne County School District

By: _____
Lonnie D. Bailey, MB#[redacted]
F. Ewin Henson III, MB#[redacted]

OF COUNSEL:

UPSHAW, WILLIAMS,
BIGGERS & BECKHAM, LLP
309 Fulton Street
P.O. Drawer 8230
Greenwood, Mississippi 38935-8230
Telephone: (662) 455-1613
Fax: (662) 455-7884

Rick Norton, Esq.
Brad A. Touchstone, Esq.
BRYAN NELSON, P.A.
P.O. Box 18109
Hattiesburg, MS 39404-8109
Telephone: (601) 261-4100
Fax: (601) 261-4106

CERTIFICATE OF SERVICE

I, Lonnie D. Bailey, of counsel to Appellant, hereby certify that I have this day mailed by U.S. Mail, postage prepaid, a true and correct copy of the foregoing document unto:

Thomas Kelvin Hudson, Esq.
Larry Stamps, Esq.
Stamps & Stamps
P.O. Box 2916
Jackson, MS 39207-2916
Attorneys for Appellee

Honorable Lester F. Williamson, Jr.
Circuit Judge, 10th District
P.O. Box 86
Meridian, MS 39302

SO CERTIFIED, this the 21st day of September, 2011.

Lonnie D. Bailey

CERTIFICATE OF FILING

I, Lisa Roberts, legal secretary to Lonnie D. Bailey, one of the counsel for the Appellant, do hereby certify that, pursuant to Rule 25(a), M.R.A.P., I have filed the original and three copies of Reply Brief of Appellant by depositing them in the United States Mail, first class, postage prepaid, on this the 27th day of September, 2011, addressed as follows:

Ms. Kathy Gillis, Clerk
Supreme Court of Mississippi
Post Office Box 249
Jackson, MS 39205-0249

This the 27th day of September, 2011.

Lisa Roberts

Lisa Roberts