

**IN THE SUPREME COURT OF MISSISSIPPI
CIVIL ACTION NO. 2011-CA-00540**

ARNETRIA L. AULTMAN

Plaintiff/Appellant

v.

LAWRENCE COUNTY, MISSISSIPPI

Defendant/Appellee

**APPEAL FROM THE CIRCUIT COURT OF
LAWRENCE COUNTY, MISSISSIPPI
CIVIL ACTION 2010-0132H**

REPLY BRIEF OF APPELLANT ARNETRIA L. AULTMAN

**C. E. Sorey, II, MSBN [REDACTED]
909 Delaware Avenue
P. O. Box 509
McComb, MS 39649
601/684-2793
601/249-2507 Facsimile**

ORAL ARGUMENT REQUESTED

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REPLY BRIEF

Lawrence County argues that because the lower court determined the huge crevasse to be “open & obvious” [R-53] that Lawrence County would be immune from liability. This determination is based on the Affidavit testimony of Aultman and her passengers that a huge crevasse existed in the center of Oak Grove Road. [R-44, 45, 46] Aultman and her passengers had **no prior knowledge** of the dangerous condition of the road.

The Affidavits offer no testimony that Aultman or her passengers knew **prior** to the accident that the huge crevasse existed, nor is there testimony that they could see the opening until after the vehicle plunged into the opening. It was very dark and the accident occurred at approximately 11:30 p.m.

The affidavits do contain testimony that the only type sign that Aultman and her passengers saw that night was a section of orange and white barricade sitting off to the side of the roadway some 12-15 car lengths before the opening in the roadway. There was nothing, at the time Aultman’s vehicle approached the crevasse, that blocked the road that would have given warning that the road had washed away. There was nothing to prevent Aultman or any other driver from driving right into the crevasse.

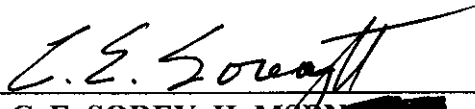

Whether the dangerous condition that existed on Oak Grove Road was open and obvious is a genuine issue of material fact. In the case at bar, there exists sworn contradictory testimony as to material facts; and, summary judgment is not appropriate. *Pratt v. Gulfport-Biloxi Regional Airport Authority* — So. 3d — (2011) 2011 WL 699371 citing *Robinson v. Cobb*, 763 So.2d 883, 886 (¶ 13) (Miss. 2000) (When opposing witnesses swear to contradictory, material facts, summary judgment is not appropriate.)

CONCLUSION

There exists material facts that should be resolved by the trier of fact, not through summary judgment, and Lawrence County's Motion should have been denied. Aultman respectfully requests that this Court reverse the ruling of the lower court and remand this case for trial on the merits.

Respectfully submitted,

ARNETRIA L. AULTMAN, APPELLANT

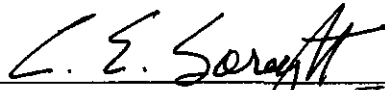
By 
C. E. SOREY, II, MSBN 


LAW OFFICES OF WILLIAM S. GUY
909 Delaware Avenue (39648)
P. O. Box 509
McComb, MS 39649
(601)684-2793
(601)249-2507 facsimile
csorey@guylaw.com

CERTIFICATE OF FILING

I, C. E. Sorey, II, attorney for Plaintiff/Appellant, do hereby certify that I have this day, forwarded via U. S. Mail, first class service, postage prepaid to the Clerk of the Mississippi Supreme Court, the original and four (4) copies of Plaintiff/Appellant's Reply Brief in Arnetria L. Aultman v. Lawrence County, Mississippi, Civil Action 2011-CA-00540.

THIS the 24th day of October, 2011.



C. E. SOREY, II, MSBN 

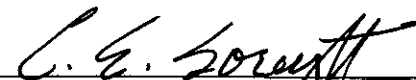
CERTIFICATE OF SERVICE

I, C. E. Sorey, II do hereby certify that I have this day mailed by United States mail, postage prepaid, a true and correct copy of Plaintiff/Appellant's Reply Brief, to:

Roy A. Smith, Jr.
Steven J. Griffin
DANIEL COKER HORTON AND BELL, P.A.
P. O. Box 1084
Jackson, MS 39215-1084

Honorable Prentiss G. Harrell
Lawrence County Circuit Court Judge
Post Office Box 488
Purvis, MS 39475-0488

THIS, the 24th day of October, 2011.



C. E. SOREY, II, MSBN 