IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

TIFFANY GRIFFIN **APPELLANT**

VS. **CASE NO. 2015-TS-01867**

GRENADA YOUTH LEAGUE **APPELLEE**

APPEAL FROM THE CIRCUIT COURT OF GRENADA COUNTY, MISSISSIPPI

REPLY BRIEF OF APPELLANT TIFFANY GRIFFIN

****Oral Argument Requested****

OF COUNSEL:	OF COUNSEL:
S. Craig Panter (MB #3999) Panter Law Firm, PLLC 7736 Old Canton Road, Suite B (39110) Post Office Box 2310 Madison, Mississippi 39130 Telephone: (601) 607-3156 Facsimile: (601) 607-3157	S. Everett Pepper (MB # 103984) PEPPER & ODOM, P.C. 571 Highway 51, Suite B Ridgeland, MS 39157 Phone: (601) 202-1111 Facsimile: (888) 456-2160 Email: everett@pepperodom.com

TABLE OF CONTENTS

TABLE OF CASES, STATUTES AND OTHER AUTHORITIE

Cases

ARGUMENT

Mr. Griffin was a public invitee.

Despite the lower court's ruling that Mr. Griffin was a public invitee, GYL continues to argue for licensee status. Yet, in support of its position, GYL offers facts that simply have no bearing on the issue.

Specifically, on page 17 of its Brief, GYL provides a list of facts that supposedly support a finding of licensee status:

- **She arrived at the park at 11 a.m. for a game that began at 11 a.m.** True, but this fact is not relevant to the analysis.

- **GYL has a designated paved walkway but Ms. Griffin took a shortcut**. For all the reasons stated in Ms. Griffin's principal Brief, taking a shortcut that numerous other people, including GYL's Chairman, Jeff McWhorter, regularly took does not change her status from invitee to licensee.

- **Ms. Griffin carried a bag and was wearing flip-flops**. Once again, true, but again this is irrelevant to the inquiry into her status as invitee or licensee.

- **Ms. Griffin walked about halfway down the small grass hill before she fell**. True, but again not relevant to the inquiry.

Under well-established law, Ms. Griffin was a public invitee of GYL at the time she was injured.

The hole was present, and it is a jury question as to whether such constituted a hazard.

GYL understands the "Achilles' heel" in its position is that this Court has to assume the hole just was as Ms. Griffin described it and that it caused her to fall and injure herself.

In an effort to get around this, GYL simply states, over and over, that its people inspected the area, that no one saw the hole, and that no one else complained.

That is certainly something GYL should point out to the jury, but this Court cannot rule *as a matter of law* that the hole was not present simply because no one with GYL claims to have seen it.

A jury might conclude, as GYL desires, that the hole was not as large as Ms. Griffin recalled. The jury might conclude, as GYL urges, that taking a shortcut, wearing flip-flops and carried a bag somehow constituted comparative negligence on her part.

At the same time, a jury might conclude that the hole was present, just as Ms. Griffin described it, and that the failure of GYL to observe it was negligence.

When reasonable minds might differ on the matter, questions of proximate cause and of negligence and of contributory negligence are generally for determination of jury. *Hankins Lumber Co. v. Moore,* 774 So.2d 459, 464 (Miss. Ct. App. 2000).

"It is solely within province of jury to resolve vital evidentiary conflicts on issues of negligence." *Enterprise Leasing Co. South Cent., Inc.* v. Bardin, 8 So.3d 866, 870 (Miss. 2009). "The issue of ordinary care is a fact question." *L.W. v. McComb Separate Municipal School District*, 754 So.2d 1136, 1142 (Miss. 1999).

Put simply, the facts are in dispute, and it is the role of the jury (not the court) to resolve the dispute.

The question of "hole" versus "drainage ditch"

In its Brief, GYL seeks to score points by noting that the Complaint said Ms. Griffin was injured in a drainage ditch but that she testified she stepped into a hole. There is no conflict here.

The Court need only look at the testimony of Jeff McWhorter, the Chairman of GYL. On page 87 of the Record (deposition page 25), Mr. McWhorter testified that the area where Ms. Griffin was injured was:

- Not steep at all.
- Sloped for the water to get off the road and drain.
- A smooth area like a "'v".
- Like a drainage ditch.

Put simply, Ms. Griffin did not change her story. The hole was located in a slight slope that allowed water to drain.

Ms. Griffin has presented sufficient facts to support causation.

GYL contends that Ms. Griffin cannot establish causation. Again, GYL advances into the realm of jury argument rather than legal conclusions.

For example, on page 30 of its Brief, GYL states that Ms. Griffin could have fallen while walking down even if the hole was not present. Perhaps so, but Ms. Griffin testified that the hole was present and that stepping into it is what caused her to fall, not something else.

GYL also argues that it was not reasonably foreseeable that such a hole would cause a person to fall. *See* GYL's Brief, pages 29-30. That is a question for the jury.

"The question of whether the defendant's negligence was a proximate contributing cause of the plaintiff's injuries is ordinarily one for the jury." *Illinois Central Gulf Railroad Company v. Milward*, 902 So.2d 575, 582 (Miss. 2005).

Foreseeability is also an issue to be decided by the finder of fact once sufficient evidence is presented in a negligence case. *Hankins*, 774 So.2d at 464. "Whether a cause of injury is foreseeable is a question for the jury." *Foradori v. Harris*, 523 F.3d 477, 496 (5th Cir. 2008) (applying Mississippi law).

As the Supreme Court held in *Alexander v. Jackson County Historical Society Inc.*, 227 So.2d 291, 292 (1969): "A jury could conclude that this concealed hole around the post was a hidden, dangerous condition in the nature of a trap and

that in the exercise of reasonable care the Society ought to have ascertained its existence and anticipated that someone might be injured by it."

The same holds true here.

The question of how long the hole was present.

GYL makes much of the fact that at her deposition, Ms. Griffin acknowledged she did not know how long the hole had been present. That is correct.

Under Mississippi law, however, to establish construction knowledge of a hazard, the plaintiff is not required to show with mathematical precision how long the hazard existed.

Instead, the plaintiff need only prove that, taking into account all the circumstances, it existed long enough for the defendant to have seen it in the exercise of ordinary care. Further, such may be done by circumstantial evidence.

"The true rule is that, while plaintiff must prove that the defective condition existed long enough so that by the use of reasonable care it should have been discovered and remedied, that fact, like other facts, may be proved by circumstantial as well as by direct evidence." *Williamson v. F. W. Woolworth Co.*, 237 Miss. 141, 112 So.2d 529 (1959).

There is no set period of time that must pass to give rise to constructive notice. "It is generally a question of fact for the jury as to whether, *under all the*

circumstances, the defective condition existed long enough so that a reasonable man exercising reasonable care would have discovered it." *Id*. (emphasis added).

To reiterate what Ms. Griffin said in her first Brief, because grass was growing in the hole, a reasonable jury could conclude that the hole had been present long enough for GYL to identify it, particularly given that:

- GYL says its grounds committee inspected the property at the start of the season (R.75);
- The Frankie Bailey Tournament is the start of the season (R.83, deposition pages 9-10);
- GYL says its commissioner walks the grounds every day to be sure everything is okay; and
- The day Ms. Griffin was injured during the 6th day of the tournament (R.75).

This is, once again, a question for the jury.

The uneven sidewalk cases are not controlling here.

Finally, GYL relies upon a number of Mississippi Supreme Court decisions regarding uneven sidewalks or thresholds. In all of those cases, there was a variation as the plaintiff transitioned from one point to another. Those were transitions that the plaintiffs either saw or should have seen.

Those cases do not address the question of a hole in the ground that was

concealed by grass. *Alexander v. Jackson County Historical Society Inc.*, 227 So.2d 291, 292 (1969), does.

Conclusion

For the foregoing reasons, Appellant Tiffany Griffin asks that this Court reverse the Judgment of the lower court and remand this action for a jury trial.

Respectfully submitted, this the 12th day of August, 2016.

TIFFANY GRIFFIN

/s/ *Everett Pepper*
S. Everett Pepper, her attorney

/s/ *S. Craig Panter*
S. Craig Panter, her attorney

OF COUNSEL:

S. Everett Pepper (MB # 103984)
PEPPER & ODOM, P.C.
571 Highway 51, Suite B
Ridgeland, MS 39157
Phone: (601) 202-1111
Facsimile: (888) 456-2160
Email: everett@pepperodom.com

S. Craig Panter (MB #3999)
Panter Law Firm, PLLC
7736 Old Canton Road, Suite B (39110)
P.O. Box 2310
Madison, Mississippi 39130
Telephone: (601) 607-3156
Facsimile: (601) 607-3157

CERTIFICATE OF SERVICE

I, S. Craig Panter do hereby certify that I have this date served a true and correct copy of the above and foregoing by the court's electronic filing system to:

J. Stephen Kennedy
Nakimuli O. Davis-Primer
BAKER, DONELSON, BEARMAN, CALDWELL
& BERKOWITZ
P.O. Box 14167
Jackson, MS 39236

and by U.S. Mail, postage prepaid, to

Honorable Clarence E. Morgan, III
P.O. Box 721
Kosciusko, MS 39090

This the 12th day of August, 2016.

/s/ S. Craig Panter
S. Craig Panter