

SUPREME COURT OF MISSISSIPPI

Stewart ex rel. Womack v. City of Jackson

804 So. 2d 1041 (Miss. 2002) · No. 1999-IA-01527-SCT · Decided January 17, 2002

SUMMARY

The Supreme Court of Mississippi reviewed an interlocutory appeal from summary judgment granted to the City of Jackson and its employee in a negligence action arising from an elderly passenger's fall after exiting a city-operated van. The court held that the alleged conduct was not protected by the Mississippi Tort Claims Act's discretionary-function immunity and that factual issues remained concerning ordinary care and breach of contract. It also held that the employee could remain joined in a representative capacity while the governmental entity remained a defendant, and reversed and remanded for trial.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Cobb; Pittman; McRae; Smith; Waller; Diaz; Easley; Carlson
JURISDICTION	Mississippi
DECIDED	January 17, 2002
DOCKET	1999-IA-01527-SCT
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Interlocutory appeal from the Hinds County Circuit Court's grant of summary judgment in favor of the City of Jackson and Doris Spiller and denial of summary judgment as to UMMC.
STANDARD OF REVIEW	De novo review of summary judgment; questions of law reviewed de novo.
PRECEDENTIAL VALUE	Published
PARTIES	Otha Stewart, by and through Emma Womack, her daughter and conservator v. City of Jackson, Mississippi, and Doris B. Spiller

TOPICS

- negligence
- municipal liability
- third party beneficiary
- summary judgment
- standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the City of Jackson is immune from liability under the Mississippi Tort Claims Act.
2. Whether the City of Jackson is subject to a trial on the merits for claims based upon breach of contract.
3. Whether the law authorizes the dismissal of Doris Spiller and prohibits a judgment against her.

HOLDINGS

1. The City of Jackson is not immune because the discretionary function exception does not apply; the act of allowing Stewart to walk unassisted did not involve social, economic, or political policy, and there is a factual dispute on ordinary care.
2. Stewart is a third-party beneficiary of the transportation contract between the City and the agency, and there are factual issues on breach, so summary judgment was improper.
3. Spiller should not have been dismissed because the governmental entity was not dismissed; under the MTCA, an employee may be joined in a representative capacity.

KEY QUOTATIONS

“The standard for reviewing a grant or denial of summary judgment is the same standard as employed by the trial court under Miss. R. Civ. P. 56(c).” (at 1045)

“only those functions which by nature are policy decisions, whether made at the operational or planning level, are protected.” (at 1047)

“In order for the third person beneficiary to have a cause of action, the contracts between the original parties must have been entered into for his benefit, or at least such benefit must be the direct result of the performance within the contemplation of the parties as shown by its terms.” (at 1050)

“We hold that the City of Jackson and Doris Spiller failed in their burden of demonstrating there was no genuine issue of material fact.” (at 1052)

FACTUAL BACKGROUND

Otha Stewart, a 72-year-old woman with partial paralysis from a prior stroke, attended an adult day care center operated by UMMC. She was transported in a van owned and operated by the City of Jackson under a contract. On August 11, 1997, driver Doris Spiller assisted Stewart off the van but then allowed her to walk unassisted toward the center; Stewart fell and was injured. She later suffered a massive stroke. Stewart sued the City, Spiller, and UMMC, alleging negligence and breach of contract. The City and Spiller moved for summary judgment, claiming immunity under the Mississippi Tort Claims Act (MTCA). The trial court granted summary judgment for the City and Spiller but denied it for UMMC.

PROCEDURAL HISTORY

Stewart filed suit against the City of Jackson, Spiller, and UMMC. The circuit court granted summary judgment for the City and Spiller, denied it for UMMC. Stewart petitioned for interlocutory appeal, which was granted.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remanded to the Hinds County Circuit Court for a trial on the merits consistent with the opinion.

CASES CITED

- Gant v. Maness, 786 So. 2d 401 (Miss. 2001)
- Massachusetts Bay Ins. Co. v. Joyner, 763 So. 2d 877 (Miss. 2000)
- Leflore County v. Givens, 754 So. 2d 1223 (Miss. 2000)
- Quinn v. Mississippi State Univ., 720 So. 2d 843 (Miss. 1998)
- L.W. v. McComb Separate Mun. Sch. Dist., 754 So. 2d 1136 (Miss. 1999)
- Jones v. Mississippi Dep't of Transp., 744 So. 2d 256 (Miss. 1999)
- United States v. Gaubert, 499 U.S. 315 (1991)
- T.M. v. Noblitt, 650 So. 2d 1340 (Miss. 1995)
- Poyner v. Gilmore, 171 Miss. 859, 158 So. 922 (1935)
- Lang v. Bay St. Louis/Waveland Sch. Dist., 764 So. 2d 1234 (Miss. 1999)
- Gale v. Thomas, 759 So. 2d 1150 (Miss. 1999)
- Pearl Pub. Sch. Dist. v. Groner, 784 So. 2d 911 (Miss. 2001)
- Gulfside Casino P'ship v. Mississippi State Port Auth., 757 So. 2d 250 (Miss. 2000)
- Cig Contractors, Inc. v. Mississippi State Bldg. Comm'n, 399 So. 2d 1352 (Miss. 1981)
- Churchill v. Pearl River Basin Dev. Dist., 619 So. 2d 900 (Miss. 1993)
- Hanberry Corp. v. State Bldg. Comm'n, 390 So. 2d 277 (Miss. 1980)
- Duncan ex rel. Duncan v. Chamblee, 757 So. 2d 946 (Miss. 1999)
- Cotton v. Paschall, 782 So. 2d 1215 (Miss. 2001)