

SUPREME COURT OF MISSISSIPPI

Demarcus Smith, a Minor, et al. v. Cassandra L. Holmes, Individually et al.

Smith v. Holmes · No. Nos. 2004-CA-01920-SCT and 2004-CA-02116-SCT · Decided July 28, 2004

SUMMARY

The Mississippi Supreme Court considered consolidated wrongful-death appeals involving parental immunity, priority jurisdiction, joinder of wrongful-death beneficiaries, and conflicts of interest involving a personal representative. The court held that parental immunity had been abrogated for negligent motor-vehicle operation, that the first-filed wrongful-death action controlled, and that all wrongful-death beneficiaries were entitled to join the action. It reversed and remanded the denial of Carl Smith's motion to join and affirmed the dismissal of his separate wrongful-death complaint.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Waller, Presiding Justice, for the Court; Waller, Presiding Justice; Smith, Chief Justice; Cobb, Presiding Justice; Carlson, Justice; Dickinson, Justice; Randolph, Justice; Easley, Justice; Diaz, Justice; Graves, Justice
JURISDICTION	Mississippi
DECIDED	July 28, 2004
DOCKET	Nos. 2004-CA-01920-SCT and 2004-CA-02116-SCT
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Consolidated appeals from the Tunica County Circuit Court's denial of Carl Smith's motion to intervene or join a pending wrongful-death action and dismissal of his separately filed wrongful-death complaint.
STANDARD OF REVIEW	The opinion does not expressly state a general standard of review. It treats denial of intervention as an appealable final order and reviews the circuit court's legal rulings concerning intervention, joinder, prior jurisdiction, and dismissal.
PRECEDENTIAL VALUE	Published, en banc Mississippi Supreme Court opinion; precedential value is not otherwise characterized in the supplied text.

PARTIES

Demarcus Smith, a minor, Kiara Smith, a minor, Tevon Smith, deceased and/or Estate of Tevon Smith by Carl Smith, personal representative, Carl Smith, individually and as natural father and next friend, and as a wrongful death beneficiary of Tevon Smith, Carl Smith on behalf of all of Tevon Smith's wrongful death beneficiaries v. Cassandra L. Holmes, individually and as natural guardian and next friend of Demarcus Holmes and Kiara Holmes, and as personal representative of the Estate of Tevon Holmes, deceased, Boone Express, Inc., Michael Dale

TOPICS

wrongful death joiner guardian ad litem appellate procedure torts

PRACTICE AREAS

wrongful death civil procedure appellate procedure torts guardianships

QUESTIONS PRESENTED

1. Whether parental immunity barred Carl Smith from asserting negligence and wrongful-death claims arising from Cassandra Holmes's negligent operation of a motor vehicle.
2. Whether Carl Smith, as a wrongful-death beneficiary, was entitled to intervene in or join the existing wrongful-death action.
3. Whether the first-filed wrongful-death action barred Carl Smith's later separate wrongful-death complaint under the rule of prior jurisdiction.
4. Whether Cassandra Holmes's alleged status as a potential tortfeasor created a fiduciary conflict requiring the circuit court to consider her removal as personal representative or appointment of a guardian ad litem or another personal representative.

HOLDINGS

1. Mississippi's judicially created doctrine of parental immunity is abrogated insofar as it would bar a claim against a parent for negligent operation of a motor vehicle. The circuit court therefore erred in denying intervention on that basis.
2. A wrongful-death beneficiary who wishes to join an existing wrongful-death lawsuit should be joined as a party plaintiff.
3. Only one wrongful-death action may be filed, and when multiple actions involving the same death are filed, the later action is subject to dismissal under the rule of prior jurisdiction.
4. The personal representative who brings a wrongful-death action acts as a fiduciary for all wrongful-death beneficiaries and should not serve while having a conflict of interest. The circuit court must determine whether Cassandra should remain personal representative and whether a guardian ad litem or another representative is necessary.

KEY QUOTATIONS

“We find that (1) Glaskox ex rel. Denton v. Glaskox, 614 So. 2d 906, 909 (Miss. 1992), abrogated the doctrine of parental immunity for a parent who negligently causes injuries to his or her child in an automobile accident; (2) under Long v. McKinney, 897 So. 2d 160 (Miss. 2005), only one wrongful death complaint may be filed – the one that is first filed; (3) under Long, all wrongful death beneficiaries have a right to be joined in the wrongful death lawsuit; (4) under Long, the personal representative of an estate in a wrongful death suit has a fiduciary relationship to the wrongful death beneficiaries; and (5) a fiduciary should not have any conflicts of interest.” (¶ 1)

“We hold that the judicially created doctrine of parental immunity has outlived its purpose and adopt the majority view abrogating the principle as it applies to the negligent operation of a motor vehicle.” (¶ 4)

“Thus, bringing suit in such a representative capacity renders the named plaintiff a fiduciary to all he or she proposes to represent, much the same as in litigation instituted by the executor or executrix of an estate.” (¶ 10)

FACTUAL BACKGROUND

An automobile operated by Cassandra Holmes collided in Tunica County with an eighteen-wheeler owned by Boone Express and operated by Michael Dale. Witnesses stated that Cassandra turned left in front of oncoming traffic. Cassandra's children Demarcus, Kiara, and Tevon were injured, and Tevon died. Cassandra filed the first wrongful-death action, while Carl Smith, the children's father, later filed a separate action and sought to join Cassandra's suit.

PROCEDURAL HISTORY

Cassandra Holmes filed a wrongful-death and personal-injury action against Boone Express and Michael Dale on September 18, 2002, following an automobile-truck collision in which her child Tevon was killed and other children were injured. Carl Smith, the children's natural father, filed a separate wrongful-death action and moved to intervene or join Cassandra's action on October 21, 2002. The circuit court denied intervention or joinder and dismissed Carl's separate complaint, leading to two consolidated appeals. The Supreme Court reversed the denial of joinder and remanded for consideration of the fiduciary-conflict issue, but affirmed dismissal of Carl's separate complaint.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

In case number 2004-CA-01920-SCT, the circuit court must permit Carl Smith to join the wrongful-death action and determine whether Cassandra Holmes should remain personal representative, whether the children's interests would be best represented by a guardian ad litem or another personal representative, and whether conflicts between Cassandra and Carl would prejudice Carl's interests. Case number 2004-CA-02116-SCT, involving Carl's separately filed complaint, was affirmed.

CASES CITED

- Glaskox ex rel. Denton v. Glaskox, 614 So. 2d 906, 909, 912 (Miss. 1992)
- Ales v. Ales, 650 So. 2d 482, 486 (Miss. 1995)
- Cohen v. Cohen, 748 So. 2d 91, 93 (Miss. 1999)
- Guar. Nat'l Ins. Co. v. Pittman, 501 So. 2d 377, 380 (Miss. 1987)
- Long v. McKinney, 897 So. 2d 160, 168-69, 172, 174 (Miss. 2005)
- Jones v. Steiner, 481 F.2d 392 (5th Cir. 1973)
- Lee v. Lee, 232 So. 2d 370, 373 (Miss. 1970)
- Harrison County Dev. Comm'n v. Daniels Real Estate, Inc., 880 So. 2d 272, 276 (Miss. 2004)
- City of Jackson v. Estate of Stewart ex rel. Womack, 908 So. 2d 703 (Miss. 2005)
- Estate of Bodman v. Bodman, 674 So. 2d 1245, 1249 (Miss. 1996)
- Jackson v. Jackson, 732 So. 2d 916, 921 (Miss. 1999)
- Classic Coach, Inc. v. Johnson, 823 So. 2d 517 (Miss. 2002)

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