

SUPREME COURT OF MISSISSIPPI

Parker v. Harrison County Board of Supervisors

987 So. 2d 435 (Miss. 2008) · No. No. 2007-CA-00532-SCT · Decided July 31, 2008

SUMMARY

The Supreme Court of Mississippi affirmed summary judgment and dismissal of Sharon Parker and Aline Whisenant's claims against the Harrison County Board of Supervisors and Wilfred E. Ross for failure to comply with the Mississippi Tort Claims Act's notice-of-claim requirements. The court held that the plaintiffs' written communications did not include all seven required categories of information under Mississippi Code section 11-46-11(2), and that South Central Regional Medical Center v. Guffy controlled despite being decided after the action was filed. A dissent argued that dismissal was an unduly harsh remedy for noncompliance.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Carlson, Justice; Smith, C.J.; Carlson, J.; Dickinson, J.
JURISDICTION	Mississippi
DECIDED	July 31, 2008
DOCKET	No. 2007-CA-00532-SCT
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a summary judgment dismissing plaintiffs' Mississippi Tort Claims Act action for failure to comply with statutory notice requirements.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. The evidence must be viewed in the light most favorable to the nonmoving party, and summary judgment is proper when the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Sharon Parker, Aline Whisenant v. Harrison County Board of Supervisors, Wilfred E. Ross

TOPICS

- summary judgment
- civil procedure
- municipal liability
- statutory interpretation
- appellate procedure

PRACTICE AREAS

civil procedure

appellate procedure

tort claims against government entities

municipal liability

statutory interpretation

summary judgment

QUESTIONS PRESENTED

1. Whether the plaintiffs complied with Mississippi Code section 11-46-11(2)'s requirement that a written notice of claim contain all seven specified categories of information.
2. Whether South Central Regional Medical Center v. Guffy applied retroactively to this pending litigation.
3. Whether the plaintiffs' communications constituted substantial compliance with the Mississippi Tort Claims Act notice requirements.

HOLDINGS

1. A claimant must provide written notice containing information in each of the seven categories specified by section 11-46-11(2). Failure to provide any one of the required categories constitutes noncompliance, and the plaintiffs' letters did not satisfy the statute.
2. Verbal communications are insufficient, and notice must be provided in writing to the chief executive officer of the governmental entity.
3. Guffy controlled because it was decided while the litigation remained pending, and its rule applied to the case.
4. Summary judgment and dismissal were proper because the plaintiffs' notices failed to comply with section 11-46-11(2), leaving no genuine issue of material fact and entitling defendants to judgment as a matter of law.

KEY QUOTATIONS

“Either the written notice complied with Miss.Code Ann. § 11-46-11(2) by disclosing all seven required categories of information, or it did not comply with the statute by failing to disclose all seven required categories of information.” (987 So. 2d at 439-440)

“But, the failure to provide any of the seven statutorily required categories of information falls short of the statutory requirement and amounts to non-compliance with Miss.Code Ann. § 11-46-11(2).” (987 So. 2d at 440)

FACTUAL BACKGROUND

On July 2, 2003, Wilfred E. Ross, a Harrison County employee driving a county vehicle within the course and scope of his employment, rear-ended Sharon Parker's vehicle on Highway 90 in Biloxi while Aline Whisenant was a passenger. The plaintiffs communicated with the county's insurer or adjuster and later sent letters concerning the accident, but the written letters did not provide all information required by the Mississippi Tort Claims Act. The plaintiffs filed suit after the Board received the January 2004 certified claim letter, and the Board subsequently sought summary judgment.

PROCEDURAL HISTORY

Parker and Whisenant sued the Harrison County Board of Supervisors after a county employee rear-ended their vehicle. The Harrison County Circuit Court granted defendants' motion for summary judgment and dismissed the action because the plaintiffs' notices did not comply with Mississippi Code section 11-46-11(2). The plaintiffs appealed, arguing substantial compliance and that later judicial decisions should not apply retroactively.

DISPOSITION

affirmed

CASES CITED

- Progressive Gulf Ins. Co. v. Dickerson & Bowen, Inc., 965 So. 2d 1050, 1052 (Miss. 2007)
- Price v. Purdue Pharma Co., 920 So. 2d 479, 483 (Miss. 2006)
- Lumberman's Underwriting Alliance v. City of Rosedale, 727 So. 2d 710, 713 (Miss. 1998)
- Sanford v. Federated Guar. Ins. Co., 522 So. 2d 214 (Miss. 1988)
- Southern Farm Bureau Cas. Ins. Co. v. Brewer, 507 So. 2d 369, 370 (Miss. 1987)
- Brown v. Credit Ctr., Inc., 444 So. 2d 358, 362 (Miss. 1983)
- City of Pascagoula v. Tomlinson, 741 So. 2d 224, 226 (Miss. 1999)
- Carr v. Town of Shubuta, 733 So. 2d 261, 263 (Miss. 1999)
- S. Cent. Reg'l Med. Ctr. v. Guffy, 930 So. 2d 1252, 1255, 1257-59 (Miss. 2006)
- Thompson v. City of Vicksburg, 813 So. 2d 717, 721 (Miss. 2002)
- Anderson v. Anderson, 692 So. 2d 65, 70 (Miss. 1997)
- Holmes v. Defer, 722 So. 2d 624, 628 (Miss. 1998)
- Univ. of Miss. Med. Ctr. v. Easterling, 928 So. 2d 815, 819-20 (Miss. 2006)
- Fairley v. George County, 871 So. 2d 713, 716 (Miss. 2004)
- Gale v. Thomas, 759 So. 2d 1150, 1158 (Miss. 1999)
- McNair v. Univ. of Miss. Med. Ctr., 742 So. 2d 1078, 1080 (Miss. 1999)
- Reaves ex rel. Rouse v. Randall, 729 So. 2d 1237, 1240 (Miss. 1998)
- Community Hospital of Jackson v. Goodlett ex rel. Goodlett, 968 So. 2d 391, 399 (Miss. 2007)
- Dinet v. Gavagnie, 948 So. 2d 1281, 1285 (Miss. 2007)
- Wallace v. Jones, 572 So. 2d 371, 376-77 (Miss. 1990)
- Caldwell v. N. Miss. Med. Ctr., Inc., 956 So. 2d 888, 896-97 (Miss. 2007)
- Arceo v. Tolliver, 949 So. 2d 691, 698-704 (Miss. 2006)