

SUPREME COURT OF MISSISSIPPI

Cotton v. Paschall

782 So. 2d 1215 (Miss. 2001) · No. 1999-CA-00498-SCT · Decided February 8, 2001

SUMMARY

The Mississippi Supreme Court affirmed dismissal of claims against a school bus driver after the employing school district had been dismissed for failure to timely serve process. The court held that the employee was immune under the Mississippi Tort Claims Act for acts within the course and scope of employment, and that the existence of liability insurance did not alter the immunity analysis. A dissent argued that the employee could be sued in a representative capacity with indemnification by the governmental entity.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Cobb, Justice, for the Court; Pittman, C.J.; Banks, P.J.; Cobb, J.; Smith, J.; Mills, J.; Waller, J.; Diaz, J.; McRae, P.J.; Easley, J.
JURISDICTION	Mississippi
DECIDED	February 8, 2001
DOCKET	1999-CA-00498-SCT
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from dismissal of a negligence action under the Mississippi Tort Claims Act and denial of a motion for reconsideration.
STANDARD OF REVIEW	Questions of law are reviewed de novo. On a motion to dismiss, the complaint's allegations are taken as true, and dismissal is proper only when it appears beyond doubt that the plaintiff can prove no set of facts supporting the claim.
PRECEDENTIAL VALUE	Published, en banc decision of the Supreme Court of Mississippi.
PARTIES	Gregory Cotton, Tammy Cotton v. Barbara Paschall

TOPICS

- municipal liability
- negligence
- service of process
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether a governmental employee acting within the course and scope of employment may remain liable after the employing governmental entity has been dismissed from the action.
2. Whether the existence of liability insurance maintained by the governmental entity permits a negligence action against the employee in an individual or representative capacity after the entity's dismissal.
3. Whether the circuit court properly denied the Cottons' motion for reconsideration.

HOLDINGS

1. Under the circumstances presented, Paschall could not be held liable because she was an employee acting within the course and scope of her employment and the employing school district had been dismissed from the lawsuit.
2. The existence of insurance did not affect Paschall's immunity or permit the action to proceed after the school district's dismissal.
3. The circuit court properly denied the Cottons' motion for reconsideration.

KEY QUOTATIONS

"The existence of insurance to cover this incident is irrelevant because the school district has been dismissed, and Paschall is immune from suit under § 11-46-9(1)(1)." (782 So. 2d at 1217)

"An employee may be joined in an action against a governmental entity in a representative capacity if the act or omission complained of is one for which the governmental entity may be liable, but no employee shall be held personally liable for acts or omissions occurring within the course and scope of the employee's duties." (782 So. 2d at 1218)

FACTUAL BACKGROUND

On September 16, 1996, a Pass Christian Public School District bus driven by Barbara Paschall collided with a vehicle driven by Gregory Cotton, causing him injuries. The Cottons filed suit under the Mississippi Tort Claims Act and served Paschall, but they did not timely serve the school district. The school district was dismissed, and the circuit court then dismissed Paschall because she was acting within the course and scope of her employment.

PROCEDURAL HISTORY

The Cottons sued the Pass Christian Public School District and Barbara Paschall after Paschall's school bus collided with Gregory Cotton's vehicle. The circuit court dismissed the school district for failure to serve it within 120 days, and the Cottons did not appeal that dismissal. The court later dismissed Paschall on the ground that she was immune because she acted within the course and scope of her employment, denied reconsideration, and the Cottons appealed.

DISPOSITION

affirmed

CASES CITED

- *Butler v. Board of Supervisors*, 659 So. 2d 578, 581 (Miss. 1995)
- *Mississippi Transportation Commission v. Fires*, 693 So. 2d 917, 920 (Miss. 1997)
- *Pruett v. Malone*, 767 So. 2d 983 (Miss. 2000)
- *Belhaven Improvement Ass'n, Inc. v. City of Jackson*, 507 So. 2d 41, 45 (Miss. 1987)
- *Leslie v. City of Biloxi*, 758 So. 2d 430, 434 (Miss. 2000)
- *Duncan ex rel. Duncan v. Chamblee*, 757 So. 2d 946, 950-951 (Miss. 1999)
- *Koch & Dryfus v. Bridges*, 45 Miss. 247, 261 (1871)

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