IN THE SUPREME COURT OF MISSISSIPPI

No. 2017-TC-00137

WILLIAM DONALD COLLINS, SR., MARY SKINNER COLLINS, WILLIAM DONALD COLLINS II, COLT MAKAI COLLINS, AND LISA MARIE COLLINS — **APPELLANTS**

VS.

CITY OF NEWTON; MAYOR DAVID CARR, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS MAYOR OF THE CITY OF NEWTON; CLARENCE PARKS, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS FIRE CHIEF FOR THE CITY OF NEWTON; JOEL SKINNER, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS FORMER FIRE CHIEF FOR THE CITY OF NEWTON; MURRAY WEEMS, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS ALDERMAN FOR THE CITY OF NEWTON; RONNIE JOHNSON, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS ALDERMAN FOR THE CITY OF NEWTON — **APPELLEES**

APPEAL FROM THE CIRCUIT COURT OF NEWTON COUNTY, MS

BRIEF OF APPELLEES

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I. CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. Those representations are made in order that the Justices of the Supreme Court and/or Judges of the Court of Appeals may evaluate possible disqualificaitons or recusal.

1. William Donald Collins, Sr.
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2. William Donald Collins, II
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3. Col Makai Collins
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4. Honorable Joel W. Howell, III
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6. Honorable J. Richard Barry
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7. Honorable Vernon Cotten
   Newton County Circuit Court Judge
   205 Main Street

Carthage, MS 39051-4117
Trial Court Judge

8. David Carr
Clarence Parks
Joel Skinner
Murray Weems
Ronnie Johnson
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So certified this the 22nd day of June, 2017.

/s/ James C. Griffin
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2) Whether the Trial Court abused its discretion in granting Appellees' Motion for Relief from Order Pursuant to Miss. R. Civ. P. 60(b) and dismissing Appellants' consolidated cases below.

3) Alternatively, whether the Trial Court correctly ruled on the merits of Appellees' underlying Motion for Summary Judgment pursuant to Miss. R. Civ. P. 56.

V. STATEMENT OF THE CASE

A. Course of Proceedings and Disposition of the Case Below

There are four separate lawsuits, which were all consolidated into one action by Court Order, which comprise the subject matter of this appeal. Specifically, on October 29, 2013, Appellant William Donald Collins, II filed a Complaint pursuant to the Mississippi Tort Claims Act ("MTCA") against Appellees in Newton County Circuit Court (Civil Action No. 13-cv-159) for wrongful termination, slander, negligent infliction of emotional distress and intentional infliction of emotional distress. (R. at 9-19). [Citations to the record on appeal are R. ___) and to the supplemental record on appeal are (SR. ___)]

That same day, on October 29, 2013, Appellants William Donald Collins, Sr. and Mary Skinner Collins filed their Complaint pursuant to the MTCA against Appellees in Newton County Circuit Court (Civil Action No. 13-cv-160) for wrongful termination, slander, negligent infliction of emotional distress, intentional infliction of emotional distress and failure to respond to a fire at William Donald Collins, Sr. and Mary Skinner Collins' home in Newton County.

(SR. at 3-12).

Also on October 29, 2013, Appellant Lisa Marie Collins filed a Complaint pursuant to the MTCA against Appellees in Newton County Circuit Court (Civil Action No. 13-cv-161) for wrongful termination, slander, negligent infliction of emotional distress and intentional infliction of emotional distress. (SR. at 13-19).

Lastly on October 29, 2013, Appellant Colt Makai Collins filed a Complaint pursuant to the MTCA against Appellees in Newton County Circuit Court (Civil Action No. 13-cv-162) for wrongful termination, slander, negligent infliction of emotional distress and intentional infliction of emotional distress. (SR. at 23-36). Appellees filed Answers and Affirmative Defenses to each of the individual four lawsuits. On August 14, 2015, these four lawsuits were consolidated into one action by Court Order. (R. at 708-709).

Following discovery, on June 8, 2015, Appellees filed a Motion for Summary Judgment and accompanying briefs and exhibits. (R. at 80-351). On June 25, 2015, Appellants filed their Response and Memorandum Brief in Opposition to Motion for Summary Judgment. (R. at 359-601). Appellees filed their Reply to Plaintiffs' Response along with a Supplemental Memorandum and Second Supplemental Memorandum in Support. (R. at 602-621, 669-673).

On December 8, 2015, the Court entered an "Order Overruling Defendants' Motion for Summary Judgment". (R. at 715-716). On December 9, 2015, Appellees filed a Motion to Alter or Amend Judgment pursuant to Miss. R. Civ. P. 59. ®. at 718-721). On February 5, 2016, the Court entered an "Order Overruling Motion to Alter or Amend Judgment". (R. at 723-725).

On February 25, 2016, Appellees sought Interlocutory Review in the Supreme Court of the December 8, 2015 Order as well as the accompanying Rule 59 Order. (*See,* R. at 727-732On

March 23, 2016, the Supreme Court entered an Order Denying Interlocutory Review. The matter was sent back to the Circuit Court of Newton County.

On May 31, 2016, the Court entered an Order Re-Setting Cause for Pre-Trial Conference. (R. at 738). Thereafter, on July 5, 2016, the parties held a Pre-Trial Conference. (R. at 786-792). On July 25, 2016, Appellees filed a Motion for Relief from Order Or In The Alternative For Reconsideration with the Trial Court. (R. at 742-757).

Thereafter, on August 5, 2016, Appellants' legal counsel filed a Motion to Withdraw as Counsel. (R. at 778-780). On October 17, 2016, Appellants' new counsel entered an appearance in the matter in Newton County Circuit Court. (R. at 790-791). On December 2, 2016, in advance of the December 5, 2016 Hearing on Appellees Motion for Relief from Order or for Reconsideration, Appellants filed their Response in Opposition to Appellees' Motion. On January 11, 2017, the Court entered an Order Granting Motion for Relief from Order and dismissing the consolidated action with prejudice. (R. at 794-808). Appellants timely filed their Appeal. (R. at 810).

VI. SUMMARY OF THE ARGUMENT

The Trial Court has full discretion to reconsider prior orders pursuant to Miss. R. Civ. P. 60(b). Therefore, the Trial Court properly revisited and reconsidered its December 8, 2015 Order pursuant to Miss. R. Civ. P. 60(b). The Trial Court's December 8, 2015 Order was completely contrary to longstanding Mississippi law. For this reason, the Trial Court did not abuse its discretion in revisiting and overturning its prior December 8, 2015 Order pursuant to Miss. R. Civ. P. 60. The Trial Court was justified in granting relief from its December 8, 2015 Order.

Moreover, the Trial Court correctly ruled on Appellants' underlying claims pursuant to

the merits by dismissing the claims under Miss. R. Civ. P. 56 and 60 and pertinent Mississippi case law. Specifically, the Appellants' claims relating to their allegedly wrongful termination by the City of Newton was properly dismissed by the Trial Court under Miss. R. Civ. P. 56 and 60 and pursuant to other pertinent Mississippi law. Second, the Trial Court properly dismissed Appellants' claims for intentional infliction of emotional distress under Miss. R. Civ. P. 56 and 60 and pursuant to other pertinent Mississippi law. Third, the Trial Court properly dismissed Appellants' claims for negligent infliction of emotional distress under Miss. R. Civ. P. 56 and 60 and pursuant to other pertinent Mississippi law. Fourth, the Trial Court properly dismissed Appellants' claims for slander under Miss. R. Civ. P. 56 and 60 and pursuant to other pertinent Mississippi law. Lastly, the Trial Court properly dismissed the Appellants' claims under the Mississippi Tort Claims Act under Miss. R. Civ. P. 56 and 60 and pursuant to other pertinent Mississippi law.

This Court employs an abuse of discretion standard when reviewing Miss. R. Civ. P. 60 rulings by a Trial Court. There is no evidence within the record that the Trial Court abused its discretion in granting Appellees relief pursuant to Rule 60. As such, the Supreme Court should affirm the Trial Court's ruling.

VII. LEGAL ARGUMENT

A. Standard of Review

The Supreme Court employs an abuse of discretion standard of review when examining a court's decision to grant or deny relief pursuant to Miss. R. Civ. P. 60(b). R.N. Turnbow Oil Investments v. McIntosh, 873 So.2d 960, 963 (Miss. 2004) (*citing* Perkins v. Perkins, 787 So.2d 1256, 1260-61 (Miss.2001); Bruce v. Bruce, 587 So.2d 898 (Miss.1991)). The Supreme Court

has explained abuse of discretion in this way:

> Rather than implying bad faith or an intentional wrong on the part of the trial judge, an abuse of discretion is viewed as a strict legal term that is clearly against logic and effect of such facts as are presented in support of the application or against reasonable and probable deductions to be drawn from the facts disclosed upon the hearing.

White v. State, 742 So.2d 1126, 1136 (Miss. 1999).

Further, with regard to review of a decision to grant or deny relief pursuant to Miss. R. Civ. P. 60(b), "when ruling on such motions a balance must be struck between granting a litigant a hearing on the merits with the need and desire to achieve finality in litigation. R.N. Turnbow Oil Investments v. McIntosh, 873 So.2d at 963 (*citing* House v. Sec'y of House and Human Servs., 688 F.2d 7(2nd Cir. 1982).

B. The Trial Court properly reconsidered its December 8, 2015 Order pursuant to Miss. R. Civ. P. 60(b) and did not abuse its discretion in granting the Appellees' Rule 60 Motion and dismissing Appellants' case.

Miss. R. Civ. P. 60(b) provides:

> "On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, **order**, or proceeding for the following reasons:
>
> (1) fraud, misrepresentation, or other misconduct of an adverse party;
> (2) accident or mistake;
> (3) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
> (4) the judgment is void;
> (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application;

(6) **any other reason justifying relief from the judgment.**

The motion shall be made within a reasonable time, and for reasons (1), (2) and (3) not more than six months after the judgment, order or proceeding was entered or taken."

Miss. R. Civ. P. 60(b) (emphasis added).

The Mississippi Rules of Civil Procedure provide two separate avenues to move the trial court to reconsider its judgment, those being Miss. R. Civ. P. 59 and Miss. R. Civ. P. 60. Woods v. Victory Marketing, LLC, 111 So.3d 1234, 1236 (Miss. Ct. App. 2013). Additionally, Miss. R. Civ. P. 54 provides, "...**any order**... which adjudicates fewer than all of the claims or the rights and liabilities of fewer than all the parties... **is subject to revision at any time before the entry of judgment adjudicating all the claims of and the rights and liabilities of all the parties.**" Miss. R. Civ. P. 54(b) (emphasis added).

The timing of the motion to reconsider determines whether it is a Rule 59 or Rule 60(b) motion. A motion to reconsider filed within ten days of the entry of the judgment falls under Rule 59, but a motion to reconsider filed more than ten days after the entry of the judgment falls under Rule 60(b). City of Jackson v. Jackson Oaks Ltd. P'ship, 792 So.2d 983, 985 (Miss. 2001) (citations omitted). As Mississippi appellate courts have plainly stated and long accepted, "[a]s much as we may like to impose a one-motion-for-reconsideration [of an order] rule, there is simply no authority to impose such a limitation." McBride v. McBride, 110, So.3d 356, 360 (Miss. Ct. App. 2013).

A party may move to set aside an order pursuant to Miss. R. Civ. P. 60(b)(6) if there are compelling circumstances justifying relief. When ruling on a Rule 60(b)(6) motion, the Trial court may consider the following factors:

> "(1) [t]hat final judgments should not lightly be disturbed; (2) that the Rule 60(b) motion is not used as a substitute for appeal; (3) that the rule should be liberally construed in order to achieve substantial justice; (4) whether the motion was made within a reasonable time; (5) [omitted factor relevant only to default judgments]; (6) whether if the judgment was rendered after a trial on the merits - the movant had a fair opportunity to present his claim or defense; (7) whether there are intervening equities that would make it inequitable to grant relief; and (8) any other factors relevant to the justice of the judgment under attack."

See Carpenter v. Berry, 58 So.3d 1158, 1162 (Miss. 2011).

The trial court has discretion to grant or deny a Rule 60(b) motion, unless the judgment is void, in which case the court is required to set aside the judgment. *See* Sartain v. White, 588 So.2d 204, 211 (Miss. 1991).

Miss. R. Civ. P. 60(b)(6) allows for Trial Courts to revisit previous orders and overturn them for any reason justifying relief other than those specifically listed in Miss. R. Civ. P. 60(b)(1)-(5). While it is clear that Rule 60 applies to "final judgments", the Appellants have cited no authority that Rule 60 only applies to "final" orders. As stated above, the determining factor when considering whether a motion to reconsider an order is a Rule 59 or Rule 60 motion is the time in which the motion is made, not the "type" or "title" of the order the movant seeks to have reviewed. However, whether Appellees **Motion for Relief from Order or in the alternative for Reconsideration** was considered by the Trial Court pursuant to Rule 60 or Rule 54(b) (as Appellants argue now on appeal) is immaterial. The Trial Court had the discretion to reconsider and revisit prior Orders in the underlying case under both rules.

Appellees validly filed a Motion for Relief from Order pursuant to Rule 60(b)(6) within a reasonable time because the Trial Court's prior December 8, 2015 Order was completely contrary to Mississippi law and the facts and evidence of the underlying case. The Trial Court considered

the Motion and Response along with all the Exhibits, the Court File and oral argument of counsel, and decided to revisit and overturn its previous December 8, 2015 Order.

In this case, the interests of justice mandated that the Trial Court revisit and overturn its December 8, 2015 Order Overruling Summary Judgment. That is because the December 8, 2015 was completely contrary to longstanding principles of law in the State of Mississippi and the facts of the case. As stated below, the Trial Court properly dismissed Appellants' various claims pursuant to Miss. R. Civ. P. 56 and other pertinent Mississippi law.

There is no evidence in the record, and Appellants do not make the express argument, that the Trial Court actually abused its discretion in granting Appellees relief from the Order Overruling Motion for Summary Judgment. This Court should affirm the Trial Court's wisdom, discretion and ultimate decision with regard to the underlying claims.

C. Alternatively, the Trial Court correctly ruled on the merits of Appellees' underlying Motion for Summary Judgment pursuant to Miss. R. Civ. P. 56.

The Trial Court's December 8, 2015 Order was completely contrary to governing Mississippi law. When the Trial Court finally dismissed Appellants' various claims against Appellees pursuant to Miss. R. Civ. P. 60(b), the Trial Court correctly ruled on Appellants' underlying claims pursuant to the merits, Miss. R. Civ. P. 56 and pertinent Mississippi case law. While "[t]his court has no jurisdiction to consider the merits of the underlying [Rule 60(b)(6)] judgment..." the Trial Court has properly dismissed Appellants' claims pursuant to Miss. R. Civ. P. 56 and other pertinent Mississippi law.

First, the Appellants' claims relating to their allegedly wrongful termination by the City of Newton was properly dismissed by the Trial Court under Miss. R. Civ. P. 56 and 60 and

pursuant to other pertinent Mississippi law. Second, the Trial Court properly dismissed Appellants' claims for intentional infliction of emotional distress under Miss. R. Civ. P. 56 and 60 and pursuant to other pertinent Mississippi law. Third, the Trial Court properly dismissed Appellants' claims for negligent infliction of emotional distress under Miss. R. Civ. P. 56 and 60 and pursuant to other pertinent Mississippi law. Fourth, the Trial Court properly dismissed Appellants' claims for slander under Miss. R. Civ. P. 56 and 60 and pursuant to other pertinent Mississippi law. Lastly, the Trial Court properly dismissed the Appellants' claims under the Mississippi Tort Claims Act under Miss. R. Civ. P. 56 and 60 and pursuant to other pertinent Mississippi law.

Rule 56(c) of the Mississippi Rules of Civil Procedure provides that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issues as to any material fact and that the moving party is entitled to judgment as a matter of law." A movant bears the burden of proving no genuine issue of material fact exists. Moore ex. rel Moore v. Mississippi Valley Gas Co., 863 So.2d 43, 47 (Miss. 2003). Rule 56 permits supportive evidence in the form of "pleadings, the discovery and disclosure materials on file, and any affidavits". Miss. R. Civ. P. 56©. The evidence, including pleadings, answers to interrogatories, admissions, and affidavits must show that there is no genuine issue of material fact and must be viewed in the light most favorable to the party opposing the motion. Doe v. Stegall, 757 So.2d 201, ¶ 8 (Miss. 2000). An issue is "genuine" if the evidence is sufficient for a reasonable jury to return a verdict for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A fact is material if it "might affect the outcome of the suit." Anderson, 477 U.S. at 248.

I. Wrongful Termination

Mississippi adheres to the Common Law Doctrine of Employment at Will. Kelly v. Mississippi Valley Gas Company, 397 So. 2d 874, 874 (Miss. 1981). Pursuant to this doctrine, either the employer or the employee may terminate the employment relationship at will unless the parties are bound by an employment contract or a contract providing for a term of employment. Perry v. Sears, Roebuck & Co., 508 So. 2d 1086, 1088 (Miss. 1987). It has been recognized that this doctrine means that an employer may terminate an employee at any time for a good reason, a wrong reason, or no reason at all. McCrory v. Wal-Mart Stores, Inc., 755 So. 2d 1141, 1142 (¶6) (Miss. Ct. App. 1999).

The doctrine of Employment-at-Will has been abrogated in two situations. In McArn v. Allied Bruce - Terminix Co., 626 So. 2d 603, 607 (Miss. 1993), the Court established a public policy exception to the doctrine, allowing an employee fired for refusing to follow the employer's directive to do illegal activity or for exposing illegal activity in the workplace to bring a wrongful termination action. And, in Bobbitt v. The Orchard, Ltd., 603 So. 2d 356, 357 (Miss. 1992), the Court held that "when an employer publishes and discriminates to its employees a manual setting forth the proceedings which will be followed in an event of an employees infraction of rules, and there is nothing in the employment contract to the contrary, then the employer will be required to follow its own manual and discipline or discharging employees for infractions or misconduct specifically covered by the manual."

"An employer may alter an employees 'at-will' status by establishing a specific disciplinary scheme in an employee manual which it publishes to its employees. However,... if the employee manual contains an express disclaimer stating that nothing in the manual affects the

employer's right to terminate the employee, then the employee's at-will status remains intact." Senseney v. Mississippi Power Company, 914 So. 2d 1225 (Miss. 2005) (*Citing* Perry, 508 So. 2d at 1089). The Court of Appeals for the State of Mississippi has previously found that, "if an employee handbook does not provide exclusive permissible grounds for discharge, it is unreasonable for an employee to believe that he may be terminated only for cause." Senseney v. Mississippi Power Company, 914 So. 2d 1225 (Miss. 2005) *quoting* Reed v. Sears, Roebuck & Co., 790 F. 2d 453, 460 (6th Circuit 1986)).

In Petty v. Baptist Memorial Health Care Corporation, 2015 Wl. 1015781 (Miss. Ct. App. 2015), Plaintiff, although admitting that she was an at-will employee, insisted that the lack of a legitimate basis for her termination proves that Defendants "actions were intentional, willful, wantoned, and malicious." Id. at ¶19. The Court went on to state that "[o]ur Supreme Court also upheld the trial court's grant of summary judgment, finding that the Appellant could not prevail on the emotional distress claim because she was an at-will employee and because she could not establish that her termination was retaliatory.

In Lee v. Golden Triangle Planning and Development District, Inc., 797 So. 2d 845 (Miss. 2001), a case cited in Petty, the Appellant, an at-will employee, was terminated after she received negative feedback on her performance evaluations and refused to accept a resultant demotion. On appeal as to the emotional distress claim, the Supreme Court found that a claim for the intentional infliction of emotional distress would not ordinarily lie for mere employment disputes. The Petty Court went on to state that "because [Plaintiff] was an at-will employee, [Defendant] was free to terminate her at any time. Therefore, based on Lee, we find that there is no merit to [Plaintiff's] argument that [Defendant] can be held liable to her for the emotional

distress that she suffered as the result of Defendant's termination of her. Id. at ¶24.

The Introductory Statement of the City of Newton, Mississippi's Employee Policy Handbook (as adopted January 6, 1988; amended June 1, 2004 and February 1, 2005) states boldly:

> 1.00 INTRODUCTORY STATEMENT...
> "NO STATEMENT IN THIS POLICY GUIDE SHOULD BE INTERPRETED AS A
> CONTRACT OF EMPLOYMENT BETWEEN YOU AND THE CITY OF NEWTON."
> Pursuant to Section 9.01 governing resignation and discharge of the City of Newton Mississippi Employee Policy Handbook (as adopted January 6, 1988; amended June 1, 2004 and February 1, 2005) each of the aforementioned Plaintiffs were classified as "at-will" employees. The relevant provision of the handbook states:
>
> 9.01 RESIGNATION AND DISCHARGE
> "Employees of the City of Newton work at the will of the governing authorities of the city. Discretion to hire and fire is vested in the department heads, i.e., the City Clerk, Chief of Police, and Director of Public Works, subject to approval by the Mayor and Board of Alderman. Since employment with the City of Newton is based on mutual consent, both the employee and the city have the right to terminate employment at-will, with or without cause, at any time."

Furthermore and pursuant to the Newton Fire Department Standard Operating Guidelines - Departmental Policies Section 1.3, Subsection 1020.01 regarding "Regulations" states:

> 1020.00 REGULATIONS
> ".01 All fire department personnel shall acquaint themselves with the City of Newton Personnel Rules and Regulations and the Rules and Regulations of the Newton Fire Department. A plea of ignorance will not be relief from any responsibility for compliance."

Given these provisions, the Trial Court correctly found and ruled that pursuant to the law of the State of Mississippi as well as the City of Newton, Mississippi's Employee Policy Handbook relating to Resignation and Discharge and all the evidence in this case, Appellants

William Donald Collins, Sr. and Lisa Marie Collins were merely volunteers with the Newton Fire Department. Appellants Colt Makai Collins and William Donald Collins II were only at-will employees pursuant to their own admission in deposition testimony and the provisions of the handbook. Mary Skinner was not an employee nor was she a volunteer whatsoever.

Notwithstanding the explicit provisions of the City of Newton's employment handbook and the overarching doctrine of employment-at-will, on appeal Appellants seem to take the position that they are protected from discharge as "civil servants". Appellants cite numerous cases and statutory provisions in support of this flawed position.

However, the Trial Court correctly found that this argument by Appellants should also fail. In review of the civil service guidelines found in Miss. Code Ann. § 21-31-1 *et seq.*, which provide the requirements that necessarily compel the enactment of a civil service commission, it is both overwhelmingly and clearly established that **the City of Newton is not required to maintain nor comply with civil service laws**. Put plainly, the City of Newton does not have a Civil Service Commission, as such the Appellants clearly are not afforded the protection they seek as "civil servants" and are unable to qualify under any "civil service exception" to the doctrine of employment-at-will.

In entering its Rule 60 Order in favor of Appellees, the Trial Court correctly found that none of the Appellants' claims for wrongful termination by the City of Newton should have survived summary judgment. There were no genuine disputes of material fact on these claims, and Appellees were rightfully entitled to judgment as a matter of law that they did not wrongfully terminate any of the Appellants. In the interest of justice, the Court properly revisited its December 8, 2015 Order and dismissed these claims.

ii. Intentional Infliction of Emotional Distress

In order for Appellants to defeat summary judgment for their claims of intentional infliction of emotional distress by Appellees, "the conduct must have been so outrageous in character and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." Pegues v. Emerson Electric Company, 913 F.Supp. 976, 982 (N.D. Miss. 1996). Furthermore, damages for intentional infliction of emotional distress are usually not recoverable in mere employment disputes. Pegues, 913 F.Supp. At 982. Only in the unusual cases does a conduct move out of the realm of an ordinary employment dispute into the classification of "extreme and outrageous", as required for the tort of intentional infliction of emotional distress. Prunty v. Arkansas Freightways, Inc., 16 F. 3d 649, 654 (5th Cir. 1994).

An action for the tort of "intentional infliction of emotional distress occurs where there is something about the Defendant's conduct which evokes outrage or revulsion, done intentionally... the results being reasonably foreseeable... even though there has been no physical injury." Pegues v. Emerson Electric Company, 913 F.Supp. 976 (N.D. Miss. 1996) (*quoting* Sears Roebuck & Co. v. Devers, 405 S0.2d 898, 902 (Miss. 1981)). Recognition of a cause of action for intentional infliction of emotional distress in a workplace environment has usually been limited to cases involving a pattern of deliberate harassment over a period of time. Pegues v. Emerson Electric Company, 913 F.Supp. at 976 (N.D. Miss. 1996).

The issue in the underlying case at the Trial Court level can clearly be classified pursuant to the Pegues case as an "ordinary employment dispute" that does not move out of the realm into an extreme and outrageous case. Such termination does not implicate the tort of intentional

infliction of emotional distress due to the extraordinarily strict standard.

The Trial Court correctly found that Appellants William Donald Collins, Colt Makai Collins, William Donald Collins, II, and Lisa Marie Collins were unable to establish any foundation for their claims for intentional infliction of emotional distress by the Appellees. There was no disputed genuine issue of material fact on this cause of action, and the Trial Court correctly found that Appellees were entitled summary judgment. In the interest of justice, the Court properly revisited its December 8, 2015 Order and dismissed these claims.

iii. Negligent Infliction of Emotional Distress

Although the tort of negligent infliction of emotional distress is recognized in Mississippi, "the Court finds that at odds with the notion of at-will employment." Pegues v. Emerson Electric Company, 913 F.Supp. 976 (N.D. Miss. 1996). To recover under this theory, Plaintiffs are required to show that "as a result of Defendants' conduct [each] suffered either a physical illness or assault upon the mind, personality, or nervous system... which is medically cognizable and which requires or necessitates treatment by the medical profession." Id. at 983.

Additionally, the Trial Court correctly found that Appellants William Donald Collins, Sr., Colt Makai Collins, William Donald Collins, II and Lisa Marie Collins were unable to satisfy nor did they provide any evidence thereof that each suffered a physical illness which is medically cognizable requiring or necessitating the assistance of those in the medical profession, as is required by law for a claim of negligent infliction of emotional distress. Further, the Pegues court has stated that this tort is generally not applicable or successful with the notion of at-will employment since each of the Appellants could have been terminated at any time. In the interest of justice, the Court properly revisited its December 8, 2015 Order and dismissed these claims.

iv. Slander

Pursuant to Blake v. Gannett Company, Inc., a claim of slander requires "(1) a false and defamatory statement concerning the Plaintiff; (2) an unprivileged publication to a third party; (3) fault amounting at least to negligence on part of the publisher; and, (4) either action ability of the statement irrespective of special harm or the existence of special harm caused by the publication." Blake v. Gannett Company, Inc., 529 So.2d 595, 602 (Miss. 1988). Truth is a complete defense to an action for libel. Fulton v. Mississippi Publisher's Corp., 498 So.2d 1215, 1217 (Miss. 1986); *quoting* Rinsley v. Brandt, 700 F.2d 1304, 1307 (10th Cir. 1983). Courts have also held "that the Plaintiff has the burden of proving falsity." Reaves v. Foster, 200 So.2d 453 (Miss. 1967). The Mississippi Supreme Court requires that the statements be "substantially true." Smith v. Byrd, 83 So.2d at 175 (*quoting* Blake v. Gannett Company Inc., 529 So.2d 595 (Miss. 1988)).

Within the deposition of Appellant Lisa Marie Collins, she admitted that she does not have any facts that substantiate her claim that she was slandered nor did she attempt to secure employment with a subsequent volunteer fire department after being released from the City of Newton's Fire Department. This was set forth before the Trial Court.

Appellant William Donald Collins II was also unable to satisfy the standard of slander as set above. William Donald Collins II was, after termination of employment by the City of Newton, subsequently hired by the City of Meridian. William Donald Collins II was further unable to substantiate any foundational fact beyond bare allegations as to which Appellee instituted a malicious and slanderous smear campaign to prevent hire. Such was set forth before the Trial Court.

Appellant Colt Makai Collins was also unable to substantiate any foundational evidence beyond bare allegations as it relates to a malicious and slanderous smear campaign to prevent his hiring at a subsequent fire department after the termination of his employment with the Newton Fire Department. Furthermore, Appellant Colt Makai Collins admitted that he did not have the facts to support his allegations of slander as he alleged were made by Appellees. In the interest of justice, the Court properly revisited its December 8, 2015 Order and dismissed these claims.

v. Mississippi Tort Claims Act – Reckless Disregard

Pursuant to Section 11-46-9 of the Mississippi Code of 1972 annotated as it relates to governmental entities and employees and their exemption from liability, Appellees engaged in actions which do not arise to the level of reckless disregard. The relevant portion of the Mississippi Code of 1972 Ann. §11-46-9:

(1) a governmental entity and its employees acting within the course and scope of their employment or duties shall not be liable for any claim;

(b) arising out of any act or omission of an employee of a governmental entity exercising ordinary care and reliance upon, or in the execution or performance of, or in the failure to execute or perform, a statue, ordinance or regulation, whether or not the statute, ordinance or regulation be valid;

(c) arising out of any act or omission of an employee or governmental entity engaged in the performance or execution of duties or activities relating to police or fire protection unless the employee acted in reckless disregard of the safety and well being of any person not engaged in criminal activity at the time of injury;

(d) Based on upon the exercise or performance of the failure to exercise or

perform a discretionary function or duty on the part of a governmental entity or employee thereof whether or not a discretion be abused;... .

Under the Mississippi Tort Claim Act (MTCA), entities engaged in ... fire protection activities will be liable for reckless acts only. Maldonado v. Kelly, 768 So. 2d (Miss. 2000). Sovereign immunity cloaks all governmental functions a city performs. Westbrook v. City of Jackson, 665 So. 2d 833 (Miss. 1995). The Court has determined that the operation of a fire department is a governmental function. Id. at 837. In Mississippi, the governmental / proprietary distinction for cities still exists. As a result, Mississippi maintains sovereign immunity for its municipal fire protection, since governmental function immunity still protects that service. Id. at 837.

"The supply of water to combat fires, and fire fighting in general, is a governmental function." City of Columbus v. McIiwain, 205 Miss. 473, 487, 38 So. 2d 921, 923 (Miss.1949). "Reckless disregard, for the purposes of immunity under the Mississippi Tort Claims Act for activities relating to police and fire protection, is more than mere negligence, but less than an intentional act." Estate of Manus v. Webster County Mississippi, 2014 West Law 1285946 (N.D. Miss. 2014). Within the meaning of the governmental immunity statute, "reckless disregard exceeds gross negligence and embraces willful and wanton conduct." City of Jackson v. Gardner, 108 So. 3d 927 (Miss. 2013). In determining whether someone's conduct constitutes reckless disregard for the purpose of the governmental immunity statute, the Supreme Court considers the totality of the circumstances. City of Jackson v. Gardner, 108 So. 3d 927 (Miss. 2013). In order to overcome a municipality's immunity under the Mississippi Tort Claim's Act as it relates to reckless disregard, there must be a conscious indifference to the consequences, and

almost a willingness that harm should follow. Furthermore, reckless disregard is only found where there is a deliberate disregard of an unreasonable risk and a high probability of harm. City of Jackson v. Shavers, 97 So. 3d 686 (Miss. 2012). For the purposes of an exception to immunity under the Mississippi Tort Claims Act for actions relating to fire protection, reckless disregard is a higher standard than gross negligence and it involves willful or wanton conduct requiring knowingly or intentionally doing a thing or wrongful act. City of Jackson v. Gray, 72 So. 3d 491 (Miss. 2011).

Reckless disregard is a high standard and while reckless disregard includes gross negligence, it is a higher standard than gross negligence by which to judge the conduct of officers as that term is used in the Tort Claims Act. The Tort Claims Act provides that the governmental entity and its employees acting within the course and scope of their employment shall not be liable for any claim arising out of any act or omission of an employee engaged in performance of duties relating to police or fire protection unless the employee acted in reckless disregard for the safety and well being of any person not engaged in criminal activity at the time of injury. Law enforcement and firefighters are to be held civilly accountable only for those acts amounting to recklessness. Lippincott v. Mississippi Bureau of Narcotics, 856 So. 2d 465 (Miss. 2003). Governmental officers are immune from personal liability for fire protection decisions if the decision to provide water lines or certain aspects of fire protection to the property is a discretionary matter involving public policy decisions. Westbrook v. City of Jackson, 665 So. 2d 833 (Miss. 1995).

On or about the 21st day of July 2012, the home of Appellants William Donald Collins, Sr. and Mary Skinner Collins, located at 105 Walnut Street, Newton, Mississippi, was struck by

lightning and a fire commenced. Appellants alleged that Appellees fought this fire with reckless disregard and allowed excess damage to occur. The Trial Court properly found that Appellants William Donald Collins, Sr. and Mary Skinner Collins failed to satisfy the burden of reckless disregard by a preponderance of the evidence with regard to the way in which the City of Newton fought th fire which occurred at the two Appellants' house on July 21, 2012. Appellants did not articulate any facts in their pleadings or depositions that support their allegations that Chief Joel Skinner, the City of Newton, or the Newton Fire Department acted in reckless disregard in their fire suppression, compliance and execution of their duties in the fire of the home of William Donald Collins, Sr., and Mary Skinner Collins.

Furthermore, the Newton Fire Department complied with the minimal firefighting standards as it relates to the skill, experience, infrastructure, and supervision of the firefighters in properly responding to the house fire according to the Appellees' unopposed expert Keith L. Black at the Trial Court level. In the interest of justice, the Court properly revisited its December 8, 2015 Order and dismissed these claims for reckless disregard under the MTCA.

VIII. CONCLUSION

For the foregoing reasons, this Court should affirm the Circuit Court of Newton County's grant of Miss. R. Civ. P. 60(b) Relief from Order Denying Summary Judgment and subsequent dismissal in favor of the Appellees. The Trial Court properly reconsidered its December 8, 2015 Order pursuant to Miss. R. Civ. P. 60(b). The Trial Court's December 8, 2015 Order was completely contrary to governing Mississippi law and the Trial Court was within its discretion in granting relief from its previous December 8, 2015 Order pursuant to Miss. R. Civ. P. 60(b)(6) and dismissing Appellants' consolidated case. Appellees request that this Court affirm the

Circuit Court of Newton County, Mississippi.

Respectfully submitted,

CITY OF NEWTON; MAYOR DAVID CARR, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS MAYOR OF THE CITY OF NEWTON; CLARENCE PARKS, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS FIRE CHIEF FOR THE CITY OF NEWTON; JOEL SKINNER, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS FORMER FIRE CHIEF FOR THE CITY OF NEWTON; MURRAY WEEMS, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS ALDERMAN FOR THE CITY OF NEWTON; RONNIE JOHNSON, INDIVIDUALLY AND IN HIS OFFICIAL CAPACITY AS ALDERMAN FOR THE CITY OF NEWTON

By: /s/ James C. Griffin

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IX. CERTIFICATE OF SERVICE

I certify that I have this day electronically filed the Appellees' Brief with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

Honorable Joel W. Howell, III
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Attorney for Appellants

I further certify that I have this day mailed via U.S. mail a true and correct copy of the foregoing Appellants' Brief to the following:

Honorable Mark Duncan
Newton County Circuit Court Judge
92 W Broad Street
Decatur, MS 39327

This, the 22nd day of June, 2017.

/s/ James C. Griffin
James C. Griffin