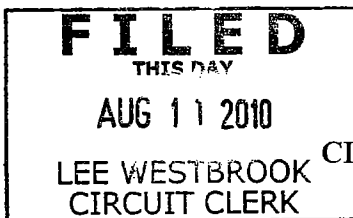


IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

THEODORE R. CLYATT

vs.

JOHN T. JACKS



PLAINTIFF

CIVIL CAUSE NO. CI-2009-206-R

DEFENDANT

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Came now this day to be considered the Defendant's, John T. Jacks, Motion for Summary Judgment, and the Court having reviewed the pleadings filed in this cause and being otherwise duly and sufficiently advised in these premises, finds as follows.

The standard of review for a Motion for Summary Judgment is a familiar one in Mississippi Law. Rule 56 of the Mississippi Rules of Court "allows summary judgment where there are no genuine issues of material fact such that the moving party is entitled to judgment as a matter of law. To prevent summary judgment, the non-moving party must establish a genuine issue of material fact by means allowable under the rule." *Lyle v. Mladinich*, 584 So.2d 397, 398 (Miss. 1991). A justice must "review carefully all the evidentiary matters before [him] . . . and, [t]he evidence must be reviewed in the light most favorable to the party against whom the motion has been made." *Brown v. Credit Center, Inc.*, 444 So.2d 358 (Miss. 1983). In situations where there is doubt as to whether there is a genuine issue of material fact, "the trial judge should err on the side of denying the Motion and permitting full trial on the merits." *American Legion Post 42 v. Ocean Springs*, 562 So.2d 103, 106 (Miss. 1990).

In this cause, the Court finds that the Plaintiff has failed to raise any genuine issues of material fact for a jury to consider. Both the Plaintiff and the Defendant were to abide by the rules of the road, and pursuant to the complaint, depositions, and subsequent motions this Court has come to the conclusion that the Plaintiff raises no issues that the Defendant breached his duty as the operator

of a motor vehicle. Furthermore, the only eye witnesses to the collision were the Plaintiff and the Defendant. The testimony of the Plaintiff when asked whether he stopped at the stop sign prior to the accident: “[T]here’s a number of the accident I do not recall, but I can tell you this: I’m the least likely person to be in any type of accident. I have been running and riding bikes for quite some time and I’m always grandma when it comes to traffic. I’m hyperaware of cars. I’m unlikely to blow through a stop sign.” (Deposition of Theodore Clyatt at 28). Furthermore, when questioned about his physical position on the road or hitting any type of obstruction, the Plaintiff stated, “I don’t recall” and “I do not recall that.” (Deposition of Theodore Clyatt at 28, 29). Through his testimony, the Plaintiff indicates that he doesn’t remember anything from the time directly before he turned on Rice Road until the time he was awakened by the EMT’s. In essence, the Plaintiff, being the only eye witness to the accident, other than the Defendant, does not recall any material aspect of the accident and can not conclusively state that he stopped at the stop sign, therefore, no genuine issue of material fact has been established.

Henceforth, this Court finds that no disputed issues of genuine material fact exist and summary judgment is proper in this case and the Defendant is entitled to summary judgment as a matter of law.

**THEREFORE**, the Court finds that the Defendant’s Motion for Summary Judgment is hereby granted. The Circuit Clerk is directed to send copies of this order to all counsel of record. Furthermore, the Defendant is directed to submit an order of dismissal to comply with the findings in this order granting the Defendant’s Motion for Summary Judgment.

SO ORDERED, this the 11<sup>TH</sup> day of August, 2010.



**ATTEST A TRUE COPY**

This 11<sup>TH</sup> day of August, 2010  
LEE WESTBROOK, CIRCUIT CLERK

BY [Signature], D.C.

[Signature]  
Circuit Judge