

**IN THE COURT OF APPEALS  
OF THE  
STATE OF MISSISSIPPI  
NO. 95-CA-00334 COA**

**BYRON J. HODA AND PAMELA K. HODA**

**APPELLANTS**

**v.**

**WAL-MART STORES, INC. AND TILLEY  
CONSTRUCTORS AND ENGINEERS, INC.**

**APPELLEES**

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND MAY NOT BE CITED,  
PURSUANT TO M.R.A.P. 35-B

DATE OF JUDGMENT:	02/24/95
TRIAL JUDGE:	HON. ROBERT LEWIS GIBBS
COURT FROM WHICH APPEALED:	HINDS COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANTS:	ROBERT G. GERMANY
ATTORNEY FOR APPELLEES:	EDLEY H. JONES FREDRICK B. FEENEY, II
NATURE OF THE CASE:	CIVIL - PERSONAL INJURY
TRIAL COURT DISPOSITION:	SUMMARY JUDGMENT IN FAVOR OF DEFENDANTS
DISPOSITION:	AFFIRMED - 12/16/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	2/4/98

BEFORE BRIDGES, C.J., COLEMAN, AND DIAZ, JJ.

DIAZ, J., FOR THE COURT:

The appellants, Byron J. Hoda and Pamela K. Hoda, assign error to the lower court's grant and final certification of summary judgment in favor of the appellees, Wal-Mart Stores, Inc. and Tilley Constructors and Engineers, Inc. Finding the appellants's arguments without merit, we affirm.

**FACTS**

On June 14, 1988, Wal-Mart Properties, Inc. contracted with Tilley Constructors and Engineers, Inc. (hereinafter referred to as Tilley) to build a Wal-Mart store in Meridian, Mississippi. Thereafter,

Tilley entered into a subcontract with Southern Steel Service for the erection of all structural steel, metal decking, and canopy decking at the store in question. During the process of constructing the store, Byron Hoda, an employee of Southern Steel, fell from an elevated girder and was injured. At the time of the accident, Mr. Hoda was covered by a workers' compensation insurance policy issued to Southern Steel Service, which had been required in Southern Steel's contract with Tilley. Nevertheless, the Hodas filed suit against Wal-Mart and Tilley alleging that the appellees were negligent in causing the accident and that their negligence was the proximate cause of Hoda's injuries. Both Wal-Mart and Tilley filed motions for summary judgment. The circuit court judge entered an order granting the appellees's motions and then entered a final judgment of dismissal with prejudice, at the cost of the Hodas. Aggrieved by the lower court's decision, the Hodas bring forth this appeal.

## DISCUSSION

### I. DID THE CIRCUIT COURT ERR IN GRANTING SUMMARY JUDGMENT IN FAVOR OF WAL-MART?

Hoda argues that a genuine issue of material fact exists with regard to Wal-Mart, thereby precluding the lower court's grant of summary judgment. **M.R.C.P. 56.** Hoda contends that Wal-Mart's negligence flows from the conduct of its construction manager, Guy Shaddox, in failing to exercise his authority to make the premises safe. However, the supreme court has stated that

[w]here a party . . . contracts with another . . . to perform original construction or repair work . . . and devolves upon the contractor the right and fact of control of the premises and the nature and details of the work, the owner has no liability for injuries experienced by the contractor's workers where those injuries arose out of or were intimately connected with the work.

*Magee v. Transcontinental Gas Pipe Line Corp.*, 551 So. 2d 182, 185 (Miss. 1989). In the present case, Wal-Mart contracted with Tilley to supervise and direct the construction of a new store, making Tilley solely responsible for all portions of the work under the contract. It is therefore clear that the court's holding in *Magee* applies with equal force in this case to relieve Wal-Mart of any responsibility for Hoda's injuries. Accordingly, we find that the circuit court did not err in granting summary judgment in favor of Wal-Mart.

### II. DID THE CIRCUIT COURT ERR IN GRANTING SUMMARY JUDGMENT IN FAVOR OF TILLEY?

**Section 71-3-7 of the Miss. Code Ann. (Rev. 1995)** provides in part: "In the case of an employer who is a subcontractor, the contractor shall be liable for and shall secure the payment of such compensation to employees of the subcontractor, unless the subcontractor has secured such payment." In accordance with its contract with Wal-Mart, Tilley required that all subcontractors purchase and present proof of insurance before they could begin work at the Wal-Mart site. The supreme court has stated that "[i]t is our opinion the legislature did not intend to subject a general contractor to common law liability if he complied with § 71-3-7 by requiring the subcontractor to have workmen's compensation insurance. It would defeat the purpose of the statute, we think, if such an improbable result followed." *Doubleday v. Boyd Constr. Co.*, 418 So. 2d 823, 826 (Miss. 1982). It is therefore clear that by requiring Southern Steel to secure workers' compensation, Tilley performed its duty under the statute and is thereby relieved of liability. Accordingly, we find that the

circuit court did not err in granting summary judgment in favor of Tilley.

**III. DID THE CIRCUIT COURT ERR IN CERTIFYING AS FINAL THE SUMMARY JUDGMENTS GRANTED TO WAL-MART AND TILLEY?**

In cases involving multiple parties, **M.R.C.P. 54(b)** permits the court to enter a final judgment as to one or more of the parties, "upon an expressed determination that there is no just reason for delay and upon an expressed direction for the entry of the judgment." *Indiana Lumbermen's Mut. Ins. Co. v. Curtis Mathes Mfg. Co.*, **456 So. 2d 750, 752-53 (Miss. 1984)**. Due to the lower court's familiarity with the case, we presume that the judge is in the best position to determine when a final judgment should be entered. *Id.* at **753**. We will only reverse the judge's order when we find that he has abused his discretion. *Id.* In the present case, the circuit court granted summary judgment in favor of Wal-Mart and Tilley as to all claims that were currently pending against them. Although the claim against co-defendant, Jerome Wooten, remained, that claim was separate and distinct and would not have provided the basis for any delay in granting final judgments in favor of Wal-Mart and Tilley. Therefore, in accordance with *Indiana Lumbermen's Mut. Ins. Co.*, the circuit court found that there was no just cause for delay and directed the entry of final judgment. Because the circuit court correctly entered final judgment as authorized by Rule 54(b), we will not hold the judge in error on this issue.

**THE JUDGMENT OF THE HINDS COUNTY CIRCUIT COURT IS AFFIRMED. COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANT.**

**BRIDGES, C.J., McMILLIN AND THOMAS, P.J.J., COLEMAN, HERRING, HINKEBEIN, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR.**