

**IN THE COURT OF APPEALS 12/03/96**

**OF THE**

**STATE OF MISSISSIPPI**

**NO. 94-CA-00447 COA**

**ROBERT PITTS**

**APPELLANT**

**v.**

**SOUTH CENTRAL BELL TELEPHONE COMPANY AND DIXIE ELECTRIC POWER  
ASSOCIATION**

**APPELLEES**

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND

MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. ROBERT WALTER BAILEY

COURT FROM WHICH APPEALED: WAYNE COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT:

GLADSTONE N. JONES

LOUIE M. BISHOP

ATTORNEYS FOR APPELLEES:

WILLIAM SYLVESTER MULLINS III

MARK FRANKLIN MCINTOSH

NATURE OF THE CASE: PERSONAL INJURY

TRIAL COURT DISPOSITION: SUMMARY JUDGMENT FOR DEFENDANTS

BEFORE BRIDGES, P.J., KING, AND PAYNE, JJ.

BRIDGES, P.J., FOR THE COURT

This case is an appeal from a summary judgment rendered in favor of South Central Bell and Dixie Electric Power Association. Robert Pitts argues that the trial court erred in granting the summary judgment in favor of the Defendants because genuine issues of material fact still exist that warrant the case's progression to full trial. We disagree and therefore, affirm.

FACTS

Although the accident which gave rise to this cause of action occurred in 1991, the events that occurred prior to 1991 will be detailed first. Prior to 1986, Dixie Electric Power Association (Dixie) owned an easement over the land of Ronald Dale Pitts (Ronald). Dixie placed its power poles and ran its utility lines over Ronald's land. Dixie also allowed South Central Bell ("SCB") to attach its overhead lines to the same poles, provided it got the permission of the landowner.

In 1986, Dixie removed its power lines from the poles, and SCB became the owner of the poles. This appears to be Dixie's last involvement with Ronald's property. Sometime after 1986 and prior to 1989, SCB cut down the poles on Ronald's property and left them there for use by Ronald and his father Robert Pitts (hereinafter Robert) at their request. Robert, in addition to being Ronald's father, was Ronald's employee, maintaining his son's land in his absence.

In 1987, SCB installed an underground cable and other related equipment running across Ronald's property. In August of 1989, SCB was notified by Ronald's attorney that its installation of the underground cable and equipment was unauthorized and considered it a trespass. SCB was also forbidden from coming onto the property to remove its line and equipment. SCB then installed a new underground line along a nearby public road and deactivated the existing equipment on Ronald's land. In January of 1990, the dispute was settled via a general and absolute release executed by Ronald and his brother Robin. SCB paid Ronald and Robin \$3,750.00 in return for their complete and absolute release. The release was worded as follows:

Robin and Ronald Pitts,[ ], for themselves, their heirs, administrators, executor's and assigns, have released and discharged, and by these presents do hereby release and discharge South Central Bell Telephone Company[ ], and its agents, representatives, servants, employees, and any and all other persons, firms, partnerships, associations, corporations, subsidiaries, predecessors in interest, successors, or assigns who are or may be in any manner whatsoever liable for their acts, or for the acts of any of them, [ ] of and from any and all claims, demands, actions, causes of action, suits and damages of every kind and nature whatsoever, which the undersigned may have or claim to have, for damages, costs, fees, losses, and expenses of every kind or nature whatsoever, whether known or unknown, anticipated or unanticipated, and whether accrued or hereafter to accrue, caused by, resulting from, growing out of or in any manner connected with the alleged trespass by South Central Bell upon the land of the undersigned, and the placement and maintenance of South Central Bell's telephone facilities upon said property

....

The undersigned further acknowledge and are aware that the cable installed across their property remains in place and will not be removed, and the undersigned hereby accept same and agree to hold Releases harmless in regard thereto.

The undersigned covenant and warrant that there have been no assignments of any claim or right in the premises to anyone not joining in this Release, and the covenants, warrants, and guarantees contained herein apply to all persons, individually and in their respective capacities, and in every regard whatsoever; and the undersigned hereby covenant and warrant to hold harmless the Releasees and all others in the premises from any further claim or liability arising out of the alleged trespass, regardless of the source or by whom tried or prosecuted whether the same arises directly, indirectly, or otherwise; and the undersigned agree that, hereafter, the released parties are and shall be forever free of liability in the premises.

On January 8, 1991, Robert was working on his son's land as he usually did. He stepped into a hole that was approximately three feet deep and was covered by growth. Robert states in his complaint that he received significant leg injuries from the fall. After filing suit in the circuit court of Wayne county, Robert was faced with motions for summary judgment from both Defendants. Relying on the pleadings, affidavits, discovery, and certain correspondence, the circuit court granted both Defendants' motions for summary judgment. In granting the motions, the court found that Robert had admitted that he did not see SCB or Dixie dig the hole into which he fell. The court also recognized the validity of the release which relieved SCB of any rights or responsibilities with regard to Ronald's property.

The court went on to conclude that Robert had produced no evidence that the hole was created by SCB or Dixie, and that neither Defendant owed a duty to Robert, who was an invitee on his son's property. The court also justified its granting of the motions by concluding that the release was valid and binding and applicable to Robert, and that he had failed to produce any proof that either Defendant was on Ronald's land after the release was signed.

#### STANDARD OF REVIEW

Rule 56(c) of the Mississippi Rules of Civil Procedure 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. *Crain v. Cleveland Lodge 1532*, 641 So. 2d 1186, 1188 (Miss. 1994). When reviewing a decision to grant summary judgment, this Court will review the case *de novo*. *Id.* All evidentiary matters are viewed in a light *most favorable to the non-movant*. *Id.* (emphasis added); *Morgan v. City of Ruleville*, 627 So. 2d 275, 277 (Miss. 1993). In other words, SCB and Dixie must show that there is *no issue of fact* on one of the following four points: (1) whether they owed a duty to Robert; (2) whether they breached that duty if one was owed to Robert; (3) whether Robert suffered injuries as a result of a breached duty; and (4) whether such breach substantially contributed to Robert's injuries. *Lyle v. Mladinich*, 584 So. 2d 397, 398-99 (Miss. 1991). We believe that SCB and Dixie have met that burden.

## ARGUMENT AND DISCUSSION OF LAW

### I. WHETHER THE CIRCUIT COURT IMPROPERLY GRANTED SCB AND DIXIE'S MOTION FOR SUMMARY JUDGMENT.

Robert's only argument on appeal is that the trial court improperly granted summary judgment in favor of Dixie and SCB. We disagree. It is the opinion of this Court that the grant of summary judgment in favor of Dixie and SCB was correct because (1) there was no showing that a duty was owed by SCB or Dixie to Robert, and (2) regardless of the duty issue, Robert was barred from suit of any kind by the general and absolute release he signed in 1990.

The only party that owed a duty to Robert was his son Ronald because Robert entered upon the land in question in answer to the express invitation of the owner for the mutual advantage of both men. *Lucas v. Buddy Jones Ford Lincoln Mercury, Inc.*, 518 So. 2d 646, 647 (Miss. 1988). Neither Dixie nor SCB owned, controlled, or occupied the land in question at the time of Robert's fall and, therefore, neither owed a duty to Robert. Because no triable issue of fact exists with regard to the duty element, the grant of summary judgment to Dixie and SCB must be affirmed. *Lyle*, 584 So. 2d at 399.

Even if there did exist a triable issue of fact with regard to the duty element, this Court would still be compelled to affirm the summary judgment because of the release executed by Ronald. In the release, Ronald agrees to hold SCB harmless against suits such as this, and the parties to this appeal did not raise the issue of the validity of the release. Accordingly, we shall not address it further. While it is true that the release was executed only in favor of SCB, the record revealed no evidence that Dixie was in any way involved in digging any holes in which Robert may have fallen. It is an undisputed fact that Dixie's involvement with Ronald's land ended in 1986 with SCB taking over the use of its poles. The record does reveal, however, Robert's hollow allegation that SCB was on Ronald's property after the release was executed. This allegation is completely unsupported by any proof or evidence and does not in any way rebut SCB's affidavits, which state the opposite.

The party opposing the motion [must] be diligent. 'Mere general allegations which do not reveal detailed and precise facts will not prevent the award of summary judgment.' The party opposing the motion is required to bring forward significant probative evidence demonstrating the existence of the triable issue of fact.

*Brown v. Credit Center, Inc.*, 444 So. 2d 358, 364 (Miss. 1983) (citations omitted). We find that Robert has not done so and, therefore, affirm the grant of summary judgment in favor of Dixie and SCB.

**THE JUDGMENT OF THE WAYNE COUNTY CIRCUIT COURT IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE TO BE ASSESSED TO ROBERT PITTS.**

**FRAISER, C.J., THOMAS, P.J., BARBER, COLEMAN, DIAZ, KING , PAYNE, AND**

**SOUTHWICK, JJ., CONCUR. MCMILLIN, J., CONCURS IN RESULT ONLY.**