

IN THE COURT OF APPEALS 12/29/95

OF THE

STATE OF MISSISSIPPI

NO. 95-CA-00083 COA

ALICE MAYE DAVIS AND JAMES P. DAVIS

APPELLANTS

v.

**JACKSON PUBLIC SCHOOL DISTRICT AND BENJAMIN O. CANADA,
SUPERINTENDENT**

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 L. GIBBS

COURT FROM WHICH APPEALED: HINDS COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANTS:

GUY N. ROGERS, JR.

TRACEY L. TUCKER

ATTORNEY FOR APPELLEES:

ANNE C. SANDERS

NATURE OF THE CASE: CIVIL -- PERSONAL INJURY PREMISED ON NEGLIGENCE

TRIAL COURT DISPOSITION: SUMMARY JUDGMENT GRANTED IN FAVOR OF
DEFENDANTS

BEFORE THOMAS, P.J., BARBER, AND DIAZ, JJ.

BARBER, J., FOR THE COURT:

Plaintiffs, Alice Maye Davis and James P. Davis, appeal from an order of the Circuit Court of Hinds County, Mississippi granting summary judgment in favor of Defendants, Jackson Public School District ("JPSD") and Benjamin O. Canada, the former district superintendent. Finding that the trial court was correct in ruling that the Defendants were not negligent in failing to install a handrail on the stairway upon which Mrs. Alice Davis fell and injured herself, we affirm.

FACTS

On May 18, 1993, Mrs. Davis entered the Iola Tapley Wilkins School to vote. After doing so, she exited by the same door by which she entered. Instead of going down the side of the stairway with a handrail, Mrs. Davis started down the side without a handrail. Mrs. Davis lost her balance and fell, breaking her hip.

On October 14, 1993, the Plaintiffs, Mr. and Mrs. Davis, filed suit against the Defendants, JPSD and Benjamin Canada. In their complaint, the Plaintiffs alleged that Defendants breached their duty to Mrs. Davis to maintain the premises in a reasonably safe condition. Specifically, the Plaintiffs alleged that the Defendants were negligent in failing to provide handrails on the stairway and in failing to provide warnings that no such handrails existed. For her pain and suffering, medical expenses and permanent disability, Mrs. Davis prayed for \$500,000 in damages. For his alleged loss of consortium, Mr. Davis prayed for \$250,000 in damages.

On April 20, 1994, the Defendants moved for summary judgment on the ground that the Mississippi Supreme Court has rejected the notion that premises liability can be based upon the failure to provide a handrail. In response to this motion, the Plaintiffs pointed to provisions of the Americans With Disabilities Act ("ADA"), 42 U.S.C. §§ 12101-12213, arguing that the Defendants' failure to provide handrails was a violation of the ADA and that the Defendants were therefore negligent *per se*. In his June 16, 1994 Opinion and Order, the trial judge agreed with the Defendants that Mississippi law did not allow a finding of negligence premised solely upon failure to provide a handrail on a stairway. However, the trial judge also agreed with the Plaintiffs as to the validity of their negligence *per se* theory. Finding that triable issues of fact existed as to whether Mrs. Davis was within the class of persons protected by the ADA, the trial judge denied the motion for summary judgment. However, in a subsequent December 7, 1994 Opinion and Order rendered after the Defendants had renewed their motion for summary judgment, the trial judge ultimately concluded that the Plaintiffs had failed to establish that at the time of her accident Mrs. Davis was disabled such that she fell within the class of persons protected by the ADA. Accordingly, the trial judge granted the renewed motion for summary judgment. The Plaintiffs now appeal.

DISCUSSION

Rule 56 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 there is no genuine issue as to any material fact. The moving party is therefore entitled to judgment as a matter of law. M.R.C.P. 56(c). "Rule 56 provides the

means by which a party may pierce the allegations in the pleadings and obtain relief by introducing outside evidence showing that there are no fact issues that need to be tried." *Brown v. Credit Ctr., Inc.*, 444 So. 2d 358, 362 (Miss. 1983). "The motion for summary judgment challenges the very existence of the legal sufficiency of the claim . . . ; in effect, the moving party takes the position that he is entitled to prevail as a matter of law because his opponent has no valid claim for relief" *Id.*

"In a negligence action, the plaintiff bears the burden of producing evidence sufficient to establish the existence of the conventional tort elements of duty, breach of duty, proximate causation and injury." *Palmer v. Biloxi Regional Medical Ctr. Inc.*, 564 So. 2d 1346, 1355 (Miss. 1990), *reh'g denied*, 649 So. 2d 179 (Miss. 1994). "[When a party opposing summary judgment on a claim or defense as to which that party will bear the burden of proof at trial, fails to make a showing sufficient to establish an essential element of the claim or defense, then all other facts are immaterial, and the moving party is entitled to judgment as a matter of law." *Galloway v. Travelers Ins. Co.*, 515 So. 2d 678, 684 (Miss. 1987). Mere denial of the movant's allegation that there is no genuine issue of fact is insufficient to create an issue of fact. *Smith v. Sanders*, 485 So. 2d 1051, 1054 (Miss. 1986). The party opposing the motion is required to bring forward significant probative evidence demonstrating the existence of the triable issue of material fact. *Id.* On appeal from a grant of a motion for summary judgment, we review the record *de novo*. *Northern Elec. Co. v. Phillips*, 660 So. 2d 1278, 1281 (Miss. 1995).

When a person falls down a stairway which does not possess handrails but is in all other respects adequately designed and maintained, the Mississippi Supreme Court has held that, as a matter of law, the absence of the handrail does not comprise a breach of the defendant's duty to maintain its premises in a reasonably safe condition and the fall belongs "to that class of ordinary accidents which ought to be imputed to the carelessness or misfortune of the sufferer." *Mercy Regional Medical Ctr. v. Doiron*, 348 So. 2d 243, 246 (Miss. 1977). In the present case, the only allegation of negligence on the part of the Defendants was the failure to provide a handrail in the school stairway. There was no allegation of any defect or problem with the stairs. Accordingly, under *Doiron*, we hold that the Plaintiffs did not have a valid claim of negligence premised solely upon the absence of a handrail.

Presumably, after the Defendants' first motion for summary judgment, the Plaintiffs realized that their attempt to hold the Defendants liable based upon the absence of the handrail was likely to fail. They therefore argued that liability should be premised upon the Defendants' failure to comply with those provisions of the ADA that require that handrails be installed in stairwells. The trial court correctly recognized that Mississippi law provides that negligence *per se* may be based upon failure to comply with a federal statutory or regulatory scheme, *see, e.g., Strong v. Freeman Truck Line, Inc.*, 456 So. 2d 698, 707 (Miss. 1984). Nevertheless, the trial court held that the Plaintiffs failed to establish that Mrs. Davis was within the class of persons sought to be protected by the ADA. After reviewing the record, we find this holding correct.

In Mississippi, violation of a criminal or regulatory statute constitutes negligence *per se* "and will support a cause of action in tort where the plaintiff is within the class protected by the statute and the harm sustained is the type sought to be prevented by the statute." *Boyer v. Tenn Tom Constructors*, 702 F.2d 609, 611 (5th Cir. 1983). The ADA prohibits various entities, including schools, from discriminating against persons "on the basis of disability" by preventing participation in or access to "goods, services, facilities, privileges, advantages, or accommodations." 42 U.S.C. § 12182(a) (West

1995). According to 42 U.S.C. § 12102(2):

The term disability means, with respect to an individual -

(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment.

Id. § 12102(2).

After reviewing the submissions of the parties, we are of the opinion that while the Plaintiffs succeeded in producing evidence that prior to the time of her accident, Mrs. Davis had suffered various physical ailments and had undergone various forms of medical treatment, they failed to produce any evidence showing that these ailments resulted in Mrs. Davis possessing, having a record of possessing or being regarded as possessing a physical or mental impairment that substantially limited one or more of her major life activities. Thus, no evidence was produced showing that Mrs. Davis was within the class of persons protected by the ADA.

We also find that even if Mrs. Davis should have been found to be within the class of persons protected by the ADA, the Plaintiffs were incorrect in asserting that the Defendants violated the ADA in not providing handrails on both sides of the stairway. While it is true that subsection 4.9.4 of 31 C.F.R., Part 1191, section 4.9 makes it mandatory that stairways have handrails at both sides of all stairs, section A4.9.1 from the applicable appendix explains that "[o]nly interior and exterior stairs connecting levels that are not connected by an elevator, ramp, or other accessible means of vertical access have to comply with 4.9." *Americans With Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities*, 36 C.F.R., Pt. 1191, § 4.9 app. A (1994). The Defendants provided the affidavit testimony of Betty Faulkner, the principal at Iola Tapley Wilkens School, to the effect that at the time that Mrs. Davis voted, a handicap access ramp existed at the south entrance of the school, which allowed access to the area used for voting. The Plaintiffs point to nothing on the record that contradicts this testimony. Accordingly, we hold that there was no violation of the ADA by the Defendants.

In sum, because the absence of handrails on a stairway cannot provide a ground upon which premises liability may be based, because Plaintiffs presented no evidence showing that she was within the class of persons protected by the ADA and because the Defendants did not violate the ADA in not providing handrails on both sides of the stairway, we affirm the trial court's grant of summary judgment in favor of the Defendants.

**THE JUDGMENT OF THE CIRCUIT COURT OF HINDS COUNTY IS AFFIRMED.
COSTS ARE ASSESSED TO THE APPELLANTS.**

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

