IN THE COURT OF APPEALS 11/28/95

OF THE

STATE OF MISSISSIPPI

NO. 94-CA-00381 COA

JENNIFER MICHAEL, BY AND THROUGH NEXT FRIEND AND MOTHER, JEWEL MICHAEL

APPELLANT

v.

SPARTAN FOOD SYSTEMS, INC. D/B/A HARDEE'S OF AMORY, MISSISSIPPI, LARRY HOLLOWAY AND TIM HOPSON

APPELLEES

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND

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

TRIAL JUDGE: HON. THOMAS J. GARDNER, III

COURT FROM WHICH APPEALED: MONROE COUNTY CIRCUIT COURT

ATTORNEYS FOR APPELLANT:

JIM WAIDE

DAVIS A. CHANDLER

ATTORNEY FOR APPELLEES:

ROBERT H. FAULKS

NATURE OF THE CASE: CIVIL-SEXUAL HARRASSMENT AND RAPE

TRIAL COURT DISPOSITION: SUMMARY JUDGMENT IN FAVOR OF DEFENDANTS, SPARTAN FOOD SYSTEMS, INC., LARRY HOLLOWAY AND TIM HOPSON

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

McMILLIN, J., FOR THE COURT:

The Circuit Court of Monroe County granted summary judgment to the defendant, Spartan Food Systems, Inc., on a claim brought by a former employee, Jennifer Michael, alleging liability on the part of Spartan for an alleged sexual assault against her by her supervisor, Tim Hopson. The alleged assault occurred at an after-hours party hosted by Hopson and held at his residence. Michael alleges that summary judgment was erroneously granted in that Spartan was liable under theories of agency or respondeat superior, and that there was a genuine issue of fact as to whether Spartan had breached a duty owed to Michael to fully counsel and advise her on the company's non-fraternization policy; apparently on the theory that, had she been more fully informed, she would not have attended the function at Hopson's residence.

We conclude that the trial court properly granted summary judgment in this cause and, therefore, affirm.

I.

FACTS

The version of the facts given in this opinion, in instances where there is a conflict, is based upon the evidence submitted by the plaintiff in opposition to the summary judgment motion. Jennifer Michael, a sixteen year old young lady, obtained summer work as a cashier at a fast-food establishment operated by the defendant, Spartan Food Systems, Inc. Her immediate supervisor was a twenty-year old young man named Tim Hopson. Michael claims that Hopson, from the beginning of her employment, expressed an interest in her that went beyond matters relating directly to their employment. She claims that he extended favorable treatment to her at work, often made remarks concerning his favorable impression of her appearance, and went so far as to encourage her to go out with a co-worker at the business named Shane Rost.

In late June 1992, Hopson accused Michael of having a shortage in her cash drawer at the end of her shift. He indicated that he would have to report the incident under existing company policy and indicated that termination of employment could possibly result. However, he expressed a personal desire to continue Michael's employment and suggested that it would be beneficial if she would come to a social gathering planned that night at his residence in order to give them a chance to discuss the proper handling of the cash shortage. Michael did, in fact, attend the social event, arriving in the company of her co-worker, Shane Rost.

There were a number of other people at the gathering, some of whom came and left during the course of the evening. The evening was passed watching television and playing a game called "Quarters," which involved the consumption of alcoholic beverages. Various forms of alcohol were present at the gathering and consumed by those present. Michael testified that she had never partaken of alcoholic beverages before that evening, but that, at the prompting of Hopson, she consumed some of the alcoholic drinks offered to her. As a result, she claims to have become intoxicated to the point

that the exact details of the evening are not clear. She claims to remember several attempts to leave the party, all of which were thwarted by her inability to locate her car keys and the unwillingness of other attendees to assist her. Ultimately, she found herself alone in the residence with Hopson, who, through a combination of physical strength and taking advantage of her intoxicated state, forced her to engage in sexual relations against her will.

Spartan had a published company policy that prohibited supervisory employees from improper fraternization with those employees under their direction outside the workplace. Spartan does not contradict the fact that Hopson had, on one occasion previous to this incident, been verbally counseled for a possible breach of the non-fraternization policy when he asked an employee out on a date.

II.

LIABILITY BASED UPON THE DOCTRINE OF

RESPONDEAT SUPERIOR OR AGENCY

Taken in the light most favorable to the plaintiff, we can find nothing that would support a finding that Hopson's activities at a private social event at his own personal residence during non-working hours were related to his duties as an employee of Spartan so as to render Spartan liable under the doctrines relied upon by Michael.

The law in Mississippi on the subject is quite clear.

> [T]he master is responsible for the torts of his servant only when they are committed within the scope of his employment. The test used in determining whether an employee's tortious act is within the scope of his employment is whether it was done in the course of and as a means to the accomplishment of the purposes of the employment and therefore in furtherance of the master's business.

Odier v. Sumrall, 353 So. 2d 1370, 1372 (Miss. 1978).

Once an employee deviates from the scope of his employment and commences to pursue some purpose unrelated to his employment duties, he is deemed to be engaged in affairs of his own. In such case, the employer is "relieved from liability for the consequence of any tortious conduct committed by the employee . . . ." *Seedkum South, Inc. v. Lee*, 391 So. 2d 990, 995 (Miss. 1980).

Though it may be true that Hopson used the influence of his position to deviously coerce Michael to his residence for a party, with every intent of sexually assaulting her on her arrival, these facts simply do not make either Hopson's invitation during working hours or the subsequent alleged assault at his residence acts undertaken in furtherance of his duties as a manager for Spartan. The fact that a person uses his position to facilitate an improper, but purely personal, undertaking does not bring the

action within the scope of that person's employment. Suppose an employee responsible for making bank cash deposits purposely arrived a few minutes after bank closing and persuaded officials to admit him to the locked bank, then took advantage of his entry to commit a robbery. Certainly, it could not be maintained, on those facts alone, that the robber's employer was civilly liable for the converted funds.

In the case of *Rita M. v. Roman Catholic Archbishop of Los Angeles*, the California Court of Appeals dealt with a case where a woman sought to establish corporate responsibility under respondeat superior on a claim that certain priests, employees of the Archbishop (which was a corporation and not an individual as the name might suggest) had used their positions to conspire to entice her into performing sexual acts. *Rita M. v. Roman Catholic Archbishop*, 187 Cal. App. 3d 1453, 232 Cal.Rptr. 685 (2d Dist. 1986). The court, in denying such a claim, stated:

> An employer may be held responsible for tortious conduct by an employee only if the tort is committed within the course and scope of employment. (citation omitted) Analytically, the question of whether a tort is committed within the course of employment turns on whether (1) the act performed was either required or instant to the employee's duties or (2) the employee's misconduct could be reasonably foreseen as an outgrowth of the employee's duties. (citation omitted).

Id at 690.

The court then concluded that, since it could not be seriously contended that sexual relations with parishioners were a part of a priest's duties, the only possible theory of recovery was on the basis of the "foreseeability test." *Id.* at 690. In analyzing the question of foreseeability, the court quite properly observed that foreseeability must be considered, "not in an omniscient way, but in the relevant sense." *Id.* at 690.

Another California case involved sexual abuse of a minor student by a teacher who had improperly qualified the student for an extracurricular program that required the student to visit in the teacher's home. Once there, the teacher coerced the student into performing sexual acts with threats of lowered grades for non-compliance. *John R. v. Oakland Unified School District*, 769 P.2d 948 (Cal. 1989). The California Supreme Court refused to hold the teacher's employer liable under the doctrine of respondeat superior. The court first rejected the argument that the offenses were committed within the scope of the teacher's duties, since "[a] more personal escapade less related to an employer's interests is difficult to imagine." *Id.* at 953. It then dealt with the issue of the foreseeable nature of the incident and observed that a determination that such conduct is "conceivable" is "a far cry from foreseeability. . . ." *Id* at 955, n.9. The majority was discussing a partial concurrence and partial dissent filed by one member of the court that suggested that liability might be based upon an independent tort of negligence by the District for failing to foresee the possibility of such an occurrence and in permitting the situation to arise. The majority observed that the writer "seems to reflect an unduly pessimistic view of human nature, for, if we read the opinion correctly, it seems to suggest that sexual misconduct is foreseeable any time a minor and an adult are alone in a room

together, at least if not constrained by the possibility of being interrupted." *Id.* The court declined to take such a broad view of foreseeability.

In *Holliday v. Pizza Inn*, the Mississippi Supreme Court refused to apply the doctrine of respondeat superior to hold an employer liable for injuries incurred by a guest at an unauthorized on-premises, but after-hours, party hosted by the local manager. *Holliday v. Pizza Inn*, 659 So. 2d 860 (Miss. 1995). The Court concluded that the party "in no way furthered or was meant to further the business of [the manager's] employers," and that it was "difficult to imagine a situation which would be more in the private interest of the employee and less in the interest of the employer." *Id.* at 865.

We conclude that the alleged activities of Hopson were, in no way, undertaken in furtherance of his duties as shift manager so as to render Spartan liable under traditional doctrines of respondeat superior. As to the related issue of foreseeability, we conclude that it is not foreseeable, based upon nothing more than general principles of human nature, that a male supervisor is likely to abuse his position of authority to lure a female employee into an isolated situation and then commit a criminal sexual assault upon her. However, this general conclusion does not finally resolve all issues of the "foreseeability" question. We must deal further with the matter of whether, in the particular case of Hopson, Spartan was charged with sufficient knowledge of his propensity to commit such an act that his continued retention in a position of authority rendered his conduct sufficiently foreseeable as to impose liability on Spartan. In actuality, such a finding would not technically fit within the issue of respondeat superior, which makes the employer vicariously liable for its employee's acts, but would be an independent act of negligence directly committed by Spartan, in the nature of negligent retention of an employee known to create a risk. Such an independent tort has been recognized by such cases as *T.M. v. Noblitt*, 650 So. 2d 1340 (Miss. 1995) (where the Court recognized the tort of the "negligent retention" of an employee), *Mississippi Baptist Hospital v. Holmes*, 56 So. 2d 709 (Miss. 1952), and *Petermann v. Gary*, 210 Miss. 438, 49 So. 2d 828 (Miss. 1951) (owner of truck held liable for acts of driver when owner knew driver habitually drank alcohol).

We have reviewed the entire record before this Court on this appeal in search of indications that there is a legitimate issue of fact as to whether Spartan should have been on notice of Hopson's propensity to commit a violent criminal sexual assault; however, we can find nothing to support that proposition. Michael asserts that Hopson had a habit of "flirting" with her at work by complimenting her on her appearance. She also says that Hopson treated her favorably while on the job, giving her special privileges and putting her in supervisory positions that she did not feel she had earned through merit. She contends that she reported to Ms. Keys, another management employee, that these occurrences made her uncomfortable, but was advised not to pursue the matter further. Assuming the complete truth of these allegations, there is nothing there that would rise to the level of charging Spartan with knowledge that Hopson was a potential rapist.

Spartan had a published company policy, known generally as its "fraternization policy," that provided that "[n]o close social ties may exist between a member of management and an individual who is subordinate to that manager." The policy specifically forbade management level employees to "date, cohabitate (sic) with, or regularly socialize with an employee or employees of their restaurant . . . ." Russell Sweeny, an area supervisor for Spartan, testified in deposition that Hopson had formerly been employed by the company's outlet in Houston and that, during that employment, he had been verbally counseled on one occasion when his immediate supervisor received information indicating that

Hopson had asked an employee out. Such an incident simply does not, by any stretch of the imagination, rise to the level of notice that Hopson was likely to abuse his position of authority to arrange a situation where he could commit a sexual assault on Michael.

Michael and her mother filed affidavits claiming that they subsequently learned that Hopson had hired Michael with the intention, from the outset, to "have sex" with her. The basis for such an allegation was an alleged statement made to them by Shane Rost. Aside from the fact that such allegations are based upon inadmissible hearsay which may not be properly considered under Mississippi Rule of Civil Procedure 56(e), accepting their truth does nothing to charge Spartan with any knowledge that would make Hopson's ensuing actions, culminating in an alleged criminal rape, foreseeable.

Michael relies heavily upon the case of *Karibian v. Columbia University*, 14 F.3d 773 (2d Cir. 1994), *cert. denied*, 114 S. Ct. 2693 (1994) in support of her claim. *Karibian*, in turn, relies upon the Restatement (Second) of Agency, § 219(2)(d), which suggests vicarious liability on the part of the master when the agent "was aided in accomplishing the tort by the existence of the agency relation." We do not find any instance where the Mississippi Supreme Court has adopted the quoted Restatement passage to expand respondeat superior liability in Mississippi, and we decline the plaintiff's invitation to do so in this instance.

Assuming the facts of this case to be exactly as advanced by the plaintiff, there is, as a matter of law, no issue of liability as to Spartan under the doctrine of respondeat superior or agency. Neither is there an issue of independent negligence on the theory of wrongful retention after such notice to Spartan as to render the alleged incident reasonably foreseeable.

III.

FAILURE TO TRAIN

We reject any claim that Spartan's failure to more fully train Michael on the various aspects of the company's non-fraternization policy was an act of negligence which proximately caused or contributed to her alleged injuries. In the first place, the published policies do not specifically forbid the attendance of an employee at a social gathering at a supervisor's home. The policy only forbids employees to "regularly socialize." Michael stated that this was the only occasion she had been to Hopson's residence and there was no evidence that the two were "regularly socializing." It involves the most rank speculation to conclude that any amount of instruction on the published company policies would have somehow prevented Michael from attending the social gathering. The purpose of the company policy was to prevent personnel problems at work. It was not designed to protect employees from criminal assaults during non-working hours.

IV.

CONCLUSION

Accepting the facts of this case to be as asserted by Michael, we conclude that the facts do not make

a jury issue on the common law causes of action asserted by her. The trial court did not err in granting summary judgment, and we affirm that judgment.

THE JUDGMENT OF THE MONROE COUNTY CIRCUIT COURT IN FAVOR OF THE APPELLEES IS AFFIRMED. ALL COSTS OF THIS APPEAL ARE TAXED TO THE APPELLANT, JENNIFER MICHAEL.

FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., AND SOUTHWICK, J., CONCUR. PAYNE, J., DISSENTS WITH SEPARATE WRITTEN OPINION JOINED BY BARBER, COLEMAN, DIAZ AND KING, JJ.

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PAYNE, J., DISSENTING:

I respectfully dissent. I firmly believe that Spartan Food is vicariously liable to Michael since Hopson acted within the scope of his employment and in furtherance of corporate business. I also believe a jury should have been given the opportunity to determine whether or not Hopson's personal and

business conduct were separable. This, in turn, would decide the question of whether or not Hopson departed from the business of Spartan Food.

Regarding the appellate review of a lower court's grant of summary judgment, this Court must conduct a *de novo* review of the record to determine whether the trial court properly granted the motion for summary judgment. *Daniels v. GNB, Inc.*, 629 So. 2d 595, 599 (Miss. 1993); *Mantachie Natural Gas Dist. v. Mississippi Valley Gas Co.*, 594 So. 2d 1170, 1172 (Miss. 1992). A trial court may grant summary judgment if there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law. M.R.C.P. 56. A fact is material if it "tends to resolve any of the issues, properly raised by the parties." *Webb v. Jackson*, 583 So. 2d 946, 949 (Miss. 1991) (citing *Mink v. Andrew Jackson Casualty Ins. Co.*, 537 So. 2d 431, 433 (Miss. 1988)). If, after viewing the evidence in the light most favorable to the non-movant, the movant is entitled to a judgment as a matter of law, then summary judgment is appropriate. *Morgan v. City of Ruleville*, 627 So. 2d 275, 277 (Miss. 1993) (citing *Brown v. Credit Ctr., Inc.*, 444 So. 2d 358, 362 (Miss. 1983)). In a negligence action, the plaintiff must produce evidence of significant and probative value to establish the existence of a duty, a breach of that duty, proximate causation, and injury. *Palmer v. Anderson Infirmary Benevolent Ass'n*, 656 So. 2d 790, 794 (Miss. 1995) (citing *Palmer v. Biloxi Regional Medical Ctr., Inc.*, 564 So. 2d 1346, 1355 (Miss. 1990)). The evidence must show a breach of an established standard of care and that the breach was the proximate cause of the injury. *Id.* Where the facts are disputed, or where reasonable minds may differ and reach different conclusions when the facts are undisputed, negligence is a jury issue. *Caruso v. Picayune Pizza Hut, Inc.*, 598 So. 2d 770, 773 (Miss. 1992) (citations omitted). "If there is to be error at the trial level it should be in denying summary judgment and in favor of a full live trial." *Donald v. Ree ves Transp. Co.*, 538 So. 2d 1191, 1195 (Miss. 1989) (quoting *Brown*, 444 So. 2d at 362-63). Where additional facts will add clarity and a greater chance of a just result on the merits, the trial court should deny summary judgment. *Hudgins v. Pensacola Constr. Co.*, 630 So. 2d 992, 993 (Miss. 1994) (citing *Donald*, 538 So. 2d at 1195-96). Therefore, summary judgment should be granted with great caution. *Womble v. Singing River Hosp.*, 618 So. 2d 1252, 1256 (Miss. 1993) (citing *Brown*, 444 So. 2d at 362).

On review of this record, I believe that summary judgment was premature. Regardless of the existence or the lack of factual disputes, reasonable minds could reach different conclusions regarding Spartan Food's duty of care, its breach of that standard of care, and its breach being the cause of Michael's injury. Moreover, reasonable minds could differ on whether there existed a genuine issue of material fact. Negligence is a jury issue, and I am of the opinion that a jury was improperly denied the right to determine negligence through the process of an actual trial.

In the present case, it was not the responsibility of a sixteen-year-old employee to enforce Spartan Food's anti-fraternization policy. Spartan Food failed to enforce its own corporate policy. That policy was most likely designed to prevent job-related personnel problems and potential problems such as the present circumstance. The majority states that Spartan Food had no duty regarding its supervisor's independent social activity and could not be held liable for acts of its agent while on a jaunt of his own. However, in the words of Presiding Justice Ethridge, very often the mixture of business and non-business events is difficult, if not impossible, to separate:

> This case is a difficult one. Ordinarily, when an agent makes a departure from the business of the principal, and is on business of his own, the principal is not responsible for the

> agent's individual wrongs. Here, however, the agent was in pursuance of the principal's business, and it is so mixed with the acts and conduct of his own pursuits that we cannot say there was a departure from the principal's business.

Singer Sewing Mach. Co. v. Stockton, 157 So. 366, 367 (Miss. 1934).

In the present case, Michael was effectively told by her supervisor, Hopson, that she was subject to termination and that she needed to come to the company party to discuss keeping her job. Michael was a teenager in her first job and had no experience from which to judge whether or not this was a reasonable request. Hopson's actions in getting her to the party were definitely work-related as far as Michael was concerned. In *Stockton*, the court found that it was for the jury to decide if the employee's misconduct (seeking dates with an unwilling sales prospect) was intertwined with the performance of his job:

> We realize that this is a type of case that ought not to be greatly encouraged by the court. It was no part of the appellant's [corporation's] purpose or business for its agent to have dates with customers for his own private purposes, but here the conduct is so blended with the attempted sale that it is difficult to separate the conduct of the agent, Walker, from his business as salesman.
>
> The law in this state is settled that, if an agent, while in the course of his duty, commits a wrong or tort in reference thereto, the master or principal is responsible. If a servant commingles his personal business [sexual advances] with his master's business, the master is liable for the servant's conduct while so engaged.

Id. (citations omitted). Likewise, I feel summary judgment was completely inappropriate in this case due to the mixture of personal and employment conduct. Hopson's conduct and actions of his own pursuits (based on his sexual interest in another employee) were so integrated with acts in furtherance of his employer's business (discussing Michael's further employment and the cash shortage), that a jury should be allowed to determine if a separation of Hopson's personal conduct and his employment conduct is even possible.

Spartan Food was clearly on notice that Hopson had previously been, and was currently, acting in violation of its corporate anti-fraternization policy. Sweeny, a Spartan Food representative, testified in his deposition that the company had knowledge that Hopson had a propensity to date underage female employees. Hopson had been verbally counseled by the Hardee's district manager for asking out another employee while working at the Houston, Mississippi store. Spartan Food was very much involved with the actions leading to the situation around which this litigation is based. Both Hopson and his manager, Holloway, breached the corporate anti-fraternization policy without any corrective action by the corporation. Both individuals not only socialized with other employees, but in fact lived together in the same apartment. Although this living arrangement was not necessarily against

corporate policy, Hopson's fraternization with female employees certainly was contrary to stated policy. The party held at their apartment and to which other Hardee's employees had been invited, and the obvious focal point of this appeal, was most assuredly "an activity [they now admit which was] strictly prohibited by the Hardee's Restaurant non-fraternization rules." An alleged money shortage in the cashier's funds and a write-up resulted in Hopson's telling Michael that she needed to come to his party to discuss this matter and her future with the company. Shane Rost, a Hardee's cook, suggested that Michael go to Hopson's party to work out the problem over the missing money. Michael canceled other plans with friends that evening so she could attend the party specifically to discuss the write-up. At the apartment, Hopson aggressively and continually tried to win Michael's affection. Holloway not only did nothing to protect Michael from Hopson's designs, but he actually refused to take her home when she asked and left her there alone with Hopson. Prior to the night of the party, Michael had spoken about Hopson's on-the-jo b flirtations with Ms. Key, a Hardee's management intern. Ms. Key told her to simply ignore Hopson and nothing more was done to deter Hopson's actions during working hours. The night of the party, Ms. Key called Hopson to admonish him about his actions toward Michael, but Hopson hung up on her. She called again and talked to Michael before Hopson took the phone to prevent Michael from telling Ms. Key anything more. Ms. Key then sent a Hardee's employee to Hopson's apartment. Hopson refused to let the employee in and placed a couch in front of the door. These facts more than justify the position that a corporate policy existed, that policy was violated, and Spartan Food had prior and present knowledge of the violations yet did nothing to correct them.

The Mississippi Supreme Court has stated that mere deviation by a servant from a strict course of duty, even if for a purpose of his own, does not necessarily equate to such a departure from the master's business as to release the master from liability for injuries inflicted by the servant's actions. *Colotta v. Phillips*, 85 So. 2d 574, 577 (Miss. 1956). The master's liability depends upon the degree of deviation and the surrounding circumstances. *Id.* A master can be relieved from liability only if the deviation is so substantial as to be a complete departure from the master's service and for purposes entirely personal to the servant. *Id.* "It must be borne in mind that liability is not limited to the acts of the employee which promote the objects of the employment. Sometimes the business of the master is combined with the business or pleasure of the employee." *Horton v. Jones*, 44 So. 2d 397, 399 (Miss. 1950). "Where the servant, in committing the wrongful deed, acts about the master's business for which he is employed, the master is liable, although in doing the act, the servant stepped beyond his authority." *Id.* (citation omitted); *see also Entente Mineral Co. v. Parker*, 956 F.2d 524, 526 (5th Cir. 1992) (Mississippi law provides that, in order for an agent's conduct to be within the scope of the master's employment, the agent's action must be actuated at least in part by a purpose to serve the master); *Western Union Tel. Co. v. Hill*, 67 F.2d 487, 488 (5th Cir. 1933) (if a servant commits an assault while in the pursuit of his master's business, although in a wrong or forbidden manner, the master is still liable).

Here, Hopson's conduct toward Michael that fateful evening was certainly for a purpose of his own. Yet the key ingredient that keeps his conduct within the employer's scope of employment was the fact that he told Michael, and she attended the party based on that discussion, that they would discuss the money shortage and its relation to her employment at the party. He may or may not have had any intention of following through with that discussion, but the fact remains that Michael believed he would and went to the party with that thought in mind. These surrounding circumstances do not

relieve Spartan Food from liability since its employee, Hopson, used his authority as Michael's supervisor, whether with or without good intentions, to convince her to attend the party under the guise of an impending employment-status discussion. Hopson most assuredly "acted about the master's business" for which he was employed in committing the obviously wrongful conduct. Coupled with both Spartan Food's inaction upon prior notice of Hopson's earlier policy violations and Holloway's inaction and obvious notice of violations, Hopson's conduct at the party in no way relieves the corporation from liability for his deviation for non-business reasons. His personal jaunt fails to negate or remove his conduct from the scope of employment with Spartan Food.

Finally, although not duties per se that the corporation neglected, Spartan Food was negligent in both retaining a known violator of its corporate policy and in training its management personnel about proper procedures for reporting and eliminating violations of its anti-fraternization policy. Neither Holloway or Ms. Key properly handled Hopson's violations: Holloway simply looked the other way on more than one occasion, while Ms. Key told Michael to just ignore Hopson's advances (although she did take it upon herself to send another employee to Hopson's apartment to investigate on the night of the party). Spartan Food utterly failed to enforce its policy or to train its management employees in how to enforce it. It chose instead to retain Hopson and, as a result, should not now be allowed to deny liability for his actions, which were I believe inextricably intertwined with his employment duties.

The majority correctly cites *Odier v. Sumrall* as established master-servant law in Mississippi. However, I believe Hopson's tortious conduct was accomplished through his ruse, as her supervisor, of an employment-status discussion with Michael at the party. This fact brings his conduct back within the scope of employment with Spartan Food, as an effort to further his employer's business. Whether he possessed good or bad intentions is irrelevant - Michael testified that she believed her job was in jeopardy and thought she had to attend to resolve any confusion. The majority also cites *Holliday v. Pizza Inn, Inc.* for the proposition that that particular unauthorized, on-premises party failed to further the employer's business and was strictly a private affair unrelated to the employer's interest. *Holliday* can be distinguished from the present case for multiple reasons. First, neither the aggressor nor the victim were employees of the corporation, as both were in the present case. Second, there was absolutely no business being carried on at the time of the incident in *Holliday*, while Michael believed business (albeit employment business) was to be conducted between Hopson and her at the fateful party. Third, the location in *Holliday* was simply a convenient place to have a party without corporate business. In the present case, as far as sixteen-year-old Michael was led to believe by her supervisor, the party was an extension of the employment responsibility and her job might depend on attendance. There was business to be conducted, on behalf of Spartan Food, by Hopson regarding Michael's job.

Finally, the majority makes a tremendous leap of logic when it states that this record reveals nothing to charge Spartan Food with knowledge that Hopson was a potential rapist. On the contrary, there is ample justification for charging Spartan Food, not with knowledge of Hopson's tendency for the extreme crimes of sexual assault or rape, but simply with the knowledge of one of its management employee's tendency to openly violate its fraternization policy and potentially to cause more extreme problems. The foreseeability of potentially extreme problems should have been evident to Spartan Food, particularly since it had notice of Hopson's prior interconnected personal and work-related conduct. Spartan Food clearly failed to take action to remedy the situation or to train its management

personnel to do the same.

I would reverse the grant of summary judgment on behalf of Spartan Food so that a jury could properly determine whether Hopson's personal conduct could or should be separated from his conduct as a supervisory employee of Spartan Food.

BARBER, COLEMAN, DIAZ, AND KING, JJ., JOIN THIS SEPARATE WRITTEN OPINION.