

**IN THE COURT OF APPEALS**

**7/29/97**

**OF THE**

**STATE OF MISSISSIPPI**

**NO. 95-CA-01097 COA**

**PHILLIP STOKES**

**APPELLANT**

**v.**

**J. STEWART MURPHY, EDWARD HARGETT, BETTY FOSTER, AND LISA HORTON**

**APPELLEES**

**THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND**

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

**TRIAL JUDGE: HON. SHIRLEY C. BYERS**

**COURT FROM WHICH APPEALED: CIRCUIT COURT OF SUNFLOWER COUNTY**

**ATTORNEY FOR APPELLANT:**

**PRO SE**

ATTORNEY FOR APPELLEES:

JAMES M. NORRIS

NATURE OF THE CASE: CIVIL--PRISONER'S ACTION AGAINST PRISON PERSONNEL TO RECOVER FOR DAMAGE TO HIS PROPERTY

TRIAL COURT DISPOSITION: DISMISSED PRISONER'S COMPLAINT BECAUSE IT FAILED TO STATE A COGNIZABLE CLAIM

MOTION FOR REHEARING FILED: 12/01/1997

MANDATE ISSUED: 3/30/98

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

COLEMAN, J., FOR THE COURT:

Phillip Stokes appeals from an order of the Circuit Court of Sunflower County which dismissed his complaint filed against J. Stewart Murphy, then Commissioner of Corrections, Edward Hargett, then Superintendent of the Mississippi State Penitentiary at Parchman (Parchman), Betty Foster, postal inspector supervisor at Parchman, and Lisa Horton, postal inspector at Parchman. The circuit judge dismissed Stokes' complaint with prejudice because she found that "Mr. Stokes has not stated a claim that is cognizable in Circuit Court. We affirm the order of dismissal because we hold that Section 11-46-9(s) of the Mississippi Code of 1972 shields all four of the Appellees from liability for Stokes' claim.

### **I. Litigation**

The gravamen of Stokes' complaint was that on or about March 14, 1994, Lisa Horton, in the discharge of her duties as postal inspector, opened two twelve-ounce boxes of crackers for inspection but failed properly to reseal them so that the crackers which the two boxes contained were "unpreserved and damaged." Stokes also charged that the same defendant, Lisa Horton, had opened two twenty-ounce boxes of cereal for inspection by so ripping the paper containers of the cereal from the boxes that they were torn open. Horton then replaced the paper containers in the boxes without mending them, the consequence of which was that the cereals were left "un-preserved and damaged." In his complaint, Stokes sought judgment "against defendant Horton for her intentional neglect in destroying [Stokes'] package items and her refusal to replace such items," and judgment against defendants Hargett, Forster, and Murphy for ill treatment of [Stokes]," for a total of \$2,000 in damages.

The record indicates that before he filed his complaint in the Sunflower County Circuit Court, Stokes pursued recompense for his damaged crackers and cereal through the prison's Administrative Remedy Program to no avail. In the "Third Step Response Form" signed by Commissioner of Corrections, J. Stewart Murphy, and delivered to Stokes, the Department of Corrections stated:

The staff of the Administrative Remedy Program has investigated your complaint and has found no evidence to substantiate your allegations. Boxes of crackers and cereal are normally inspected, but re-packaged.

In their answer to Stokes' complaint, the four defendants raised the following affirmative defenses. First, Stokes' complaint failed to state a claim against them upon which relief might be granted. Second, the defendants were statutorily immune. Third, the Court lacks jurisdiction. The defendants concluded their answer by moving "the Court for an order dismissing said Complaint, with prejudice, at Plaintiff's Cost." Stokes responded by filing a motion for summary judgment and a memorandum in support of plaintiff's motion for summary judgment. The defendants filed their response to Stokes' motion for summary judgment, in which they asserted that "[p]rison employees are statutorily immune from prisoner property claims (see Miss. Code Ann. § 11-46-9)."

The circuit judge conducted a hearing on Stokes' motion for summary judgment and the defendants' motion to dismiss contained in their answer on September 18, 1995, at the conclusion of which, she ruled:

Mr. Stokes, I'm going to dismiss this complaint on the basis there is no claim here, and that your complaint is an administrative matter to be handled within the Agency, and it is dismissed with prejudice.

She then instructed the defendants' attorney to prepare the order of dismissal. As we earlier commented, the circuit judge found in the order of dismissal that "Mr. Stokes has not stated a claim that is cognizable in Circuit Court." Stokes has appealed from this order of dismissal with prejudice.

## **II. Resolution of Stokes issue**

Stokes presents this one issue for this Court's review and resolution:

I. Did the trial judge abuse her discretion in refusing to allow the Appellant to reopen his case to support the facts with law?

To support his position on this issue, Stokes urges this Court to consider *Wakefield v. Puckett*, 584 So. 2d 1266 (Miss. 1991). In *Wakefield*, an inmate at Parchman, Daryl Wakefield, filed a complaint against the Department of Corrections to recover the value of his personal property, which he alleged to be \$200, which had become lost or stolen after Wakefield had been placed in administrative detention for fighting with another inmate. *Id.* at 1267. However, Wakefield did not introduce an itemized list of his missing belongings and their value before he rested. *Id.* at 1269. When the defendants took advantage of Wakefield's failure to introduce an itemized list of his belongings by moving for a directed verdict, Wakefield responded that he thought that the list which he had provided in his complaint would be considered by the jury. *Id.* The trial judge granted the defendants' motion for directed verdict; Wakefield appealed to the Mississippi Supreme Court; and that court reversed and remanded the trial court's judgment for the defendants. *Id.* at 1270.

In the case *sub judice* Stokes recognizes the factual similarity between his claim against employees of

the Mississippi Department of Corrections for the alleged damages to the contents of his two boxes of crackers and two boxes of cereal and Wakefield's claim for compensation for the loss of his personal property. However, the legal issue in *Wakefield, i. e.*, did the trial judge err when he refused to allow Wakefield to reopen his case to introduce his list of personal property and its value of approximately \$200, *Id.* at 1268-69, is not the issue which this Court confronts in the case *sub judice*. In *Wakefield*, the Mississippi Supreme Court observed that even the trial judge had acknowledged that Wakefield made a case against the defendants who were employees of the Mississippi Department of Corrections and that therefore "*some reasonable payment ought to be made . . . to Wakefield for his [missing] property.*" *Id.* at 1269.

Contrary to *Wakefield*, our issue is to determine whether the trial judge erred when she dismissed Stokes' claim against the Appellees because "Mr. Stokes has not stated a claim that is cognizable in Circuit Court." If Stokes stated a claim in his complaint that was cognizable in circuit court, then this Court must reverse the order of dismissal which the circuit court rendered and remand this case for further proceedings consistent with this opinion, just as did the supreme court in *Wakefield*. If Stokes did not state a claim that was cognizable in the circuit court, then this Court must affirm the circuit court's order of dismissal with prejudice.

While Stokes filed a motion for summary judgment, which is governed by Rule 56 of the Mississippi Rules of Civil Procedure, the order of dismissal recited that the circuit court had dismissed Stokes' complaint because "Mr. Stokes has not stated a claim that is cognizable in Circuit Court." Thus, Rule 12(b)(6) of the Mississippi Rules of Civil Procedure, which provides for the dismissal of a complaint "for failure to state a claim upon which relief can be granted," M.R.C.P. 12(b)(6), was the procedural basis for the circuit court's rendering its motion for dismissal in this case.

In *Butler v. Board of Supervisors*, 659 So. 2d 578, 581 (Miss. 1995), the Mississippi Supreme Court again stated the standard of review for dismissals pursuant to Rule 12(b)(6), which is:

The pleaded allegations of the complaint must be taken as true and a dismissal should not be granted unless it appears beyond a reasonable doubt that the plaintiff can prove no set of facts in support of his claim which entitles him to relief."

(citations omitted). Section 11-46-9 of the Mississippi Code of 1972 provides in part:

(1) A governmental entity and its employees acting within the course and scope of their employment or duties shall not be liable for any claim:

....

(s) Arising out of loss, damage or destruction of property of a patient or inmate of a state institution.

Miss. Code Ann. § 11-46-9 (1972). This statute is the basis of the defendants' affirmative defense which they included in their answer that they were "statutorily immune" from Stokes' claim.

Stokes' complaint charged that all four of the defendants were employees of the Mississippi Department of Corrections when his boxes of crackers and cereal were so damaged that their

contents of crackers and cereal were "unpreserved and damaged." This Court finds that Stokes "can prove no set of facts in support of his claim which entitles him to relief," because no matter what set of facts he pleads against the four defendants to recover for damages to his cereal and crackers, Section 11-46-9 grants those four defendants as employees of the Mississippi Department of Corrections immunity from liability to Stokes for those damages. Thus, this Court holds that the circuit court was correct when it found that "Mr. Stokes has not stated a claim that is cognizable in Circuit Court" and accordingly dismissed his claim against the defendants, Edward Hargett, Betty Forster, J. Stewart Murphy, and Lisa Horton, all four of whom were employees of the Mississippi Department of Corrections, when Stokes alleges that Lisa Horton's acts left his crackers and cereal "unpreserved and damaged." We affirm the circuit court's order of dismissal with prejudice and assess the costs of this appeal to the Appellant, Phillip Stokes.

**THE SUNFLOWER COUNTY CIRCUIT COURT ORDER OF DISMISSAL WITH PREJUDICE IS AFFIRMED. COSTS OF THIS APPEAL ARE ASSESSED TO SUNFLOWER COUNTY**

**BRIDGES, C.J., McMILLIN AND THOMAS, P.JJ., DIAZ, HERRING, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR. HINKEBEIN, J., NOT PARTICIPATING.**