

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 95-CA-00695 COA
CONSOLIDATED WITH
NO. 95-CA-00818 COA**

**MELANIE A. CHISM AND HER HUSBAND
WILLIAM T. CHISM**

APPELLANTS

v.

**HARRY COOLEY, III AND THE CITY OF LELAND,
MISSISSIPPI, A MUNICIPALITY**

APPELLEES

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

DATE OF JUDGMENT:	05/31/95
TRIAL JUDGE:	HON. EUGENE M. BOGEN
COURT FROM WHICH APPEALED:	WASHINGTON COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANTS:	W. B. SWAIN
ATTORNEYS FOR APPELLEES:	JOHN DONELSON BRADY JOSEPH L. MCCOY
NATURE OF THE CASE:	CIVIL - PERSONAL INJURY
TRIAL COURT DISPOSITION:	CASE DISMISSED
DISPOSITION:	AFFIRMED - 12/16/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	2/4/98

BEFORE THOMAS, P.J., HERRING, AND HINKEBEIN, JJ.

HINKEBEIN, J., FOR THE COURT:

This is an appeal of dismissal for the tolling of the statute of limitations in a personal injury case. Melanie A. Chism and William T. Chism appeal the dismissal of their case against the City of Leland, Mississippi and Officer Harry Cooley, III, an officer of the Leland Police Department. The Chisms present the following issue on appeal:

I. THE STATUTE OF LIMITATIONS AS APPLIED TO THIS CASE FALLS UNDER MISSISSIPPI CODE § 11-46-7(3), AND THE MOTION TO OVERRULE THE DISMISSAL BY THE TRIAL COURT SHOULD BE GRANTED.

Finding no error, we affirm the judgment of the Circuit Court of Washington County, Mississippi.

FACTS

On May 12, 1993, within the City of Leland, Washington County, Mississippi, Harry Cooley, III was charged with negligently colliding his patrol car into the car Melanie Chism was driving. Melanie Chism suffered injury to her person and property. On April 13, 1995, Melanie Chism, joined by William Chism as owner of the vehicle, filed suit against the City of Leland and Officer Cooley, charging them with negligence and alleging personal injury, loss of income, and property damages. The City of Leland and Officer Cooley filed a joint "Motion to Dismiss for Running of the Statute of Limitations." The court granted the motion, at which time the Chisms filed their "Motion to Set Aside Order, to Reconsider, and for Other Relief." The court denied that motion, the case was dismissed, and the matter was appealed to this Court.

On appeal, the Chisms argue that the trial judge erred and that they should have their day in court. Their issue on appeal is:

I. THE STATUTE OF LIMITATIONS AS APPLIED TO THIS CASE FALLS UNDER MISSISSIPPI CODE § 11-46-7(3), AND THE MOTION TO OVERRULE THE DISMISSAL BY THE TRIAL COURT SHOULD BE GRANTED.

The argument that the Chisms make is one irrelevant to the issue that they are appealing. The Chisms wish to apply **Miss. Code Ann. § 11-46-7(3)(Supp. 1994)**. This statute is not applicable. This statute states that as of July 1, 1993, for the state, and October 1, 1993, for political subdivisions, every government entity must provide a defense to its employees and for the payment of any judgment in a civil action or the settlement of any claim against an employee for money damages arising out of any act or omission within the course and scope of his employment. **Miss. Code Ann. § 11-46-7(3)**. This statute does not apply to the actual filing of a claim against a municipality, only that the municipality needs to defend its employees acting within the scope of their employment.

The correct statute concerning the statute of limitations under the Mississippi Tort Claims Act is **Miss. Code Ann. § 11-46-11**, entitled, "Statute of Limitations; Notice of Claim Requirements." Under subsection (3), the law clearly states that "all actions brought under the provisions of this chapter shall be commenced within one year next after the date of the tortuous, wrongful or otherwise actionable conduct on which the liability phase of the action is based, and not after..." **Miss. Code Ann. § 11-46-11(3)(Supp. 1994)**. The statute is clearly cited as becoming effective on April 1, 1993 and thereafter. Our review is limited to whether or not the trial judge correctly applied the law in determining that the statute of limitations had run. **Robinson v. State, 473 So. 2d 957, 964 (Miss. 1985)**.

The statute of limitations clearly was enacted prior to Mrs. Chism's injury, and the one year statutory period is effective from the date of the tortuous act. Given the strict wording of the statute, the decision of the Circuit Court of Washington County to dismiss the case for the running of the statute of limitations is the only decision that could have been reached.

**THE JUDGMENT OF THE CIRCUIT COURT OF WASHINGTON COUNTY IS
AFFIRMED. COSTS ARE TAXED TO APPELLANTS.**

**McMILLIN AND THOMAS, P.JJ., COLEMAN, HERRING, PAYNE, AND SOUTHWICK,
JJ., CONCUR. DIAZ, J., CONCURS WITH SEPARATE WRITTEN OPINION JOINED BY
BRIDGES, C.J., KING AND PAYNE, JJ.**

DIAZ, J., CONCURRING:

I concur only in the result of the majority opinion. I concur in the result only because statutorily there can be no other result.

The ultimate result of applying the statute of limitations to the present case will be that the taxpayers of the State of Mississippi will now have to shoulder the burden by providing public assistance to those injured. A more desired result would be for the negligent party to assume the responsibility.

This is but one of the first in a no doubt long series of cases where negligent parties will be relieved of the liability arising from their negligence and that liability will be shifted to the taxpayers of the State of Mississippi by an arbitrarily short statute of limitations.

BRIDGES, P.J., KING AND PAYNE, JJ., JOIN THIS SEPARATE OPINION.