

**IN THE COURT OF APPEALS  
OF THE  
STATE OF MISSISSIPPI  
NO. 96-CA-00873 COA**

**SHEILA BURLESON**

**APPELLANT**

v.

**BILLY J. LOGAN, INDIVIDUALLY AND IN HIS  
OFFICIAL CAPACITY AS DEPUTY SHERIFF OF  
CHICKASAW COUNTY, MISSISSIPPI AND JAMES  
SIMMONS IN HIS OFFICIAL CAPACITY AS  
SHERIFF OF CHICKASAW COUNTY, MISSISSIPPI**

**APPELLEES**

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

DATE OF JUDGMENT:	7/17/96
TRIAL JUDGE:	HON. R. KENNETH COLEMAN
COURT FROM WHICH APPEALED:	CHICKASAW COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	JIMMY D. SHELTON
ATTORNEY FOR APPELLEES:	J. LAWSON HESTER
NATURE OF THE CASE:	CIVIL - PERSONAL INJURY
TRIAL COURT DISPOSITION:	SUMMARY JUDGMENT GRANTED IN FAVOR OF DEFENDANT
DISPOSITION:	AFFIRMED - 12/16/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	2/4/98

BEFORE McMILLIN, P.J., DIAZ, AND HERRING, JJ.

DIAZ, J., FOR THE COURT:

Sheila Burleson appeals the summary judgment granted in the circuit court to Billy J. Logan, Deputy Sheriff of Chickasaw County, and James Simmons, Sheriff of Chickasaw County. Logan and Simmons were sued for negligence by Burleson in their individual and official capacities. The summary judgment was granted on the grounds that, *inter alia*:

**1. no genuine issues of material fact exist;**

- 2. defendants possess sovereign immunity;**
- 3. the action is barred by the statute of limitations; and**
- 4. plaintiffs failed to meet the requirements of § 11-46-3 for notification.**

The circuit court judge specifically stated that the defendants were immune from suit under sovereign immunity as stated in **Mississippi Code Annotated §§ 11-46-1 to 11-46-23 (Supp. 1993)**, as well as common law immunity. Aggrieved, Burleson now appeals.

## **FACTS**

Sheila Burleson and Chickasaw County Deputy Sheriff Billy J. Logan had a motor vehicle accident on April 19, 1993. As a result, Burleson alleges that she sustained bodily injuries. Burleson filed a complaint on May 12, 1994, naming as defendants Logan, individually and in his official capacity as deputy sheriff, and Simmons in his official capacity as sheriff. Burleson alleged negligence and gross negligence and demanded compensatory and punitive damages. At the time of the incident, Chickasaw County was a political subdivision of the State of Mississippi. Chickasaw County participated at the time of the accident in a self-funded liability pool, but the pool did not provide for public liability insurance.

The circuit court judge dismissed the complaint granting the defendants' motion for summary judgment. Burleson appeals stating that the judge granted the summary judgment in error. She argues his errors are as follows:

**I. BURLESON DID COMPLY WITH THE NOTICE REQUIREMENTS OF § 11-46-11 MISSISSIPPI CODE ANNOTATED (SUPP. 1993)**

**II. BURLESON FILED THE LAWSUIT WITHIN THE APPLICABLE STATUTE OF LIMITATIONS**

**III. BURLESON ASSERTS THAT LOGAN AND SIMMONS WERE COVERED BY A PROGRAM WHICH WOULD PROVIDE COVERAGE FOR THE CLAIM AT BAR AND THAT THEIR IMMUNITY IS WAIVED UP TO THE AMOUNT OF INSURANCE COVERAGE; AND**

**IV. THERE WERE GENUINE ISSUES OF MATERIAL FACT.**

Because this Court finds that the trial judge was not in error when he granted summary judgment based solely on the sovereign immunity of Logan and Simmons, we will now address only the immunity issue.

**WERE LOGAN AND SIMMONS COVERED BY AN INSURANCE PROGRAM WHICH WOULD PROVIDE COVERAGE FOR THE CLAIM AT BAR SO THAT THEIR IMMUNITY WAS WAIVED UP TO THE AMOUNT OF INSURANCE COVERAGE?**

There seems to be some confusion as to which statute should be utilized when examining the above issue. The accident happened on April 19, 1993, but the suit was not filed until May 12, 1994. Burleson argues that the limited statutory waiver in **Mississippi Code Annotated § 11-46-5 (Supp.**

1993) applies because Logan and Simmons are covered by liability insurance. However, this statute which says that immunity granted to the employees of the state and its political subdivisions is waived up to the amount of liability insurance that employee has, also says it does not take effect as to the political subdivisions until October 1, 1993. Therefore, this statute has no impact on the issue at hand--whether or not Logan and Simmons are immune from suit. The statutes and cases cited by Burleson do not pertain to the accident at hand. We must examine the statutes in effect in April, 1993.

First, we note that our review in summary judgment cases is de novo review of the record. *Spradlin v. State Farm Mut. Auto. Ins.*, 650 So. 2d 1383, 1385 (Miss. 1995). After a thorough review of the record in the case at bar, we find that the trial judge was not in error in granting Logan's and Simmons's motion for summary judgment based on their immunity.

The statutes and cases in effect prior to and at the time this incident occurred were in a constant state of change. Mississippi Code Annotated § 11-46-3 had just gone into effect on April 1, 1993 returning to the sovereign its immune status. Also, § 11-46-5 providing for a waiver of sovereign immunity in many circumstances, had just been passed but was not to take effect as to political subdivisions until October 1, 1993. So the case at hand arose after § 11-46-3 had gone into effect, but before § 11-46-5 became active. A review of the applicable statutes demonstrates a clear status of immunity to Logan and Simmons as employees of a political subdivision of the state. We, therefore, affirm the circuit court's granting of the motion for summary judgment.

**THE JUDGMENT OF THE CHICKASAW COUNTY CIRCUIT COURT OF SUMMARY JUDGMENT IN FAVOR OF THE DEFENDANTS/APPELLEES IS AFFIRMED. COSTS OF THIS APPEAL ARE ASSESSED TO APPELLANT.**

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