

**FILED**

APR 27 2011

BARBARA BUNN, CIRCUIT CLERK  
D.C.

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF  
HINDS COUNTY, MISSISSIPPI**

**ROBERT SANDIFER, JR., and  
MILDRED SANDIFER, Individually and  
on Behalf of the Wrongful Death  
Beneficiaries of TAWANDA SANDIFER**

**PLAINTIFFS**

**VS.**

**CIVIL ACTION NO: 251-06-881 CIV**

**CITY OF JACKSON, MISSISSIPPI,  
KENNETH TAL TON, Individually and in his  
official capacity as duly commissioned police  
officer of the City of Jackson; Maurice Clark,  
individually and in his official capacity as duly  
commissioned police officer of the City of  
Jackson, and OTHER UNKNOWN DEFENDANTS  
A, B, C and D**

**DEFENDANTS**

**OPINION AND ORDER**

THIS CAUSE came on to be heard before the Honorable Winston L. Kidd, Hinds County Circuit Court Judge, sitting without a jury, pursuant to the requirements of Miss. Code Ann. §11-46-13. Having announced their readiness for trial, the parties presented their respective testimony and evidence to the Court.

The issue herein is whether Jackson Police Officers, while acting within the scope of their employment, exercised reckless disregard in dealing with Tawanda Sandifer and whether that reckless disregard contributed to Tawanda's death.

The plaintiffs assert that the alleged disregard of the rights of the police department officers in dealing with Tawanna and her family's concerns contributed to her ultimate death. The defendant contends that Plaintiffs failed to prove that said officers' conduct was within the scope of employment due to the alleged criminal nature. Further,

Defendant asserts Plaintiffs did not prove that the 2004 investigation by Wanda Camel proximately caused the death of Tawanda Sandifer. Moreover, the defendant asserts that the proximate cause of Tawanda's death was the conduct of Toice Wilson.

### FINDINGS OF FACT

1. Plaintiff, Robert Lee Sandifer, is an adult resident citizen of Hinds County, Mississippi.
2. Plaintiff, Mildred Sandifer, is an adult resident citizen of Hinds County, Mississippi.
3. Plaintiffs are the parents and wrongful death beneficiaries of Tawanda Sandifer.
4. Defendant, City of the Jackson, is a political sub-division of the State of Mississippi, with its principal place of business in Hinds County, Mississippi.
5. Tawanda, the middle child of Robert and Mildred Sandifer, was found murdered on January 9, 2006. She was 16 years of age at the time of her death.
6. Toice Wilson was convicted of Twanda's murder.
7. In the years and months preceding her death, Tawanda had various psychological problems that caused her to be bipolar, among other things, and to run away from home on numerous occasions.
8. In 2004, allegations were made that Officer Maurice Clark had sexual contact with Tawanda. These allegations were reported to police and Detective Wanda Camel.
9. Wanda Camel launched an investigation and said investigation was not completed due to Camel leaving the Jackson Police Department. No one from the Jackson Police Department continued or attempted to finalize this investigation.

10. During the investigation into Tawanda's death, the police found a cell phone by Tawanda's body, with a number in it for "KT". The number was called and Jackson Police Officer Kenneth Talton answered the phone. He was interviewed, and ultimately admitted that he too had had sex with Tawanda (she performed oral sex on him).
11. Jackson Police Officer Maurice Clark had sex with Tawanda while employed by JPD.
12. On January 10, 2006, the JPD launched an internal affairs investigation against both Officer Clark and Officer Talton.

#### STANDARD OF CARE

When analyzing the conduct of police officers under the MTCA, reckless disregard is a higher standard than gross negligence. Turner v. City of Ruleville, 735 So.2d 226,230 (Miss. 1999). "Reckless disregard usually is accompanied by a conscious indifference to consequences, amounting almost to a willingness that harm should follow." Miss. Dep't of Pub. Safety v. Durn, 861 So.2d 990, 995 (Miss.2003) (quoting Maye v. Pearl River County, 758 So.2d 391,394 (Miss. 1999)). Police officers are not liable for mere negligence, which is a failure to exercise due care. Maldonado, 768 So.2d at 910. The Mississippi Supreme Court has specifically held that an officer's failure to investigate can constitute reckless disregard under the MCTA. Foster v. Noel, 715 So.2d 174, 179 (Miss. 1998) (finding officer's failure to investigate before obtaining a warrant for plaintiffs arrest constituted reckless disregard).

The City of Jackson's General Order dealing with reporting and finding Missing Persons, as well as testimony presented at trial, provides that there be a complete and full

investigation. Herein, many of the circumstances surrounding Tawanda's disappearance should have triggered the Jackson Police Department to investigate both the allegations that Tawanda had been engaging in sexual acts with Officer Clark as well as Tawanda's status as a runaway.

### CONCLUSIONS OF LAW

The Mississippi Tort Claims Act, § 11-46-9(1)(c), provides in pertinent part as follows:

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

- (c) Arising out of any act or omission of an employee of a governmental entity engaged in the performance or execution of duties or activities relating to police or fire protection **unless the employee acted in reckless disregard of the safety and well-being of any person not engaged in criminal activity at the time of the injury....**

Miss. Code Ann § 11-46-9(1)(c)(emphasis added).

The defendant correctly cites to this point of law, but erroneously analyzes the facts as they pertain to the instant case. There was substantial evidence in 2004 that there was criminal behavior taking place as alleged by the Sandifers. JPD clearly had an affirmative duty to fully investigate the allegations against their employee, Officer Clark. They began an investigation, which led to Tawanda picking Officer Clark out of a photo line-up. JPD states that the results of this investigation are unknown whereas the detective who was in charge of the investigation, Detective Wanda Camel, is no longer a member of the Jackson Police Department due to medical disability leave. Her absence, however, does not absolve JPD of their duty to fully investigate this matter.

The manner in which a municipality conducts analysis of basic investigative decisions, including the decision of what type of investigation to conduct arise from the performance of discretionary functions, of which the City of Jackson has sovereign immunity pursuant to Miss. Code Ann. § 11-46-9(1)(d). Estate of Lakeshia Denise Carr v. City of Ruleville, 5 So.3d 455 (Miss. Ct. App. 2008), see also City of Jackson v. Powell, 917 So.2d 59 (Miss. 2005). Herein, the investigation was instituted, but was not completed. The investigation serves as proof that JPD knew or should have known of the criminal activity being habitually committed by one of its employees. The Court finds that this knowledge is enough to overcome the presumption that state entities are not liable for the criminal actions of employees. Moreover, the failure to thoroughly investigate the 2004 allegations coupled with the repeated sexual contact that JPD officers had with Tawanda, constitutes reckless disregard for her status as a runaway on numerous occasions and thereby establishes the proximate cause in the death of Tawanda Sandifer.

#### **SCOPE OF EMPLOYMENT**

The City asserts that Officers Clark and Talton were not acting within the scope of their employment during their encounters with Tawanda. The City assertion is wrong. If it were true that a servant is outside the scope of his employment whenever he disobeys the orders of his master, the doctrine of respondeat superior would have scant application, for the master could always instruct his servant to use ordinary care under all circumstances. The servant's negligence would therefore always be contrary to orders, and the non-liability of the master would follow. But such is not the law. The servant is within the scope of his employment when he is engaged in the master's service and

furthering the master's business, though the particular act is contrary to instructions. Rahman, 208 P.3d at 572. Mississippi law is in accord. See, e.g. Loper v. Yazoo & M v'R. Co., 166 Miss. 79,145 So. 743, 745 (Miss. 1933) (noting that "disobedience of servants to instructions as to the particular manner in which their duties should be discharged is so frequent as to become a matter of common knowledge of which employers must take notice."). Under Mississippi law, included in the definition of "course and scope of employment" are tortious acts incidental to the authorized conduct. Adams v. Cinemark USA, Inc., 831 So.2d 1156, 1159 (Miss. 2002). The mere fact that JPD officers did not follow JPD policies does not negate the presumption that they were in the course and scope of their employment so long as they were on the job.

The City further contends that Officers Clark and Talton's conduct was criminal, and thus not within the scope of their employment. However, the City overlooks the responsibilities of these officers prior to their criminal conduct. Under the City's own policies, these officers should have determined whether Tawanda was a minor and whether there was a runaway warrant for her.

Officers Clark and Talton both met and acted towards Tawanda during the scope of their employment. With respect to Officer Clark, he used his position of trust to give Tawanda the confidence to engage in sexual acts with him. It was Clark's position as a police officer that enabled her to continue her prostitution activities with him and others.

With respect to Officer Talton, he was clearly acting in the scope of his employment when he met Tawanda. He was on patrol, in a JPD patrol car, when he responded to Twanda's call for help. Thereafter, Talton disregarded policies (such as

reporting his transport of her, etc) and clearly used his position to establish the kind of relationship whereby he could exploit her.

The MTCA provides a rebuttable presumption that any act or omission of an employee that occurs within the time and place of his or her employment is within the course and scope of employment. Miss. Code Ann. § 11-46-5(3), Miss. Code Ann. § 11-46-7(7). Clearly, the officers who failed to investigate Tawanda's allegations regarding Officer Clark and those who encountered Tawanda when she had run away but failed to investigate her status (even though the knowledge that Tawanda was a runaway was known to them if not actually then constructively) were acting within the course and scope of their employment when they failed to do what they were required to do.

Finally, the City put on no evidence to dispute the fact that that Detective Camel and Sergeant Haywood were acting in the scope of their employment when they were charged with the responsibility of investigating the claims that Tawanda had made against Maurice Clark in September through December 2004.

The Court concludes then that all these officers were acting in the scope of their employment when they recklessly disregarded the rights and safety of Tawanda Sandifer.

### CAUSATION

The City contends that the acts of these offending officers caused Tawanda no harm. Further, the City claims that Toice Wilson killed Tawanda and that Wilson admitted that he had no connection with the JPD. The City fails to appreciate however, that Tawanda was injured before her death by the statutory rape by Clark and by the failure of Detective Camel and Sergeant Haygood to fully investigate the charges against

him. The record reflects that after Tawanda's alleged affair with Clark, she had to be hospitalized at Brentwood Behavior Center (October 2004) and put on medication for depression and other behavioral difficulties. Thus, the Court concludes that the statutory rape by Officer Clark contributed to Tawanda's injuries as noted in those records. Moreover, because no subsequent action was taken against him, Clark clearly continued his contacts with Tawanda, up to near the time of her death. It is clear that had Detective Camel and Sergeant Haywood completed their investigation, Clark would have been prosecuted and not been able to hurt Tawanda any further. It is clear that the failure to fully investigate constitutes a reckless disregard for Tawanda's safety. Mississippi Dept. of Human Services v. S. W.: 974 So.2d 253, 259 (Miss.App. 2007); and Foster v. Noel, 715 So.2d 174, 179 (Miss. 1998).

With respect to Tawanda's death, the Court finds that the physical death was caused by the blows from Toice Wilson. However, the employees of the Jackson Police Department put Twanda in a place of danger and is also responsible for contributing, if not causing, her death. To be held liable, a person "need not be the sole cause of an injury. It is sufficient that his negligence concurring with one or more efficient causes, other than the plaintiffs, is the proximate cause of the injury." Foster v. Bass, 575 So.2d 967,992 (Miss.1990) quoting Smith v. Dillon Cab Co., Inc., 245 Miss. 198,205-06,146 So.2d 879, 882 (1962).

With respect to Officer Clark and Officer Talton's conduct, both had the opportunity to identify Tawanda and bring her into custody after her last runaway report in April 2005.

Toice Wilson testified that Twanda had contact with Clark and Talton as late as December 2005. It is clear that if Officers Clark and Talton had done what they were supposed to do, Tawanda would not have been out on the streets, and vulnerable to the attack of Toice Wilson. The actions and conduct of these officers clearly contributed to Tawanda's death.

### DAMAGES

Herein, the Court finds that Plaintiffs are entitled to damages as a result of the defendant's conduct. After taking into consideration the actual damages and assessing an amount for the loss of the love, society and companionship of Tawanda, the Court assesses damages at One Million Dollars. However, the Court acknowledges the contribution of Toice Wilson to Tawanda's death and hereby finds him to be Fifty percent (50%) at fault. Therefore, the Court finds for the Plaintiffs and awards them the maximum damages allowed under the MCTA, in the amount of \$500,000.

### CONCLUSION

It is clear that the City of Jackson is liable for the conduct of its employees herein who abused Tawanda Sandifer while she was a runaway. Officers Clark and Talton were sworn to protect and serve, and instead they abused Tawanda at a time when she desperately needed their help. The Court finds that the City of Jackson and Toice Wilson are responsible for Tawanda Sandifer's death.

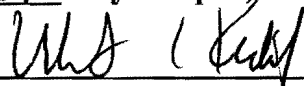
Moreover, if this matter had been fully investigated by the Jackson Police Department, then Tawanda could have received the help she so desperately needed. This failure caused her to succumb to the brutal and fatal actions of Toice Wilson. Based on

the above, the defendants' conduct in this case reached the level of "reckless disregard" and, accordingly, a Judgment shall be entered in favor of the plaintiffs against the defendants.

**IT IS, THEREFORE, ORDERED AND ADJUDGED** that a Judgment shall be entered in favor of the Plaintiffs and against the Defendants in the amount of \$500,000.00.

**IT IS FURTHER ORDERED AND ADJUDGED** that on or before May 13, 2011, the plaintiffs shall submit a proposed Judgment setting forth the damages herein.

**SO ORDERED AND ADJUDGED** this the 27<sup>th</sup> day of April, 2011.

  
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**WINSTON L. KIDD**  
**CIRCUIT COURT JUDGE**