



TAYLOR
WELLONS
POLITZ & DUHE

June 2020



TWPD WINS LIABILITY ARGUMENT ON MOTION FOR SUMMARY JUDGMENT

Ginny Deliman successfully obtained summary judgment in Madison County Circuit Court for TWPD's client, P.F. Chang's, in a food allergy case. The plaintiff is a licensed lawyer and represented herself.

RECENT CASES AND NEWS

MISSISSIPPI GENERAL
LIABILITY NEWSLETTER

The plaintiff alleged she had dined at P.F. Chang's and ordered a chicken jicama taco off of P.F. Chang's promotional menu. She had numerous food allergies, including seafood, nuts, dairy, eggs, mushrooms and peas, among numerous others. She claimed that she communicated her "significant" allergies to the server and further claimed that the server assured her that the dish would be safe if they omitted the peanut sauce. Plaintiff also claimed that, after taking a bite or two of the tacos, her lip began to swell and she left the restaurant. She did not seek medical treatment or use an epi-pen with which she was prescribed, but instead took Benadryl on the advice of a local pharmacy. Over one month later, she sought treatment for medical issues she alleged to be related to this incident.

Plaintiff sought damages of more than \$130,000. She also claimed that she had permanent swelling in one side of her face as a result of the allergic reaction. Other than her own testimony, there was no proof that the taco dish contained peanut sauce or any ingredient that caused her reaction, as opposed to any number of other allergens to which she was sensitive. The Court granted summary judgment in favor of P.F. Chang's based on plaintiff's inability to establish breach of duty and causation to support her claim of negligence.

ORDER TO GRANT DEFENDANTS AMENDED MOTION FOR SUMMARY JUDGEMENT

Attorney Spotlight



Lyle Robinson

Lyle is a partner in the firm's Jackson, Mississippi office. His practice areas include transportation law, insurance coverage and defense, premises liability, and complex commercial litigation. He represents insureds and insurance carriers throughout Mississippi in both state and federal courts. In addition to being admitted in all Mississippi state and federal courts, Lyle is admitted before the United States Court of Appeal for the Fifth and Eleventh Circuits.

Lyle is a Georgia native and a proud Georgia Bulldog. He attended law school at the Mississippi College School of Law, where he was managing editor of the Law Review. Outside of the office, Lyle enjoys spending time with his wife and three daughters.



MISSISSIPPI IMPLEMENTS NEW GAP ACT

Mississippi's laws regarding guardianships and conservatorships have not been substantially changed in some time. The Supreme Court felt the old laws lacked oversight, monitoring, and accountability of guardianships and conservatorships. As such, they created the Mississippi Commission on Guardianship and Conservatorship in 2017. Over time, the Commission developed recommendations that were used in practice although not codified. The Mississippi GAP (Guard and Protect) Act was implemented beginning January 1, 2020 and it serves as a "replacement" of the guardianship and conservatorship laws previously in place.

The Court now requires a "Guardian's Plan" and "Conservator's Plan," both of which help the court understand and guide the fiduciary's strategy for ensuring safety and welfare of the ward—however, both plans are discretionary and at the will of the Court. Judges can tailor a guardianship or conservatorship to the needs of the ward, which also allows adults to maintain some independence. Additionally, one primary change is the clearly defined terms between a Guardian and a Conservator—which were previously used interchangeably. Under the GAP act a guardianship pertains to an arrangement over the person and a conservatorship pertains to an arrangement over the estate/money. Although sometimes used in practice, the arrangement of a limited conservatorship was codified in sections 206, 309, and 411.

The Mississippi Judicial College, in conjunction with the Commission, has created editable forms required when going through a guardianship or conservatorship—both of which are applicable to minor settlements that require a guardianship. The new forms are slightly more in depth than those previously use and encompass all the new requirements of the GAP Act. They can be found here: <https://mjc.olemiss.edu/gap-act/>.



COURT OF APPEALS GRANTS MOTION FOR SUMMARY JUDGMENT IN SIDEWALK TRIP AND FALL

While walking up a grooved concrete handicap on Singing River LLC's premises, Anita Carroll tripped and fell on uneven concrete and sustained an injury to her knee. The following day she sought medical treatment and returned to Singing River to report the accident. The Carrolls allege the security guard who assisted them with the injury report disclosed that another person also fell in the same area recently. Thereafter, she and her husband filed a premises-liability suit alleging Singing River negligently failed to maintain its premises in a reasonably safe condition. The Jackson County Circuit Court granted Singing River's summary judgment on the issue of liability and the Carroll's appealed.

While Singing River argued that the uneven sidewalk was a common architectural feature which any invitee should expect to encounter. The Court of Appeals agreed, and cited multiple case law recognizing pathways and sidewalks are commonly uneven and further, that a property owner is not required to keep its sidewalks in a perfectly even condition. The court points out a Mississippi Supreme Court case in which an elevation difference of seven and a half inches was not great enough to qualify as an inherently dangerous condition and was open and obvious. *Stanley v. Morgan & Lindsey Inc.*, 203 So. 2d 473, 477 (Miss. 1967). Despite the Carroll's testimony regarding an elevation difference of three inches, their submitted photographs, and their alleged statements of the security guard, the court found no genuine issue of material fact and affirmed the circuit court's grant of summary judgment on May 12, 2020.

<https://courts.ms.gov/Images/Opinions/CO144979.pdf>



TAYLOR WELLONS POLITZ & DUHE



The success we have seen is because of the way we built our practice. It's about more than routine strategies. It's about creative resolutions to difficult legal questions. It's about how we treat our clients and each other and how we work together to build the best possible defense for every single case. It's

PRACTICE, "
MADE PERFECT

BATON ROUGE

NEW ORLEANS

MISSISSIPPI

WWW.TWPD.LAW.COM

866-514-9888 TF