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Torts - A Requiem for the Sudden Emergency Doctrine - Knapp v. Stanford

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TORTS—A REQUIEM FOR THE SUDDEN EMERGENCY DOCTRINE—*Knapp v. Stanford*, 392 So. 2d 196 (Miss. 1980).

On December 31, 1977, at eleven o'clock p.m., a one vehicle auto accident occurred in which James Stanford was the owner and operator of the automobile. The passenger, Robert Knapp, sustained serious personal injuries. The accident happened as the vehicle approached a sweeping left curve. The vehicle's right wheel left the pavement's right edge and slid onto the shoulder for approximately three or four seconds. Without braking, Stanford attempted to bring the vehicle back onto the hard surfaced road, which was six to eight inches above the shoulder due to recent road construction. The right wheels hung on the raised edge and caused the driver to lose control. The vehicle went into a spin, crossed the highway, turned over two or three times and came to rest in a ditch on the left side of the highway.[1]

While the resulting injuries to Robert Knapp were not disputed, the parties differed as to the cause of the accident.[2] At trial for the recovery of Knapp's personal injuries, Stanford requested and was granted a jury instruction commonly referred to as the "sudden emergency" instruction.[3] The jury

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1. Knapp v. Stanford, 392 So. 2d 196 (Miss. 1980).

2. *Id.* at 197. Stanford testified that he was driving at a reasonable speed when forced onto the right shoulder as an on-coming vehicle crossed into his lane, thus creating the emergency circumstances. However, Knapp stated that Stanford's blazer was being driven over 90 miles an hour and no other vehicle was on the roadway at the time of the accident.

3. *Id.* The jury instruction for Stanford stated:

The court instructs the jury that under the law when a person is confronted with a sudden emergency not of his own making and is by reason thereof placed in a position of peril to himself without sufficient time in which to determine with certainty the best thing to do, he is not held to the same accuracy of judgment as is required of him under ordinary circumstances, and in this case if you believe from a preponderance of the evidence, that James B. Stanford, immediately prior to the accident in question was driving his vehicle on his right side of the road, at a reasonable rate of speed and he was suddenly, without warning, confronted with the vehicle driven by persons unknown within James Stanford's lane of traffic and that the presence of the other vehicle constituted a sudden emergency which was not of a making of the defendant, James B. Stanford, and if you further find from a preponderance of the evidence that after having been confronted with such sudden emergency, if any, the defendant, James B. Stanford, used the same degree of care that a reasonably prudent automobile driver would have used under the same or similar circumstances, if any, but was unable to avoid the accident giving rise to this lawsuit, then the defendant, James B. Stanford, was not guilty of negligence which proximately caused the collision in question, and in that event, it would be your sworn duty to return a verdict for the defendant, James B. Stanford.

returned a verdict for Stanford negating liability for any negligent actions, and Knapp appealed, claiming such instruction was error. The Mississippi Supreme Court reversed and held the jury instruction did not apply to the undisputed facts. The court abolished the doctrine of sudden emergency in Mississippi and held that the same standards of negligent conduct should apply in this and similar negligence actions.[4]

A REVIEW OF THE SUDDEN EMERGENCY DOCTRINE

The sudden emergency doctrine[5] encompasses those actions an individual takes when faced with a sudden emergency, created by another, in which due to want of time the actor responds with the care of a reasonably prudent person under the circumstances.[6] The individual's failure to exercise the *best* judgment in an emergency often results in injuries to innocent third parties, but, due to the application of the doctrine, the actor is not held liable for his negligence.[7] The courts have taken into consideration the actor's need for a speedy decision and the lack of safe alternative courses of action as opposed to the foresight and calm judgment available in normal circumstances.[8] Emergencies are only one of the situations requiring a reasonable standard of care by the normally prudent and careful person.[9] Thus, in a sudden emergency, the law does not require a higher standard of

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4. 392 So. 2d at 199.

5. The sudden emergency doctrine is also known as the doctrine of imminent peril, Goolsbee v. Texas & N.O.R., 150 Tex. 528, 531, 243 S.W.2d 386, 387 (1951); sudden peril, Spence v. Doran, 306 P.2d 499, 503 (Cal. Dist. Ct. App. 1957); terror, Graham v. Hines, 240 S.W. 1015, 1020 (Tex. Civ. App.-Galveston 1922); emergency, Jacobsen v. Cummings, 318 Ill. App. 464, 469, 48 N.E.2d 603, 609 (1943).

6. 57 AM. JUR. 2d *Negligence* § 590 (1971); Majure v. Herrington, 243 Miss. 692, 699, 139 So. 2d 635, 638 (1962); Mississippi Cent. R.R. v. Aultman, 173 Miss. 622, 642, 160 So. 737, 740 (1935).

7. Peel v. Gulf Transp. Co., 252 Miss. 797, 174 So. 2d 377 (1965). Judge Cardozo stated in Wagner v. International Ry., 232 N.Y. 176, 182, 133 N.E. 437, 438 (1921): "Errors of judgment, however, would not count against him, if they resulted from the excitement and confusion of the moment."

8. The RESTATEMENT (SECOND) OF TORTS § 296 (1965) clarifies the emergency factor under these circumstances: "In determining whether conduct is negligent toward another, the fact that the actor is confronted with a sudden emergency which requires rapid decision is a factor in determining the reasonable character of his choice of action."

9. *Id.* § 470; *See* Jones v. Dixie Greyhound Lines, Inc., 211 Miss. 34, 50 So. 2d 902 (1959).

care than that which is reasonable under the circumstances.[10]

A similar but distinguishable theory of tort law is that of the unavoidable or inevitable accident.[11] This alternative attempt to negate liability is defined as an unintended occurrence which could not have been prevented by the exercise of due care by both parties, and was not caused by the fault of any person.[12] Like the sudden emergency doctrine, an unavoidable accident exonerates one from liability in that the actor claims his negligence was not the proximate cause of the injury. However, the difference lies in the fact situation itself. In an unavoidable accident, any choice of action taken by the defendant would result in an accident, thus the term *unavoidable* accident. In a sudden emergency situation, the defendant has a choice of actions, one of which might not have resulted in an accident. The defendant is not held liable in an unavoidable accident because he is only required to act in a reasonable manner under the stress of the circumstances. While these are not foreseeable, they are often linked with the superior forces of nature and have become synonymous with an "act of God."[13]

The doctrine of sudden emergency first emerged in England in 1773 in the infamous "squib case" of *Scott v. Shep-*

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10. Jones v. Dixie Greyhound Lines, Inc., 211 Miss. 34, 50 So. 2d 902 (1959).

11. W. PROSSER, *Handbook of the Law of Torts* § 29 (4th ed. 1971); 57 AM. JUR. 2d *Municipal, School, and State Tort Liability* § 16 (1971).

12. Otto v. Sellnow, 233 Minn. 215, 225, 46 N.W.2d 641, 646 (1951).

13. *Compare* Neal v. Saunderson, 6 Miss. (2 S. & M.) 572, 577 (1844) *with* City of Jackson v. Brummett, 244 Miss. 501, 80 So. 2d 827 (1955).

There is a further distinction between the theories of "act of God" and "unavoidable accident." The former denotes natural accidents such as violent storms, lightning, and floods, while the latter denotes events involving a human agency which are unforeseeable and no amount of protection could ever prevent. *See* City of Jackson v. Brummett, 224 Miss. 501, 80 So. 2d 827 (1955).

Like a sudden emergency, the unavoidable accident doctrine enjoys a separate jury instruction which may be presented to the jury to demonstrate further that the defendant's negligence was not the proximate cause of a third party's injuries. THE MISSISSIPPI MODEL JURY INSTRUCTIONS, *Negligence* § 36.08 (1977) states:

> If you find from a preponderance of the evidence in this cause that plaintiff's injury was due directly and exclusively to natural causes, without human intervention and which could not have been prevented by the exercise of reasonable care and foresight, the occurrence is an act of God for which the defendant is not liable.

However, the pleadings and elements, to establish each circumstance, must be specially pled and submitted into evidence to enable the court to render the proper jury instruction.

ard.[14] In 1816, the doctrine was further developed in *Jones v. Boyce*[15] in which Chief Justice Lord Ellenborough wrote that one must be responsible for the consequences if one forces another to adopt a perilous alternative.[16] The *Jones* decision was approved and followed by the United States Supreme Court in *Stokes v. Saltonstall*[17] in 1839. Since then *Stokes* and *Jones* have formed the theoretical cornerstones for the modern sudden emergency doctrine.

Mississippi adopted the emergency doctrine in 1933 in *Vann v. Tankersly.*[18] The Mississippi Supreme Court reversed a lower court decision and held that the elderly Vann was not liable when he acted to save his wife from falling from their moving car, whereupon he lost control and injured Tankersly, an innocent pedestrian seated upon a sidewalk bench.[19] Since 1933, various situations have prompted requests for a sudden emergency instruction in order to negate liability.[20]

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14. 2 Wm. Bl. 892, 3 Wils. 403, 96 Eng. Rep. 525 [1553-1774], All E.R. Rep. 295 (K.B. 1773). A lighted squib (firecracker) was thrown into a crowded market and then thrown from stall to stall as merchants sought to save their goods. The squib hit the plaintiff in the eye, exploded, causing permanent vision loss. The plaintiff sued the intervening squib hurlers. Justice Gould, in a concurring opinion, stated that terror deprived the merchants of the power of recollection and they acted in excited self-defense and thus were not liable. *Id.*

15. 1 Stark. 493, 171 Eng. Rep. 540 [1814-23], All E.R. Rep. 570 (N.P. 1819). The plaintiff, believing defendant's coach was about to tip over, jumped out, thus sustaining a broken leg. The coach remained upright but the defendant was held negligent. *Id.*

16. *Id.*

17. 38 U.S. (13 Pet.) 181 (1839). Plaintiff and his wife jumped from a moving coach as it turned over and plaintiff pled that they were free of any contributory negligence due to the emergency situation and the Supreme Court affirmed the lower court's award of $7,130. *Id.*

18. 164 Miss. 748, 145 So. 642 (1933).

For a thorough review of the history of the doctrine of sudden emergency, *See* Gillespie, *The Sudden Emergency Doctrine*, 36 MISS. L.J. 392 (1965).

19. 164 Miss. at 752, 145 So. at 643.

20. These situations include: Wood v. Walley, 352 So. 2d 1083 (Miss. 1977) (vehicle illegally entering intersection); Nielson v. Miller, 259 So. 2d 702 (Miss. 1972) (brakes failed); Graves v. Hart's Baker, Inc., 241 So. 2d 673 (1970) (vehicle unexpectedly pulling out into traffic); Bozeman v. Tucker, 203 So. 2d 795 (Miss. 1967) (cows in the road); Peel v. Gulf Transp. Co., 252 Miss. 797, 174 So. 2d 377 (1965) (vehicle swerving into a passing bus); Layton v. Cook, 248 Miss. 690, 160 So. 2d 685 (1964) (driver blinded by on-coming car lights); Gregory v. Thompson, 248 Miss. 431, 160 So. 2d 195 (1964) (slow moving vehicle); Cipriani v. Miller, 248 Miss. 670, 160 So. 2d 87 (1964) (disabled car on the side of the road); Crump v. Brown, 246 Miss. 671, 151

Despite the court's frequent criticism of attorneys for failing to incorporate the necessary elements in jury instructions in order to justify a proper sudden emergency instruction,[21] the doctrine has been successfully used on behalf of innocent litigants.[22] Juries are not required to find for the party seeking the sudden emergency instruction if such an instruction is given, but may take the emergency into consideration as one of the unusual circumstances arising which required the party to take instantaneous action.[23] Though often mistaken as an absolute defense or a tool of avoidance,[24] sudden emergency is only one of the *circumstances* to be considered in determining if a litigant used reasonable care.[25]

In recent years, both plaintiff[26] and defense[27] attorneys familiar with elements of the doctrine have used it as an effective trial tactic. However, attorneys and trial judges have consistently misinterpreted and failed to follow the rules

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So. 2d 822 (1963) (pedestrian in the road); Moak v. Black, 230 Miss. 337, 92 So. 2d 845 (1957) (child on bicycle turning into traffic); Callaway v. Haddad, 226 Miss. 177, 83 So. 2d 825 (1955) (driver caught his pants cuff on the seat lever and was unable to brake); Mississippi Cent. R.R. v. Aultman, 173 Miss. 622, 160 So. 737 (1935) (bus upon railroad tracks).

21. Justice Brady in Bozeman v. Tucker, 203 So. 2d 795, 797 (Miss. 1967) stated. "We have, with metronomic regularity, undertaken our Sisyphean task of imparting to the Bar the three essentials which must be present in an instruction concerning a sudden emergency and which must factually exist to justify the granting of a sudden emergency instruction."

See, e.g., Continental So. Lines, Inc. v. Lum, 182 So. 2d 228 (Miss. 1966); McClure v. Felts, 252 Miss. 234, 172 So. 2d 549 (1965); Kettle v. Musser's Potato Chips, Inc., 249 Miss. 212, 162 So. 2d 243 (1964).

22. *See, e.g.*, Graves v. Hart's Bakery, Inc., 241 So. 2d 673 (Miss. 1970); Lum v. Jackson Indus. Uniform Serv., Inc., 253 Miss. 342, 175 So. 2d 501 (1965); Rushing v. Edwards, 244 Miss. 677, 145 So. 2d 695 (1962); Majure v. Herrington, 243 Miss. 692, 139 So. 2d 635 (1962); Phillips v. Delta Motor Lines, 235 Miss. 1, 108 So. 2d 409 (1959); Vann v. Tankersly, 164 Miss. 748, 145 So. 642 (1933).

The "doctrine" has been severely criticized when successfully used by a defendant in a negligence suit, as a legal device whereby the injured party is left without compensatory relief.

23. Dreyfuss v. Mississippi City Lines, 261 So. 2d 786, 789-90 (Miss. 1972).

24. *Id.*

25. *See, e.g.*, Jones v. Dixie Greyhound Lines, Inc., 211 Miss. 34, 50 So. 2d 902 (1951); Mississippi Cent. R.R. v. Aultman, 173 Miss. 622, 160 So. 737 (1935); Jones v. Mitchell Bros. Truck Lines, 266 Or. 513, 511 P.2d 347 (1973); RESTATEMENT (SECOND) OF TORTS § 296 (1965).

See Reynolds, *Put Yourself in an Emergency—How Will You Be Judged?*, 62 KY. L.J. 366, 369 (1974); Wise, *The Sudden Emergency Doctrine As Applied In South Carolina*, 20 S.C.L. REV. 408, 414 (1968).

26. Gulf, Mobile & Ohio R.R. v. Withers, 247 Miss. 123, 154 So. 2d 157 (1963).

27. Wood v. Walley, 352 So. 2d 1083 (Miss. 1977).

promulgated by the Mississippi Supreme Court.[28] This failure has ultimately led to the abolition of the doctrine itself.

In *Gulf, Mobile & Ohio R.R. v. Withers*,[29] the court established three essential elements to invoke a proper jury sudden emergency instruction: (1) The individual must have used reasonable care before the emergency and the emergency was not of his own making;[30] (2) a description of the emergency which would warrant the jury to find a sudden emergency existed;[31] and (3) after the emergency arose, he exercised the care of a reasonably prudent person under these unusual circumstances.[32] In 1966, the court attempted to define further the situations which would warrant a sudden emergency instruction in order to direct the Bar away from embarrassing

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28. Justice Bowling writing for the majority in *Knapp*, 392 So. 2d at 198 stated:

> Over the years we have cautioned trial attorneys in a large number of cases regarding the danger of requesting and securing the so-called "sudden emergency" instruction. During the past twenty-five years, this Court has considered approximately twenty-seven cases on appeal involving the propriety of the instruction either in its language or applicability and out of those cases approximately twenty have been reversed because the instruction was erroneous in some manner.

29. 247 Miss. 123, 154 So. 2d 157 (1963).

30. In sixteen instances the Mississippi Supreme Court has reversed the case where this element was omitted or improperly applied: Nielson v. Miller, 259 So. 2d 702 (Miss. 1972); Mercier v. Davis, 234 So. 2d 902 (Miss. 1970); May v. Pace, 197 So. 2d 220 (Miss. 1967); Washington v. Terrel, 185 So. 2d 925 (Miss. 1966); Peel v. Gulf Transp. Co., 252 Miss. 797, 174 So. 2d 377 (1965); McClure v. Felts, 252 Miss. 234, 172 So. 2d 549 (1965); Ladner v. Merchants Bank & Trust Co., 251 Miss. 804, 171 So. 2d 503 (1965); Gregory v. Thompson, 248 Miss. 431, 160 So. 2d 195 (1964); Cipriani v. Miller, 248 Miss. 672, 160 So. 2d 87 (1964); Crump v. Brown, 246 Miss. 631, 151 So. 2d 822 (1963); Pullin v. Nabors, 240 Miss. 864, 128 So. 2d 117 (1961); Meeks v. McBeath, 231 Miss. 504, 95 So. 2d 791 (1957); Moak v. Black, 230 Miss. 337, 92 So. 2d 845 (1957); Rivers v. Turner, 223 Miss. 673, 78 So. 2d 903 (1955); Continental S. Lines, Inc. v. Klass, 217 Miss. 795, 65 So. 2d 575 (1953); Jones v. Dixie Greyhound Lines, Inc. 211 Miss. 34, 50 So. 2d 902 (1951).

31. Six cases have been reversed in whole or in part due to this error in instructions: Dreyfuss v. Mississippi City Lines, 261 So. 2d 786 (Miss. 1972); Bozeman v. Tucker, 203 So. 2d 795 (Miss. 1967); Continental S. Lines, Inc. v. Lum, 254 Miss. 655, 182 So. 2d 228 (1966); McClure v. Felt, 252 Miss. 234, 172 So. 2d 549 (1965); Kettle v. Musser's Potato Chips, 249 Miss. 212, 162 So. 2d 243 (1964); Gulf, Mobile & Ohio R.R. v. Withers, 247 Miss. 123, 154 So. 2d 157 (1963).

32. Five cases were reversed in whole or in part due to an error on element #3: Gulf, Mobile & Ohio R.R. v. Withers, 247 Miss. 123, 154 So. 2d 157 (1963); Summers v. Johnson, 236 Miss. 826, 105 So. 2d 451 (1958); Moore v. Taggart, 233 Miss. 389, 102 So. 2d 333 (1958); Calloway v. Haddad, 226 Miss. 177, 83 So. 2d 825 (1955); Jones v. Dixie Greyhound Lines, Inc., 211 Miss. 34, 50 So. 2d 902 (1951). *See* Continental S. Lines, Inc. v. Lum, 254 Miss. 655, 182 So. 2d 228 (1966); McClure v. Felts, 252 Miss. 234, 172 So. 2d 549 (1965); Kettle v. Musser's Potato Chips, Inc., 249 Miss. 212, 162 So. 2d 243 (1964).

reversals.[33] Justice Sugg, in limiting sudden emergency instructions, set the following guidelines:

1) The motorist seeking the instruction must be driving in a reasonable and prudent manner;
2) the driver must be suddenly confronted with an unexpected and sudden emergency;
3) the emergency cannot be created or contributed to by the negligence or the wrongful conduct of the driver claiming the benefit of the rule;
4) the driver must be placed in a position of peril to himself;
5) the driver cannot have sufficient time in which to determine by rational deliberation the best alternative;
6) and, the degree of care to be weighed by the jury under the said emergency doctrine is that which a reasonably prudent and capable driver would use under the "unusual" circumstances brought about by the sudden emergency.[34]

Though in 1965 there was no noticeable trend toward the abolishment of the sudden emergency doctrine,[35] this is no longer true today.[36] As recently as 1979, the Mississippi Supreme Court in *Gates Rubber Co. v. Duke*[37] stated that the sudden emergency instructions are "doubtful when requested and dangerous to a party's case when given."[38] However, in 1970, the Supreme Court of Oregon was one of the first courts to criticize openly the usefulness of the doctrine.[39] The

33. Wood v. Walley, 352 So. 2d at 1086-87.

34. *Id.*

35. Gillespie, *The Sudden Emergency Doctrine*, 36 MISS. L.J. 392, 408 (1965).

36. In Florida, the Supreme Court Committee on Standard Jury Instructions, appointed in 1962 by the Florida Supreme Court, recommended "that sudden emergency instructions not be given to juries in Florida." The author points out that this is not a rejection of the sudden emergency doctrine, but rather that the doctrine "is adequately applied to the facts by the general charge on negligence." Hollingsworth, *The Sudden Emergency Doctrine in Florida*, 21 U. FLA. L. REV. 667, 680 (1969).

See also, THE ILLINOIS PATTERN JURY INSTRUCTION, § 12.02-.03 (1961), which recommends against the giving of sudden emergency jury instructions.

37. 367 So. 2d 910 (Miss. 1979). Though the emergency doctrine has seen its greatest use in automobile cases, *Gates* recently expanded the doctrine of sudden emergency into the field on products liability. In 1979, suit was brought against a hose manufacturer for the negligent production of a hose which ruptured while a farm supply manager, Mr. William Duke, was transferring deadly anhydrous ammonia into a customer's tank. After the hose ruptured, Duke attempted to close a supply valve after donning a gas mask. He became ill and subsequently died after closing the valve. His executrix brought suit based upon the sudden emergency rule and products liability warranties, but the case was ultimately reversed due to the deceased manager's negligence in failing to change the hose once it developed a dangerous bend.

38. *Id.* at 912.

39. Evans v. General Tel. Co. of the Northwest, Inc., 257 Or. 460, 479 P.2d 747 (1970).

Oregon court stated that it would be a rare situation where it would be error to fail to give the sudden emergency instruction.[40] They, like the Mississippi Supreme Court in *Knapp*, reasoned that the standard negligence instruction includes how a reasonable man would act under the same circumstances, including those of sudden emergency.[41] Two months later, the Oregon court, in separate decisions, labeled the doctrine "treacherous"[42] and again stated that a sudden emergency instruction was "unnecessary to give and should be avoided."[43] The present status of the doctrine in Oregon and other jurisdictions[44] is that the sudden emergency doctrine is to be avoided and rarely would any failure to give it on behalf of a litigant constitute reversible error.[45]

INSTANT CASE ANALYSIS

The Mississippi Supreme Court's decision to abolish the sudden emergency doctrine effectively unified the standards by which negligence actions are judged.[46] In the past, Mississippi courts have consistently lowered the liability standards for negligent conduct in emergencies and raised the standard of reasonable care under normal circumstances.[47] These twin standards of liability have often misled juries as to the spe-

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40. *Id.* at 464, 479 P.2d at 750-51.

41. 257 Or. 460, 479 P.2d 747 (1970).

THE MISSISSIPPI MODEL JURY INSTRUCTIONS, *Negligence* § 36.01 (1977) has an identical section: "Reasonable care is that degree of care which a reasonably careful person would use *under like or similar circumstances.*" (emphasis added). Section 36.11 Sudden Emergency Instruction also states: "[A]fter the sudden emergency arose... defendant exercised the care of a reasonable prudent person *under like or similar circumstances.*" (emphasis added).

42. Rankin v. White, 258 Or. 252, 256, 482 P.2d 530, 533 (1971).

43. Ballard v. Rickabaugh Orchards, Inc., 259 Or. 200, 207, 485 P.2d 1080, 1083 (1971). *See* Galvert v. Ourum, 40 Or. App. 511, 595 P.2d 1264 (1979); Swanson v. Hale, 273 Or. 138, 539 P.2d 1073 (1975); Harkins v. Doyle, 271 Or. 664, 533 P.2d 785 (1975). Jones v. Mitchell Bros. Truck Lines, 266 Or. 513, 511 P.2d 347 (1973); Evans v. General Tel. Co. of the Northwest, Inc., 257 Or. 460, 479 P.2d 747 (1970).

44. Hollingsworth, *The Sudden Emergency Doctrine in Florida*, 21 U. FLA. L. REV. 667, 681 (1969); Thode, *Imminent Peril and Emergency in Texas*, 40 TEX. L. REV. 441 (1962); Wiehl, *Instructing a Jury*, 36 WASH. L. REV. 378, 383 (1961).

45. Jones v. Mitchell Bros. Truck Lines, 266 Or. 513, 526, 511 P.2d 347, 353 (1973).

46. 392 So. 2d at 198.

47. *Id.* Justice Bowling stated in the majority opinion: "The hazard of relying on the doctrine of sudden emergency is the tendency to elevate its principles above what is required to be proven in a negligence action."

cific amount of care required in emergency and non-emergency situations.[48]

It is doubtful that chaos will erupt throughout our court system with the striking of the sudden emergency jury instruction from the arsenals of skilled defense attorneys,[49] for now the standard negligence instruction is sufficient to include all circumstances including those of sudden emergency.[50] However, the court has implied that any mention of the terms "sudden emergency," when tying the facts to the law in an instruction, would invoke an automatic reversal.

While abolishing the doctrine in a 5-4 decision,[51] the majority failed to answer Justice Walker's claim that *Knapp* presented a classic sudden emergency fact situation and thus must be affirmed.[52] However, the court used *Knapp* as their means to scrap the sudden emergency instruction which had plagued judges, jurors, and attorneys for almost half a century. Justice Walker's strong and well-reasoned dissent focused upon the doctrine's fifty-year tradition, but like the majority opinion, Walker implied that though the emergency doctrine was abolished, it still lives within the bounds of the existing standard.[53] Justice Smith's dissenting argument that the doctrine itself was not under question but rather the narrow fact situation had little merit.[54] In essence, the majority

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48. Lachman v. Pennsylvania Greyhound Lines, Inc., 160 F.2d 496 (4th Cir. 1947).

49. "To abolish the doctrine now will create chaos out of what is presently a little confusion. In my opinion, the majority are doing a disservice to the bench, the bar, and the litigants by abolishing this long-established principle of law." 392 So. 2d 196, 202 (Walker, J., dissenting).

50. Evans v. General Tel. Co. of the Northwest, Inc., 257 Or. 460, 479 P.2d 747 (1971).

At the outset of the majority opinion in *Knapp*, the court held that the emergency was in fact over and the granting of the sudden emergency instruction was in error because Stanford was negligent in failing to see what he should have seen and "that which is in plain view, open and apparent." 392 So. 2d at 198. *See, e.g.*, Shideler v. Taylor, 292 So. 2d 155 (Miss. 1974); Stewart v. White, 220 So. 2d 271 (Miss. 1969); Tippit v. Hunter, 205 So. 2d 267 (Miss. 1967); Campbell v. Schmidt, 195 So. 2d 87 (Miss. 1967); Layton v. Cook, 248 Miss. 690, 160 So. 2d 685 (1964).

51. Justices Patterson, C.J., Sugg, Brown, Lee, Bowling for the majority and Justices Smith, Robertson, Walker, Coffer dissenting.

52. 392 So. 2d 196, 202 (Walker, J., dissenting).

53. 392 So. 2d 196, 202 (Walker, J., dissenting).

Justice Walker in his vigorous dissent stated: "[W]hat test is left is the same as before—what a reasonable prudent man might have done when faced with the same or similar circumstances, *i.e.*, a sudden emergency." *Id.* at 202.

54. 392 So. 2d 196, 199 (Smith, J., dissenting).

held that negligence cases would best be disposed of by uniform principles of negligence.[55]

CONCLUSION

The Mississippi Supreme Court's decision to abolish the sudden emergency doctrine has removed a long-standing enigma which has existed since its introduction in 1933 in *Vann v. Tankersly*.[56] The court has stated that the present test of one charged with negligence is whether his actions were that of a reasonable and prudent person under the *same or similar circumstances*.[57] In doing so, the court has retained an acceptable solution by instructing that the alleged negligent act be entwined with the evidence presented to verify the circumstance, *i.e.* an emergency.[58] The court has at last recognized that sudden emergency is neither a defense, *nor* a tool of avoidance,[59] but rather one of several circumstances which should be considered by the jury. The "doctrine" is not an *exception* to the standard of care required of a reasonable man but an *application* of it.

While the court has quelled the chaos of past decisions which have attempted to clarify the instruction, it has failed to instruct members of the Bar on their role in presenting similar cases of fact before Mississippi juries. However, while the doctrine lives under the guise of the standard negligence instruction, plaintiff attorneys will be relieved of the burden of defending against the doctrine's prejudicial jury instruction. In the past, these instructions have been complicated and have resulted in a confusion of the basic issues of negligence and have made the results of litigation even more unpredictable. A standardization of the instruction will enhance the jury's ability to grasp and comprehend the basic issues of negligence, causation, and damages. At the same time, defense attorneys would be wise to prove the emergen-

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55. *Id.* at 198. The Mississippi Supreme Court commented that the doctrine of sudden emergency "tends to confuse the principle of comparative negligence that is well ingrained in the jurisprudence of this state." Mississippi was the first state to adopt such a general comparative negligence act, doing so in 1910. *See* W. PROSSER, HANDBOOK OF THE LAW OF TORTS § 67, at 436 (4th ed. 1971).

56. 164 Miss. 748, 145 So. 642 (1933).

57. 392 So. 2d at 199.

58. *Id.*

59. *See* Peel v. Gulf Transp. Co., 252 Miss. 797, 815-17, 174 So. 2d 377, 385 (1965).

cy elements by presenting supporting evidence to solidify the existence of emergency circumstances within the jury's mind,[60] and the reasonableness of the actor's conduct in light thereof.

In summary, *Knapp v. Stanford* will be viewed as the court's means of unifying the abolished "doctrine" with the reasonable standard of care instruction. While many would view this decision as abolishing an important common sense rule of law, the result is merely a different name for an old rule.

Timothy Lee Murr

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60. Gulf, Mobile & Ohio R.R. v. Withers, 247 Miss. 123, 154 So. 2d 157 (1963) listed 3 elements which trial attorneys should present in their jury instructions. However, after *Knapp*, these elements should be presented as evidence and argued to the jury to establish that the emergency action was reasonable under the circumstances and thus their client should not be held liable:

1) The individual must have used reasonable care before the emergency and the emergency was not of his own making;
2) A description of the emergency which would warrant the jury to find a sudden emergency existed; and
3) After the emergency arose he exercised the care of a reasonable prudent person under these unusual circumstances.

As stated earlier, there should be no mention of the terms "sudden emergency" in an instruction as it would invoke an automatic reversal.