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ALLIGATORS FOR CHRISTMAS: LIABILITY FOR WILD ANIMALS IN THE CONTEXT OF PRIVATE NUISANCE

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I. INTRODUCTION

For years, alligators terrorized Tom and Consandra Christmas of Wilkinson County, Mississippi. When the Christmases moved to a large tract of land located between Centreville and Woodville, Mississippi, the couple made plans to build a life there; they dreamt of constructing a house and having a pond. They dreamt of having a place where they could fish and host their grandchildren. That dream ended, however, when the Christmases realized that situated next to their property was an alligator-infested toxic waste dump owned by Exxon Mobil ("Exxon"). Soon, the Christmases were too afraid to use their property, and their dream of having a peaceful retreat came to an abrupt halt. In an effort to salvage their dream and the use of their property, the Christmases turned to the legal system for help—claiming private nuisance against Exxon.

In *Christmas v. Exxon Mobil Corporation*, the Supreme Court of Mississippi addressed the following question: can a person be held liable in private nuisance for the presence of alligators on his property? Responding to that question, the majority repeatedly asserted that because the alligators on Exxon's property were "wild," the corporation could not be held liable in private nuisance. This Note analyzes the term "wild" to determine the meaning of the word in the context of private nuisance and discusses the difference between wildness and possession. Then, this Note looks to cases from other jurisdictions that deal with liability in private nuisance for the possession of wild animals and compares those cases and rulings to the instant case. Last, this Note proposes a more structured approach to private nuisance cases that courts should apply in the future when similar issues arise.

II. FACTS AND PROCEDURAL HISTORY

From the early 1980s until the early 2000s, Cliff Rogers owned a landfill in the countryside of Wilkinson County, Mississippi.[1] For most of that time period, Exxon Mobil used Rogers' landfill exclusively and helped him keep the landfill functioning.[2] One of Rogers' former employees, Frederick Coleman, testified that while Rogers owned the property, Exxon controlled and made all decisions

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1. Christmas v. Exxon Mobil Corp., 138 So. 3d 123, 125 (Miss. 2014).

2. *Id.*

regarding the site.[3] In addition to the landfill, the property featured nineteen ponds, amounting to eighty-five surface acres, which Rogers used to collect rainwater.[4]

During the early 1980s, Rogers purportedly introduced alligators from Louisiana to the property.[5] Coleman testified that while he was working at the landfill, he watched an instructional video explaining that Rogers brought the alligators, as well as other kinds of animals, to the landfill so that he could monitor their health to determine whether the site was safe for humans.[6] Coleman stated that some landfill employees were responsible for maintaining these animals; the employees were instructed to feed the animals and house some of the alligators in a shed.[7]

After years of using and controlling the landfill, Exxon finally bought the property from Rogers during the summer of 2001.[8] About a year and a half later, Tom and Consandra Christmas bought thirty-five acres of land adjacent to the landfill.[9] During the next four years, the Christmases spotted several alligators on their land.[10] Mr. and Mrs. Christmas both testified that they were scared to go outside because of the alligators, and Mr. Christmas blamed the alligators for the loss of three of his animals—a pet dog and two cows.[11] The couple maintains that they first learned of Exxon's alligator infestation and toxic waste dump in 2007, when Mr. Christmas followed a pet onto the property.[12] Within the same year, the Mississippi Department of Wildlife, Fisheries, and Parks found approximately eighty-four alligators on the Exxon property, which it determined to be a high population of wild alligators for that area of land.[13] The next summer, Exxon arranged for the Department to remove and relocate some of the alligators.[14]

On August 11, 2008, the Christmases filed suit in the Circuit Court of Wilkinson County against Exxon for nuisance and requested monetary damages for having to live next to the alligator-infested property.[15] Despite the Christmases' argument that the presence of the alligators caused their property value to decline, the circuit court granted summary judgment in favor of Exxon, which argued that the Christmases could not prove damages and that the statute of limitations barred them from bringing suit.[16] The Christmases appealed the

3. *Id.* at 129 (Chandler, J., dissenting).
4. Christmas v. Exxon Mobil Corp., 138 So. 3d 168, 170 (Miss. Ct. App. 2013).
5. Christmas v. Exxon Mobil Corp., 138 So. 3d 123, 125 (Miss. 2014).
6. *Id.* at 129 (Chandler, J., dissenting).
7. *Id.*
8. *Id.* at 125 (majority opinion).
9. *Id.*
10. *Id.*
11. *Id.* at 131 (Chandler, J., dissenting).
12. *Id.* at 125 (majority opinion).
13. *Id.*
14. *Id.*
15. *Id.*
16. *Id.*

decision.[17] The court of appeals concluded that the statute of limitations depended on when the Christmases first learned of Exxon's alligator problem.[18] Finding the timing of the Christmases' knowledge of the infestation to be in dispute, the court of appeals reversed and remanded the case, which prompted Exxon's petition for certiorari to the Supreme Court of Mississippi.[19]

On appeal, the Supreme Court of Mississippi granted summary judgment in favor of Exxon.[20] The court held that Exxon could not be held liable in private nuisance because there was no evidence that Exxon took possession of the alligators.[21] The court justified its determination, explaining, "[A]llowing wild alligators to constitute a private nuisance would subject landowners to liability for something over which they have no control."[22]

III. BACKGROUND AND HISTORY OF THE LAW

In Mississippi, the case of *Bowen v. Flaherty* defines private nuisance as, "a nontrespassory invasion of another's interest in the use and enjoyment of his property. One landowner may not use his land so as to unreasonably annoy, inconvenience, or harm others."[23] In *Leaf River Forest Products, Inc. v. Ferguson*, the Supreme Court of Mississippi expounded on the concept of private nuisance, explaining the two types of nuisance that Mississippi recognizes:

One is subject to liability for a private nuisance if, but only if, his conduct is a legal cause of an invasion of another's interest in the private use and enjoyment of land, and the invasion is either (a) intentional and unreasonable, or (b) unintentional and otherwise actionable under the rules controlling liability for negligent or reckless conduct, or for abnormally dangerous conditions or activities.[24]

In *Alfred Jacobshagen Co. v. Dockery*, the court clarified, "Each case must be decided upon its own peculiar facts, taking into consideration the location and the surrounding circumstances. It is not necessary that other property owners should be driven from their dwellings. It is enough that the enjoyment of life and property is rendered materially uncomfortable and annoying."[25]

A. Intentional and Unreasonable Nuisance

The first kind of nuisance, as discussed in *Comet Delta*, is one that is intentional and unreasonable, one that involves "an intentional act involving a

17. *Id.*
18. *Id.*
19. *Id.*
20. *Id.* at 128.
21. *Id.* at 127-28.
22. *Id.* at 127.
23. Bowen v. Flaherty, 601 So. 2d 860, 862 (Miss. 1992).
24. Leaf River Forest Products, Inc. v. Ferguson, 662 So. 2d 648, 662 (Miss. 1995) (quoting Comet Delta, Inc. v. Pate Stevedore Co. of Pascagoula, Inc., 521 So. 2d 857, 859-60 (Miss. 1988)).
25. Alfred Jacobshagen Co. v. Dockery, 139 So. 2d 632, 634 (Miss. 1962).

culpable wrong."[26] The case of *Lambert v. Matthews* is an example of an intentional and unreasonable nuisance in Mississippi. In that case, the defendant owned around 100 roosters and chickens that he kept in 200 small structures on his property.[27] The plaintiffs complained that the roosters' constant crowing interfered with the use and enjoyment of their property and accordingly, filed suit against the defendant, claiming private nuisance.[28] The Court of Appeals of Mississippi found that the number of crowing roosters on the defendant's property was unreasonable, and because the defendant raised the birds as a hobby (rather than for income) the court required him to reduce his bird population to no more than two.[29]

Alfred Jacobshagen Co. is another Mississippi case that involves the issue of intentional and unreasonable private nuisance. There, the defendant operated a plant that dismantled and cooked animal carcasses.[30] As a result of those operations, the plant "emitted into the air obnoxious, nauseous, sickening, and offensive odors and fumes . . . ."[31] The plaintiffs, who were neighboring property owners, complained that the odor prevented them from eating and sleeping.[32] The chancery court found that the plant lacked the proper mechanisms to prevent water and power failures that often resulted in the tremendously disgusting odors.[33] The court held: "A reasonable use of one's property cannot be construed to include those uses which produce obnoxious smells, which in turn result in a material injury to owners of property in the vicinity, causing them to suffer substantial annoyance, inconvenience, and discomfort."[34] Because of the defendant's unreasonable use of his property, the court found him liable for private nuisance and required him to make improvements to his plant in order to eliminate the terrible smell.[35]

B. Unintentional and Otherwise Actionable Nuisance

The second type of nuisance in Mississippi is conduct that can be simultaneously characterized as negligence. According to *Patterson v. Liberty Associates, L.P.*, "[t]he elements of a negligence action are well-settled in Mississippi. A plaintiff in a negligence suit must prove by a preponderance of the evidence (1) duty, (2) breach of duty, (3) causation, and (4) injury."[36] In order for conduct to amount to the second type of nuisance, all four elements of negligence must be met.

One example of this kind of nuisance is portrayed *White v. Lewis*. In that

26. Comet Delta, Inc. v. Pate Stevedore Co. of Pascagoula, Inc., 521 So. 2d 857, 858 (Miss. 1988).
27. Lambert v. Matthews, 757 So. 2d 1066, 1068 (Miss. Ct. App. 2000).
28. *Id.*
29. *Id.* at 1070.
30. *Alfred Jacobshagen Co.*, 139 So. 2d at 632.
31. *Id.* at 632-33.
32. *Id.* at 633.
33. *Id.*
34. *Id.* at 634.
35. *Id.*
36. Patterson v. Liberty Associates, L.P., 910 So. 2d 1014, 1019 (Miss. 2004).

case, the defendant owned animals, including dogs, turkeys, hogs, and chickens, that often wandered onto the plaintiffs' property.[37] The animals also made excessive noise and scattered garbage along the property line between the parties' land.[38] The Supreme Court of Mississippi determined that "[i]t is not necessary to debate whether dogs and chickens may attain the status of trespassers. It is enough that their presence and actions created a nuisance . . . ."[39]

Other jurisdictions have also addressed the issue of nuisance in the context of wild animals. In *Sickman v. United States*, the Seventh Circuit considered whether a person could be liable for trespassing wild animals.[40] In that case, the plaintiffs owned farms near a wildlife preserve in Illinois.[41] After suffering damage to their corn and soybean crops, the plaintiffs sued the United States, claiming that it failed to protect the plaintiffs' farms from the migratory geese that occupied the wildlife preserve during the winter.[42] The Seventh Circuit held in favor of the government, finding that "a private person could not be held liable for the trespasses of animals which are *ferae naturae*, and which have not been reduced to possession, but which exist in a state of nature."[43] The court continued, "The United States, considered as a private person, did not have any ownership, control or possession of these wild geese which imposed liability for their trespasses."[44]

Similarly, in 1961, the Appellate Court of Illinois determined whether an individual may be held liable for private nuisance for naturally occurring insects. In *Merriam v. McConnell*, the plaintiff sued his neighbors, the defendants, on the basis of private nuisance because the defendants had a certain type of tree on their property that attracted box elder bugs.[45] The bugs infested the plaintiff's house, ruining his furniture.[46] The court found for the defendants, relying on the following language from a nuisance treatise:

> In order to create a *legal* nuisance, the *act of man* must have contributed to its existence . . . . [A] nuisance cannot arise from the neglect of one to remove that which exists or arises from purely natural causes. But, when the result is traceable to artificial causes, or where the hand of man, in any essential measure, contributed thereto, the person committing the wrongful act cannot excuse himself from liability upon the ground that natural causes conspired with his act to produce the

37. White v. Lewis, 57 So. 2d 497, 498 (Miss 1952).
38. *Id.*
39. *Id.*
40. Sickman v. United States, 184 F.2d 616, 617 (7th Cir. 1950).
41. *Id.*
42. *Id.*
43. *Id.* at 618.
44. *Id.*
45. Merriam v. McConnell, 175 N.E. 2d 293, 294 (Ill. Ct. App. 1961).
46. *Id.*

ill results.[47]

The Supreme Court of Alabama addressed a similar issue in *Roberts v. Brewer*. In *Roberts*, the plaintiffs sued the defendant after a group of beavers built a dam across a creek on the defendant's property, causing water to back up onto the plaintiff's property.[48] Despite the plaintiffs' complaints, the defendant refused to remove the dam.[49] Because of the blockage, the plaintiffs' property flooded with stagnant water and became a breeding ground for mosquitos.[50] The Supreme Court of Alabama held that while the plaintiff suffered actual injury, the defendant was not legally liable for the presence of the dam.[51] Instead, the court allowed the plaintiffs to remove the dam, even though the beavers would likely rebuild the dam after it was destroyed.[52]

In 1979, the Commonwealth Court of Pennsylvania decided the case of *Commonwealth v. Sadecky*, in which the defendant maintained a rat-infested junkyard, contrary to an ordinance.[53] There, the defendant used his property to store pieces of old cars and boats.[54] The defendant's maintenance of the junkyard led to a rodent infestation on his property, creating hazardous conditions for the citizens of the borough.[55] The court found that the defendant's storage of old vehicles constituted a nuisance and declared that "[a] haven for rodents is a nuisance in fact."[56]

More recently, in 2005, the plaintiffs in *Butler v. City of Palos Verdes Estates* (as residents of the defendant city) sued the city on several grounds, including private nuisance, after becoming frustrated with the city's growing peacock population.[57] Years before the lawsuit, one of the city's former mayors brought several peacocks to his home and kept them outside in an enclosure.[58] When the mayor died, his family released the birds into the wild.[59] After the release of the birds in 1965, the city developed a substantial peacock population.[60] The court found that the city was not responsible for the peacocks because the peacocks were living in the wild.[61] In reaching that decision, the court relied on the fact that the city did not feed, protect, or breed the birds.[62] The court noted that even though the original six to eight peacocks brought over

47. *Id.* at 296 (quoting 1 H.G. WOOD, NUISANCES 148-49 (3d ed. 1983)).
48. Roberts v. Brewer, 276 So. 2d 574, 575-76 (Ala. 1973).
49. *Id.* at 576-77.
50. *Id.* at 577.
51. *Id.* at 582.
52. *Id.* at 581.
53. Commonwealth v. Sadecky, 398 A.2d 1073, 1074-75 (Pa. Commw. Ct. 1979).
54. *Id.* at 1075.
55. *Id.*
56. *Id.*
57. Butler v. City of Palos Verdes Estates, 37 Cal. Rptr. 3d 199, 202 (Cal. Ct. App. 2005).
58. *Id.* at 201.
59. *Id.*
60. *Id.*
61. *Id.* at 208.
62. *Id.* at 205.

by the mayor may have been domesticated birds, the peacocks currently occupying the city were not.[63]

Last, in the 2008 case of *Belhumeur v. Zilm*, the plaintiff was attacked and injured by wild bees that had nested in one of the defendants' trees.[64] The plaintiff claimed that the bees amounted to a private nuisance because the defendants, by allowing the bees to reside on their property, were interfering with his right to use and enjoy his property.[65] The Supreme Court of New Hampshire rejected the plaintiff's claim, finding that "the defendants could not be held liable in nuisance 'for wild animals that exist on their land as a natural occurrence.'"[66] The court held that because the defendants did not contribute to the bees' presence or nesting, the bees were naturally occurring and could not constitute a private nuisance.[67]

IV. INSTANT CASE

A. The Majority Opinion

Writing for the majority, Justice Lamar explained that the issue in the instant case was whether the presence of wild alligators could be a private nuisance.[68] First, the court explained that Exxon did not bring the alligators onto the land and did not seem to be purposely keeping them there.[69] Rather, Rogers allegedly brought the alligators onto the property before he sold the land to Exxon.[70] But even if Rogers did introduce alligators to the property, the majority found that there was no evidence to show any biological relationship between Rogers' alligators and the current overpopulation of alligators on the land.[71] The majority also noted that if Rogers was the source of the alligator problem, Exxon should not be liable for his actions.[72]

Because the issue in this case was an issue of first impression for Mississippi, the court looked to a case from Alabama, *Sickman v. United States*, and a case from Seventh Circuit, *Roberts v. Brewer*, as persuasive authority.[73] The majority concluded that in these jurisdictions, "private persons cannot be held liable for the acts of wild animals on their property that are not reduced to possession."[74] The court adopted this view as its own and then turned to the law of Mississippi, explaining that only the Mississippi Department of Wildlife,

63. *Id.*
64. Belhumeur v. Zilm, 949 A.2d 162, 163 (N.H. 2008).
65. *Id.*
66. *Id.* at 164.
67. *Id.*
68. Christmas v. Exxon Mobil Corp., 138 So. 3d 123, 126 (Miss. 2014).
69. *Id.*
70. *Id.* at 127.
71. *Id.*
72. *Id.*
73. *Id.*
74. *Id.*

Fisheries, and Parks may manage wild alligators.[75] Noting that the Department alone controls all activities involving alligators, including buying, selling, capturing, and removing the reptiles, the majority concluded that Exxon's only option was to ask the Department to remove some of the alligators on the property.[76] Ultimately, the court granted summary judgment in favor of Exxon, holding that because Exxon did not possess the alligators, the animals were wild and could not be a private nuisance.[77]

B. The Dissenting Opinion

In the dissenting opinion, Justice Chandler, joined by Justices Randolph, Kitchens, and King, began by laying out the governing rules. The dissent noted that when considering Exxon's motion for summary judgment, the court must view the evidence in the light most favorable to the Christmases, as the nonmoving party.[78] The dissent found that a genuine issue of material fact existed in regard to whether the alligators were in Exxon's possession and could classify as a private nuisance or whether they were naturally occurring.[79] Justice Chandler then discussed the concept of private nuisance, first defining private nuisance and then explaining that permanent private nuisances may result in lower property values, while temporary private nuisances may not.[80]

Moving into its analysis of the case at hand, the dissent first clarified that when private individuals place wild animals on property where the animals do not otherwise appear naturally, those individuals may incur liability for private nuisance.[81] The dissent referenced *Commonwealth v. Sadecky,* a Pennsylvania case that held that a "haven for rodents is a nuisance in fact."[82] Finding that the evidence, particularly Coleman's affidavit, suggested that the alligators' presence on the land was unnatural, the dissent found that there was reason to believe that the alligators on Exxon's property did not naturally occur there.[83] Because of this possible inference, the dissent asserted that the majority failed to make all reasonable inferences in favor of the Christmases.[84]

Second, Justice Chandler found that a genuine dispute as to a material fact existed over whether the alligator infestation amounted to a nuisance.[85] Noting that while the Christmases never saw any alligators enter their property from the neighboring landfill, the dissent revealed that Mr. Christmas did see an alligator attempt to crawl under his fence, and Coleman did actually see alligators escape

75. *Id.*
76. *Id.*
77. *Id.* at 128.
78. *Id.* (Chandler, J., dissenting).
79. *Id.*
80. *Id.* at 128-29.
81. *Id.* at 129.
82. *Id.* (citing Commonwealth v. Sadecky, 398 A.2d 1073, 1075 (Pa. Commw. Ct. 1979)).
83. *Id.* at 129-30.
84. *Id.* at 130.
85. *Id.*

through the Christmases' fence.[86] Coupled with this evidence, the dissent concluded that the alligator infestation could be a private nuisance because of the Christmases' inability to use and enjoy their land.[87] The dissent based this conclusion on evidence that the Christmases were too scared of the alligators to go outside and go near their ponds, along with evidence that alligators were responsible for the couple's loss of three animals.[88]

Justice Chandler summarized the dissenting opinion by concluding that, "[i]f a landowner, in violation of Mississippi law, amassed wild alligators or lured them to his or her property, those alligators could not be said to exist in a state of nature, and the landowner could be liable for creating and maintaining a nuisance."[89] Finding that the majority failed to view the evidence in a way that favored the Christmases, as the nonmoving party, Justice Chandler held that he would remand the case for trial.[90]

V. ANALYSIS

In the instant case, the majority repeatedly used the term "wild" in reference to the alligators as a way of bolstering its position that the alligators were not in captivity. However, a closer inspection of the term "wild" in the context of private nuisance reveals that the majority used the term incorrectly throughout, confusing the concepts of "wildness" and "possession." When looking to cases from other jurisdictions, it is clear that wildness and possession have separate and distinct meanings because in the concept of private nuisance, possession of a wild animal is what sparks a duty.

In addition, as previously established, Mississippi recognizes two kinds of private nuisance. The first kind is an intentional and unreasonable invasion of another's use and enjoyment of his property. The second kind is essentially a claim for negligence, requiring duty, breach, causation, and injury. In the instant case, however, the majority failed to thoroughly analyze the facts of the case under both kinds of nuisance. Instead, the majority only briefly discussed the role of possession in private nuisance and glazed over the facts of the case. And while the dissent focused more on the elements of negligence and the facts in the record, both opinions failed to give adequate analyses of the issue at hand.

A. The Difference Between Wildness and Possession

Throughout the majority opinion, Justice Lamar emphasizes the word "wild" in reference to the alligators. She says, "We find the dispositive issue in this case is whether the presence of wild alligators can constitute a private nuisance."[91] She also announces, "At the outset, we find it important to clarify that this is a wild-alligator case. There is no evidence that Exxon brought the

86. *Id.*
87. *Id.* at 131.
88. *Id.*
89. *Id.*
90. *Id.*
91. *Id.* at 126 (majority opinion).

alligators to its property or that it is restraining the alligators in any way."[92] Toward the end of the opinion, again, she says, "Consequently, allowing wild alligators to constitute a private nuisance would subject landowners to liability for something over which they have no control."[93] But what exactly makes an alligator "wild?"

American Law Reports specifies that the term "wild animal" includes "animals of known savage nature, living ordinarily at large and not by custom devoted to the service of mankind. . . ."[94] This definition supports the conclusion that an animal is inherently wild and that its classification as "wild" will not disappear if the animal is suddenly confined to a cage or put on a leash. According to the *American Law Reports'* definition, an alligator would classify as an immutably wild animal because it is vicious and unfit for interaction with humans, let alone service. Similarly, the Mississippi Judicial College's definition is as follows:

> A wild animal is an animal that is not usually domesticated or that is not customarily used by people. A person who owns or keeps a wild animal is legally responsible for the harm that the wild animal causes to others, even if the owner carefully keeps the wild animal and does not know that the particular wild animal is dangerous.[95]

Like the definition from *American Law Reports*, this definition also indicates that an animal's categorization as "wild" is inflexible. A particular animal, by its nature, is either wild or it is not. Again, using the Mississippi Judicial College's definition of wild animal, an alligator, as an animal that is not typically domesticated, would classify as wild.

Another underlying aspect of the instant case deals with the definition of possession when wild animals are at issue. In *Pierson v. Post*, the court held that the animal in question—a fox—was a wild animal, and the only way for a person to claim ownership to a wild animal is through occupancy.[96] Occupancy, the court determined, can be defined as "actual corporal possession" of the animal, which includes keeping the animal in an enclosure or net, or can be defined as the mortal wounding of the animal with the intent to take possession of it.[97] Under *Pierson*, the key to the possession of a wild animal is denial of the animal's liberty.[98] So under *Pierson*, if a person confines an alligator, which is inherently wild, to a cage, captures it in a net, or mortally wounds it, that person has taken possession of that alligator. Taking the *Pierson* definition of

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92. *Id.*

93. *Id.* at 127.

94. E.T. Tsai, Annotation, *Owner or Keeper's Liability for Personal Injury or Death Inflicted by Wild Animal*, 21 A.L.R. 3d 603 (1968).

95. MISS. MODEL JURY INSTRUCTIONS, CIV. § 3100 (2014).

96. Pierson v. Post, 3 Cai. R. 175, 175 (N.Y. Sup. Ct. 1805).

97. *Id.* at 177-78.

98. *Id.* at 178-79.

possession in conjunction with the *American Law Reports* and Mississippi Judicial College's definitions of wild, an animal can be both wild and possessed; if a human places an alligator in some kind of enclosure, the alligator maintains its wild character despite its state of captivity.

The concepts of wildness and possession come up repeatedly throughout the majority opinion of the instant case. But the majority seems to have muddled the two terms from the very beginning of the opinion; Justice Lamar starts by declaring the case to be a "wild-alligator case" on the basis that Exxon did not have possession of the alligators.[99] In reality, that supposedly important clarification clarified nothing at all. The majority treats wildness and possession as mutually exclusive ideas, incorrectly using the word "wild" to mean "free" or "not possessed." The instant case is, however, a wild-alligator case not because the alligators were or were not being held captive on Exxon's property, but because alligators are inherently and unchangeably wild.

B. The Link Between Possession and Duty: How Possession Amounts to Duty

In order to constitute the second kind of private nuisance, there must be negligence, and all four elements of negligence must be met. The first element of negligence is duty, so in order for a person to be liable for private nuisance, he must have first had a duty. When addressing wild animals in the context of private nuisance, courts have found that possession of a wild animal can be key to establishing a duty.

White v. Lewis is one Mississippi case that dealt with the issue of negligence in the context of private nuisance. In *White*, the Supreme Court of Mississippi held the defendant liable in nuisance when his animals annoyed the neighboring plaintiffs by making too much noise.[100] In order to find nuisance, the court must have determined that the facts of the case were enough to satisfy all four elements of negligence. While these elements are not specifically discussed in the case, they are present. Beginning with the last two elements, the plaintiffs in this case clearly established injury and causation; the noisy and rambunctious animals kept the plaintiffs from enjoying their property and using it to its full potential. As for the first two elements, the court found that the defendants had a duty to keep their animals from bothering the plaintiffs and interfering with their property use, and it based that duty on the defendant's ownership and possession of the animals. Specifically, the court said, "[T]he coercive power of this extraordinary writ should not encompass those who neither owned nor controlled the annoying agencies."[101] In other words, the defendant's possession of the animals sparked the duty to keep those animals from interfering with the plaintiff's property rights. By allowing the animals to make excessive noise, the defendant breached that duty.

In *Sickman*, the Seventh Circuit held that the Government was not liable

99. Christmas v. Exxon Mobil Corp., 138 So. 3d 123, 127 (Miss. 2014).

100. White v. Lewis, 57 So. 2d 497, 498 (Miss 1952).

101. *Id.*

when migratory geese destroyed the plaintiff's corn and soybean crops.[102] While the court did explain that the plaintiffs brought suit against the Government, claiming that the geese constituted a nuisance on the basis of negligence[103], the court did not follow a clear negligence analysis. Rather, the court indirectly discussed some of the negligence elements. For example, the court acknowledged that the plaintiffs certainly had an injury; they lost their crops because of the geese.[104] The court also discussed duty by explaining the plaintiff's argument—that the Government should have had a duty to keep the birds away from their corn and soybeans.[105] In the end, the court explicitly held that "[t]he United States, considered as a private person, did not have any ownership, control, or possession of these wild geese . . . ."[106] In other words, without possessing or controlling the birds, no duty existed for the Government to breach. Further, while the Seventh Circuit made its determination based on negligence and discussed some of the elements of negligence, its analysis was unclear.

Likewise, in *Merriam v. McConnell*, the Illinois Appellate Court found that the defendants could not be held liable when bugs from their property infested their neighbor's house.[107] The court based its determination on the fact that the bugs were naturally occurring on the defendants' property; the defendants did not introduce the bugs to the land and could not be liable for failing to eradicate them.[108] The court found, however, that if the defendants had caused or even contributed to the bugs' presence on their own property, then they could be held liable for nuisance.[109] The plaintiffs in *Merriam* clearly had an injury caused by the bugs on the defendant's property, but the court could not hold the defendants liable because they did not possess or contribute to the existence of the bugs. Without possession or contribution to the bugs, no duty attached. Again, in this case, the court reached its conclusion based on an incomplete negligence analysis. The court stated, "[D]efendants have been enjoined, only where a human agency has intervened in a negligent . . . way to turn the natural creation into a nuisance."[110] Here, finding human intervention was key to finding negligence because that intervention is what creates a duty.

In *Roberts v. Brewer*, the Alabama Supreme Court refused to force the defendant to remove a naturally occurring beaver dam on his property, even though it was causing flooding and a mosquito infestation on the plaintiffs' property.[111] Finding that the defendant was not legally liable for the presence of the dam, the court gave the plaintiffs permission to go onto the defendant's

102. Sickman v. United States, 184 F.2d 616, 617 (7th Cir. 1950).
103. *Id.* at 617-18.
104. *Id.*
105. *Id.*
106. *Id.* at 618.
107. Merriam v. McConnell, 175 N.E.2d 293 (Ill. App. Ct. 1961).
108. *Id.* at 295-96.
109. *Id.*
110. *Id.* at 295.
111. Roberts v. Brewer, 276 So. 2d 574, 577 (Ala. 1973).

property and remove the dam.[112] The court certainly recognized that the plaintiffs had suffered an injury, which was the mosquito infestation and flooding because of the beavers. But because the defendant had no control over the beavers and their dam building, the court simply could not hold him liable. Without possession or control of the beavers, the defendant had no duty to remove the dam and fix the plaintiffs' problems. Accordingly, the court awarded the plaintiffs an equitable remedy, which was permission to go onto the defendant's property and remove the dam. In *Roberts*, the court only hints at its consideration of negligence by repeating that the plaintiffs claimed the defendant was "negligently maintaining" the dam.[113] And while its analysis certainly contained elements of negligence, particularly duty and injury, the court did not explicitly engage in a negligence analysis.

The Commonwealth Court of Pennsylvania, in *Sadecky*, held the defendant liable for maintaining a junkyard that became a breeding ground for rats.[114] The plaintiff, the Commonwealth, claimed that the junkyard was a safety hazard because it might attract children, and the rats were a health hazard.[115] In that case, the Commonwealth demonstrated that the injury it suffered was the hazards the junkyard posed. Because the defendant contributed to the existence of the rats by maintaining their habitat, he was liable in nuisance. By storing old boats and cars on his property and attracting the rodents, a duty attached to the defendant. He breached that duty by allowing the rats to take over his property and cause the health and safety concerns. The court's eventual conclusion was that the defendant acted negligently by breaching a duty, but strangely, the court never mentioned negligence at all.

A California Court of Appeals case made similar links between possession and liability in *Butler v. City of Palos Verdes Estates*. The court found that the city's large population of peacocks was not a private nuisance because the city did not feed, protect, or breed the birds, even though the birds were originally brought over and possessed by the city's former mayor.[116] In its determination, the court implied that had the birds been fed, enclosed, bred, or otherwise possessed, the city could have been held liable for the nuisance that the birds caused for the city's residents.[117] But because the city did not possess the birds or contribute to their existence, it had no duty to keep the birds from causing harm to others. *Butler* is yet another example of a court employing a negligence analysis and making conclusions based on negligence without openly doing so. The court could not hold the city liable for private nuisance because the city was not negligent, but the court did not make this holding overt.

In *Belhumeur v. Zilm*, the Supreme Court of New Hampshire held that the defendants could not be held liable for the presence of bees on their property.[118]

112. *Id.* at 583.

113. *Id.* at 577.

114. Commonwealth v. Sadecky, 398 A.2d 1073, 1075 (Pa. Commw. Ct. 1979).

115. *Id.*

116. Butler v. City of Palos Verdes Estates, 37 Cal. Rptr. 3d 199, 204-05 (Cal. Ct. App. 2006).

117. *Id.*

118. Belhumeur v. Zilm, 949 A.2d 162, 165-66 (N.H. 2008).

The court found that the animals were naturally present in the area, and because the defendants did not cause or contribute to the bees' existence, the bees did not amount to a private nuisance.[119] Had the defendants introduced the bees to their property or helped maintain their habitat, then they could have been held liable for private nuisance. Again, without possession, contribution, or control, no duty could attach to the defendant, and without duty, the defendant could not be liable for the plaintiff's injury. The Supreme Court of New Hampshire in *Belhumeur* was more explicit than most courts about tying the concepts of negligence and private nuisance together. In fact, the court discussed the element of duty outright. The court focused, however, solely on duty. Because the court did not even mention the other elements, the negligence analysis still seemed lacking.

In order for conduct to amount to nuisance under the second kind of private nuisance, it must be "unintentional and otherwise actionable under the rules controlling liability for negligent . . . conduct."[120] All of the aforementioned cases used some kind of rough negligence analysis, but most of them only focused on the concept of duty. All of those cases demonstrated that possession of an animal, and in some jurisdictions, control over an animal or contribution to an animal's existence, is what sparks the duty. No duty attaches without possession, control, or contribution. Duty is an essential element that must be met, and without it, there can be no finding of private nuisance based on negligence.

C. Negligence in the Instant Case

Although the facts in all of the cases mentioned above included the elements of negligence, none of the courts actually walked through the negligence analysis to determine whether the defendant was liable. Even though negligence has specific elements, not a single court in those cases mentioned all of them. While the second kind of private nuisance clearly requires a negligence analysis, courts seem to be lackadaisical in applying the facts of a case to the elements of negligence. There is a clear link between duty and possession, but courts are hardly explicit about that connection. In the instant case, the Supreme Court of Mississippi is no exception.

The majority's analysis in the instant case is incomplete. While the court does acknowledge the existence of two types of nuisance, it does not fully address either type. As for the first kind of nuisance, the court does not attempt to determine whether Exxon's conduct was intentional and unreasonable. And as for the second kind, the court does not even mention the four elements of negligence or attempt to apply the facts to those elements. The only element that the court alludes to is duty, and it does so by admitting that "other jurisdictions have held that private persons cannot be held liable for the acts of wild animals on their property that are not reduced to possession."[121] But even in this fleeting

119. *Id.* at 164.

120. Comet Delta, Inc. v. Pate Stevedore Co. of Pascagoula, Inc., 521 So. 2d 857, 859-60 (Miss. 1988).

121. Christmas v. Exxon Mobil Corp., 138 So. 3d 123, 127 (Miss. 2014).

discussion of duty, the court relies solely on possession, when many jurisdictions have imposed a duty on individuals for exhibiting control over a wild animal or for simply contributing to the existence of a wild animal.

The majority also declines to mention the facts in dispute. As the dissent points out, the record contains several allegations that Exxon played a significant role in the alligators' presence on the property. The record indicates that Exxon and Rogers may have had an agency-type relationship, and Exxon may have had a hand in importing the alligators from Louisiana. Furthermore, the record also reveals that Exxon may have been keeping the alligators in enclosures and feeding them. Instead of acknowledging these discrepancies in the record, the majority glazes over them, concluding, "[t]here is no evidence that Exxon brought the alligators to its property or that it is restraining the alligators in any way."[122] The court is correct in asserting that when an animal occurs naturally, an individual cannot be held liable; however, the facts in the instant case are far from certain. Because of these factual uncertainties, the court should have withheld summary judgment and sent the case to trial.

Another approach that courts should employ when making private nuisance analyses is to discuss every element of nuisance (rather than stopping after one) even if there is doubt surrounding an element. In the instant case, the majority discussed duty exclusively, and again, it discusses it briefly, incompletely, and in no express terms. The majority should have meticulously examined the facts of the case, and even if there was doubt surrounding the existence of duty, regardless, the court should have gone on to discuss the other three elements of negligence. A complete negligence analysis is important in cases like the instant case where the facts are unclear. Because the facts are so uncertain regarding duty, the majority should have acknowledged them and continued its analysis of the other three negligence elements. If the court could identify shortcomings with another element of negligence, it could have bolstered its argument against a finding of private nuisance instead of relying solely on the duty element to support its conclusion.

In the instant case, the dissent organized a somewhat more comprehensive analysis of the facts. The dissent discussed the concept and types of private nuisance in more detail and relied more on case law to support its position that when the circumstances surrounding an animal's presence are unnatural, a duty may attach to the party that has contributed to the animal's existence. In addition, the dissent discussed the injury element of negligence, noting that the Christmases could not enjoy their land because they feared the alligators, especially after losing several of their animals to the reptiles. The dissent also accurately pointed out the discrepancies in the record. Despite its more comprehensive approach, the dissent still lacks the structure that a private nuisance opinion needs. The analysis would have been far more effective if the dissent had discussed both types of private nuisance, including all of the elements of negligence, more exhaustively.

As a whole, courts need to be more thorough with their approaches when

122. *Id.* at 126.

discussing private nuisance, especially when they rely on negligence as a basis. Courts should define the two types of nuisance, clearly delineate the elements of negligence, and apply the facts accordingly. Particularly, when determining whether a duty exists for an animal's behavior in the context of private nuisance, courts should carefully examine the parties' conduct. If there are facts that indicate possession, control, or maintenance of animal, a duty may be present. This approach is precisely the method that the Supreme Court of Mississippi should have employed in the instant case. Rather than omitting the elements of negligence and overlooking the facts in the record, the majority should have been clearer and more detailed when reaching its conclusion. Without a well-defined analysis, the court's conclusion lacks the clarity and power that it needs to be convincing.

VI. CONCLUSION

In the instant case, the Supreme Court of Mississippi sought to determine whether the wild animals on Exxon's property could constitute a private nuisance. Because Mississippi case law is relatively silent on issues involving wild animals within the context of private nuisance, the court announced that it would look to case law from other states to resolve the issue. The court ultimately determined that the alligators were wild, and therefore could not be a private nuisance. Upon closer examination, however, case law from other states shows that wild animals can, under certain circumstances constitute private nuisance. And part of the problem with the majority opinion is that the majority repeatedly used the term "wild" incorrectly, confusing the word with the concept of captivity. But an entirely different problem with the majority opinion is the court's disregard of the evidence in support of the Christmases. At the very least, the court should have denied Exxon summary judgment on the matter to give the parties a chance to present the evidence to a fact-finder.

Regardless of the result, the Supreme Court of Mississippi in the instant case failed to deliver a well-organized opinion. Both the majority and dissenting opinions lacked the structure that a private nuisance analysis needs. The two opinions needed complete discussions of the two types of private nuisance that Mississippi recognizes, and more importantly, they needed an outlined analysis of negligence. The instant case was a perfect opportunity for the Supreme Court of Mississippi to create a strong and convincing private nuisance opinion as an example for other courts and for future decisions. But because the court's structure, analysis, and application fell short, the opinion is weak, and the conclusion is unpersuasive.