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Court of Appeals – Civil

Graves v. Hankins - Civil Procedure – Mississippi Tort Claims Act – Sovereign Immunity – Following a jury trial, Marshall Graves was convicted and sentenced as a habitual offender to life imprisonment for sexual battery and two concurrent fifteen-year sentences for fondling. Graves sued one of his former criminal defense attorneys for legal malpractice, but the circuit court dismissed the case with prejudice based on the statute of limitations. Graves then sued the Lamar County Circuit Clerk, Martin Hankins. Graves alleged that his malpractice lawsuit was dismissed because of Hankins's delay and negligence in filing and docketing the complaint. The circuit court dismissed Graves's complaint against Hankins with prejudice because it was barred by the Mississippi Tort Claims Act ("MTCA").

Because Graves's claim against Hankins was an administrative action or inaction of a judicial nature, sovereign immunity barred Graves's claim against Hankins pursuant to the MTCA. Additionally, because Graves was an inmate when his claim against Hankins arose, and because the MTCA provided an exemption from the government's liability for claims made by inmates, Graves's claim against Hankins was barred by sovereign immunity under the MTCA. Therefore, the Court of Appeals affirmed the judgment of the Lamar County Circuit Court.

Briefed by [Luke Seymour](#)

Krohn v. Krohn - Family Law – Child Support – Alimony Modification – Attorney's Fees – In April 2016, Melvin Krohn Jr. and Karen Krohn received a final judgment of divorce from the Jackson County Chancery Court based on irreconcilable differences after being married for twenty-nine years. During the marriage, Karen earned approximately \$39,000 per year while Melvin earned approximately \$218,000 per year. The couple had one child during the marriage and, upon divorce, the two executed an agreement regarding child custody, child support, maintenance, and property ("the Agreement"). In the Agreement, Melvin agreed to pay \$1,500 per month to Karen in child support and \$2,000 per month in alimony. Both agreed that if either one of them were found to be in contempt of any provision of the Agreement, the party in contempt would be responsible for the other's attorney's fees and court costs. Both parties found the Agreement difficult to abide by and subsequently, each filed suit against the other. Melvin alleged that Karen failed to abide by the Agreement regarding communications, failed to provide him with copies of the child's medical records, and forged Melvin's signature on the Agreement. Karen responded with an answer, a counterclaim, and a motion for modification, alleging that Melvin had exposed the child to "illegal activity" of drinking and failed to acquire the proper insurance that the Agreement required. The court denied Melvin's motion for relief, finding insufficient evidence that Melvin's signature was forged. In December 2016, Melvin was involuntarily released from his job

that paid him \$218,000 per year. He eventually obtained a job at the same company, but with a salary of approximately \$84,000 per year. Also, the child moved into Melvin's residence in February 2017. There was nothing in the record to indicate why or if the move was ordered or sanctioned by the court. The chancery court gave Melvin child-support credit, but also found Melvin in willful and contumacious contempt of court, ordered his incarceration, and assessed a \$43,100 judgment against him for arrearages, alimony, and attorney's fees. The court allowed Melvin to pay \$15,000 of the arrearages to be released from prison and also reduced his child support obligations from \$1,500 a month to \$982 according to his adjusted gross income. The court found Karen in contempt for failing to produce the child's shot records upon Melvin's request. Following the denial of Melvin's motions, he appealed, raising the following issues: (1) whether the chancery court erred in failing to award Melvin child support for the period he had custody of the child; (2) whether the chancery court erred in failing to modify Melvin's alimony obligation; and (3) whether the chancery court erred in awarding attorney's fees to Karen and failing to award attorney's fees to Melvin.

Karen and Melvin mutually agreed that the child would stay with Melvin for several months with no court order concerning this change in custody, thus giving the court no basis to find Karen in contempt or to order her to pay child support for those months. Accordingly, the chancery court did not abuse its discretion when it failed to order Karen to pay child support for the months Melvin had the child. Also, because Melvin proved that his decrease in income was unanticipated, substantial, and a material change in circumstances such that he may be entitled to a modification of monetary obligations after an analysis applying the *Armstrong* factors, the chancery court abused its discretion when it erroneously failed to apply these factors to his alimony obligation. Lastly, because both parties were found to be in contempt, the chancery court erred in awarding Karen attorney's fees for all matters and the determination of attorney's fees should be attributable to each separate action and allocated accordingly. Therefore, the Court of Appeals affirmed in part and reversed and remanded in part the judgment of the Jackson County Chancery Court.

Briefed by [Matthew Rhea](#)

Robinson v. Singh - Civil Procedure – Post-Trial Motions – Statute of Limitations – In June 2008, Anshika Singh and Abby Robinson entered into an agreement, in which Singh would loan Robinson money for ninety days. A few days later, they entered into another agreement for Singh to loan Robinson an additional sum of money. Robinson drafted both of these agreements. Both parties signed the first agreement, while only Robinson signed the second agreement. They also entered into several more oral agreements, in which Singh lent money to Robinson. Robinson made repayments until 2010, when Singh claimed Robinson still owed \$60,000, and Singh brought a claim for breach of contract in the County Court of Madison County. At trial, Robinson claimed her signature on the second agreement was forged. Singh asked for Mary Grant, the notary public who witnessed the signing, to be allowed to testify via Skype. Robinson objected, but the county court allowed Grant's Skype testimony. The jury awarded Singh damages in the amount of \$100,000 and court costs. Robinson filed a notice of appeal, but did not file any post-trial motions in the county court. The circuit court reviewed and affirmed the judgment of the county court. Robinson appealed.

Because she did not file any post-trial motions, Robinson waived her argument that the jury's verdict lacked evidentiary support. Further, because she did not request any jury instructions based on the statute of limitations or make any post-trial motions, Robinson also failed to preserve the statute of limitations issue for appeal. In addition, because evidence requiring the notary public's testimony had only arisen five days before trial and the witness was subject to vigorous cross-examination, the trial judge did not abuse her discretion by allowing the

notary public to testify via Skype. Finally, because there was no evidence that Singh's delay was contumacious or dilatory or that Robinson was prejudiced by the delay, the county court did not abuse its discretion by denying Robinson's Miss. R. Civ. P. 41(b) motion to dismiss for lack of prosecution. Therefore, the Court of Appeals affirmed the judgment of the Madison County Circuit Court.

Briefed by [Reid Hudson](#)

Ward v. Estate of Cook - Civil Procedure – Undue Influence – Confidential Relationship – After Mary Cook's three children ("the conservators") were appointed as conservators of her person and estate, they filed a petition alleging that her former business partner, John Ward, improperly obtained residential real property and money from Cook while she was incompetent. The conservators claimed Ward did this by writing checks to himself, making transfers to his personal account, and/or forging Cook's signature. Ward obtained the residential property by having Cook deed the property to him. The deed was not notarized, and there was no evidence that the deed was prepared by an attorney. The conservators filed a petition to be appointed as conservators of their mother's person and estate, alleging that she lacked the mental capacity to manage her affairs. The chancery court granted their petition, which was supported by letters from two of Cook's physicians. The conservators then filed a petition to cancel the deed transferring the residential real property and to recover funds that Ward had taken from Cook's personal account and the joint accounts. They argued that Cook lacked the capacity to deed the residential property and transfer funds to Ward. The chancery court ruled that a confidential relationship existed between Ward and Cook, and that Ward had used undue influence to obtain the residential property and to obtain or spend a total of \$95,537.86 from Cook's bank account and joint accounts. Therefore, the chancery court set aside the residential property deed and granted Cook's estate a judgment against Ward for \$95,537.86 plus five percent post-judgment interest. Ward appealed.

On appeal, Ward argued the chancellor erred by (1) finding that Ward had a confidential relationship with Cook and exercised undue influence over Cook when the conservators did not plead those issues in their petition; (2) considering hearsay; (3) finding that Cook was not competent to execute the residential property deed; (4) holding that Ward lacked standing to challenge Cook's conservatorship; (5) allowing Cook's daughter to testify about some of Cook's medical records; and (6) excluding an expert witness whom Ward disclosed just before the second day of the trial. Because Miss. R. Civ. P. 15(b) allows issues to be tried with implied consent by the parties, and the chancellor talked with Ward's attorney during the trial about the issue, the issue of undue influence was tried by implied consent and there was ample evidence to support the chancellor's finding of a confidential relationship. Further, because Ward did not object to the hearsay at trial, it became competent evidence for the trier of fact to consider. Also, because the chancellor's primary basis to set the deed aside was undue influence and not lack of capacity, it was unnecessary to address this additional finding by the chancellor. Additionally, because Ward was considered a "stranger" to the conservatorship, Ward did not have standing to appeal the chancellor's ruling to set aside the conservatorship. Furthermore, because the chancellor's opinion mentioned the hemoglobin test results only briefly, and there was nothing to indicate that the issue impacted the chancellor's decision, Cook's daughter's testimony about the medical record was a harmless error. Finally, because, absent special circumstances, the court does not allow testimony at trial of an expert witness who was not designated as an expert witness to all attorneys of record at least sixty days before trial, the chancellor did not abuse her discretion by excluding expert testimony from Ward's expert witness. Therefore, the Court of Appeals affirmed the judgment of the Oktibbeha County Chancery Court.

Briefed by [Daniel Bond](#)

Court of Appeals – Post-Conviction Relief

Freeman v. State - Post-Conviction Relief – Successive Motion – Time-barred – Elliott Freeman pled guilty as a habitual offender to three counts related to burglary and was sentenced to thirty years in prison. Although Freeman was indicted pursuant to Miss. Code Ann. § 99-19-83, he was sentenced pursuant to Miss. Code Ann. § 99-19-81. The former statute required the State to demonstrate that the defendant served a prison sentence in excess of one year, but the latter statute did not require this showing. Freeman filed three successive motions for post-conviction relief. He was convicted in 2009 and the motion at issue was filed in 2017. Pursuant to Miss. Code Ann. § 99-39-5(2), a movant is required to file a PCR motion within three years after the entry of a judgment of conviction. Additionally, Miss. Code Ann. § 99-39-23(6) provides that the denial or dismissal of a PCR motion bars any second or successive motion. On appeal, Freeman challenged the circuit court's denial of his third PCR motion and further argued that his sentence was illegal because the State did not prove that he served the requisite prison sentences.

Because Freeman's motion was successive and because it was filed more than three years after entry of judgment, it was procedurally improper and time-barred. Furthermore, because Miss. Code Ann. § 99-19-81 does not require the State to show that the defendant served the prison sentence and because Freeman admitted to the prior felonies in the course of entering the plea, the trial court did not err in denying Freeman's motion for post-conviction relief. Therefore, the Court of Appeals affirmed the judgment of the DeSoto County Circuit Court.

Briefed by [Eli Scott](#)

Tucker v. State - Habitual Offender – Guilty Plea – Ineffective Assistance of Counsel – In December 2016, Marion Tucker was indicted for possession of methamphetamine, possession of clonazepam, possession of marijuana, possession of a firearm by a felon, and possession of hydrocodone and acetaminophen while in possession of a firearm. The State indicted Tucker as both a habitual offender and a second drug offender. A jury trial commenced on July 10, 2017. Later that same day, Tucker decided to forego the rest of his trial and pled guilty to all charges. The trial court accepted the guilty pleas and dismissed the habitual offender portions of the indictments. Tucker was sentenced to serve forty years for possession of methamphetamine, and fifty years for possession of a firearm by a felon and possession of hydrocodone and acetaminophen while in possession of a firearm. These sentences were ordered to run consecutively for a total of ninety years to serve. Tucker filed a motion for post-conviction collateral relief ("PCR"), claiming an erroneous habitual offender sentence, an insufficient factual basis supporting his guilty pleas, involuntary pleas, and ineffective assistance of counsel. The Neshoba County Circuit Court denied Tucker's motion on the merits, and Tucker appealed the denial.

Tucker's claim that the trial court erroneously sentenced him as a habitual offender was not supported by either the record or the sentencing order, which specifically noted that Tucker was sentenced as a second drug offender and not as a habitual offender. Additionally, because the State had already presented its evidence of guilt at trial prior to Tucker's guilty pleas, a sufficient factual basis supported Tucker's guilty pleas. Tucker also claimed that his pleas were involuntary because the trial court failed to advise him of his right to counsel, right

to cross-examine witnesses at trial, and his right against self-incrimination. However, the record showed that he was advised of his right to cross-examine witnesses and his right against self-incrimination. Further, because Tucker was represented by counsel, the trial court was not obligated to advise him of his right to counsel. Finally, because the record showed Tucker's testimony expressed satisfaction with his representation and the ineffective assistance of counsel claim was supported only by conclusory allegations, Tucker failed to prove ineffective assistance of counsel. Therefore, the Court of Appeals affirmed the judgment of the Neshoba County Circuit Court.

Briefed by [Michael Sturgus](#)

Court of Appeals – Criminal

Stevens v. State - Criminal Procedure – Evidence – Statute of Limitations – In December 2015, Charbrekia Stevens and four other women entered a clothing store in Neshoba County. After their departure, the store owner noticed over \$3,000 in missing merchandise. The police reviewed security footage, which captured the suspects from at least five different camera angles. The police transmitted the recordings to a thumb drive but the thumb drive was misplaced. Ultimately, the police were able to locate footage from only one camera angle. They printed copies of the images and gave them to Crime Stoppers, which eventually generated two anonymous tips that led to an identification of Stevens. An arrest warrant was issued on January 4, 2016, but Stevens was not indicted until January 11, 2018. A Neshoba County jury convicted Stevens of felony shoplifting and Stevens appealed, claiming the statute of limitations had run on the charge, the trial court erred in the giving and refusing of jury instructions, and citing multiple evidentiary issues.

Because the prosecution commenced the action on January 4, 2016, when the arrest warrant was issued, the felony-shoplifting charge was not barred by the two-year statute of limitations. Additionally, because the jury instructions accurately stated the law and Stevens failed to produce evidence sufficient to support a misdemeanor instruction, the trial court did not err in refusing to give either of Stevens's proffered instructions. Furthermore, because Stevens failed to object with specificity and there was no evidence that the lost thumb drive was the product of bad faith, the trial court did not err in admitting the testimony of the State's witness and the video images did not violate the best evidence rule. Finally, because the sentencing order did not exceed the statutory maximum for felony shoplifting, the order was affirmed. Therefore, the Court of Appeals affirmed the judgment of the Neshoba County Circuit Court.

Briefed by [Breland Parker](#)

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