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## **Court of Appeals – Civil**

**Beckham v. Beckham** - Contracts – Policy Changes – Substantial Compliance – Prior to his death, Brad Beckham began expressing his intention to change the beneficiary on his two life insurance policies from his mother, Rita, to his wife, Lindsey. Brad informed the secretary at his employer's office of his intention to change beneficiaries, and she informed him that he would need to give her a written, signed request; however, Brad never made the request. Brad also began filling out the forms needed to change his MetLife policy, a policy separate from his employment insurance, but Brad only completed page one of the eight required forms before going to Louisiana on a business trip. While in Louisiana, Brad died in an accidental death. Both policies' proceeds were given to Rita, and Lindsey filed suit in chancery court claiming she was the owner of the proceeds of the policies. The trial court found that Brad failed to satisfy both prongs of the "substantial compliance rule," which requires evidence of intent to change beneficiaries and that a person do all he can do to comply with requirements of the policy.

Because Brad did not do all that he could do to change his beneficiary designation, and because Lindsey expressly admitted that he did not do all that he could have done, Rita's motion for summary judgment was granted. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Chancery Court.

Briefed by [John Forrest Kelly](#)

**Cook v. NPN Props.** - Civil Procedure – Post-Judgment Motions – Timeliness – In 2010, Carol Cook brought a negligence action against NPN Properties ("NPN") after she slipped and fell at the Comfort Inn in McComb, Mississippi. On March 23, 2015, the Pike County Circuit Court entered an order granting NPN's motion for summary judgment. Following the order, Cook filed two motions for additional time to file a motion for "reconsideration/rehearing," both of which were granted. NPN did not object to either motion. On April 22, 2015, Cook filed her motion for reconsideration/rehearing. In response, NPN argued that a trial court cannot extend the ten-day time period required to file a motion for reconsideration/rehearing under Miss. R. Civ. P. 59(e); therefore, Cook's motion could only be treated as one for relief from judgment under Miss. R. Civ. P. 60(b). On March 23, 2018, the trial court entered its order denying Cook's motion for reconsideration/rehearing, classifying the motion as a Rule 60(b) motion and determining that Cook failed to demonstrate that she was entitled to relief under Rule 60(b). On April 19, 2018, Cook filed her notice of appeal and submitted that the court should find the following: (1) that her motion for reconsideration/rehearing was a motion for relief from judgment pursuant to Rule 60(b) and (2) that she be granted an opportunity to appeal the case under Rules 60(b)(3) and 60(b)(6) of the Mississippi Rules of Civil Procedure.

On appeal, the court held that it lacked jurisdiction to address the merits of Cook's appeal from the trial court's order granting summary judgment under Rules 4(a) and 4(d) of the Mississippi Rules of Appellate Procedure because Cook did not file a notice of appeal within thirty days after the order granting summary judgment, and her motion for reconsideration/rehearing did not toll the thirty-day time period because it was not filed within ten days after the entry of judgment. Additionally, it held that the trial court properly classified Cook's motion for reconsideration/rehearing as a Rule 60(b) motion and properly denied it because it was an attempt to relitigate the case, as Cook failed to demonstrate that she qualified for relief under any of the grounds set forth in Rule 60(b). Therefore, the Court of Appeals affirmed the judgment of the Pike County Circuit Court on the issue of Cook's Rule 60(b) motion and dismissed Cook's appeal from the order granting summary judgment.

Judge McCarty dissented in part, agreeing with the majority that Cook's motion for reconsideration/rehearing did not set forth any grounds that prompted granting a Rule 60(b) motion, but disagreeing with the majority's determination that it lacked jurisdiction to entertain Cook's appeal from the trial court's grant of summary judgment. Judge McCarty argued that, while NPN did raise the issue of timeliness after Cook filed her motion for reconsideration/rehearing, NPN failed to object to either of Cook's two motions for a continuance to file her motion for reconsideration/rehearing. Accordingly, Judge McCarty would have had the court fully resolve the appeal because of NPN's failure to object.

Briefed by [Breland Parker](#)

**[Edwards v. Williams](#)** - Adverse Possession – Open, Notorious, & Visible – Hostile – Plaintiff, owner of Lots 2 and 3, filed suit against her neighbors for trespass and damages after discovering a fence was put up and outbuildings were bulldozed on the property. The neighbors, owners of the adjacent Lot 1, counterclaimed alleging that they acquired the property where the fence was through adverse possession. The chancery court found that adverse possession was established and dismissed the claim for trespass and damages. Plaintiff appealed, challenging the chancery court's findings on the elements of the claim of adverse possession.

Because the possession was not open, notorious, and visible and the possession was not hostile, two elements of the claim of adverse possession were not met. The chancery court erred in finding that adverse possession was established. Therefore, the chancery court's judgment was reversed and rendered in part on the finding of adverse possession and reversed and remanded in part for resolution of the claim of trespass.

Briefed by [Philip Lott](#)

**[Fields v. Gulf Publ'g. Co., Inc.](#)** - Wrongful Death – Motion to Exclude – Expert Witness – Gloria Fields filed a wrongful death claim against Marjorie Richards and her employer, Gulf Publishing Company. Richards was the district manager for Gulf Publishing Company, and she was asked to deliver extra newspapers to a newspaper carrier early one morning. It was still dark outside when Richards was delivering the papers, and she struck Devitra Kelly, Fields's daughter, with her car. Kelly died as a result of the incident. Richards testified that she had her headlights on while she was driving, that she was going the speed limit, and that the road was dark and narrow. In addition, Kelly was wearing dark clothes that made her hard to see. Prior to the trial, Fields filed a motion to exclude two expert witnesses brought on behalf of Richards. One expert, Dr. Webb, was a psychologist. Dr. Webb received his medical degree from Tulane University and had been a licensed

psychologist for over 27 years. Dr. Webb testified about several mental ailments that Kelly suffered from. The trial court granted in part and denied in part his testimony. The court denied him from offering his opinion as to the cause of the accident. The other expert, Alexander, was admitted to testify as an accident reconstructionist. He had been an accident reconstructionist for over 30 years, and he taught accident reconstruction courses. The trial court denied the motion to exclude Alexander as an expert witness. At the conclusion of the trial, the jury rendered a verdict in favor of Richards and Gulf Publishing Company. Kelly appealed.

In order for an expert witness to be able to testify, the witness's conclusions must be reasonably and accurately based upon the facts of the case, as distinguished from mere guess or conjecture. Further, the trial court is to act as a gatekeeper and has discretion in deciding whether to admit expert witnesses. Because the trial court did not allow Dr. Webb to offer any opinions about what contributed to Kelly's death, because Alexander's conclusions were based on visiting the scene of the accident multiple times, reviewing depositions, and reviewing police reports, Alexander's conclusions were reasonably based on the facts of the case. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Circuit Court.

Briefed by [Matthew Russ](#)

**[Thompson v. State](#)** - Appeals – Plea Agreement – Waiver – Travis James Thompson was indicted on three counts of possession of controlled substances with intent to sell them within 1,500 feet of a school. Thompson pled guilty to all three charges and was sentenced as a nonviolent habitual offender. Thompson filed a “motion to quash indictment,” arguing that the indictment was fatally defective and unconstitutional and that he had been illegally sentenced as a nonviolent habitual offender. This motion was considered a petition for post-conviction relief and denied by the trial court. Thompson appealed.

Because Thompson did not discuss an assignment of error in his brief, and because Thompson freely, voluntarily, knowingly, and intelligently entered a valid plea agreement, Thompson's claims regarding the sufficiency of his indictment were waived and without merit. Because a failure to object to a habitual-offender enhancement during sentencing procedurally bars a defendant from raising that issue on appeal, Thompson's claims regarding the legality of his sentence were waived and without merit. Therefore, the Court of Appeals affirmed the judgment of the Jones County Circuit Court.

Briefed by [Charles Matranga](#)

## **Court of Appeals – Post-Conviction Relief**

**[Freelon v. State](#)** - Appellate Procedure – Evidentiary Support – Laronda Freelon was indicted for aggravated assault with a deadly weapon and robbery with a deadly weapon in violation of Miss. Code Ann. § 97-3-7(2) and Miss. Code Ann. § 97-3-79. The indictment also charged Freelon as a habitual offender under Miss. Code Ann. § 99-19-81, citing three prior felony convictions. Freelon's attorney negotiated a plea agreement to remove the habitual-offender designation. Prior to accepting Freelon's guilty plea, the circuit court engaged Freelon in an exhaustive examination, during which Freelon was asked several questions about her understanding of the charges, sentencing, inappropriate influences, and the rights she would waive by pleading guilty. The circuit

court accepted Freelon's guilty plea and followed the State's recommendation for sentencing. The order did not reflect a habitual-offender enhancement. After conviction, Freelon filed two, successive PCR motions. Both were denied. The second denial entered an "Order Denying Relief Requested," noting the second PCR motion as successive. Freelon appealed.

Freelon alleges a denial of due process and asserts that the MDOC, in violation of the court's orders, converted her sentences to that of a habitual offender. Freelon also claims that police officers and the court misinformed her regarding the charges and sentencing guidelines related to her guilty plea, specifically that her term to serve was non-mandatory. Because Freelon cited neither the record nor caselaw to support her arguments, the court was not required to lend its consideration to her claims under Miss. R. App. P. 10(b)(1) & 28(a)(7), respectively. Further, Freelon wholly misrepresented the facts surrounding her assignments of error. Therefore, the Court of Appeals affirmed the Calhoun County Circuit Court's denial of Freelon's PCR motion.

Briefed by [Frank Wood](#)

**[Powell v. State](#)** - Post-Conviction Relief – Petition – Merit – In December 1983, Jimmy Powell pled guilty to two counts of armed robbery. Powell filed motions for post-conviction relief ("PCR") in December 1994, August 1996, and August 2018, alleging: (1) that he was not advised that he waived his privilege against self-incrimination; (2) ineffective assistance of counsel; (3) that he was not advised of the minimum and maximum sentences for armed robbery; and (4) that his two guilty pleas infringed upon his right to a fair trial. Powell also alleged that the indictments failed to put him on notice of the nature of the charges against him and therefore, his indictments were void. In the latest PCR motion, the Copiah County Circuit Court dismissed Powell's motion arguing that it was successive writ and based upon the same issues in Powell's previous motions. The Court of Appeals held that Powell's motion was time barred and successive-writ barred, and that Powell's indictments adequately established the elements of armed robbery. Therefore, the trial court's judgment was affirmed.

Briefed by [Jennifer Lee](#)

**[Tingle v. State](#)** - Civil – Post-Conviction Relief – Out-of-Time Appeals – In May 2016, Donnell Tingle was indicted for "Burglary of a Nondwelling" after he broke into a building and stole tires. Tingle pled guilty to the charges and was sentenced but filed two post-conviction relief ("PCR") motions in the circuit court alleging a variety of claims like ineffective assistance of counsel and that there was no factual basis for his guilty plea. The circuit court denied PCR. Tingle appealed to the Court of Appeals claiming that (1) the indictment failed to charge him with the essential elements of the crime; (2) he should have been indicted for trespassing; (3) his guilty plea was involuntary; and (4) he received ineffective assistance of counsel. Because of the extreme tardiness of Tingle's motion, the raising of the ineffective assistance of counsel claim for the first time on appeal, and the meritless remaining claims, the Court of Appeals found that allowing Tingle's out-of-time appeal was not "in the interest of justice." Therefore, the Court of Appeal affirmed the judgment of the Lauderdale County Circuit Court and dismissed Tingle's appeal as untimely.

Briefed by [Sarah Schofield](#)

### **Townsend v. State** - Factual Basis for a Guilty Plea – Ineffective Assistance of Counsel – Damien

Townsend pled guilty to conspiracy to sell methamphetamine. Townsend filed a petition for Post-Conviction Relief (“PCR”), which the trial court denied. He appealed on the grounds that there was no factual basis for a guilty plea and that he had ineffective assistance of counsel. The facts presented to the trial court suggested that the State could prove beyond a reasonable doubt that Townsend conspired to sell methamphetamine. Further, Townsend agreed, under oath, to the facts stipulated to the court. Townsend claimed that his plea was not entered voluntarily; however, the trial court presented him with his constitutional rights and that when he entered his plea it would be considered knowingly and intelligently entered. The appellate court found no error on this issue.

Townsend also claimed that his attorney did not challenge the factual basis of the State’s version of the events and that he did not properly investigate. To prove ineffective assistance of counsel Townsend must prove with reasonable probability that but for his counsel’s assistance he would not have pled guilty, taken the case to trial, and that the outcome would have been different. A mere assertion of ineffectiveness is insufficient proof. Townsend’s assertion of ineffective counsel contradicts his sworn testimony at his plea hearing that he was satisfied with his representation. When asked if he had any complaints about his attorney, he replied, “No sir.” Therefore, the Court of Appeals affirmed the judgment of the Madison County Circuit Court.

Briefed by [Liza Linginfelter](#)

## **Court of Appeals – Criminal**

**Hodges v. State** - Criminal Procedure – Jury Instructions – Essential Elements – Derrick Sanders’s dead body was found on Highway 7 near Sexton Road with several body parts missing. Six weeks later, David Glass’s body was found just yards from where Sanders had died with similar injuries to those suffered by Sanders. Glass, however, survived for a short while following the attack on him. Glass informed law enforcement on the night of the attack that dogs attacked him and bit him. Glass stated that the dogs came from Sexton Road, and he stated that while he was not sure who owned the dogs, he believed that they belonged to Eric Hodges. Glass died from the injuries he sustained the next day. Hodges lived some sixty to eighty yards from where both Sanders’s and Glass’s bodies were found. Hodges owned six pit bull dogs and informed law enforcement that he would sometimes let the dogs roam free at night. The Benton County Sheriff’s Department and the Mississippi Bureau of Investigations investigated the deaths of both Sanders and Glass. After the conclusion of their investigation, Hodges was indicted on two counts of manslaughter relating to the ownership of a dangerous animal under Miss. Code Ann. § 97-3-45. Hodges was tried and convicted on both counts and sentenced to twenty years in the custody of the Mississippi Department of Corrections for each count. Hodges filed a motion for a new trial, which the trial court denied. Hodges appealed.

On appeal, Hodges asserted that his convictions should be reversed and his case remanded for a new trial because the jury was not instructed on an essential element of both charged crimes. Miss. Ann. Code § 97-3-45 requires the accused to have owned dogs “knowing [their] propensity [for mischievousness/dangerousness].” The jury instructions provided to the jury in Hodges’s trial substituted this element with the lesser requirement that the accused “know [the dogs] propensity to go at large.” Because the jury instructions, as a whole, omitted the essential element that the jury find that Hodges knew that his dogs

had a dangerous propensity, the Court held that the trial court had committed a plain error. Therefore, the Court of Appeals reversed and remanded the judgment of the Benton County Circuit Court.

Briefed by [Bryant Carlton](#)

**[Peterman v. State](#)** - Criminal Procedure - Pretrial Motions - Motions to Dismiss Counsel – In December of 2016, Joshua Peterson was indicted for murder to be tried in the Harrison County Circuit Court. He was appointed counsel by the court due to his indigency. Before trial, Peterman filed a motion to dismiss counsel and re-appoint new counsel. His motion was denied. He was subsequently convicted for murder and sentenced to serve life in prison without eligibility for parole. On appeal, Peterman contends that the trial court erred in failing to grant his pretrial motion to dismiss counsel and that because of the denial, he failed to receive adequate representation during trial.

In order to successfully be granted a motion to dismiss counsel and re-appoint new counsel, the defendant must show good cause, such as a conflict of interest, a complete breakdown of communication, or an irreconcilable conflict which leads to an unjust verdict. Here, the trial court reasonably found no such good cause as the dispute was merely a personality conflict between Peterman and his attorney. Further, Peterman failed to show how his attorney's continued representation led to an unjust verdict. Thus, Peterman has not adequately shown that good cause existed requiring a change in counsel. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Circuit Court.

Briefed by [Cristofor Taylor](#)

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