

MISSISSIPPI SUPREME COURT DECISIONS – FEBRUARY 20, 2020**SUPREME COURT - CIVIL CASES****ANDERSON V. WIGGINS****CIVIL - TORTS-OTHER THAN PERSONAL INJURY & PROPERTY DAMAGE**

WILLS & ESTATES - INTER VIVOS GIFTS - UNDUE INFLUENCE - A presumption of undue influence is not raised merely because a beneficiary occupies a confidential relationship with the testator; something more is required, such as active participation by the beneficiary in the procurement, preparation or execution of the will or mental infirmity of the testator; in other words, there must be some showing that the beneficiary abused the relationship either by asserting dominance over the testator or by substituting her intent for that of the testator

WILLS & ESTATES - INTER VIVOS GIFTS - INCAPACITY - Incapacity requires a showing that the person either (1) did not understand the legal consequences of his actions; (2) suffered from a general weakness of intellect with either inadequate consideration given for the transfer, or a confidential relationship; or (3) suffered from permanent insanity up to and after the date of execution

WILLS & ESTATES - INTER VIVOS GIFTS - INCAPACITY - Except for permanent insanity, the critical time for determining capacity is the transfer date

FACTS

Darnice Wiggins sued her deceased son's fiancée, Chasity Anderson, for conversion. The decedent, Jhonte Sanders, met Anderson in the military and reconnected with her online following his diagnosis with leukemia. Sanders received a personal injury settlement of over \$350,000 while recovering from seizures, undergoing chemotherapy, and receiving rehabilitative speech therapy. Throughout this time, Wiggins served as Sanders's primary caregiver and transported him to and from his appointments. Prior to his death, Sanders transferred his settlement proceeds to Anderson in three large payments. Wiggins was appointed administratrix of Sanders's estate and filed a complaint for conversion against Anderson. Wiggins then sent Anderson a request for admissions; Anderson failed to respond. Wiggins filed a motion for summary judgment, and at the hearing, Wiggins offered multiple exhibits into evidence, including an affidavit from Sanders's neuropsychologist. The neuropsychologist treated Sanders two months prior to the gifts, and she relied on Sanders's therapist's notes in forming her opinion regarding his competency. None of the therapist's notes were taken the same days as the gifts, but one note was taken on the same day that Sanders signed a gift letter. The chancery court found that no issue of material fact existed and granted Wiggins's motion for summary judgment. The Court of Appeals affirmed, and Anderson appealed.

ISSUES

Whether the chancery court erred at the summary judgment hearing by finding that (1) Wiggins sufficiently proved that Anderson wrongfully converted Sanders's funds by means of undue influence and (2) Wiggins provided sufficient evidence to prove that Sanders was a vulnerable adult.

HOLDING

(1) Because no proof was offered that Anderson actively participated in the procurement, preparation, or execution of the transfers, Wiggins failed to prove that Anderson wrongfully converted Sanders's funds by means of undue influence. (2) Because Sanders's neuropsychologist could not adequately form an opinion of Sanders's capacity on the transfer dates, Wiggins did not provide sufficient evidence to prove that Sanders was a vulnerable adult. Therefore, the Supreme Court reversed and remanded the judgment of the Rankin County Chancery Court.

Reversed & Remanded - 2017-CT-00607-SCT (Feb. 20, 2020)

Opinion by Justice Coleman

Hon. John S. Grant III (Rankin County Chancery Court)

James N. Scarff II for Appellant - Thomas J. Lowe Jr. & James B. Grenfell for Appellee

Briefed by [Eli Scott](#)

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HOLLAND V. MURPHY OIL USA, INC.

CIVIL - PERSONAL INJURY

CIVIL - TORTS - DUTY OF CARE - The duty of care is an affirmative duty, in that the land possessor has not acted in any way to create the risks posed by natural conditions

CIVIL - TORTS - LIABILITY - A landowner is not responsible for the acts of a third party, unless he exercises a duty of control in which the landowner “takes charge” of the third party

FACTS

Mario Holland parked his vehicle across the street from a vacant lot owned by Murphy Oil. Upon returning to his parked vehicle, Holland was shot and robbed by a third-party assailant, who came from Murphy Oil’s vacant lot. Holland suffered serious injuries from the assault. Holland sued various entities along with Murphy Oil as the owner of the vacant lot where the assailant originated. Holland argued that section 54 of the Restatement (Third) of Torts should apply, which provides that landowners owe certain duties of care to persons off their premises. Holland also filed a request for time to conduct discovery under Miss. R. Civ. P. 56(f). The trial court found that Murphy Oil did not control the assailant and that section 54 was inconsistent with Mississippi Law. Holland appealed.

ISSUES

Whether (1) section 54 should be adopted and applied to this case and (2) the trial court erred by granting summary judgment.

HOLDING

(1) Because Holland’s case didn’t fall within the language of section 54, the court declined to adopt the section to the case at bar. (2) Because Murphy Oil did not have a way to “take control” of the third party assailant, no special relationship existed between Murphy Oil and the assailant, and because a “duty” is essential to a negligence claim and no legal duty from Murphy Oil to Holland existed, the trial court’s grant of summary judgment was appropriate. Therefore, the Supreme Court affirmed the judgment of the Hinds County Circuit Court.

Affirmed - 2018-CA-01491-SCT (Feb. 20, 2020)

Opinion by Presiding Justice King

Hon. Joseph Anthony Scalfani (Hinds County Circuit Court)

Terris Caton Harris for Appellant - David C. Dunbar, Eric Reynolds Price, and Christopher Gerrard Dunnells for Appellees

Briefed by [R. Matthew Rhea](#)

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IN RE ESTATE OF MATUTE

CIVIL - WILLS, TRUSTS, & ESTATES

CONSTITUTIONAL LAW - SOVEREIGN IMMUNITY - STATES - The Eleventh Amendment is rooted in a recognition that the States maintain certain attributes of sovereignty, including sovereign immunity; the Constitution

bars suits against nonconsenting States in a wide range of cases, including suits by private parties against a State in its own courts

CIVIL PROCEDURE - JUDGMENTS - EXECUTION - Under Miss. Code Ann. § 85-3-1, tangible personal property not exceeding \$ 10,000 is exempt from seizure with respect to execution of a judgment

FACTS

Julisa Matute was admitted to the University of South Alabama Medical Center (“USA”), following a motor-vehicle accident. She died intestate on February 11, 2016, and her organs were donated to the Alabama Organ Center (“AOC”). After Matute’s death, USA probated a claim against her Estate. The Estate counterclaimed arguing that the probated claim was void, because the hospital had agreed to cover Matute’s medical expenses as consideration for the organ donation. USA filed a motion seeking dismissal of the Estate’s counterclaim for lack of jurisdiction. USA argued that as an Alabama state entity, it was entitled to sovereign immunity. The chancery court denied the motion. The Estate subsequently filed a wrongful-death lawsuit and obtained a settlement. Following a hearing on USA’s probated claim, the chancellor found that the court had jurisdiction over USA and its hospital lien claim. The court held that USA’s claims against the Estate were both invalid and uncollectable. USA filed a motion seeking recovery from the settlement of the wrongful-death claims. The chancellor denied the motion. USA appealed.

ISSUES

Whether the chancellor erred by (1) denying USA’s claim of sovereign immunity; (2) finding its probated claim against the Estate invalid; and (3) entering an order concerning the validity of a hospital lien.

HOLDING

(1) Because USA was not entitled to sovereign immunity on its probated claim against the Estate, the chancellor did not err by denying USA’s sovereign-immunity claim and finding jurisdiction. (2) Because the organ donation agreement was between Matute’s family and AOC, and because there was no evidence of an agency relationship between USA and AOC, the chancellor was manifestly wrong and clearly erroneous in finding that USA’s probated claim was invalid due to the agreement. However, because the claim was uncollectable, the denial of the claim was proper. (3) Because the only claim before the chancellor was the probated claim for medical services, the chancellor erred by entering an order as to the validity of USA’s hospital lien claim. Therefore, the Supreme Court affirmed in part, and reversed and rendered in part the judgment of the Harrison County Chancery Court.

Affirmed in Part; Reversed & Rendered in Part - 2018-CA-01772-SCT (Feb. 20, 2020)

Opinion by Justice Griffis

Hon. Sanford R. Steckler (Harrison County Chancery Court, First Judicial Dist.)

Thomas Richard Boller for Appellant - Jim L. Davis III for Appellee

Briefed by [Charity Karanja](#)

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LIBERTY MUT. FIRE INS. CO. V. FOWLKES PLUMBING, L.L.C.

CIVIL - FEDERALLY CERTIFIED QUESTION

CONTRACTS - INTERPRETATION - AMBIGUITY - When interpreting a contract, if the court finds that the contract is unambiguous, the intention of the contracting parties should be gleaned solely from the wording of the contract

FACTS

After the Chickasaw County School District entered into a contract with Sullivan Enterprises, Inc. for window restoration work at the Houlika Attendance Center, a fire occurred which destroyed the building. The School District’s insurer, Liberty Mutual paid the school district \$4,300,000 and filed a subrogation suit against Sullivan Enterprises and several other parties. The Chickasaw County School District had purchased one insurance policy from Liberty Mutual

that covered both the property on which work was being completed and the property that was not having any work done. Under the standard American Institute of Architects Form A201-2007, the owner of the property waived all subrogation rights against contractors for damage caused by fire or other causes of loss. This waiver extended to a property insurance policy applicable to the “work” property (subparagraph 11.3.7) and to a separate policy applicable to adjacent “non-work” property (subparagraph 11.3.5). The United States District Court for the Northern District found that the waiver of subrogation in the case sub judice only applied to damages to the property on which construction work was being completed. The Court of Appeals for the Fifth Circuit allowed an interlocutory appeal, certifying a question to the Mississippi Supreme Court, asking whether the waiver of subrogation applies only to “work” property or if it also extends to “non-work” property.

ISSUE

Whether a waiver of subrogation between parties extends to all “work” and “non-work” properties, or only to properties on which work is being completed.

HOLDING

The court held that the disputed subparagraphs were unambiguous and should be interpreted based on their plain meaning. Based on the plain meaning of the contract, subparagraph 11.3.5 provides that if an owner chooses to do so, the owner waives all rights for damages caused by fire in accordance with subparagraph 11.3.7. Because of this and the general waiver of subrogation in both subparagraphs 11.3.5 and 11.3.7, the only instance when damage to non-work property would not be covered by a subrogation waiver is if the owner did not have any policy insuring the non-work property. Therefore, the waiver of subrogation applies to both work and non-work property.

Certified Question Answered - 2019-FC-01285-SCT (Feb. 20, 2020)

En Banc Opinion by Justice Coleman

Richard T. Lawrence, Michael O. Gwin, Brian A. Hinton, Thomas M. Wright, Samuel C. Kelly, R. Lane Bobo, Marc A. Biggers, & Steven C. Cookston for Appellant - Jay M. Goldstein, Albert S. Nalibotski, & Lana E. Gillon for Appellees

Briefed by [Reid Hudson](#)

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MISS. DEP'T OF PUB. SAFETY V. HERRINGTON

CIVIL - CRIMINAL - FELONY

CRIMINAL LAW - IMPRISONED - DEFINITION - An offender under intensive supervision, or house arrest, is “imprisoned”

SEX OFFENSES - LAW ENFORCEMENT - CERTAIN OFFENDERS - Under Miss. Code Ann. § 97-3-104(1), it is unlawful for a law enforcement officer to engage in sexual relations with an offender on “intensive supervision”

SEX OFFENSES - CERTAIN OFFENDERS - OFFENDER REGISTRATION - Because the subsections under Miss. Code Ann. § 45-33-23(h) list brief descriptions of the statutes that require sex-offender registration and do not track the full language of the statutes, Miss. Code Ann. § 45-33-23(h)(xvii) includes all convictions under Miss. Code Ann. § 97-3-104 as registrable sex offenses

FACTS

Justin Herrington was convicted of the crime of sexual activity between certain individuals and offenders incarcerated in correctional facilities or on correctional supervision in violation of Miss. Code Ann. § 97-3-104. Herrington’s victim was a probationer. The trial court sentenced Herrington to five years in the custody of the Mississippi Department of Corrections, with two years to serve. The trial court further ordered Herrington to register as a sex offender with the appropriate agency as provided by Miss. Code Ann. §§ 45-33-21 through 45-33-51. Miss. Code Ann. § 45-33-23(h)(xvii) defines a “sex offense” or “registrable offense” as an offense under “Section 97-3-104 relating to the crime of sexual activity between law enforcement, correctional or custodial personnel and prisoners.” Miss. Code Ann. § 45-33-23(h)(xvii) had not been updated to explicitly define prisoners to include probationers and parolees. Herrington moved

to dispense with his requirement to register as a sex offender, which the trial court granted. The State of Mississippi, by and through the Mississippi Department of Public Safety (“MDPS”), moved for a stay of the trial court’s alleviating Herrington of his duty to register as a sex offender, which the trial court denied. MDPS appealed.

ISSUES

Whether the term “prisoners” as stated in Miss. Code Ann. § 45-33-23(h)(xvii) excludes as a registrable offense a conviction involving a law-enforcement officer who engages in sexual activity with a probationer.

HOLDING

Because the subsections under Miss. Code Ann. § 45-33-23(h) list brief descriptions of the statutes that require sex-offender registration and do not track the full language of the statutes, Miss. Code Ann. § 45-33-23(h)(xvii) includes all convictions under Miss. Code Ann. § 97-3-104 as registrable sex offenses. Therefore, the Supreme Court reversed the judgment of the Lamar County Circuit Court.

Reversed & Remanded - 2019-CA-00145-SCT (Feb. 20, 2020)

Opinion by Presiding Justice King

Hon. Prentiss Greene Harrell (Lamar County Circuit Court)

Lora Elizabeth Hunter for Appellant - Michael Adelman for Appellee

Briefed by [Michael Stirgus](#)

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SUPREME COURT – ORDERS

YOUNG V. STATE

EN BANC ORDER

ORDER

Philip Earl Young filed a Petition for Permission to File a Motion for Post-Conviction Relief. He raised issues regarding his indictment, pretrial identification, lack of an initial appearance, and his right to counsel. Young’s conviction and sentence were affirmed by the Court of Appeals in 2007, and he sought post-conviction relief (“PCR”) from the Mississippi Supreme Court. The court determined that Young’s petition was time barred and barred as a successive writ. Young’s claims were also barred under the doctrine of res judicata because they had been raised before. Lastly, Young failed to present an arguable basis for his claims to warrant an exception to procedural bars. The court deemed Young’s petition as frivolous and warned Young that future frivolous filings could result in monetary sanctions and restrictions on filing applications for post-conviction collateral relief.

OBJECTION

Presiding Justice King disagreed with the court’s finding that Young’s application was frivolous and with the warning that the court issued for future frivolous filings. He argued that monetary sanctions and restrictions on future filings would violate a defendant’s constitutional rights by restricting his access to the courts.

Denied - 2019-M-01521 (Feb. 19, 2020)

En Banc Order by Chief Justice Randolph - Objection by Presiding Justice King

Briefed by [Luke Seymour](#)

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SUPREME COURT - CRIMINAL CASES

SMITH V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION - APPEALS - STATUTE OF LIMITATIONS - Miss. R. App. P. 4(h) provides that if it finds (a) that a party entitled to notice of the entry of a judgment or order did not receive such notice from the clerk or any party within 21 days of its entry and (b) that no party would be prejudiced, may, upon motion filed within 180 days of entry of the judgment or order or within 7 days of receipt of such notice, whichever is earlier, reopen the time for appeal for a period of 14 days from the date of entry of the order reopening time for appeal

POST-CONVICTION - MOTIONS - RELIEF - Miss. Code Ann. § 99-39-52 states that any person sentenced by a court of record of the State of Mississippi, including a person. . . subject to sex offender registration for the period of the registration or for the first five years of the registration, whichever is the shorter period, may file . . . a motion for an out-of-time appeal if the person claims: . . . (i) that he is entitled to an out of time appeal

FACTS

In January 2016, a jury convicted Carlos Smith of sexual battery. Smith was sentenced to twenty-two years in the custody of the Mississippi Department of Corrections. No direct appeal was timely filed. In June 2017, Smith filed a petition for post-conviction relief (“PCR”) to proceed with an out-of-time appeal, which the circuit court denied. The circuit court denied the petition for lack of jurisdiction, finding that the 180-day deadline to file an out-of-time appeal under Miss. R. App. P. 4(h) had passed. Smith appealed that decision to the Mississippi Court of Appeals, which affirmed. Smith filed a petition for writ of certiorari.

ISSUE

Whether the trial court erred by denying the motion for an out-of-time appeal for lack of jurisdiction.

HOLDING

Because Smith styled his motion as a motion for PCR under Miss. Code Ann. § 99-39-52, and not as a motion for appeal under Miss. R. App. P. 4(h), the circuit court had jurisdiction over the claim because the Miss. Code Ann. § 99-39-52’s statute of limitations is three years. Therefore, the Supreme Court reversed and remanded the judgment of the Stone County Circuit Court.

Reversed & Remanded - 2017-CT-01725-SCT (Feb. 20, 2020)

En Banc Opinion by Justice Coleman

Hon. Roger T. Clark (Stone County Circuit Court)

Pro se for Appellant - Jeffrey A. Klingfuss (Att’y Gen.) for Appellee

Briefed by [Daniel Bond](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – FEBRUARY 18, 2020

COURT OF APPEALS - CIVIL CASES

HUGGINS V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - PROCEDURAL BAR - TIME-BARRED - The defendant filed a motion for post-conviction relief more than thirteen years after his sentencing, which means his motion is time-barred pursuant to Miss. Code Ann. 99-39-5(2) which sets the statute of limitations at three years

POST-CONVICTION RELIEF - TIME-BARRED - NEW EVIDENCE EXCEPTION - Pursuant to Miss. Code Ann. § 99-39-5(2)(a)(i), the defendant must show that the newly discovered evidence was not readily discoverable at trial, and the evidence must have been of such a nature that, had it been introduced at trial, it would have caused a different result in the conviction or sentence

POST-CONVICTION RELIEF - COUNSEL - INEFFECTIVE ASSISTANCE - The defendant must prove that some basis of truth exists for their claim of ineffective assistance of counsel, mere assertions are insufficient to qualify as a procedural bar

POST-CONVICTION RELIEF - EVIDENTIARY HEARING - SUMMARILY DISMISSED - Pursuant to Miss. Code Ann. § 99-39-11(2), the trial court possesses the authority to summarily dismiss a motion for post-conviction relief without an evidentiary hearing if it plainly appears from the face of the motion that the movant is not entitled to relief. In order to be entitled to an evidentiary hearing, the defendant must show that there are contested issues of fact that would warrant relief if concluded in favor of the defendant

FACTS

Sydney Huggins pled guilty to one count of armed robbery on August 22, 2003. Subsequently, on December 9, 2003, the trial court sentenced Huggins to forty years in the custody of the Mississippi Department of Corrections. Huggins filed a motion for post-conviction relief on February 13, 2017; Huggins filed the motion because of an affidavit by his co-defendant, Curtis Calhoun, taking responsibility for the crime. Huggins argued that Calhoun's affidavit is newly discovered evidence that was not available at trial and, therefore, it should apply as an exception to the general three-year statute of limitations that applies to motions for post-conviction relief ("PCR"). Further, Huggins argued that Calhoun tried to take responsibility for the crime at the time of his trial, but his counsel would not take Calhoun's statement. Considering this, Huggins argued that he received ineffective assistance of counsel. In addition, Huggins also moved for an evidentiary hearing on his PCR motion. The trial court found that an evidentiary hearing was unnecessary, and the trial court dismissed Huggins's motion for PCR as untimely pursuant to Miss. Code Ann. § 99-39-5(2) which sets the statute of limitations at three years. Huggins appealed.

ISSUES

Whether (1) the trial court erred by dismissing Huggins's motion for PCR because it was time-barred; (2) the trial court failed to apply the newly discovered evidence exception to Huggins's motion for PCR; (3) Huggins alleged sufficient facts necessary to invoke a fundamental-rights exception and his motion should not be procedurally barred; and (4) the trial erred by summarily dismissing Huggins's motion for an evidentiary hearing.

HOLDING

(1) Because Huggins filed the motion for PCR more than thirteen years after he was sentenced, and because Miss. Code Ann. § 99-39-5(2) sets the statute of limitations at three years, he was time-barred from filing a motion for PCR. (2) Because Huggins offered no explanation for how he discovered this evidence, and because he did not explain how this information was not readily discoverable at trial, and because Huggins swore under oath that he understood the facts and allegations against him and he still admitted that he was guilty of the crime, the evidence was not newly discoverable. (3) Because Huggins makes only mere assertions and has not proved a basis of truth upon which his claim exists, Huggins did not receive ineffective assistance of counsel. (4) Because Huggins makes unsupported claims that he was entitled to an evidentiary hearing, and because the record does not indicate that any unresolved issues exist, an evidentiary hearing was not necessary.

Affirmed - 2018-CP-01418-COA (Feb. 18, 2020)

Opinion by Judge Tindell

Hon. Steve S. Ratcliff III (Madison County Circuit Court)

Pro se for Appellant - Kaylyn Havrilla McClinton (Att'y Gen. Office) for Appellee

Briefed by [Matthew Russ](#)

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JOHNSTON V. NATIONWIDE MUT. INS. CO.

CIVIL - TORTS

CIVIL PROCEDURE - JUDICIABILITY - STANDING - Parties have standing to sue when they assert a colorable interest in the subject matter of the litigation or experience an adverse effect from the conduct of the defendant, or as otherwise provided by law

INSURANCE - BAD FAITH - REQUIREMENTS - To prevail in a bad faith claim against an insurer, the plaintiff must show that the insurer lacked an arguable or legitimate basis for denying the claim, or that the insurer committed a willful or malicious wrong, or acted with gross and reckless disregard for the insured's rights

INSURANCE - POLICY - RULES OF CONSTRUCTION - An insured is charged with the knowledge of the terms of the policy upon which he or she relies for protection

FACTS

Jennifer Stephens was killed by a teenage driver while out walking. Stephens was engaged to be married to Robert Johnston III. Johnston was insured by Nationwide Property and Casualty Insurance Company. Before Stephens death, Johnston and Stephens discussed adding Stephens's vehicle to Johnston's auto policy. The two met with Jody Woody, a Nationwide employee, who advised Stephens to add her vehicle back to her father's policy before adding her vehicle to Johnston's policy. No changes were ultimately made to Johnston's policy. After Stephens's death, Johnston, individually and as his daughter's guardian and administrator of Stephens's estate, filed a claim for uninsured motorist benefits under his policy with Nationwide. The policy's uninsured motorist terms specified that it would pay compensatory damages for bodily injury suffered by Johnston "or a relative." Relative was defined in the policy as "one who regularly lives in your household and who is related to you by blood, marriage, or adoption." Nationwide denied the claim because Stephens was not Johnston's relative under the terms of the policy. Johnston filed suit alleging Nationwide and its insurance agent Jason White acted in bad faith and were negligent. Both defendants filed motions for summary judgment which the circuit court granted. Johnston appealed.

ISSUES

Whether (1) Johnston had standing to assert his individual claims alleged in the complaint and (2) the circuit court erred in granting summary judgment on his individual claims.

HOLDING

(1) Because Johnston was not a beneficiary of Stephens, he suffered no adverse effect from Nationwide's alleged bad faith denial of uninsured motorist coverage and negligence, and therefore he lacked standing in his individual capacity to assert either claim. (2) Because Johnston failed to cite any authority to support his claim, and because Johnston failed to provide evidence that Stephens was covered under the Policy's terms, the trial court did not err in granting summary judgment on Johnston's bad faith claim. Because the Policy clearly indicated that only a relative by "blood, marriage, or adoption" who resided with Johnston was covered, the trial court did not err in granting summary judgment on Johnston's negligence claim. Therefore, the Court of Appeals affirmed the judgment of the Desoto County Circuit Court.

Affirmed - 2018-CA-01573-COA (Feb. 18, 2020)

Opinion by Chief Judge Barnes

Hon. Celeste Embrey Wilson (Desoto County Circuit Court)

William Albert Brown for Appellants - Edward J. Currie Jr., William H. Creel Jr., & Joseph Walter Gill for Appellees

Briefed by [Bryant Carlton](#)

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OATES V. OATES

CIVIL - DOMESTIC RELATIONS

APPELLATE PROCEDURE - DIVORCE - ALIMONY - Alimony awards are within the discretion of the chancellor, and his discretion will not be reversed on appeal unless he was manifestly in error in his finding of fact and abused his discretion

DIVORCE - ATTORNEY FEES - DISCRETION - An award of attorney fees is appropriate in a divorce case where the requesting party establishes an inability to pay

DIVORCE - MARITAL PROPERTY - DISTRIBUTION - Merely using inherited property or cash for a joint purpose does not in and of itself equate to a conversion of separate property to marital property

FACTS

Debra Oates filed for a fault-based divorce, due to her husband Thomas's alleged extra-marital affairs, in the Chancery Court of Montgomery County, Mississippi. The chancellor rendered a bench opinion granting Debra a divorce as requested. With specific reference to the *Talbert* analysis, the chancellor found clear and convincing evidence, including the admission by Thomas, proving Thomas engaged in at least one adulterous affair with another person during his marriage with Debra. The chancery court entered an order commensurate with the bench opinion. After consideration was given to the factors in *Ferguson*, *Albright*, and *Armstrong*, the chancellor made findings concerning the equitable distribution of property, the subject of alimony, and attorney's fees. Among other things, the court awarded Debra the marital home and the thirty-nine acres surrounding the marital home. Thomas was ordered to pay alimony in the amount of \$504.00 per month; to pay \$2,000.00 in lump-sum alimony to pay off a vehicle debt; and to pay Debra's attorney's fees in the amount of \$8,538.88. Thomas appealed.

ISSUES

Whether the chancellor erred (1) with regard to the award of periodic alimony and lump-sum alimony; (2) in awarding Debra attorney's fees; and (3) in classifying the thirty-nine acres of land, inherited by Debra prior to the marriage, as separate property.

HOLDING

(1) Because the chancellor properly applied, on the record and in detail with credible evidence, each *Armstrong* factor, the award of periodic and lump-sum alimony to Debra was proper. (2) Because the chancellor's decision with regard to attorney's fees was supported by the record and without manifest error, the award was proper. (3) Because the marital estate consists only of assets produced by a spouse's efforts and property obtained through inheritance is the separate property of the individual owner, the chancellor's classification of the thirty-nine acres was proper. Therefore, the Court of Appeals affirmed the judgment of the Montgomery County Chancery Court.

Affirmed - 2018-CA-01168-COA (Feb. 18, 2020)

Opinion by Judge Westbrook

Hon. Percy L. Lynchard Jr. (Montgomery County Chancery Court)

William Stacy Kellum III for Appellant - Debra Faye Coleman Morman for Appellee

Briefed by [Frank Wood](#)

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COURT OF APPEALS - POST-CONVICTION RELIEF

HOOD V. STATE

CIVIL - POST-CONVICTION RELIEF

DUE PROCESS - COMPETENCY HEARINGS - SANDERS STANDARD - When a court orders a psychiatric evaluation, it is an error for it to not hold a competency hearing

APPELLATE PROCEDURE - APPLICABILITY - RETROACTIVITY - The *Sanders* Standard does not apply retroactively to cases decided before its implementation

FACTS

Ronald Hood was convicted for the crime of exploitation of children in 2007 and sentenced to serve twenty years in prison without eligibility for parole. Hood appealed his conviction and sentence. The Mississippi Supreme Court affirmed his conviction and sentence and later denied his motion for rehearing. Thereafter, Hood filed several motions for post-conviction relief. The Supreme Court granted Hood permission to proceed in the Yazoo County Circuit Court to pursue his due process claim. This claim asserted a lack of a required competency hearing in violation of Rule 9.06 of the Uniform Rules of Circuit and County Court Practice. Hood filed his motion in the trial court which subsequently denied the motion. Hood appealed.

ISSUES

Whether (1) Hood’s due process rights were violated because since his conviction and sentence, the Supreme Court has mandated in *Sanders v. State*, that when a court orders a psychiatric evaluation, it is an error for it to not hold a competency hearing; (2) Hood should have been afforded a competency hearing because the issue of his competency was raised; and (3) the court had reasonable grounds to believe that Hood was incompetent.

HOLDING

(1) Because the 2009 *Sanders* Standard does not apply retroactively, it has no effect on Hood’s 2007 conviction. (2) Because Hood’s argument is predicated on a case that involved the denial of a motion for a psychiatric evaluation, it does not apply to the issue at bar. (3) Because Hood failed to provide the trial court with information that would have reasonably raised a doubt about his competence, the court had no grounds to believe that Hood was incompetent. Therefore, the Court of Appeals affirmed the judgment of the Yazoo County Circuit Court.

Affirmed - 2017-CP-00165-COA (Feb. 18, 2020)

Opinion by Judge McDonald

Hon. Jannie M. Lewis-Blackmon

Pro se for Appellant - Laura Hogan Tedder (Att’y Gen. Office) for Appellee

Briefed by [Cristofor Taylor](#)

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COURT OF APPEALS - CRIMINAL CASES

ADAMS V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - FIRST-DEGREE MURDER - INTENT - An individual who is aware and methodical with their actions to deliberately kill another individual is guilty of first-degree murder

CRIMINAL LAW - MANSLAUGHTER - HEAT OF PASSION - Manslaughter is the killing of another individual in the “heat of passion,” which can be brought about by some insult, provocation, or injury

CRIMINAL PROCEDURE - REVERSAL - WEIGHT OF EVIDENCE - A reversal is warranted only if the lower court abused its discretion in denying a motion for a new trial

FACTS

Bobby Adams and Shareca Fair shared custody of their twelve-year-old son, Javen Fair. Adams lived in Byhalia, Mississippi, and Fair lived in Olive Branch. The two split time with Javen with him visiting them at their respective homes. In August 2016, Adams refused to allow Javen to visit Fair. Fair filed a complaint to obtain sole legal and physical custody of Javen, and a chancellor granted that request in November 2016. Two weeks later, Fair went to Adams’s

home to take custody of Javen with the order in hand. The two began arguing over the custody order and Adams went inside his house, told Javen to go to his room, and got his gun. When returning outside, Adams shot Fair nine times in her chest, neck, heart, and lungs. Adams was taken into custody and put on trial. The jury was instructed on first-degree “deliberate-design” murder, the lesser-included offense of “heat-of-passion” manslaughter, and the circumstantial evidence standard. The jury found Adams guilty of first-degree murder. Adams appealed.

ISSUE

Whether Adams lacked the requisite intent for deliberate-design murder.

HOLDING

Because Adams instructed his son to go to his room prior to the shooting, and because he returned to the scene of the crime to hide the body behind his house, the verdict was not contrary to the weight of the evidence that Adams had the requisite intent for deliberate-design murder. Therefore, the Court of Appeals affirmed the judgment of the Desoto County Circuit Court.

Affirmed - No. 2018-KA-01261-COA (Feb. 18, 2020)

En Banc Opinion by Chief Judge Barnes

Hon. Smith Murphey (Desoto County Circuit Court)

Justin Taylor Cook (Pub. Def. Office) for Appellant - Billy L. Gore (Att’y Gen. Office) for Appellee

Briefed by [John Forrest Kelly](#)

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CHASE V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - APPEALS - JURY INSTRUCTION - A discrepancy between oral and written jury instructions will only be reversed if the discrepancy creates a notable conflict

CRIMINAL PROCEDURE - APPEALS - JUDGMENT NOTWITHSTANDING THE VERDICT - A court will affirm the denial of a motion for JNOV if there is substantial evidence to support the verdict

CRIMINAL PROCEDURE - PRETRIAL MOTION - MOTION IN LIMINE - A motion in limine should be granted only when the trial court finds that the material or evidence in question will be inadmissible at a trial under the rules of evidence; and the mere offer, reference, or statements made during trial concerning the material will tend to prejudice the jury

FACTS

On the morning of November 23, 2017, a University of Mississippi Medical Center police officer found April Ainsworth sitting on the sidewalk near the hospital. Ainsworth exhibited severe bodily injuries, including multiple bruises, scrapes, contusions, lacerations, and fractures. Ainsworth stated that her severe injuries were caused by her husband, Charles Lester Chase, over the course of two days. Sergeant David Cannon, who responded to a prior domestic-disturbance report involving Chase and Ainsworth earlier in the year, took Ainsworth’s statement and subsequently obtained a warrant for Chase’s arrest and a search warrant for Ainsworth’s home. Sergeant Cannon collected evidence of the attack at Ainsworth home, but ultimately found Chase at his girlfriend’s house. At trial, the State provided redacted evidence of Chase’s phone conversation with his girlfriend. It also provided testimony from Sergeant Cannon regarding the phone calls and his investigation, and testimony from Ainsworth’s medical personnel. Chase was convicted for one count of domestic aggravated assault in violation of Miss. Code Ann. § 97-3-7(4) and sentenced to serve twenty years in the custody of the Mississippi Department of Corrections. Chase appealed.

ISSUES

Whether the trial court erred when it (1) allowed the admission of photographs of Ainsworth’s injuries after the discovery deadline; (2) denied Chase’s first motion in limine to prohibit discussing Chase’s previously unadjudicated

domestic-violence charge; (3) allowed Sergeant Cannon to give his opinion about the subject of the recorded conversations between Chase and his girlfriend; (4) allowed Ainsworth's medical personnel to testify as expert witnesses despite the State's failure to properly designate them as experts; (5) admitted the jail recordings of his conversations with his girlfriend over his objection at trial; (6) advised the State on how to present its evidence; (7) incorrectly identified Chase's girlfriend; (8) authenticated his phone call from jail; (9) gave an oral recitation of Jury Instruction Number 5 that did not parallel the written instruction; (10) failed to give a jury instruction for the lesser-included defense of simple domestic assault; and (11) denied his motion for JNOV or, in the alternative, a new trial.

HOLDING

(1) Because Chase failed to demonstrate any unfair surprise or undue prejudice resulting from the introduction of the photographs, and because he waived his right to object to their introduction as cumulative, the trial court did not abuse its discretion when it allowed admission of the photographs of Ainsworth's injuries after the discovery deadline. (2) Because Chase was not on trial for the previous charge, and because he failed to demonstrate that testimony regarding the previous incident would result in prejudice or confusion to the jury, the trial court did not abuse its discretion when it denied Chase's first motion in limine. (3) Because Chase failed to timely object to Sergeant Cannon's opinion regarding the recording between Chase and his girlfriend, the issue was barred from consideration on appeal and was therefore without merit. (4) Because the trial court has the ability to evaluate the qualifications of expert witnesses, it did not abuse its discretion by allowing the experts to testify despite the State's failure to properly designate them as such. (5) Because the statements made on the recordings were relevant and highly probative, the trial court did not abuse its discretion when it admitted the jail recordings of Chase's conversation with his girlfriend. (6) Because Chase failed to raise a timely objection when the trial court advised the State on how to present its evidence, this issue was waived. (7) Because no objection was raised regarding the misidentification of Chase's girlfriend at trial, the issue was waived. (8) Because the State's expert presented his knowledge of the jail's telephone system, and because the expert identified Chase's voice on the phone call, the issue was without merit. (9) Because there was not a notable conflict between the written and oral instructions given to the jury, the issue was without merit. (10) Because Chase failed to seek an instruction for the lesser-included defense, the claim was waived. (11) Because there was sufficient evidence for a jury to find that Chase was guilty beyond a reasonable doubt, the trial court did not err when it denied Chase's motion for JNOV or, in the alternative, a new trial. Therefore, the Court of Appeals affirmed the judgment of the Rankin County Circuit Court.

Affirmed - 2018-KA-01501-COA (Feb. 18, 2020)

Opinion by Judge Westbrooks

Hon. Steve S. Ratcliff III (Rankin County Circuit Court)

George T. Holmes (Pub. Def. Office) for Appellant - John R. Henry Jr. (Att'y Gen. Office) for Appellee

Briefed by [Charles Matranga](#)

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MARTIN V. STATE

CRIMINAL - FELONY

SENTENCING & PUNISHMENT - JUVENILE JUSTICE - POST-CONVICTION RELIEF - Prisoners whose convictions and sentences were already final when *Miller v. Alabama* was decided are not entitled to be resentenced by a jury; instead, those offenders are entitled to an evidentiary hearing before a judge

SENTENCING & PUNISHMENT - JUVENILE JUSTICE - POST-CONVICTION RELIEF - While the Eighth Amendment to the United States Constitution does not prohibit sentences of life without parole, it does require the sentencing judge to take into account several factors related to maturity and upbringing that the sentencing judge must consider

FACTS

In 2002, Jeremy Dean Martin was convicted of capital murder and sentenced to a term of life imprisonment without the possibility of parole. Martin was seventeen years and eight months old when he committed the offense. In 2012,

Martin filed a petition for post-conviction relief based on *Miller v. Alabama*, a United States Supreme Court case that declared mandatory life without parole sentences for those under the age of 18, at the time of their crimes, repugnant to the Eighth Amendment's prohibition on "cruel and unusual punishments." The circuit court subsequently entered an agreed order vacating Martin's sentence for resentencing pursuant to *Miller*. Following an evidentiary hearing, the court held that Martin was not entitled to relief under *Miller* and resented him to a term of life imprisonment without the possibility of parole. Martin appealed.

ISSUES

Whether (1) the trial court erred in determining that Martin did not have a statutory right to be resentenced by a jury and (2) the trial court's decision to resentence Martin to life without parole reflected a misapplication of *Miller* or an abuse of discretion.

HOLDING

(1) Because mandatory resentencing pursuant to *Miller* applies only to a defendant's initial sentencing, the trial court did not err in declining post-conviction review of Martin's life-without-parole sentence. (2) Because the State had no special burden to present its own expert to rebut the clinical psychologist's evaluation of Martin, and because the trial court appropriately considered all of the *Miller* factors and made findings supported by substantial evidence, the trial court's decision to resentence Martin to life without parole was not a misapplication of *Miller* or an abuse of discretion. Therefore, the Court of Appeals affirmed the judgment of the Jackson County Circuit Court.

Affirmed - 2018-KA-00381-COA (Feb. 18, 2020)

Opinion by Presiding Judge Wilson

Hon. Dale Harkey (Jackson County Circuit Court)

Stacy L. Ferraro (Pub. Def. Office) for Appellant - Matthew Wyatt Walton (Att'y Gen. Office) for Appellee

Briefed by [Sarah Schofield](#)

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TERRY V. STATE

CRIMINAL - FELONY

CONTROLLED SUBSTANCES - POSSESSION - CONSTRUCTIVE POSSESSION - When the defendant owns or controls the premises where the contraband is found, there is a presumption of constructive possession of that contraband

CONTROLLED SUBSTANCES - POSSESSION - CONSTRUCTIVE POSSESSION - If the defendant's possession is not exclusive, there must be additional incriminating circumstances tying him to the drugs because mere physical proximity to the contraband, absent other evidence, is not sufficient to establish constructive possession

JURIES - INSTRUCTIONS - CONSTRUCTIVE POSSESSION - The instructions need not state that proximity alone is insufficient to establish constructive possession if the instructions clearly state all the elements of constructive possession

FACTS

After receiving a tip from a confidential informant regarding illicit drug activity, the Neshoba County Sheriff's Department obtained and executed a search warrant at an apartment complex in Philadelphia, Mississippi. Ralph Sciple, the chief investigator, was the first to enter the apartment after properly announcing himself. After entering, Sciple and other deputies observed multiple piles of white residue, plastic bags, and pills on the furniture in plain view. Additionally, there were two pistols on the television stand and ammunition in plain view. The only residents present at the time were two children and their father, Cephus Terry, who came out of another room moments after Sciple and the deputies entered the premises. At the scene, Sciple asked Terry how long he had lived at the apartment, and Terry responded that he had lived there about one year. A forensic analysis of the substances indicated that there were multiple grams of cocaine, two dosage units of methamphetamine, and ten dosage units of Tramadol. Subsequently, Terry was indicted

for three counts of possession of a controlled substance, and two counts of being a felon in possession of a firearm. At trial, the State prosecuted Terry on a theory of constructive possession, and a Neshoba County jury convicted Terry on all five counts. Terry appealed.

ISSUES

Whether (1) the evidence was sufficient to support the verdict and (2) the circuit court erred by improperly instructing the jury as to the elements of constructive possession.

HOLDING

(1) Because Terry was the only adult in the apartment at the time of the search and he admitted to Sciple that he lived at the apartment, there was sufficient evidence for the jury to find that constructive possession existed. (2) Because the instructions clearly stated all the elements of constructive possession, the trial court did not err in failing to explicitly instruct the jury that mere physical proximity to the drugs was not enough, of itself, to establish constructive possession. Therefore, the Court of Appeals affirmed the judgment of the Neshoba County Circuit Court.

DISSENT

Judge McDonald argued that the presumption of constructive possession never arose because the State's only evidence that Terry owned or controlled the premises was Terry's answer to Sciple's question regarding how long he lived at the apartment, which was disputed at trial. Additionally, Judge McDonald concluded that there was insufficient evidence of additional incriminating circumstances that would lead a rational jury to find that Terry was in constructive possession of the contraband seized and would reverse and render Terry's conviction on that basis.

Affirmed - 2019-KA-00623-COA (Feb. 18, 2020)

En Banc Opinion by Chief Judge Barnes - Dissent by Judge McDonald

Hon. Mark Sheldon Duncan (Neshoba County Circuit Court)

William B. Jacob for Appellant - John R. Henry Jr. (Att'y Gen. Office) for Appellee

Briefed by [Breland Parker](#)

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