

MISSISSIPPI SUPREME COURT DECISIONS – FEBRUARY 27, 2020***SUPREME COURT - CIVIL CASES*****DIAMONDHEAD COUNTRY CLUB AND PROP. OWNERS ASS'N V. PEOPLES BANK****CIVIL - REAL PROPERTY**

REAL PROPERTY - COMMON INTEREST COMMUNITIES - COVENANTS - Rights to construct and maintain structures reserved by declarant or developer are personal rights that do not run with the land and can only be exercised by those parties specifically mentioned or their successors or assignees

DEEDS OF TRUST - ASSIGNMENT - FORECLOSURE SALE - Assignment during the purchase of property through a foreclosure sale is based on the parties' intent as articulated in the deed of trust, even though the purchaser does not receive a written assignment of rights

FACTS

In 1970, Purcell acquired and developed the property that is now Diamondhead, Mississippi. All of the lots were subject to covenants requiring purchasers to pay Property Owner's Association ("POA") fees and assessments. In 1981, Purcell and the Diamondhead Country Club and Property Owner's Association ("DPOA") entered into a "Supplemental Agreement" ("the Agreement") where Purcell transferred some of its assets to DPOA. The Agreement stipulated that Purcell was not required to pay POA fees and assessments on the properties it owned and that upon conveyance of any of its properties, the new owners would be subject to those fees and assignments. In 2004, Purcell twice used its properties as collateral to secure loans from Peoples Bank. Purcell executed two deeds of trust in favor of Peoples in 2008 and then again in 2012. In 2012, Purcell entered a "Workout Agreement" with Peoples that provided additional collateral and deeds of trust in favor of Peoples in more of its properties. Purcell eventually defaulted on its loans and Peoples purchased the encumbered lots at the foreclosure sale. The DPOA began billing Peoples for fees and assessments. Peoples filed suit against DPOA seeking a declaration that Peoples was exempt from paying fees and assessments. DPOA counterclaimed for the unpaid fees and for a declaration that Peoples was not exempt from the fees and assessments. Both parties filed motions for summary judgment and the chancellor ruled in favor of Peoples, stating that Purcell's rights were assigned to Peoples upon the foreclosure sale. DPOA appealed.

ISSUE

Whether the trial court erred by holding that Peoples was assigned the properties that Purcell owned, making Peoples exempt from the DPOA's fees and assessments.

HOLDING

Because the exemption from the fees and assessments could only be passed through assignment, Peoples was only entitled to exemption for the properties acquired under the 2008 deed of trust. Therefore, the Supreme Court affirmed in part and reversed and remanded in part the judgment of the Hancock County Chancery Court.

CONCURRENCE

Justice Ishee argued that neither of the deeds of trust assigned Peoples the exemption of the fees and assignments. He argued that intent should not be read into the language of the actual deeds of trust. Rather, he stated that intent should be ascertained from within the four corners of the document, and that if the meaning was still unclear, parole evidence may be evaluated. He argued that the language in the 2008 deed of trust did not attach the rights that Purcell received personally to the lots themselves. He also argued that those rights were not attached to the property, and therefore, not assigned.

Affirmed in Part; Reversed & Remanded in Part - 2018-CA-00978-SCT (Feb. 27, 2020)

En Banc Opinion by Justice Ishee - Concurrence by Presiding Justice Kitchens

Hon. Jennifer T. Schloegel (Hancock County Chancery Court)

Richard B. Tubertini, Michael J. Casano, & David W. Crane for Appellant - Nathan Lamar Prescott, David M. Allen, & Lauren Reeder McCrory for Appellee

Briefed by [Liza Linginfelter](#)

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FITCH V. WINE EXPRESS, INC.

CIVIL - TORTS-OTHER THAN PERSONAL INJURY & PROPERTY DAMAGE

CIVIL PROCEDURE - PERSONAL JURISDICTION - NONRESIDENT - Personal jurisdiction over a nonresident defendant is determined under a two-part inquiry: (1) whether Mississippi's long-arm statute confers personal jurisdiction over the nonresident defendant and (2) whether personal jurisdiction comports with constitutional due process

CIVIL PROCEDURE - PERSONAL JURISDICTION - LONG-ARM STATUTE - Mississippi's long-arm statute provides that any nonresident person, firm, general or limited partnership, or any foreign or other corporation not qualified under the Constitution and laws of this state as to doing business herein, who shall make a contract with a resident of this state to be performed in whole or in part by any party in this state, or who shall commit a tort in whole or in part in this state against a resident or nonresident of this state, or who shall do any business or perform any character of work or service in this state, shall by such act or acts be deemed to be doing business in Mississippi and shall thereby be subjected to the jurisdiction of the courts of this state

CIVIL PROCEDURE - PERSONAL JURISDICTION - SPECIFIC JURISDICTION - When the plaintiff alleges specific jurisdiction, a three-prong test must be satisfied: (1) whether the defendant has minimum contacts with the forum state; (2) whether the plaintiff's cause of action arises out of or results from the defendant's forum-related contacts; and (3) whether the exercise of personal jurisdiction is fair and reasonable

FACTS

The Alcohol Beverage Control ("ABC") Division of the Mississippi Department of Revenue ("MDOR") and the Alcohol and Tobacco Enforcement Division of the Mississippi Attorney General's Office investigated the shipment of wine and other alcoholic beverages into the state by Wine Express Inc. ("Wine Express"), Bottle Deals Inc. ("Bottle Deals"), and Gold Medal Wine Club ("Gold Medal"). The investigation uncovered that these three companies were shipping alcoholic beverages to Mississippi residents totaling \$200,000 worth of alcohol sales in Mississippi. However, Wine Express, Bottle Deals, and Gold Medal did not possess any of the permits required by Mississippi state law to sell and distribute alcohol to Mississippi residents. The three companies alleged that alcohol purchases by Mississippi consumers were made Free on Board ("F.O.B."), and that title to the goods passed to the buyers at the time and place that the goods left their premises located outside of Mississippi. Since the State of Mississippi directly controls the distribution and sale of alcoholic beverages, all manufacturers must ship their alcohol to a centralized warehouse owned and operated by the State. From there, the State distributes the alcohol to privately held and permitted retailer package stores. These retailers may not ship or otherwise deliver alcohol directly to consumers; rather, consumers must purchase the alcoholic beverages at the store in person. The State sued Wine Express, Bottle Deals, and Gold Medal for illegally selling and directing the shipment of thousands of bottles of alcohol into Mississippi. The three companies, incorporated in California and New York, filed a motion to dismiss based on lack of personal jurisdiction, and the trial court granted their motion. The State appealed.

ISSUES

Whether (1) Mississippi's long-arm statute conferred personal jurisdiction over the nonresident defendants and (2) personal jurisdiction comported with constitutional due process.

HOLDING

(1) Because each defendant company conducted business in the State of Mississippi by means of their respective websites, giving them a virtual presence in Mississippi, they were all subjected to personal jurisdiction in Mississippi under Mississippi's long-arm statute. (2) Because the defendant companies knowingly allowed Mississippi residents to place an order for alcoholic beverages online in violation of Mississippi law, and because regardless of the F.O.B. contract terms used by the defendants in their sales contracts, the defendants "stood ready and willing to do business" with Mississippi residents, and "knowingly did do business" frequently with Mississippi residents, the companies purposefully established sufficient minimum contacts within Mississippi and those contacts related to the State's claims against them. Thus, personal jurisdiction over each of the defendant companies comported with fair play and substantial justice and did not violate their constitutional due process rights. Therefore, the Supreme Court reversed and remanded the judgment of the Rankin County Chancery Court.

Reversed & Remanded - 2018-SA-01259-SCT (Feb. 27, 2020)

En Banc Opinion by Justice Beam

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

James A. Bobo, Krissy Casey Nobile, & David J. Caldwell (Att'y Gen. Office) for Appellants - Joel W. Howell III for Appellees

Briefed by [Jennifer Lee](#)

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JACKSON MAC HAIK CDJR, LTD. V. HESTER

CIVIL - CONTRACT

CONTRACTS - ALTERNATIVE DISPUTE RESOLUTION - ARBITRATION - Mississippi liberally construes agreements with a presumption in favor of arbitration

CONTRACTS - ARBITRATION - MOTION TO COMPEL - There are three questions to determine the validity of a motion to compel arbitration: (1) whether the parties agreed to arbitrate; (2) whether the parties' dispute is within the scope of arbitration; and (3) whether any defenses to the validity of the contract exist that would bar arbitration

ARBITRATION - STATUTORY PROVISIONS - FEDERAL ARBITRATION ACT - Under the Federal Arbitration Act, arbitration agreements shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract

FACTS

Brenda Hester purchased a used 2014 Dodge Ram from Jackson Mac Haik, Ltd. ("Mac Haik"). Hester executed a retail-installment sale contract that contained an arbitration agreement. She then filed a complaint with the Smith County Circuit Court against Mac Haik, American Financial Warranty Corporation ("American Warranty"), M&S Towing, and Randy Miggins, the owner of M&S Towing. In her complaint, Hester alleged both that the truck was defective and that American Warranty issued her a warranty but never repaired the vehicle. In response, Mac Haik filed a motion to compel arbitration. Hester did not respond. The circuit court judge ruled that he was not going to compel arbitration because Hester's claim, which related to the vehicle she purchased from Mac Haik, fell outside the contract's arbitration provision. Additionally, Hester had purchased the vehicle from Mac Haik "under duress," making the provision unenforceable. Mac Haik appealed.

ISSUE

Whether the trial court erred in denying the motion to compel arbitration.

HOLDING

Because Hester freely signed the arbitration agreement, the dispute was covered by the agreement, and she did not assert any defenses to the contract or at the hearing, the trial court erred in denying the motion to compel arbitration. Therefore, the Supreme Court reversed the judgment of the Smith County Circuit Court.

CONCURRENCE IN PART/DISSENT IN PART

Presiding Justice Kitchens argued that while the majority was correct in applying the arbitration agreement to the defective nature of the vehicle, there were certain damages that were outside the agreement. Specifically, Hester alleged that rather than repair the vehicle, Mac Haik caused it to be towed away and damaged in the process, and such damage and storage costs could not have been contemplated by the agreement. Therefore, he concluded that the towing and storage claims should have been litigated and should be remanded for a trial.

Reversed & Remanded - 2019-CA-00340-SCT (Feb. 27, 2020)

En Banc Opinion by Justice Beam - Concurrence in Part/Dissent in Part by Presiding Justice Kitchens

Hon. Eddie H. Bowen

Chadwick Mitchell Welch for Appellant - Raymond Patrick Tullos for Appellee

Briefed by [Cristofor Taylor](#)

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SUPREME COURT - ORDERS

CONLEY V. STATE

ORDER

ORDER

Glen L. Conley Jr. was convicted of capital murder and sentenced to life without parole. Since his appeal, Conley has filed three petitions for post-conviction relief, all of which were subsequently denied by the Mississippi Supreme Court. Conley recently filed an Application for Post-Conviction Relief for this Court to Vacate an Illegal Sentence the Circuit Court had No Authority to Impose, asserting that (1) his sentence was illegal; (2) the indictment was defective; and (3) trial counsel was ineffective. The Supreme Court denied his current application because his claims were procedurally barred and without merit. The Supreme Court also issued a warning to Conley that any frivolous future filings may result in monetary sanctions and/or restrictions on filing applications for post-conviction relief in forma pauperis.

OBJECTION IN PART

Presiding Justice King objected in part with the Supreme Court's warning to impose monetary sanctions or restrictions on Conley's future filing applications for post-conviction relief in forma pauperis, arguing that restrictions on future filings would only serve as a way to punish a convicted defendant or to preclude a defendant from his fundamental right to appeal. Rather, he argued that the court should only deny or dismiss motions based on their merit.

Denied - 2011-M-01006 (Feb. 26, 2020)

Order by Justice Maxwell - Objection in Part by Presiding Justice King

Briefed by [Charles Matranga](#)

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HURNS V. STATE

ORDER

ORDER

Victor Hurns asked the Mississippi Supreme Court to clarify its order denying his application for post-conviction relief ("PCR"). In that order, the Supreme Court directed the Clerk of the Court not to accept for filing any further applications for post-conviction collateral relief from Hurns related to his conviction and sentence unless he paid the

applicable docket fee. Hurns failed to pay the applicable docket fee before filing this motion. Thus, the Supreme Court denied Hurns's motion requesting clarification on its order.

OBJECTION IN PART

Presiding Justice King stated that he would also deny Hurn's motion to clarify, maintaining that the prior order entered by the Supreme Court was clear. He incorporated by reference his original objection and separate statement.

Denied - 2018-M-00633 (February 26, 2020)

Order by Justice Maxwell - Objection in Part by Presiding Justice King

Briefed by [Philip Lott](#)

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STRATTON V. STATE

ORDER

ORDER

Timothy Stratton filed an Application for Leave to Proceed in the Trial Court. Stratton argued that his constitutional rights were violated because the jury instructions omitted venue. He raised the same issue in his prior two applications for post-conviction relief. Because the question of venue was raised for the first time in a post-conviction relief proceeding, the court did not consider it. Therefore, Stratton's application was denied, and the court also found Stratton's filing frivolous and restricted him from filing further applications for post-conviction relief related to these convictions and sentences in forma pauperis.

OBJECTION

Presiding Justice King objected and argued that the court prioritized efficiency over justice. He argued that Miss. Const. art. III, § 25 provides that "no person shall be debarred from prosecuting or defending any civil cause for or against him or herself, before any tribunal in the state, by him or herself, or counsel, or both." Additionally, he emphasized that Miss. Code Ann. § 99-39-7 provides that actions under the Uniform Post-Conviction Collateral Relief Act are all civil actions. Therefore, Stratton's application was a civil action and the decision preventing him from filing actions in forma pauperis violated his state constitutional right to access to the courts.

Denied - 2016-M-00217 (Feb. 26, 2020)

Order by Justice Griffis - Objection by Presiding Justice King

Briefed by [Winston Hudson](#)

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SUPREME COURT - CRIMINAL CASES

EUBANKS V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - COSTS - EXPERT WITNESSES - For an expert to be a basic tool of an adequate defense, three factors are considered: (1) private interest affected by the State's action; (2) governmental interest affected if the safeguard is provided; and (3) probable value of additional or substitute safeguards sought, and the risk of erroneous deprivation of the affected interest if those safeguards are not provided

CRIMINAL PROCEDURE - JURY - BATSON CHALLENGE - A *Batson* challenge requires a three-prong inquiry: (1) the party objecting to the juror peremptory strike must make a prima facie showing that race was the reason for the strike; (2) the State must then articulate a race-neutral reason for the strike; and (3) the trial court must determine if the State's reason is a pretext for racial discrimination

CRIMINAL LAW - EVIDENCE - HEARSAY - Statements do not constitute hearsay when admitted to explain an officer's course of investigation or motivation for the next investigatory step taken by that officer

FACTS

Ashley Brown and Jessica Baugh invited their coworker, Stephanie Mejia, to stay the night with them. They told Mejia that the door would remain unlocked during the night so she could enter the apartment when she arrived. Mejia called a group of individuals and informed them about personal property in the residence and that the door would be unlocked. During the early morning hours, several codefendants, including Jontavian Eubanks, burglarized the residence and took a bag that contained Baugh's tips earned from working the night before, several credit cards, an iPad, and Brown's car keys and car. While searching Eubanks's residence, Officer Adrian Ready, who responded to the burglary call, found the iPad, along with Eubanks and another codefendant. Eubanks was convicted of burglary of a dwelling and conspiracy to commit burglary of a dwelling. Eubanks filed a motion for judgment notwithstanding the verdict or, alternatively, for new trial. The trial court denied Eubanks's motion. Eubanks appealed.

ISSUES

Whether the trial court erred by (1) denying Eubanks's motion for funds to retain an expert; (2) overruling Eubanks's *Batson* challenge; and (3) permitting hearsay testimony to establish official elements of the charged offenses.

HOLDING

(1) Because Eubanks failed to show that he required an expert as a basic tool of an adequate defense, the trial court did not abuse its discretion and therefore did not err in denying Eubanks's motion for funds to retain an expert. (2) Because the State provided valid race-neutral reasons for each of its peremptory strikes, the trial court did not err in overruling Eubanks's *Batson* challenge. (3) Because official testimony regarding Eubanks's involvement in the offenses charged came from codefendants, and not the police officer, the court did not err in permitting hearsay testimony to establish official elements of the charged offenses. Therefore, the Supreme Court affirmed the judgment of the Madison County Circuit Court.

CONCURRENCE IN PART

Justice Coleman argued that the trial court erred in failing to discuss *Ake v. Oklahoma*, in which the United States Supreme Court provided factors for determining whether funding is required for a defendant to obtain an expert witness. Justice Coleman further argued, however, that this constituted harmless error because Eubanks rested at trial without calling a witness and it is far from clear whether the factors would have weighed in Eubanks's favor. Therefore, Justice Coleman agreed with the court's result.

DISSENT

Presiding Justice King argued that because the State used every available peremptory strike on African-American jurors, the trial court erred in determining that no *Batson* violation occurred.

Affirmed - Docket Number 2018-KA-00282 (Feb. 27, 2020)

En Banc Opinion by Justice Griffis - Concurrence in Part by Justice Coleman - Dissent by Presiding Justice King

Hon. William E. Chapman III (Madison County Circuit Court)

Cynthia Ann Stewart for Appellant - Barbara Wakeland Byrd (Att'y Gen. Office) for Appellee

Briefed by [Joshua Crownover](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – FEBRUARY 25, 2020

COURT OF APPEALS - CIVIL CASES

GRIFFIN V. ADAMS

CIVIL - PERSONAL INJURY

CIVIL PROCEDURE - RES JUDICATA - IDENTITIES - Generally, four identities must be present for the doctrine of res judicata to apply: (1) identity of the subject matter of the action; (2) identity of the cause of action; (3) identity of the parties to the cause of action; and (4) identity of the quality or character of a person against whom the claim is made

CIVIL PROCEDURE - RES JUDICATA - FINAL JUDGMENT - Even if all four elements of res judicata are satisfied, the prior judgment must be final and on the merits

PROTECTION OF ENDANGERED PERSONS - ORDER OF PROTECTION - JURISDICTION - Pursuant to Miss. Code Ann. § 93-21-15, municipal and justice courts are only able to grant temporary orders

FACTS

On March 29, 2015, an incident occurred between Karen Griffin and Clark Adams. Griffin sought emergency relief and protection from domestic abuse pursuant to Miss. Code Ann. § 93-21-15(1)(a). The Neshoba County Justice Court granted Griffin's petition and entered a "Temporary Domestic Abuse Protection Order." Several months later, Griffin filed a complaint for damages against Adams in the Neshoba County Circuit Court and sought compensation for the injuries she claimed resulted from the March 29 incident. Adams filed a motion to dismiss Griffin's complaint, alleging the circuit court action was barred under the doctrine of res judicata. The circuit court agreed with Adams and dismissed Griffin's complaint. Griffin appealed.

ISSUE

Whether the trial court erred in dismissing Griffin's complaint under the doctrine of res judicata.

HOLDING

Because the temporary order granted by the justice court was not a final judgment, the circuit court erred in determining the temporary order was a final judgment on the merits and applying res judicata to dismiss the circuit court complaint. Therefore, the Court of Appeals reversed and remanded the judgment of the Neshoba County Circuit Court.

Reversed & Remanded - 2018-CA-01674-COA (Feb. 25, 2020)

Opinion by Judge Westbrook

Hon. Mark Sheldon Duncan (Neshoba County Circuit Court)

Joseph Anthony Denson for Appellant - Steven Detroy Settlemyres for Appellee

Briefed by [Nicole Broussard](#)

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ROBERSON V. AMORY HMA, LLC

CIVIL - WRONGFUL DEATH

CIVIL PROCEDURE - MEDICAL MALPRACTICE - STATUTE OF LIMITATIONS - Miss. Code Ann. § 15-1-36(2) imposes a two year statute of limitations on claims for injuries arising from medical malpractice; in which the statute of limitations begins to run from the date the patient discovers or should have discovered by exercise of reasonable diligence, that they probably have an actionable injury

CIVIL PROCEDURE - SUMMARY JUDGMENT - NONMOVANT'S BURDEN - In opposition to the motion, the nonmoving party must show there is significant probative evidence that such an issue of fact exists; mere allegations unsupported by detailed and precise facts are not sufficient

FACTS

On May 13, 2013, Christie Roberson’s son, Justin, began complaining that he was having trouble breathing. Roberson drove Justin to Gilmore Memorial Regional Medical Center (“GMRMC”) in Amory, Mississippi. At the hospital, Justin explained to the emergency-room nurse that he “hurt all over” and thought he had the flu. He also stated he had pain in his left ankle but that he had helped his grandfather move furniture earlier in the week. The nurse relayed her assessment to Dr. Brian McCoy, the physician primarily responsible for Justin’s care. Dr. McCoy then performed a physical exam on Justin. Justin’s medical records did not recall any injuries to the ankle. As a result, Dr. McCoy determined the cause of his ankle pain to be musculoskeletal pain and ordered Justin to undergo a flu test and chest x-ray. The flu-test results were negative, but Justin’s chest x-ray revealed some abnormality. Dr. McCoy stated that the abnormality potentially indicated a chest infection and gave Justin a Toradol for his pain and antibiotics to combat the possible infection. Four days later, Justin went into full cardiac arrest at his home. EMS personnel transported Justin back to GMRMC, where he was declared dead upon arrival at 4:45 a.m. Alan Gurley, the Monroe County Coroner, ordered an autopsy on Justin’s body. According to Coroner Gurley’s deposition transcript, Dr. Davis called him the same day the autopsy was performed to inform him that Justin died from a blood clot in his leg. Coroner Gurley further testified that he “immediately” called Roberson to advise her of what he learned from Dr. Davis. According to Roberson, however, Coroner Gurley refused to tell her anything concerning the results of the autopsy until the official autopsy report was released. Roberson received her son’s death certificates on May 30, 2013, and the official autopsy report on June 19, 2013. Both the death certificates and the official autopsy report listed Justin’s cause of death as a pulmonary thromboembolism. On April 29, 2015, one year, eleven months, and twelve days after Justin’s death, Roberson, as representative of Justin’s wrongful-death beneficiaries, sent a mandatory pre-suit notice letter to Dr. McCoy. In May 2015, Roberson sent a second pre-suit notice letter to the hospital groups. On August 7, 2015, Roberson filed a wrongful-death action against Dr. McCoy, Amory HMA LLC, and Amory HMA Physician Management LLC. Dr. McCoy later moved for summary judgment. The circuit court granted the summary judgment motions stating that the statute of limitations had run. Roberson appealed.

ISSUE

Whether the trial court erred by granting the defendants’ summary judgment motions based on their finding that the two-year statute of limitations, which included a sixty-day extension for following the statutory pre-suit mandate, had run.

HOLDING

Because the 2-year and 60-day statute of limitations in medical malpractice cases was found to have commenced on May 30, 2013, the day that Roberson received the death certificates, and not June 19, 2013, the day she received the autopsy report, and because the court determined that Roberson reasonably should have discovered the medical negligence claim upon receipt of the death certificates listing the cause of death, the statute of limitations commenced on May 30, 2013, and ran on July 29, 2015, and Roberson’s suit filing on August 7, 2015, was nine days after the statute of limitations had run. Therefore, the Court of Appeals affirmed the Monroe County Circuit Court.

Affirmed - 2018-CA-00564-COA (Feb. 25, 2020)

Opinion by Judge Greenlee

Hon. Thomas J. Gardner III (Monroe County Circuit Court, First Judicial Dist.)

Matthew Thompson & Gregory John Bosseler for Appellant - David W. Upchurch, Mark P. Caraway, & John Mark McIntosh for Appellees

Briefed by [David Boydston](#)

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STACKS V. SMITH

CIVIL - ADOPTION

CIVIL PROCEDURE - PROCEDURAL BAR - FRAUD ON THE COURT - A court possesses the inherent power to set aside a judgment based on fraud upon the court and may grant such relief separate and apart from Miss. R. Civ. P. 60(b)

FAMILY LAW - ADOPTION - STATUTE OF LIMITATIONS - A chancellor is entrusted with the inherent authority to vacate judgments procured by fraud upon the court notwithstanding the adoption statute of limitations

FAMILY LAW - ADOPTION - NOTICE - A biological father who has not established paternity has a constitutional right to notice of an adoption proceeding if he has attempted to establish a substantial relationship with the child

FACTS

In 2012, Rhonda Raab gave birth to a daughter, B.R. Ricky Raab, Rhonda's then husband, was listed as the father on B.R.'s birth certificate. Prior to B.R.'s birth, Rhonda had a romantic relationship with Garth Wayne Stacks. Rhonda and Stacks lived together off and on during the four years following B.R.'s birth and, when Rhonda moved out, B.R. was left in Stack's care. Stacks was incarcerated in 2016 and Rhonda passed away before his release in October 2017. In May 2017, Daniel and Nicole Smith filed a petition to adopt B.R. in the Choctaw County Chancery Court. In support of the Smiths' petition, Ricky signed, under oath, a "Voluntary Release of All Parental Rights and Consent to Adoption," in which he claimed to be B.R.'s legal and biological father. After being released from incarceration, Stacks filed a "Petition to Disestablish Paternity, to Establish Paternity, for Determination of Custody, to Set Aside Adoption, and for Other Relief," naming the Smiths and Ricky as defendants. In his petition, Stacks alleged that he had raised B.R., had a good and loving relationship with her, and that she lived with him until she was four years old. Further, Stacks claimed the Smiths had obtained the adoption by defrauding the court and that they deliberately failed to name him as a party to the proceeding. The Smiths and Ricky responded by filing joint motions to dismiss. Before the hearing, DNA test results came back indicating a 99.99% probability that Stacks was B.R.'s father. In May 2018, the chancellor heard arguments on the defendants' motions to dismiss but refused Stack's request to put on testimony. Subsequently, the court dismissed Stacks' petition, finding that it was barred by the statute of limitations and that Stacks was not entitled to notice of the adoption. Stacks appealed.

ISSUES

Whether (1) the chancery court erred in dismissing Stacks's claim that the adoption was obtained through fraud on the court and (2) the Smiths' failure to give notice and join Stacks as a party to the adoption proceedings constituted a jurisdictional defect.

HOLDING

(1) Because the chancery court possessed the inherent power to set aside a judgment obtained by fraud on the court, it was unnecessary for Stacks to cite Miss. R. Civ. P. 60(b)(6) as authority for his petition, and the chancery court erred by dismissing Stacks's petition based on the statute of limitations. (2) Because Stacks had a constitutional right to notice of the adoption if he had established a substantial relationship with the child, the chancery court erred by refusing to hold a hearing and make findings on the issue. Therefore, the Court of Appeals reversed and remanded the judgment of the Choctaw County Chancery Court.

CONCURRENCE IN PART/DISSENT IN PART

Judge Greenlee argued that Stacks was procedurally barred from asserting a claim that the adoption was obtained by fraud on the court because Stacks never cited Miss. R. Civ. P. 60(b)(6) in the chancery court. However, he agreed with the majority that the chancery court erred in dismissing Stacks' notice-based claim. He argued that Stacks, as the child's natural father, was entitled to notice of the adoption proceedings.

DISSENT

Presiding Judge Carlton argued that Stacks was not entitled to receive notice of the adoption proceedings because the chancellor had determined that Ricky Raab, rather than Stacks, was the child's legal and presumptive. Further, she agreed with Judge Greenlee that Stacks's fraud on the court claim was procedurally barred.

Reversed & Remanded - 2018-CA-01065-COA (Feb. 20, 2020)

En Banc Opinion by Presiding Judge J. Wilson - Concurrence in Part/Dissent in Part by Judge Greenlee - Dissent by Presiding Judge Carlton

Hon. Edward C. Fenwick (Choctaw County Chancery Court)
Timothy C. Hudson for Appellant - Mark G. Williamson for Appellees
Briefed by [Harrison Smith](#)

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COURT OF APPEALS - POST-CONVICTION RELIEF

BARTON V. STATE

CIVIL - POST-CONVICTION RELIEF

CRIMINAL PROCEDURE - GUILTY PLEA - REQUIREMENTS - In order to accept a guilty plea, the court must determine that there is a factual basis for the plea and that it is made voluntarily and intelligently

CRIMINAL LAW - INEFFECTIVE ASSISTANCE OF COUNSEL - PRESUMPTION OF REASONABLENESS - There is a presumption that an attorney's performance falls within the wide range of reasonable professional assistance

JUDGES - DISQUALIFICATION TO ACT - RECUSAL - There is a presumption that a judge is qualified and unbiased, and this presumption is overcome only by showing beyond a reasonable doubt that the judge is biased or unqualified

FACTS

Luke Barton was indicted for three counts: Count I, the first-degree murder of his wife, Tonya Barton; Count II, the aggravated assault of his father-in-law; and Count III, the aggravated assault of his mother-in-law. Barton pled guilty to all three counts charged in his indictment and filed a motion for Trial Judge Collins's recusal. In his recusal motion, Barton claimed that Collins, who was an attorney at the time of his plea hearing, laughed, mocked, and imitated Barton as he attempted to answer questions during his plea hearing. Barton claimed that this conduct called into question Collins's impartiality to Barton's requested post-conviction relief ("PCR") motion. Judge Collins denied the motion for recusal as meritless and frivolous and denied Barton's PCR motion. Barton appealed.

ISSUES

Whether (1) Barton voluntarily plead guilty to any of his charges; (2) Barton's attorney rendered ineffective assistance of counsel; and (3) the trial court erroneously denied Barton's recusal motion.

HOLDING

(1) Because Barton never voluntarily, knowingly, and intelligently pled guilty to the Count III aggravated assault of his mother-in-law, and because no factual basis for it was ever established, the trial court erred in denying Barton's requested PCR motion on Count III. (2) Because the record contained sufficient evidence to show that Barton entered voluntary guilty pleas for the Count I first-degree murder of his wife and Count II aggravated assault of his father-in-law, and because Barton failed to prove his counsel's assistance was ineffective with regards to Counts II and III, his ineffective assistance of counsel claims lacked merit. (3) Because Barton provided no evidence beyond his own unsupported assertions, Barton failed to show beyond a reasonable doubt that the trial judge should have recused himself. Therefore, the Court of Appeals affirmed in part and reversed and remanded in part the judgment of the Leake County Circuit Court.

Affirmed in Part; Reversed & Remanded in Part - 2018-CA-00736-COA (Feb. 25, 2020)

Opinion by Judge Tindell

Hon. Christopher A. Collins (Leake County Circuit Court)

Imhotep Alkebu-Lan for Appellant - Barbara Wakeland Byrd (Att'y Gen. Office) for Appellee

Briefed by [Haley Nutt](#)

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THOMAS V. STATE

CIVIL - POST-CONVICTION RELIEF

CIVIL PROCEDURE - POST-CONVICTION RELIEF - STANDARD OF REVIEW - When reviewing a trial court's denial or dismissal of a post-conviction relief motion, a court will only disturb the trial court's factual findings if they are clearly erroneous; however, the court will review legal conclusions under a de novo standard of review and a PCR movant bears the burden of showing by a preponderance of the evidence that he is entitled to relief

CIVIL PROCEDURE - PROCEDURAL BAR - WAIVER - Merely asserting a constitutional-right violation is insufficient to overcome the procedural bars; rather, there must at least appear to be some basis for the truth of the claim before the procedural bar will be waived

CRIMINAL PROCEDURE - SENTENCING - HABITUAL OFFENDERS - Pursuant to Miss. Code Ann. § 99-19-81, in order to be sentenced as a habitual offender, it is only required that the offender was convicted twice previously of any felony or federal crime upon charges separately brought, arising out of separate incidents, and with separate terms of one year or more in any state and/or federal penal institution

FACTS

In 1996, Robert Lee Thomas was indicted on two counts of aggravated assault as a habitual offender under Miss. Code Ann. § 99-19-81. Seven months later, a jury found Thomas guilty of both counts of aggravated assault, and he was sentenced as a habitual offender to twenty years on each count without eligibility for parole. In 2017, Thomas filed a motion to reduce the sentence or for post-conviction collateral relief ("PCR"), claiming that the court erred in sentencing him as a habitual offender. The Coahoma County Circuit Court dismissed the motion under the assertion that it lacked authority to reduce or reconsider Thomas's sentence and that he was ineligible for parole. Thomas appealed.

ISSUE

Whether the State failed to prove that Thomas was a habitual offender under Miss. Code Ann. § 99-19-81.

HOLDING

Because the State proved that Thomas had two prior felony convictions of the sale of a controlled substance and a drive-by shooting, each having separate sentences and arising out of separate incidents, his argument that the State failed to prove he was a habitual offender as required by Miss. Code Ann. § 99-19-81 was without merit. Therefore, the Court of Appeals affirmed the judgment of the Coahoma County Circuit Court.

Affirmed - 2019-CP-00188-COA (Feb. 25, 2020)

Opinion by Judge Lawrence

Hon. Albert B. Smith III (Coahoma County Circuit Court)

Pro se for Appellant - Scott Stuart (Att'y Gen. Office) for Appellee

Briefed by [Brittany Brewer](#)

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WELLS V. STATE

CIVIL - POST-CONVICTION RELIEF

CONSTITUTIONAL LAW - CONFRONTATION CLAUSE - IMPLICATION - The constitutional right of confrontation does not extend to a non-jury *Miller* hearing

CONSTITUTIONAL LAW - CONFRONTATION CLAUSE - IMPLICATION - The Confrontation Clause is only implicated when there are statements that are testimonial in nature

POST-CONVICTION RELIEF - RESENTENCING - MILLER STANDARD - The two standards of review under *Miller* are (1) whether the trial court applied the correct legal standard and (2) if it did apply the correct standard, its sentencing is reviewed for an abuse of discretion

FACTS

A few days before his sixteenth birthday, Darwin Wells shot and killed Michael Porter during an altercation at a gas station. Wells was indicted for capital murder and, following a jury trial in 2009, he was convicted of deliberate design murder and sentenced to life imprisonment. According to Miss. Code Ann. § 47-7-3(1)(f), Wells was ineligible for parole. Following the United States Supreme Court’s decision in *Miller v. Alabama*, which prohibits the mandatory imposition of a life-without-parole sentence if the offender was under the age of eighteen at the time of the offense, Wells filed a motion for post-conviction relief and sought to be resentenced to a term of life imprisonment with the eligibility for parole. Following an evidentiary hearing, the trial court held that Wells was not entitled to relief under *Miller*. Wells appealed.

ISSUES

Whether (1) Wells was entitled to a new sentencing hearing due to records from the Mississippi Department of Corrections and Jackson County Adult Detention Center that were entered into evidence in violation of the Confrontation Clause and (2) the trial court misapplied *Miller* or abused its discretion in resentencing Wells to a term of life without parole.

HOLDING

(1) Because the constitutional right of confrontation does not extend to a non-jury *Miller* hearing, and because the records at issue were not testimonial, Wells’s confrontation clause argument was without merit. (2) Because the trial court applied the correct legal principle, and because the judge’s application of that standard was not arbitrary or an abuse of discretion due to the findings of fact being supported by substantial evidence, the trial court did not misapply *Miller* or abuse its discretion. Therefore, the Court of Appeals affirmed the judgment of the Jackson County Circuit Court.

CONCURRENCE IN PART/DISSENT IN PART

Judge Westbrook agreed with the majority’s conclusion, but she believed some of the documents admitted into evidence contained prejudicial testimony about Wells in violation of his constitutional right to confrontation. However, due to Wells’s post-incarceration conviction, the admission of these documents was a harmless error and did not warrant reversal.

Affirmed - 2018-CA-00778-COA (Feb. 25, 2020)

En Banc Opinion by Presiding Judge J. Wilson - Concurrence in Part/Dissent in Part by Judge Westbrook
Hon. Dale Harkey (Jackson County Circuit Court)
Stacey L. Ferraro (Pub. Def. Office) for Appellant - Scott Stuart (Att’y Gen. Office) for Appellee
Briefed by [Jack Byrd](#)

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COURT OF APPEALS - CRIMINAL CASES

BELL V. STATE

CRIMINAL - FELONY

EVIDENCE - RELEVANCE - CHARACTER EVIDENCE - Evidence of the victim’s prior violent acts, when known to the defendant, are relevant and admissible under Miss. R. Evid. 404(b) to show defendant’s state of mind at the time of the incident and reasonableness of his use of force

EVIDENCE - PREJUDICE - PROSECUTOR STATEMENTS - Mississippi courts have recognized that a prosecutor has a right to comment on evidence, but the State does not allow a prosecutor to comment on his personal beliefs about a defendant's guilt or innocence

CRIMINAL PROCEDURE - JURY INSTRUCTIONS - PERJURY - Inconsistent testimony alone does not allow for a perjury jury instruction

FACTS

In 2016, Cordarryl Lamond Bell was indicted for one count of first-degree murder and one count of aggravated assault. Bell's first trial in April 2018 resulted in a hung jury and he was re-tried the following September. Testimony revealed that he fatally shot Aquarius Nelson four times and continued to fire at the vehicle driven by Joshua Cole. Bell argued a theory of self-defense, claiming that he believed Nelson was armed and came to the house to shoot him. He proffered testimony that he feared Nelson because of rumors that Nelson had murdered a young woman named Bridget London. Bell did not present any admissible evidence connecting Nelson with the incident. The jury found Bell guilty of manslaughter and aggravated assault. Bell filed a motion for judgment notwithstanding the verdict ("JNOV") or, in the alternative, a new trial in October 2018. The court denied Bell's motion and sentenced him to two consecutive terms of imprisonment in the custody of the Mississippi Department of Corrections ("MDOC")—twenty years to serve for manslaughter and twenty years, ten suspended and ten to serve, for aggravated assault. Bell appealed.

ISSUES

Whether the court erred in (1) limiting Bell's testimony; (2) denying Bell's motion for a mistrial; and (3) refusing Bell's perjury instruction.

HOLDING

(1) Because Bell did not profess to have any personal knowledge of Nelson's involvement in London's death, did not offer testimony from anyone else with first-hand knowledge of Nelson's involvement, and was not prohibited from testifying about his state of mind or fear of Nelson at the time of the incident, the court did not abuse its discretion in ruling that the disputed evidence was not relevant or admissible as character evidence under Miss. R. Evid. 404(b). (2) Because the court sustained the objection regarding the prosecutor's single use of the potentially prejudicial phrase "I know" during closing arguments and ordered the jury to disregard the prosecutor's comments, it did not abuse its discretion in denying Bell's motion for mistrial. (3) Because the jury had already been properly instructed on making credibility determinations with regard to the testimony of witnesses, Bell's instruction did not contain the elements of perjury, and there was no perjury charge at Bell's trial, the court did not abuse its discretion by refusing Bell's perjury instruction. Therefore, the Court of Appeals affirmed the judgment of the Lincoln County Circuit Court.

Affirmed - 2018-KA-01763-COA (Feb. 25, 2020)

Opinion by Judge Westbrook

Hon. Michael M. Taylor (Lincoln County Circuit Court)

Imhotep Alkebu-Lan for Appellant - Jeffrey A. Klingfuss & Allison Elizabeth Horne (Att'y Gen. Office) for Appellee

Briefed by [Kaitlin Bethay](#)

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MCDANIEL V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - JUDGMENT NOTWITHSTANDING THE VERDICT - STANDARD OF REVIEW - When the sufficiency of the evidence presented to the jury is challenged by a motion for judgment notwithstanding the verdict ("JNOV"), the court views the evidence in the light most favorable to the State, and will uphold the verdict if any reasonable trier of fact could have found the essential elements of the crime beyond a reasonable doubt

CRIMINAL PROCEDURE - CONSTRUCTIVE POSSESSION - CONTROL - Constructive possession is not determined by the defendant's location in connection with the drugs; instead, the drug must simply be found in a place over which the defendant exercises dominion or control, which may be proven by circumstantial evidence

CRIMINAL PROCEDURE - NEW TRIAL - STANDARD OF REVIEW - When the weight of the evidence is challenged by a motion for new trial, the court must view the evidence in the light most favorable to the verdict and disturb the verdict only when it is so contrary to the overwhelming weight of the evidence as to constitute unconscionable injustice

FACTS

Lonnie Lee McDaniel was indicted as a habitual offender for felony fleeing or eluding of a law enforcement officer, simple assault of a police officer, and possession of a controlled substance. McDaniel had two previous convictions in Forrest County for possession of a controlled substance. Sergeant Bounds observed a white vehicle near Walmart in Petal, Mississippi failing to use a turn signal when making a left turn. The sergeant followed the vehicle into Walmart's parking lot and attempted a traffic stop. The vehicle fled the parking lot after nearly hitting Officer Joey Scott, who arrived as backup. When the vehicle attempted to ram Officer Scott, he recognized the driver as McDaniel and communicated the identification to Sergeant Bounds. During the chase, Sergeant Bounds observed McDaniel throw something from his window near the church on Lynn Ray Road. He radioed the dispatcher to document where the object was thrown as he was still in high-speed pursuit of the vehicle. After the chase, Sergeant Bounds ordered Officer Scott to search the area near the church for the discarded item. After officers searched the scene, a clear bag was found containing what was later identified by the crime lab as methamphetamine. After hearing all the evidence, the jury returned a verdict of guilty for felony fleeing or eluding of law enforcement and possession of a controlled substance. The Court denied McDaniel's motion for JNOV, or in the alternative, a new trial. McDaniel appealed.

ISSUES

Whether (1) any reasonable trier of fact could have found the essential elements of possession of a controlled substance; (2) the drug in question was proven to be found in an area over which McDaniel exercised dominion and control; and (3) the verdict was so contrary to the overwhelming weight of the evidence that allowing it to stand would sanction unconscionable injustice.

HOLDING

(1) Because the evidence, when viewed in the light most favorable to the State, could lead a reasonable trier of fact to find the essential elements required for possession of a controlled substance, it was sufficient to sustain the verdict. (2) Because the State presented eyewitness testimony that McDaniel threw something out his window, the pursuing officers recognized McDaniel, and the drugs were found in the same area which the officer instructed his partner to search for the discarded item, constructive possession was proven. (3) Because the overwhelming weight of the evidence, when viewed in the light most favorable to the verdict, was not so contrary to the verdict as to constitute an unconscionable injustice, a new trial was not warranted. Thus, the Court of Appeals affirmed the conviction of the Forrest County Circuit Court.

Affirmed - 2018-KA-01363-COA (Feb. 25, 2020)

Opinion by Judge Lawrence

Hon. Jon Mark Weathers (Forrest County Circuit Court)

W. Daniel Hinchcliff (Pub. Def. Office) for Appellant - Scott Stuart (Att'y Gen Office) for Appellee

Briefed by [Charles Ellzey](#)

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WILLIAMS V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - SIXTH AMENDMENT - SPEEDY TRIAL - To determine if a defendant's constitutional speedy-trial right has been violated, the courts must consider and weigh four factors: (1) the length of delay; (2) the reason for the delay; (3) the defendant's assertion of his right to a speedy trial; and (4) prejudice to the defendant

CRIMINAL LAW - SIXTH AMENDMENT - SPEEDY TRIAL - Miss. Code Ann. § 99-17-1 provides that all indictments presented to the court shall be tried no later than 270 days after the accused has been arraigned; if the defendant does not request or assert his right to a speedy trial within 270 days of his arraignment, he effectively waives his statutory right to a speedy trial

CRIMINAL LAW - INSANITY - M'NAGHTEN STANDARD - The *M'Naghten* test for determining insanity is whether the accused knew right from wrong at the time the act was committed, which is found through proving that, at the time of the act, the accused was laboring under such defect of reason from disease of the mind as (1) not to know the nature and quality of the act he was doing or (2) if he did know it, he did not know that what he was doing was wrong

APPELLATE REVIEW - PROSECUTORIAL MISCONDUCT – CUMMULATIVE ERROR - Under the cumulative-error doctrine, individual errors, which are not reversible in themselves, may combine with other errors to make up reversible error where the cumulative effect of all errors deprives the defendant of a fundamentally fair trial

FACTS

A Yazoo County grand jury indicted Mark Williams for two counts of simple assault against a law enforcement officer. Williams had a history of experiencing “rage episodes” and had previously undergone psychiatric treatment at a behavioral health center. Following his release on bond, and prior to his trial, Williams returned to the treatment center and received outpatient treatment from Dr. Sudhakar Madakasira. Williams waived arraignment in August 2015, and in January 2016, Williams filed a notice that he intended to present an insanity defense. In asserting his insanity defense, Williams provided the State with a letter from Dr. Madakasira, in which the doctor opined that Williams was suffering from temporary insanity as part of his untreated bipolar condition. Four days before trial, the State filed a motion to exclude Dr. Madakasira's expert testimony about Williams's lack of sanity. At the hearing on the State's motion, Dr. Madakasira testified that Williams was unable on the day in question “to make a decision as to right or wrong in terms of what he was doing.” During the hearing, Dr. Madakasira testified that he wished to correct a statement contained in his letter to clarify that Williams “was temporarily out of his mind, irrational thinking, with poor judgments and poor decision making” at the time of the altercation. The circuit court found that Dr. Madakasira's testimony failed to comply with the *M'Naghten* test applied by Mississippi courts and instead appeared to discuss diminished capacity, which Mississippi fails to recognize as a defense to a criminal charge. Thus, the circuit court excluded Dr. Madakasira's testimony. Williams's trial commenced on April 9, 2018. At various times throughout the trial, the district attorney cited to out-of-court research and commented on evidence previously excluded by the court. The defense's objections to these comments were overruled. The jury found Williams guilty of one count of simple assault. The Yazoo County Circuit Court denied Williams's motion for a judgment notwithstanding the verdict, or, in the alternative, a new trial. Williams appealed.

ISSUES

Whether (1) Williams was denied his constitutional and statutory rights to a speedy trial; (2) the circuit court erroneously excluded Dr. Madakasira's testimony; and (3) the State committed prosecutorial misconduct that entitled Williams to a new trial.

HOLDING

(1) Because Williams never raised the issue of a speedy trial before the circuit court and because he failed to articulate any actual prejudice resulting from the delay, Williams waived his statutory right to be tried within 270 days of arraignment and Williams's constitutional right to a speedy trial was not violated. (2) Because Dr. Madakasira clearly concluded that, at the time of the altercation with the deputies, Williams's mental disease prevented him from knowing that his actions were wrong, his expert testimony was in accordance with the *M'Naghten* standard and the circuit court erroneously excluded Dr. Madakasira's expert testimony. (3) Because the district attorney made improper and prejudicial comments throughout Williams's trial, the cumulative effect of these errors deprived Williams of a fundamentally fair trial. Therefore, the Court of Appeals reversed and remanded the judgment of the Yazoo County Circuit Court.

DISSENT

Presiding Judge Carlton argued that the circuit court did not abuse its discretion by excluding Dr. Madakasira's testimony. Because Williams was allowed to present alternative expert testimony, and his expert report supported Williams's insanity defense, the circuit court's decision on this issue did not prejudice or adversely affect Williams's substantial rights. She also argued that the prosecutorial misconduct addressed by the majority did not constitute a sufficient basis, standing alone, to warrant reversal. Therefore, she would affirm Williams's conviction and sentence.

Reversed & Remanded - 2018-KA-00631-COA (Feb. 25, 2020)

En Banc Opinion by Judge Tindell - Dissent by Presiding Judge Carlton

Hon. Jannie M. Lewis-Blackmon (Yazoo County Circuit Court)

James H. Powell III & Richard T. Starrett for Appellant - Scott Stuart & Jeffrey A. Klingfuss (Att'y Gen. Office) for Appellee

Briefed by [Melissa Fenwick](#)

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