

**MISSISSIPPI SUPREME COURT DECISIONS – MARCH 6, 2020****SUPREME COURT - CIVIL CASES****MISS. STATE BD. OF CONTRACTORS V. HOBBS CONSTR., LLC****CIVIL - STATE BOARD & AGENCIES**

**ADMINISTRATIVE LAW - NOTICE - DUE PROCESS** - Due process requires some form of notice, whether by statute, rule, regulation, applicable judicial decision, agency decision, or communication from the licensing authority, to the licensee that is reasonably calculated to inform the licensee that history will be considered

**CONSTITUTIONAL LAW - PROCEDURAL DUE PROCESS - NOTICE** - In order to make a fully informed choice whether to appear, contest, default, or acquiesce, the licensee must have notice sufficient to enable its defense of the charges that will be considered by the government in deciding whether to suspend or revoke the license

**LEGISLATION - STATUTORY INTERPRETATION - CONFLICT** - If possible, statutory language in apparent conflict must be construed harmoniously to give effect to all statutory language

**FACTS**

In October 2016, Pyramid Interiors Distributors (“Pyramid”) filed a complaint with the State Board of Contractors (the “Board”) against Hobbs Construction, LLC (“Hobbs”), alleging that Hobbs owed the Board \$13,390 for materials. The Board notified Hobbs of the complaint and requested that Hobbs respond in writing. After Hobbs failed to respond in writing, the Board filed a complaint against Hobbs and provided notification that a hearing was set for January 11, 2017. Both the complaint and the notice of hearing were served on Hobbs by certified mail, as shown by the return receipt. The day before the hearing, Hobbs executed a forbearance agreement with Pyramid in which it agreed to pay a compromised amount of \$11,570 by January 31, 2017. Pyramid agreed to notify the Board that the parties were attempting to resolve the dispute and to request a continuance of the hearing. Hobbs did not pay, the Board filed an amended complaint, and another hearing was set. No representative of either Pyramid or Hobbs appeared at the hearing. During deliberations, Board members considered the fact that the Board had received several complaints against Hobbs in the past. The Board voted 5-1 to revoke Hobbs’s certificate of responsibility (“COR”), noting its debt to Pyramid and the numerous prior violations. In July 2017, the Board revoked Hobbs’s COR. Hobbs appealed to the Harrison County Chancery Court. Hobbs moved for a preliminary injunction, alleging that without a preliminary injunction, it would lose business relationships, hundreds of thousands of dollars in expected profits, and its employees would have to seek other work. The chancery court granted a preliminary injunction, finding that Hobbs had a substantial likelihood of prevailing on the merits, that Hobbs made the requisite showing that irreparable harm would result without injunctive relief, and that a preliminary injunction would not harm the Board. In its decision on the merits, the chancery court found that the Board’s decision was not supported by substantial evidence, was arbitrary and capricious, was beyond the Board’s power to determine, and violated Hobbs’s constitutional rights. The chancery court ordered that Hobbs’s COR be reinstated. The Board appealed.

**ISSUES**

Whether the chancery court erred by (1) reversing the Board’s decision and (2) granting a preliminary injunction.

**HOLDING**

(1) Because the amended complaint gave no indication that any prior complaints against Hobbs would be considered, which failed to provide Hobbs with procedural due process, the chancery court did not err in reversing the Board’s decision. (2) Because the statutory language providing for equitable relief permitted the chancery court to issue a

preliminary injunction when all the elements were met, the chancery court did not err in granting a preliminary injunction. Therefore, the Supreme Court affirmed the judgment of the Harrison County Chancery Court.

### **CONCURRENCE**

Chief Justice Randolph argued that he would affirm the chancery court's decision. However, he would base his affirmance on the fact that the Board allowed itself to become involved in a private dispute in derogation of its statutory duty to protect the health, safety, and general welfare of all persons dealing with those who are engaged in the vocation of contracting and to afford such persons an effective and practical protection against incompetent, inexperienced, unlawful and fraudulent acts of contractors. He noted that the Board's role is not that of a debt collector nor should it act as a quasi-judicial civil claims tribunal.

### **DISSENT**

Justice Beam agreed that the Board is not vested with judicial authority to resolve contractual disputes between contractors and subcontractors, but she also found that the Board must protect the public from unethical contractors. She considered Hobbs's failure to pay Pyramid as evidence that Hobbs was not responsible and that others should be protected from future misdealing from Hobbs. Finally, she did not consider the Board's consideration of Hobbs's disciplinary history without notification to be a violation of procedural due process.

#### **Affirmed - 2018-CA-01389-SCT (Mar. 6, 2020)**

En Banc Opinion by Presiding Justice Kitchens - Concurrence by Chief Justice Randolph - Dissent by Justice Beam

Hon. Carter O. Bise (Harrison County Chancery Court, Second Judicial Dist.)

B. Parker Berry, Haley Gregory, & Tommie S. Cardin for Appellant - Austin Clark, Russell S. Gill, Michael B. Wallace, & Rebecca Hawkins for Appellee

Briefed by [Michael Stirgus](#)

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## **MISSISSIPPI SUPREME COURT DECISIONS – MARCH 5, 2020**

### **SUPREME COURT - CIVIL CASES**

#### **DICKERSON V. STATE**

#### **CIVIL - DEATH PENALTY - POST CONVICTION**

**EVIDENCE - WITNESS TESTIMONY - CREDIBILITY** - When conflicting evidence that is capable of having more than one reasonable interpretation is presented to the court, the trial judge is entitled to determine the credibility of the witnesses and the weight to afford their testimony

**CRIMINAL LAW - PRETRIAL MOTION - COMPETENCY** - In Mississippi, a defendant is not competent to stand trial if he does not have sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding or does not have a rational as well as a factual understanding of the proceedings against him

#### **FACTS**

David Dickerson was convicted of capital murder, arson, and armed robbery. He was sentenced to death for capital murder, twenty years for arson, and forty years for armed robbery. Dickerson appealed his convictions and sentences, and the Mississippi Supreme Court affirmed. After his direct appeal, Dickerson filed for post-conviction relief and moved to stay the post-conviction proceedings, claiming that he was not competent to proceed. The Mississippi Supreme Court remanded the case and ordered the trial court to determine whether Dickerson was competent to proceed in post-conviction proceedings. During that hearing, Dr. Robert Storer and Dr. Malcolm Spica both testified on the issue of Dickerson's competency. Dr. Storer testified that Dickerson was competent to proceed because he possessed a factual and rational understanding of post-conviction proceedings and had the ability to consult with his attorneys. Dr. Spica testified that Dickerson had the ability to communicate with his attorneys, but that Dickerson did

not have a rational or factual understanding of post-conviction proceedings. After hearing the doctors' testimonies and reviewing both of the doctors' written reports, the trial court found Dickerson competent. Dickerson appealed.

### **ISSUES**

Whether the trial court erred in (1) finding Dickerson competent to proceed in post-conviction collateral relief proceedings and (2) failing to apply the correct standard to determine Dickerson's competency.

### **HOLDING**

(1) Because the trial court found Dickerson competent to proceed in post-conviction collateral relief proceedings after considering the experts' conflicting reports and testimonies, the trial court's determination of competency was not manifestly against the overwhelming weight of the evidence. (2) Because the trial court determined that Dickerson had sufficient present ability to consult his attorneys with a reasonable degree of rational understanding, as well as a rational and factual understanding of the nature and object of post-conviction proceedings, the trial court applied the correct standard for determining competency and did not err in finding Dickerson competent to stand trial. Therefore, the Supreme Court affirmed the judgment of the Copleah County Circuit Court.

### **CONCURRENCE**

Justice Coleman addressed the State's argument that Dickerson had no right to competency during his post-conviction collateral relief proceedings and noted that the Court has never held that a petitioner enjoys a statutory or constitutional right to competency during post-conviction proceedings.

#### **Affirmed - 2018-CA-00710-SCT (Mar. 5, 2020)**

En Banc Opinion by Justice Chamberlin - Concurrence by Justice Coleman

Hon. Lamar Pickard (Copleah County Circuit Court)

Alexander Kassoff, Humphreys McGee, & Scott A. Johnson (Office of Post-Conviction Counsel) for Appellant - Brad A. Smith, Jason L. Davis, & Ashley Lauren Sulser (Att'y Gen. Office) for Appellee

Briefed by [Charity Karanja](#)

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## **WOLFE V. DELTA DISCOUNT DRUGS, INC.**

### **CIVIL - MEDICAL MALPRACTICE**

**CIVIL PROCEDURE - PLEADINGS - STATUTE OF LIMITATIONS** - A claim may not be misbranded in order to escape a shorter statute of limitations

**ADMINISTRATIVE LAW - PHARMACIST - DUTIES** - A pharmacist shall be present and personally supervise the pharmacy technician and shall be responsible for the correct preparation and delivery of the drug to the patient

**CIVIL PROCEDURE - PLEADINGS - AGENCY** - A statute that bars a claim against an agent equally protects those on whose behalf he acted as an agent

### **FACTS**

Spencer Wolfe was being treated for high blood pressure and was prescribed two milligrams of hydralazine two times a day. Some time between May 20, 2015 and May 27, 2015, Wolfe had his prescription filled at Delta Discount Drugs ("Delta"). Delta allegedly mis-filled Wolfe's prescription with twenty-five milligram tablets of hydroxyzine. On June 19, 2015 Wolfe was hospitalized after he blacked out while driving. At the hospital, doctors explained to Wolfe that his medical complications were caused by the incorrect medication. On May 1, 2018, Wolfe filed suit, claiming negligence by Delta for allegedly mis-filling Wolfe's prescription. Wolfe attached two documents to his complaint: a notice of claim letter Wolfe sent Delta indicating that Wolfe intended to sue Delta for pharmaceutical negligence and Wolfe's certificate of consultation, which is required in medical malpractice actions. Delta filed a motion to dismiss, claiming that Wolfe's suit was time barred under the applicable two-year statute of limitations period for professional malpractice pursuant to Miss. Code Ann. § 15-1-36, because Wolfe's claim accrued no later than June 19, 2015, when Wolfe was hospitalized and told about the improper medication. Wolfe argued that his complaint constituted general negligence subject to the

three-year statute of limitations in Miss. Code Ann. § 15-1-49. The circuit court granted Delta's motion to dismiss after determining that Wolfe's claims were all predicated on the alleged acts or omissions of a pharmacist and were, therefore, subject to the two-year medical-malpractice statute of limitations pursuant to Miss. Code Ann. § 15-1-36. Wolfe appealed.

### **ISSUE**

Whether the circuit court erred in finding the two-year statute of limitations pursuant to Miss. Code Ann. § 15-1-36 to be the applicable statute of limitations.

### **HOLDING**

Because Wolfe's alleged injury arose out of the course of professional services specifically contemplated by Miss. Code Ann. § 15-1-36, and because Wolfe's claims against Delta based upon the doctrine of respondeat superior were also subject to the limitations period in Miss. Code Ann. § 15-1-36, the statute of limitations for medical malpractice claims applied and barred Wolfe's suit. Therefore, the Supreme Court affirmed the judgment of the Coahoma County Circuit Court.

**Affirmed - 2019-CA-00160 (Mar. 5, 2020)**

Opinion by Justice Chamberlin

Hon. Linda F. Coleman (Coahoma County Circuit Court)

Derek D. Hopson Sr. & Derek D. Hopson Jr. for Appellant - Wilton V. Byars III & Caroline C. Johnson for Appellee

Briefed by [Bryant Carlton](#)

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## ***SUPREME COURT - CRIMINAL CASES***

### **PITTS V. STATE**

#### **CRIMINAL - FELONY**

**APPELLATE REVIEW - ABUSE OF DISCRETION - ADMISSION OF HEARSAY** - The Supreme Court will affirm the trial court's ruling unless it determines that the trial court abused its discretion in allowing or excluding evidence that resulted in prejudice to the accused

**EVIDENCE - HEARSAY - TENDER YEARS EXCEPTION** - A child of tender years describing any act of sexual contact is admissible if the court determines the statements provide substantial indicia of reliability

**CRIMINAL LAW - ABUSE OF DISCRETION - JURY INSTRUCTION** - Jury Instruction S-6 instructs the jury that uncorroborated testimony of a sex-crime victim is sufficient to support a conviction if accepted as true by the finder of fact

#### **FACTS**

Cody L. Pitts married Janice Pitts, who had a five-year-old son named Billy. After they moved to Pass Christian, Mississippi, Cody began sexually abusing Billy. The abuse continued over the next two years and surfaced after Janice noticed changes in Billy's behavior. It took several months for Billy to fully disclose to both his mother and a therapist that Cody had sexually abused him. Janice contacted the Pass Christian authorities and the Child Advocacy Center in Gulfport, Mississippi conducted a forensic interview of Billy. A Harrison County grand jury indicted Cody on one count of touching Billy for lustful purposes under Miss. Code Ann. § 97-5-23(1). The trial judge found Billy competent to testify and Billy was called as the State's first witness at trial to testify about the instances of sexual abuse by Cody. The trial judge addressed each reliability factor under Miss. R. Evid. 803(25) on the record and ruled that Billy's disclosures had substantial indicia of reliability and were admissible under the tender-years hearsay exception. Cody denied all of the accusations against him and was convicted and sentenced to serve ten years, day for day, without the possibility of

parole or early release. Cody was ordered to register as a sex offender upon being released from incarceration. Cody appealed.

## **ISSUES**

Whether the trial court erred in (1) finding the victim's out-of-court statements admissible under Miss. R. Evid. 803(25) and (2) giving jury instruction S-6 to the jury.

## **HOLDING**

(1) Because Billy's statements were made spontaneously when telling his mother about the incidents of sexual abuse, because Billy was able to understand and express the difference between the truth and a lie, and because the evidence did not bolster the accused but was necessary to tell the whole story, the trial court did not err in admitting Billy's out-of-court statements. (2) Because jury instruction S-6 did not constitute an improper comment on the weight of evidence, and because it did not instruct the jury on how to weigh the victim's testimony, jury instruction S-6 was proper to determine what weight and credibility to give to the victim's testimony. Therefore, the Supreme Court affirmed the judgment of the Harrison County Circuit Court.

## **CONCURRENCE IN PART/DISSENT IN PART**

Presiding Justice King argued that the trial court did not abuse its discretion, but that jury instruction S-6 was unnecessary in this case because the victim's testimony was corroborated by the testimony of both the victim's mother and the forensic interviewer. He further explained that instructing the jury that "the uncorroborated testimony of a sex-crime victim is sufficient to support a conviction if accepted as true" might encourage a jury to ignore contradictory evidence.

## **DISSENT**

Presiding Justice Kitchens argued that the mother's testimony about the child's out-of-court statements only served to bolster the child's incriminating testimony. He also articulated that jury instruction S-6 is an improper judicial comment on the evidence and that it is not a complete statement of applicable law.

### **Affirmed - 2019-KA-00275 (Mar. 5, 2020)**

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

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

George T. Holmes (Pub. Def. Office) for Appellant - Kaylyn Havrilla McClinton (Att'y Gen. Office) for Appellee

Briefed by [R. Matthew Rhea](#)

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## **STEWART V. STATE**

### **CRIMINAL - FELONY**

**CRIMINAL PROCEDURE - JURY SELECTION - *BATSON* CHALLENGE** - Although employment history is a sufficient race-neutral reason for striking a venire member, disparate treatment of similarly situated jurors is strong evidence of discriminatory intent

**CRIMINAL PROCEDURE - DISCOVERY - EXCULPATORY EVIDENCE** - A new trial is not automatically required where evidence is discovered after trial that could have possibly been useful but was not likely to change the verdict

**EVIDENCE - ISSUE PRESERVATION - PROCEDURE** - To preserve an objection to allegedly improper remarks by counsel during closing argument, the complaining party must not only make a contemporaneous and specific objection to the remarks, but also obtain a definitive ruling from the trial court on his objection and request corrective action

## **FACTS**

In 2016, Collins Police Department officers stopped Albert Stewart during a routine safety checkpoint in Covington County. Stewart's window did not work, so he cracked the driver's door and submitted his license with his left hand. Stewart's right hand remained concealed in the glove department of his vehicle. As the stop progressed, the officers noticed that Stewart became nervous and agitated. The officers began to investigate the matter further, but Stewart's right hand was still concealed in his vehicle. This caused one officer to draw his weapon because he thought Stewart might be armed. Before the stop was completed, Stewart fled the scene and a high-speed chase ensued until Stewart's tire blew out and he was forced to stop his vehicle. During the course of the chase, the tailing officers noticed white specks spewing from Stewart's vehicle. Stewart was arrested, and multiple traces of cocaine were recovered from his vehicle and placed in a white Styrofoam cup. Prior to trial, Stewart filed two motions relating to video recordings captured the night of the chase, both of which were denied by the trial court, and the State admitted the recordings into evidence. Additionally, Stewart filed a motion to suppress the drug evidence under the theory that there was a break in the chain of custody, but it was likewise denied by the trial court. In 2018, a Covington County jury convicted Stewart of felony fleeing and possession of cocaine. Stewart appealed.

### **ISSUES**

Whether the trial court erred in (1) denying Stewart's peremptory strike of Juror 15; (2) not allowing examination of the videos; (3) allowing the State to read from an internet document not entered into evidence; (4) admitting drug evidence; (5) denying Stewart's motion for continuance; (6) admitting the video recordings into evidence; and (7) finding the road block constitutional.

### **HOLDING**

(1) Because Stewart used peremptory strikes against two Caucasian teachers and then accepted an African-American teacher, the trial court did not err in finding a pattern of discrimination and refusing to allow Stewart to strike Juror 15. (2) Because the missing portions of one of the officer's body-camera videos would not have affected Stewart's felony fleeing conviction, the trial court did not err in refusing to allow examination of the videos. (3) Because Stewart did not renew his objection, request a curative instruction, or move for a mistrial with respect to the State's use of internet sources not in evidence, he was barred from raising that issue on appeal. (4) Because Stewart failed to meet his burden of showing a break in the chain of custody, the trial court did not err in denying Stewart's motion to suppress. (5) Because Stewart failed to support his contention that the trial court's denial of his motion for a continuance violated the constitution with meaningful argument and citation of authority, that issue was without merit. (6) Because Stewart filed his motion to exclude the hearsay statements within the video tapes on the day of the trial, and because he failed to request a limiting instruction and make a reasonable argument, the trial court did not err in denying Stewart's motion to exclude the hearsay statements. (7) Because Stewart did not depose any of the officers regarding the nature and purpose of the roadblock or produce any evidence supporting his claim that the roadblock was illegal, the trial court did not err in finding that the roadblock was constitutional. Therefore, the Supreme Court affirmed the judgment of the Covington County Circuit Court.

**Affirmed - 2018-KA-00764-SCT (Mar. 5, 2020)**

Opinion by Presiding Justice King

Hon. Stanley Alex Sorey (Covington County Circuit Court)

Catouche Judge Body for Appellant - Lisa L. Blount (Att'y Gen. Office) for Appellee

Briefed by [Breland Parker](#)

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## **MISSISSIPPI COURT OF APPEALS DECISIONS – MARCH 3, 2020**

### **COURT OF APPEALS - CIVIL CASES**

**CONWILL V. CITY OF COLUMBUS**

## CIVIL - STATE BOARDS & AGENCIES

**ADMINISTRATIVE LAW - STATUTORY INTERPRETATION - VAGUENESS** - In order for a statute to survive scrutiny for vagueness, the language must convey a sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices

**ADMINISTRATIVE LAW - APPELLATE REVIEW - ARBITRARY & CAPRICIOUS** - If a decision is fairly debatable, then it cannot be considered arbitrary or capricious

### FACTS

Tyler Conwill, a former police officer with the Columbus Police Department (“CPD”), was terminated after he was involved in four motor-vehicle accidents within less than a one-year period while driving a CPD patrol car. Conwill admitted fault with respect to all four accidents. After the mayor and the Columbus City Council (“the City”) unanimously voted to terminate Conwill pursuant to the City’s motor vehicle accident policy, Conwill appealed to the Columbus Civil Service Commission (“the Commission”). After the Commission affirmed the City’s decision, Conwill appealed to the Lowndes County Circuit Court, which affirmed the Commission’s decision. Conwill appealed.

### ISSUES

Whether the trial court erred in not finding that (1) the City’s vehicle-accident policy, which examined accident severity in terms of property damage and the number of prior chargeable accidents, was too vague and (2) Conwill’s termination was imposed in an arbitrary and capricious manner.

### HOLDING

(1) Because the applicable disciplinary guidelines (“the Guidelines”) sufficiently warned Conwill that a third at-fault accident would result in his dismissal, and because Conwill testified that this was consistent with his interpretation of the Guidelines, the trial court did not err in determining that the Guidelines were not impermissibly vague. (2) Because Conwill’s termination was made in good faith and for cause, the trial court did not err in not finding that Conwill’s termination was imposed in an arbitrary and capricious manner. Therefore, the Court of Appeals affirmed the judgment of the Lowndes County Circuit Court.

**Affirmed - 2018-CC-01346-COA (Mar. 3, 2020)**

Opinion by Presiding Judge Carlton

Hon. James T. Kitchens Jr. (Lowndes County Circuit Court)

Francis Starr Springer for Appellant - Jeffrey Johnson Turnage & Michael D. Chase for Appellee

Briefed by [Sarah Schofield](#)

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## DAVIS V. SINGING RIVER HEALTH SYS.

### CIVIL - MEDICAL MALPRACTICE

**CIVIL PROCEDURE - MOTION TO DISMISS - ELEMENTS** - Pursuant to Miss. R. Civ. P. 12(b)(b), motions to dismiss must accept allegations in the complaint as true and the motion should not be granted unless it appears beyond doubt that the plaintiff will be unable to prove any set of facts in support of his claim

**TORTS - MISS. TORT CLAIMS ACT - STATUTE OF LIMITATIONS** - Pursuant to Miss. Code Ann. § 11-46-11(3)(a), all actions against public institutions or entities protected under the Miss. Tort Claims Act must be filed within one year after the date of the actionable conduct

**TORTS - MISS. TORT CLAIMS ACT - NOTICE OF CLAIM** - A plaintiff must first send a notice of claim to the chief executive officer of the protected entity and then wait the statutorily-prescribed ninety-five days from the receipt of the notice of claim before filing a complaint; if the notice of claim is denied or expires, the plaintiff has an additional ninety days to file

### FACTS

Susan Davis was Dr. Terrence Millette's patient in while he was still in private practice. In 2010, Dr. Millette diagnosed Davis with multiple sclerosis and Davis began treatment, which included multiple evaluations per year and several powerful medications. In 2011, Singing River Health Systems ("Singing River") hired Dr. Millette and Davis continued to see Dr. Millette for her treatment. In 2016, three of Singing River's neurologists expressed concern to the hospital administration about Dr. Millette's pattern of diagnosis and treatment of patients with multiple sclerosis. Singing River reviewed Dr. Millette's diagnoses and treatments and Dr. Millette ultimately left Singing River. In November 2016, Singing River sent many of its patients, including Davis, a letter from its Chief Executive Officer and its Chief Medical Officer. This letter stated that Singing River had undertaken a review of Dr. Millette's diagnoses and treatments of multiple sclerosis patients and that Dr. Millette no longer practiced at Singing River. It also advised Davis to contact Singing River to obtain a new doctor and discuss options to re-evaluate her multiple sclerosis diagnosis. In May 2017, Davis contacted Singing River and arranged a re-evaluation, which determined that she did not have multiple sclerosis and should not have been treated for it. Davis sent Dr. Millette and Singing River a notice of claim in March 2018 and filed her medical-malpractice complaint in the Jackson County Circuit Court. Singing River filed a motion to dismiss, claiming that Davis failed to send her notice of claim within the one-year statute-of-limitations period under the Miss. Tort Claims Act. The trial court granted Singing River's motion to dismiss. Davis appealed.

## ISSUE

Whether the trial court erred in granting Singing River's motion to dismiss.

## HOLDING

Because Singing River's November 2016 letter did not sufficiently notify Davis of a possible claim, and because there was no evidence in the record that Davis knew or should have known that she had been misdiagnosed at that time, it was premature and erroneous at the current stage of litigation to find that Davis's claim was time-barred based on Singing River's letter. Therefore, the Court of Appeals reversed the judgment of the Jackson County Circuit Court.

### Reversed & Remanded - 2019-CA-00208-COA (Mar. 3, 2020)

Opinion by Judge Tindell

Hon. James D. Bell (Jackson County Circuit Court)

Walter C. Morrison IV & Tim C. Holleman for Appellant - Brett K. Williams, Jason R. Scheiderer, A. Kelly Sessoms III, & James Everett Lambert III for Appellee

Briefed by [Allison Middleton](#)

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## HOME SOLUTIONS OF MISS., LLC V. RIDGE

### CIVIL - CONTRACTS

**CIVIL PROCEDURE - SUPPLEMENTAL ACTION - RES JUDICATA** - The burden of proof is on the party asserting res judicata and that party must provide pleadings or a judgment from a prior case that clearly shows the issues and questions in the former case to demonstrate that the issues in question were previously adjudicated

**CIVIL PROCEDURE - JURY INSTRUCTION - PROCEDURAL BAR** - Pursuant to Miss. R. App. P. 28(a)(7), the argument section in an appellant's brief must contain citations to the authorities, statutes, and the parts of the record that the appellant is relying upon and in the absence of citation to such authority, the appellate court will not consider an assignment of error

**APPELLATE PROCEDURE - REVERSAL - FAILURE TO CITE THE RECORD** - The appellant has a duty to cite to the record for the facts and evidence presented at trial pertaining to the cause of action and it is the appellant's duty to point out which facts in the record support their claim of error

**JURY REVERSAL - GENERAL VERDICT - MULTIPLE THEORIES OF RECOVERY** - In *Ill. Cent. R.R. Co. v. Brent*, the Mississippi Supreme Court held that when there is a general verdict for the plaintiff on two counts that lead to the same liability, then the verdict is sufficient under either cause of action

## FACTS



Home Solutions of Mississippi LLC (“Home Solutions”), formed by Todd Sandridge and Jack McCabe, contracted with John Ridge to renovate Ridge’s home in Canton, Mississippi. After several months, Ridge was disappointed in Home Solutions’s work and terminated the contract. In 2007, Ridge filed suit against Home Solutions and further filed suit against Sandridge and McCabe individually. Between 2007 and 2009, Sandridge and McCabe withdrew over \$1 million from Home Solutions. After 2009, Sandridge and McCabe agreed to part ways and Home Solutions was administratively dissolved by the Mississippi Secretary of State in 2012 for failure to file annual reports. A bench trial was held in 2013, and, since the parties agreed not appeal the decision, the transcript of the trial was not on record. The court returned a judgment against Home Solutions and awarded Ridge an amount of \$754,366.56. Following the judgment, McCabe destroyed Home Solutions’ books and records. Home Solutions was left insolvent because of the large amounts of money that Sandridge and McCabe took out of the LLC. As a result, Ridge filed a supplemental suit and sought to hold Sandridge and McCabe individually liable for the judgment against Home Solutions by piercing the corporate veil. A certified public accountant, who testified on Ridge’s behalf, conceded that there was no legal requirement for Home Solutions to set aside money for judgment. After Ridge rested his case, Sandridge and McCabe moved for a directed verdict, arguing that they did not do anything fraudulent, they were not required to set aside money for judgment, and that the statute of limitations had run on Ridge’s claim. The court denied the motion. Subsequently, the jury was given instructions on the three elements that Ridge needed to prove in order to show that the corporate veil was pierced. In addition, the court gave the jury instructions on an alternative theory of recovery, dissipation of the LLC’s assets. The jury found in favor of Ridge. The final judgment was entered and Sandridge and McCabe were ordered to pay Ridge \$754,366.56. Home Solutions appealed.

## **ISSUES**

Whether (1) Ridge’s second action against Home Solutions was barred under the doctrine of res judicata; (2) Home Solution’s jury instruction issue was procedurally barred pursuant to Miss. R. App. P. 28(a)(7); (3) there was a basis to reverse the jury’s verdict based on Home Solution’s failure to cite the record; and (4) there was no basis to reverse the jury’s verdict because they returned a general verdict based on two theories of recovery and Home Solutions only argued one of those theories on appeal.

## **HOLDING**

(1) Because the burden of proof was on Home Solutions and they failed to provide evidence of either pleadings or a judgment from a prior case that would enable the court to make findings on the elements of res judicata, Ridge’s second claim was not barred by the doctrine of res judicata. (2) Because Home Solutions failed to cite any authority after they identified improper jury instruction as an issue, the jury-instruction issue was inadequately briefed, and it was procedurally barred. (3) Because Home Solutions failed to cite to the record in order to discuss how the facts applied to the law, there was no basis to reverse the jury’s verdict. (4) Because the jury returned a general verdict when there were two theories of recovery and Home Solutions only argued the piercing the corporate veil theory on appeal, there was no basis to reverse the jury’s verdict. Therefore, the Court of Appeals affirmed the judgment of the Madison County Circuit Court.

### **Affirmed - 2018-CA-01258-COA (March 3, 2020)**

Opinion by Judge McDonald

Hon. Staci Bozant O’Neal (Madison County Circuit Court)

Christopher A. Tabb for Appellants - Cecil Maison Heidelberg for Appellee

Briefed by [Matthew Russ](#)

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## **HUNT V. ALLEN**

### **CIVIL - REAL PROPERTY**

**PROPERTY - CONVEYANCE - DURESS** - A deed that is induced as a result of duress is void and unenforceable

**CIVIL PROCEDURE - SUMMARY JUDGMENT - MEMORANDUM OF AUTHORITIES** - The lack of a memorandum of authorities accompanying a motion for summary judgment will not defeat the motion

**CIVIL PROCEDURE - JUDGMENT - MOTION TO AMEND OR ALTER** - A motion to amend or alter judgment will not be granted where the moving party cannot establish that a new trial would probably produce a new result

### **FACTS**

In September 2013, M. Hayes Hunt conveyed real property to his daughter, Brittany Allen. On December 7, 2015, Brittany conveyed a quick claim deed for the same property (“December 7 deed”) to Hunt. However, before the December 7 deed was recorded, Brittany conveyed the same property to her husband, Michael Allen, two days later by warranty deed. One month later, Michael filed a civil declaration with the Oktibbeha County Justice Court requesting Hunt’s eviction from the property. The justice court evicted Hunt from the property and Hunt appealed to the Oktibbeha County Circuit Court. Michael and Brittany filed a complaint with the Oktibbeha County Chancery Court requesting the December 7 deed in favor of Hunt be declared void. On April 16, 2018, the chancery court determined the deed was signed under duress, not supported by consideration, and not properly notarized. As a result, the deed was declared void. Michael filed a motion for summary judgment with the Oktibbeha County Circuit Court, noting the chancery court’s order and alleging there were no further issues or defenses to prohibit Hunt’s eviction from the property. The circuit court granted Michael’s motion for summary judgment. Hunt appealed.

### **ISSUES**

Whether the circuit court erred in (1) granting Michael’s motion for summary judgment and (2) denying Hunt’s motion to alter or amend the judgment.

### **HOLDING**

(1) Because the chancery court found that the December 7 deed was void and unenforceable due to duress in its inducement, the circuit court did not err in granting Michael’s motion for summary judgment. (2) Because the chancery court’s order declared Hunt’s deed void, the circuit court did not err in denying Hunt’s motion to alter or amend the judgment. Therefore, the Court of Appeals affirmed the judgment of the Oktibbeha County Circuit Court.

**Affirmed - 2019-CA-00292-COA (Mar. 3, 2020)**

Opinion by Chief Judge Barnes

Hon. James T. Kitchens Jr. (Oktibbeha County Circuit Court)

Charles Hays Burchfield & Karsunn Ezekiel Moore for Appellant - J. Niles McNeel for Appellee

Briefed by [John Forrest Kelly](#)

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## ***COURT OF APPEALS - CRIMINAL CASES***

### **SHEAD V. STATE**

#### **CRIMINAL - FELONY**

**CRIMINAL LAW - SEXUAL BATTERY - JURY INSTRUCTION** - The court may give a proper jury instruction regarding fondling as a lesser-included offense of sexual battery if there is sufficient evidence for a reasonable jury to find for the lesser-included offense

**CRIMINAL LAW - FONDLING - ELEMENTS** - The lustful intent element of fondling may be inferred from credible evidence

**APPELLATE REVIEW - CONVICTIONS - UNCONSCIONABLE INJUSTICE** - If the defense fails to contradict sufficient and credible evidence for a jury to convict, allowing the verdict to stand does not sanction an unconscionable injustice

## **FACTS**

Lorenzo Shead Jr. was indicted for one count of sexual battery against his eight-year-old sister, Roshanda. At trial, the court limited the testimony of one of the defense's witnesses, Tameka Campbell. The defense called Campbell to discredit Williams, a witness for the prosecution. After the State presented its case-in-chief at trial, the circuit court granted the defense's motion for a directed verdict on the sexual-battery charge due to the prosecution's inability to prove penetration. At the close of trial, the circuit court instructed the jury on fondling as a lesser-included offense of sexual battery. Based on Roshanda's testimony and the fact that Roshanda and Shead tested positive for the same sexually transmitted disease, the jury convicted Shead of fondling. Shead appealed.

## **ISSUES**

Whether (1) the trial court erred in limiting defense witness Williams' testimony; (2) the trial court erred in instructing the jury on the lesser-included offense of fondling; (3) the evidence was insufficient to support the jury's verdict; and (4) the verdict was against the overwhelming weight of the evidence.

## **HOLDING**

(1) Because an inquiry into Williams's character for truthfulness was neither relevant to whether Shead committed the crime of fondling nor tended to prove or disprove any material issue at hand, the trial court did not err in excluding this evidence. (2) Because the record contained sufficient evidence to support the lesser-included fondling offense, and because the lustful intent element of fondling could be inferred from Shead's actions, as Roshanda testified to and described in her interview with Daniels, the trial court did not err in giving the jury the lesser-included offense instruction. (3) Because a rational juror could have found beyond a reasonable doubt that the State proved the essential elements of fondling, including the element of lustful purpose or lustful intent, the evidence was sufficient to support the jury's verdict. (4) Because the defense failed to provide any testimony or evidence that contradicted the allegations of abuse or Roshanda's testimony, allowing the verdict to stand did not sanction an unconscionable injustice and the verdict was not against the overwhelming weight of the evidence. Therefore, the Court of Appeals affirmed the judgment of the Washington County Circuit Court.

**Affirmed - 2018-KA-01732-COA (Mar. 3, 2020)**

Opinion by Judge Tindell

Hon. Carol L. White-Richard (Washington County Circuit Court)

George T. Holmes (Pub. Def. Office) for Appellant - Matthew Wyatt Walton (Att'y Gen. Office) for Appellee

Briefed by [Frank Wood](#)

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