

MISSISSIPPI SUPREME COURT DECISIONS – AUGUST 1, 2019***SUPREME COURT - ORDERS*****ESPINOZA V. STATE****COURT ORDER****ORDER**

Rodolfo Espinoza's convictions were affirmed on appeal, and Espinoza for the fifth time applied for post-conviction relief. These successive petitions were subject to the time bar. Espinoza challenged the validity of his enhanced sentence arguing that his sentence was illegal. The Supreme Court found these applications frivolous and considered monetary sanctions and restrictions on filing future applications for post-conviction relief. Therefore, the Supreme Court denied Espinoza's Application for Leave to File Post-Conviction Motion.

OBJECTION

Presiding Justice King disagreed in part, opining that the application was not frivolous and that the warnings regarding future frivolous filings were improper. However, he agreed the application did not merit relief. He would have found that Espinoza made reasonable arguments, and his application was not frivolous. Further, he believed that the court should have simply denied or dismissed Espinoza's application rather than seek a punishment such as sanctions and restrictions.

Denied - 2016-M-00176-SCT (July 31, 2019)

En Banc Order by Justice Maxwell - Objection by Presiding Justice King
Briefed by [Robert Rhea](#)

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STRICKLAND V. STATE**COURT ORDER****ORDER**

George Strickland filed a motion for post-conviction collateral relief in forma pauperis after his conviction and sentence were affirmed on direct appeal. The Supreme Court denied Strickland's motion for two reasons. First, the motion was time-barred because this was Strickland's second application for leave and Strickland presented no exception to this procedural bar. Second, Strickland presented no arguable basis for his claims. The court also found the successive application was frivolous and warned Strickland that future filings deemed frivolous may not only result in monetary sanctions, but also in restrictions on filing applications for post-conviction collateral relief in forma pauperis.

OBJECTION

Presiding Justice King objected to the order in part. Although he agreed that Strickland's application did not merit relief, he disagreed with the court's holding that the application was frivolous because Strickland made reasonable arguments to support his application. Additionally, he disagreed with the court's warning of future sanctions and restrictions because such measures punish criminal defendants proceeding in forma pauperis, preclude defendants' lawful rights to appeal, and overall discourage defendants from exercising their right to appeal.

Denied - 2016-M-01297 (July 31, 2019)

En Banc Order by Justice Maxwell - Objection by Presiding Justice King

Briefed by [Elena Mosby Peters](#)

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SUPREME COURT - CRIMINAL CASES

MARTIN V. STATE

CRIMINAL - FELONY

EVIDENCE - PHOTOGRAPHS - AUTOPSY - Autopsy photographs are admissible only if they possess probative value; so long as a photograph has probative value and its introduction serves a meaningful evidentiary purpose, it may still be admissible despite being gruesome, grisly, unpleasant, or even inflammatory

EVIDENCE - PHOTOGRAPHS - PURPOSE OF ADMISSION - A photograph has a meaningful evidentiary purpose when it: (1) aids in describing the circumstances of the killing; (2) describes the location of the body or cause of death; or (3) supplements or clarifies witness testimony

FACTS

Bruce Martin was indicted for the murder of James Dwight Brown after beating him to death. At trial, two autopsy photographs were introduced as evidence: one, which depicted Brown's lungs filled with blood, and another, which showed the extent of the trauma and hemorrhaging in Brown's head. Martin offered to stipulate the cause of death as blunt-force trauma and moved to suppress the photographs arguing that they would result in unfair prejudice. However, the trial judge overruled Martin's objection and admitted the photographs into evidence because he found them to be probative as to the cause and manner of death. Martin was found guilty of second-degree murder, and he was sentenced to serve forty years in the custody of the Mississippi Department of Corrections. Martin appealed.

ISSUE

Whether the trial court abused its discretion in admitting autopsy photographs alleged by Martin to be gruesome, inflammatory, and more prejudicial than probative.

HOLDING

Because the two autopsy photographs were of probative value and relevant in demonstrating the nature and extent of the injuries suffered by Brown without being overly gruesome or prejudicial, the trial court did not abuse its discretion by admitting the photographs into evidence. Therefore, the Supreme Court affirmed the judgment of the Madison County Circuit Court.

Affirmed - 2018-KA-01144-SCT (Aug. 1, 2019)

Opinion by Chief Justice Randolph

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

Erin E. Briggs (Pub. Def. Office) for Appellant - Barbara Byrd (Att'y Gen. Office) for Appellee

Briefed by [Charity Karanja](#)

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McALISTER V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - INEFFECTIVE ASSISTANCE OF COUNSEL - STANDARD OF REVIEW - To prove ineffective assistance of counsel, a defendant must show that counsel's performance was deficient and that the deficient performance prejudiced the defense

CONSTITUTIONAL LAW - SIXTH AMENDMENT RIGHTS - ADMISSION OF TESTIMONY - Even if testimony violates the accused's Sixth Amendment rights, its admission is harmless error if other evidence proves the defendant's guilt

FACTS

While visiting his brother Ernest Morris, Chevelle McAlister began using methamphetamine with Morris and his girlfriend, Johnna Norris. That night, McAlister shot Norris in the head with a single shot, killing her. McAlister and Morris then engaged in a stand-off. Morris eventually passed out. Several hours later, McAlister called 911 on two occasions identifying himself and stating that he killed someone. Officer Al Crum responded, and McAlister told Crum that he shot his girlfriend while playing with his gun and that she was dead. Upon entering the trailer, Officer Crum saw Morris passed out on the couch with a .22 rifle in his lap. While processing McAlister at the sheriff's department, Officer Crum found a folded five-dollar bill with a white powdery substance inside it. The substance was later determined to be methamphetamine. The grand jury indicted McAlister for murder and possession of a firearm as a convicted felon. At the jury trial, McAlister was tried for both the murder charge and the possession of a firearm, and his counsel did not seek to sever the charges. McAlister's counsel declined to request a limiting instruction to avoid drawing the jury's attention to McAlister's prior criminal conviction. Officer Crum testified about the methamphetamine he found in the five-dollar bill in McAlister's pocket. McAlister's counsel did not object to the testimony. The jury convicted McAlister on both counts. The trial court sentenced McAlister to life imprisonment for murder and ten years' imprisonment for illegal firearm possession to be served consecutively. McAlister appealed on the grounds of ineffective assistance of trial counsel.

ISSUE

Whether McAlister's counsel's decision not to sever the counts of the indictment, not to seek a limiting jury instruction, and not to object to improper testimony by Officer Crum, violating McAlister's Sixth Amendment rights, resulted in ineffective assistance of counsel.

HOLDING

Because counsel's decision not to sever the counts of the indictment and not to seek a limiting jury instruction were acceptable trial strategy, and because McAlister did not demonstrate that the failure to object to Officer Crum's testimony was prejudicial to his case, and because even if the admission violated McAlister's Sixth Amendment rights, objecting to the testimony would not have changed the outcome of the case, counsel did not provide ineffective assistance. Therefore, the Supreme Court affirmed the judgment of the Tippah County Circuit Court.

Affirmed - 2018-KA-00916-SCT (Aug. 1, 2019)

Opinion by Justice Chamberlin

Hon. John Kelly Luther (Tippah County Circuit Court)

Justin T. Cook & George T. Holmes (Pub. Def. Office) for Appellant - Alicia Ainsworth (Att'y Gen. Office) for Appellee

Briefed by [Jordan Thomas](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – JULY 30, 2019

COURT OF APPEALS - CIVIL CASES

BAILEY V. CITY OF PEARL

CIVIL - WRONGFUL DEATH

MISSISSIPPI TORT CLAIMS ACT - SOVEREIGN IMMUNITY - DISCRETIONARY FUNCTION - Under Miss. Code Ann. S 11-46-9(1), a public entity will not be liable for claims based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a governmental entity or employee thereof, whether or not the discretion be abused

MISSISSIPPI TORT CLAIMS ACT - SOVEREIGN IMMUNITY - PUBLIC-POLICY FUNCTION TEST - For a government defendant to enjoy discretionary-function immunity, the activity in question must involve an element of choice or judgment and that choice or judgment must involve social, economic, or political-policy considerations

FACTS

Kenneth Bailey and his wife, Bertha Bailey, went to watch their grandson play a baseball game at the Pearl youth ballpark. Bailey entered through an open gate. Allegedly, the gate was left unattended and unsecured, allowing it to swing partially closed. Bailey contended this created a substantial, unavoidable, hazardous condition. As the Baileys were leaving, the gate pierced through the front windshield like a spear and struck Bertha. She died in the hospital from her injury eleven days later. In his complaint, Bailey cited numerous duties that he alleged Pearl owed to visitors of the park, including proper design and installation of the gate; proper supervision, hiring and training of its employees; establishment of safety protocols for safe use of the facilities; providing adequate lighting; marking and warning of any hazardous conditions; inspecting fixtures that could create a dangerous condition; providing and allowing safe ingress and egress into the city's property; refraining from blocking the road with anything that could cause injury; and keeping the gate secured. The City of Pearl ("Pearl") filed an answer and a motion to dismiss based on discretionary-function sovereign immunity as established under the Mississippi Tort Claims Act ("MTCA"). The trial court found that operation and maintenance of the park is a discretionary function and therefore, Pearl is immune from liability under the MCTA. Bailey appealed.

ISSUE

Whether the trial court erred in dismissing all of Bailey's claims under discretionary-function sovereign immunity.

HOLDING

Because the Supreme Court recently instated the public-policy function test, and because the allegations of negligently leaving the gate unsecured, failing to maintain the gate, and failing to inspect fixtures upon the property that could create a dangerous condition are not public policy, the trial court erred in dismissing those specific claims. Therefore, the Court of Appeals affirmed the dismissal of Bailey's claims that fell under the public-policy umbrella and reversed the dismissal by the Rankin County Circuit Court of claims that fell outside the sovereign immunity of Pearl.

Affirmed in Part; Reversed in Part & Remanded - 2018-CA-01235-COA (July 30, 2019)

Opinion by Judge McDonald

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

Stacy Everett Pepper & Steven Craig Panter for Appellants - Walker Reece Gibson & Rebecca Suzanne Blunden for Appellee

Briefed by [Frank Wood](#)

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CRUMP V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - APPEALS - PETITION - A convicted defendant may file a petition for post-conviction relief in the pursuit of the modification of his sentence

CRIMINAL PROCEDURE - SENTENCING - PLEA AGREEMENT - The circuit court has no obligation to comply with an agreement of the parties and retains full discretion to sentence a defendant according to the applicable law regardless of a plea agreement

CRIMINAL PROCEDURE - SENTENCING - HABITUAL OFFENDER - Pursuant to Miss. Code Ann. § 99-19-81, a defendant may be indicted as a habitual offender if the defendant was convicted twice previously of any

felony or federal crime upon charges separately brought and arising out of separate incidents at different times and for which the defendant was sentenced to separate terms of at least one year's imprisonment

FACTS

Malcolm Crump was indicted on three separate charges of “Sale of a Schedule II Controlled Substance-Methamphetamine.” His indictment included two enhancements, one as a second or subsequent offender and another as a habitual offender. Crump entered a plea agreement on January 11, 2016. Under the plea agreement, the prosecution agreed to dismiss the subsequent offender and habitual offender enhancements. Crump would also become eligible for parole under the agreement. Despite accepting the plea agreement, Crump fled from Mississippi to Alaska and failed to appear at his sentencing hearing on February 1, 2016. After extradition, Crump appeared before the trial court on June 7, 2016. The prosecution rescinded the plea agreement, introduced evidence for the two enhancements, and recommended that the trial court sentence Crump accordingly. In the absence of the plea agreement, Crump would also become ineligible for parole. The trial court sentenced Crump pursuant to the prosecution’s recommendation. Crump subsequently filed a post-conviction relief petition on the grounds that the prosecution breached the plea agreement when it recommended the original sentence. Crump also asserted that the State failed to provide sufficient evidence to support his conviction as a habitual offender. The trial court denied Crump’s petition for post-conviction relief. Crump appealed.

ISSUES

Whether the trial court erred by refusing to grant Crump’s post-conviction relief petition after (1) the prosecution rescinded the plea agreement entered between Crump and the State and (2) the trial court sentenced Crump as a habitual offender pursuant to Miss. Code Ann. § 99-19-81.

HOLDING

(1) Because the State was no longer bound to uphold the plea agreement after Crump fled Mississippi and did not appear at his sentencing hearing, the trial court did not err when it refused to grant Crump’s post-conviction relief petition on this issue. (2) Because Crump’s prior convictions constituted two separate incidents occurring at different times, Crump qualified as a habitual offender pursuant to Miss. Code Ann. § 99-19-81, and the trial court did not err when it refused to grant Crump’s post-conviction relief petition on this issue. Therefore, the Court of Appeals affirmed the judgment of the Grenada County Circuit Court.

Affirmed - 2018-CA-00056-COA (July 30, 2019)

Opinion by Judge Tindell

Hon. Joseph H. Loper Jr. (Grenada County Circuit Court)

Robert Fred Lingold Jr. & Vicki L. Gilliam for Appellant - Jeffrey A. Klingfuss (Att’y Gen. Office) for Appellee

Briefed by [Charles Matranga](#)

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JOBE V. STATE

CIVIL - STATE BOARDS & AGENCIES

STATE BOARDS & AGENCIES - PRISONS - JUDICIAL REVIEW - Under Miss. Code Ann. § 47-5-807, an offender aggrieved by an adverse decision rendered pursuant to an administrative review procedure under Miss. Code Ann. §§ 47-5-801 through 47-5-807 has the right to seek judicial review by a circuit court within thirty (30) days after receipt of the agency’s final decision

STATE BOARDS & AGENCIES - JUDICIAL REVIEW - PROCESS - An appeal of an administrative decision under an administrative review procedure is not a “regular civil suit,” and thus, service of process upon the attorney general is not required as long as the agency has notice of the intent to appeal

STATE BOARDS & AGENCIES - JUDICIAL REVIEW - TIMELINESS - A pro se pleading is considered filed when mailed by the inmate and not when it is received by the circuit clerk

FACTS

Dennis Jobe, an inmate at the Mississippi State Penitentiary, contracted Hepatitis-C while being treated at the Veterans Administration Medical Center prior to his criminal conviction. While incarcerated, Jobe learned of a new treatment for Hepatitis-C called Harvoni and sent a request to the Mississippi Department of Corrections (“MDOC”) to receive the treatment. MDOC responded by stating that Harvoni was not yet on its pharmacy formulary, but that eligible patients would be evaluated for treatment once the treatment was approved. Thereafter, Jobe made his second request for Harvoni, and MDOC responded by stating that the matter was closed and that his request would not be processed. After his third request for Harvoni was denied on October 3, 2016, Jobe began his appeal and filed a motion for an extension of time to prepare his motion for judicial review in the Sunflower County Circuit Court on October 28, 2016 and mailed a copy of it to MDOC’s attorneys. Jobe mailed his final motion for judicial review on November 2, 2016. MDOC responded by filing a motion to quash the summons based on lack of personal jurisdiction because Jobe failed to have the attorney general served with process. Raising the issue for the first time in his response, Jobe claimed that he had been denied outside exercise and sought a temporary restraining order based on the denial of Harvoni treatment, MDOC’s failure to provide him with an MRI for a back problem and being subjected to group punishment. The trial court denied Jobe’s motion for a temporary restraining order concerning medical treatment for his back, exercise time, and group punishment because he failed to exhaust all of his administrative remedies on the issues. Finding that MDOC had taken steps to evaluate Jobe for Harvoni treatment, the trial court held that Jobe’s request for a restraining order on the subject was moot and ordered MDOC to provide Jobe and the court with an update of its medical specialist’s recommendation and its final decision concerning Jobe’s Hepatitis-C treatment with Harvoni. Jobe appealed.

ISSUES

Whether the circuit court (1) had jurisdiction to hear Jobe’s petition for judicial review of his Harvoni request; (2) erred in its rulings on exhaustion of remedies; and (3) erred in its rulings on Jobe’s Harvoni request.

HOLDINGS

(1) Because service of process upon the attorney general is not required for an appeal pursuant to an administrative review process and Jobe mailed his motion for judicial review within thirty days after receiving MDOC’s final decision, the circuit court had jurisdiction to hear Jobe’s petition for review of his Harvoni request. (2) Because Jobe did not pursue his complaints about his back pain, exercise time, and group punishment prior to his appeal, the circuit court correctly held that Jobe did not exhaust his administrative remedies with respect to those issues. (3) Because both MDOC’s approval of Harvoni and Jobe’s evaluation for eligibility for the treatment occurred after the trial court’s decision, the trial court should be given an opportunity to review the new evidence and issue a final order concerning Jobe’s request for Harvoni. Therefore, the Court of Appeals affirmed and remanded the judgment of the Sunflower County Circuit Court.

DISSENT

Presiding Judge Carlton argued that the circuit court lacked jurisdiction over Jobe’s appeal because he failed to serve the attorney general with process in accordance with Miss. R. Civ. P. 4(d)(5), which provides that service upon the State or any of its departments shall be made by delivering a copy of the summons and complaint to the attorney general. Therefore, Judge Carlton would have vacated the trial court’s orders and remanded to the trial court for dismissal for lack of jurisdiction.

Affirmed & Remanded - 2018-CP-00087-COA (July 30, 2019)

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

Hon. Margaret Carey-McCray (Sunflower County Circuit Court)

Pro se for Appellant - Darrell Clayton Baughn (Att’y Gen. Office) for Appellees

Briefed by [Breland Parker](#)

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CIVIL - CONTRACT

CIVIL PROCEDURE - STATUTE OF LIMITATIONS - ACCRUAL - Under Miss. Code Ann. § 15-1-49(1) all actions for which no other period of limitation is prescribed shall be commenced within three (3) years next after the cause of such action accrued, and not after

CIVIL PROCEDURE - STATUTE OF LIMITATIONS - CAUSE OF ACTION - Miss. Code Ann. § 15-1-49's three-year statute of limitations applies to claims of fraud, misrepresentation, concealment, breach of fiduciary duty, conversion, unjust enrichment, unfair competition and business practice, and breach of contract

FACTS

After receiving a bachelor's degree from Indiana State University, Veronica McGee enrolled at Jackson State University ("JSU") as a graduate student in the Department of Elementary and Early Childhood Education ("Education Department"). After consulting only JSU's 2003-2005 graduate-school course catalog, McGee entered JSU's Master of Science in Reading Education Program ("Reading Education Program"). The catalog's only stated prerequisite for the Reading Education Program was that applicants must hold a baccalaureate degree from an accredited college or university. Therefore, McGee satisfied this requirement. Nowhere in the course description did the catalog represent that the Reading Education Program satisfied the initial eligibility requirements for a teaching license. After completing the two-year Reading Education Program, McGee graduated from JSU with a Master of Science in Reading Education. After receiving her Doctorate of Education and working as a substitute teacher, McGee applied to the Georgia Professional Standards Commission for a Georgia teaching license. McGee learned that her master's degree from JSU failed to satisfy the Mississippi Department of Education's requirements for a Class A initial teacher's license. After the Georgia Professional Standards Commission denied her request for a teaching license, McGee filed her complaint against JSU and sought over \$1 million in damages. JSU moved for summary judgment, and the circuit court found that Miss. Code Ann. § 15-1-49's three-year statute of limitations applied as a bar to McGee's claims. McGee appealed.

ISSUE

Whether the three-year statute of limitations in Miss. Code Ann. § 15-1-49 barred McGee's claims against JSU.

HOLDING

Because McGee filed her lawsuit after an eleven-year delay, Miss. Code Ann. § 15-1-49's three-year statute of limitations barred McGee's claims against JSU. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

Affirmed - 2018-CP-00662-COA (July 30, 2019)

Opinion by Judge Tindell

Hon. William A. Gowan Jr. (Hinds County Circuit Court, First Judicial Dist.)

Pro se for Appellant - Pope Shannon Mallette & Paul Bowie Watkins Jr. for Appellee

Briefed by [Sarah Schofield](#)

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MILAM V. KELLY

CIVIL - REAL PROPERTY

CIVIL PROCEDURE - STATUTE OF LIMITATIONS - DISCOVERY RULE – The discovery rule exception to the statute of limitations is only applicable to cases where it is unrealistic to expect a layman to perceive the injury at the time of the wrongful act

CIVIL PROCEDURE - STATUTE OF LIMITATIONS - CONTINUOUS TORT - A continuing tort sufficient to toll the statute of limitations must be the result of continual unlawful acts rather than the ongoing ill effects from an original violation

CIVIL PROCEDURE - STATUTE OF LIMITATIONS - FRAUDULENT CONCEALMENT - To establish a claim of fraudulent concealment, there must be some act or conduct of an affirmative nature designed to prevent and which does prevent discovery of the claim

FACTS

J. P. Milam's home suffered flash flood damage eight times between 2008 and 2017. Milam did not observe the flooding when it first occurred, but he was present the second time the house flooded on July 3, 2010. Milam investigated the cause of the flooding and talked to his neighbor Jim Kelley who blamed the City of Jackson's clogged storm drains. After several more flooding incidents Milam filed a complaint against the City of Jackson, contending that the damage was due to clogged storm drains maintained by the city. Subsequently, an engineer informed Milam that the wooden fence erected by the Kellys also posed a significant surface drainage problem. On April 29, 2014, more than three years after Milam originally observed the flooding, Milam amended his complaint to add the Kellys as defendants. The Kellys filed a motion for summary judgment in which they argued that Milam's claim was barred by the three-year statute of limitations. The chancellor found that Milam's cause of action accrued at the latest on July 3, 2010, and thus the statute of limitations had expired. Milam appealed.

ISSUES

Whether (1) the chancellor improperly applied the discovery rule; (2) Milam's claims of negligence, nuisance, and trespass were continuing torts that tolled the statute of limitations; and (3) fraudulent concealment tolled the statute of limitations.

HOLDING

(1) Because reasonable minds could not differ that Milam possessed sufficient information to bring a claim, and because Milam was aware of his injury, he could not take shelter in the discovery rule. (2) Because the flooding of Milam's home constitutes a continual ill effect, the continuing torts doctrine does not apply. (3) Because Milam did not present evidence of an affirmative act by the Kellys to prevent discovery of Milam's claim, Milam did not establish a claim of fraudulent concealment. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Chancery Court.

DISSENT

Judge Lawrence argued that the Supreme Court's decision in *Punzo* was determinative in this case, rather than *Angle* and *O'Callaghan* relied upon by the majority. Thus, Judge Lawrence argued the discovery rule was applicable here because there was expert disclosure concerning flooding.

Affirmed - 2017-CA-01760-COA (July 30, 2019)

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

Hon. William H. Singletary (Hinds County Chancery Court, First Judicial Dist.)

Michael Verdier Cory Jr. for Appellant - Douglas E. Levanway, Mark C. Carroll, Eric Joseph Dillon, Cory Louis Radicioni, Scott Charles Campbell, & Charles Edward Cowan for Appellees

Briefed by [Bryant Carlton](#)

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SULLIVAN V. ESTATE OF MADDOX

CIVIL - REAL PROPERTY

REAL PROPERTY - EASEMENT - MERGER - Where the land on which the easement was granted and the land for which the easement served are obtained by the same party, the doctrine of merger applies and there is no longer a valid easement

CIVIL PROCEDURE - DISMISSAL - DELAY - Where there is a lack of prosecution for a claim, and a clear record of delay and lesser sanctions have been considered, the trial judge may dismiss the complaint sua sponte

CIVIL PROCEDURE - ESTATE - SUBSTITUTION - An estate may file for an extension to substitute a deceased party in a claim as long as the motion is filed within a reasonable time

FACTS

Annie Collier originally owned a parcel of land and, in 1981, was granted an easement from the public road to the land she owned. The easement constituted an easement appurtenant and belonged to the land, not Collier personally. On April 27, 1987, the Sullivans purchased the land from Collier for which the easement was granted. By other conveyances over time, the Sullivans acquired the land through which the 1981 easement was given. Collier maintained ownership of a pie-shaped portion of land that was not adjacent to the lands on which the 1981 easement was located. In 1994, the Maddoxes purchased the remaining pie-shaped portion of land from Collier. The Sullivans filed a complaint in 2010 seeking an injunction to prohibit the Maddoxes from entering their property through the Sullivans' land. The Maddoxes filed a counterclaim asserting that they possessed an easement across the Sullivans' property. After going to trial in 2011, the case was continued and, after an effort by the Maddoxes to set another trial date, the Sullivans chose to delay. Additionally, the Sullivans moved to recuse the judge twice alleging that he had a clear bias against them. Steve and Samuel Maddox died before the judgment was rendered, but Samuel Maddox's estate filed for a party substitution. The trial court dismissed the Sullivans' complaint, awarded sanctions in the form of attorney's fees to Samuel Maddox's estate, and found that the Maddoxes did not possess a valid easement over the Sullivans' property.

ISSUES

Whether (1) the trial judge erred in dismissing the complaint; (2) the trial judge erred in awarding sanctions to Samuel Maddox's estate; and (3) the trial judge erred in finding that the Maddoxes did not have a valid easement.

HOLDING

(1) Because there was a clear record of delay and lesser sanctions were deemed to be insufficient, the trial judge did not err in dismissing the Sullivans' case sua sponte. (2) Because Samuel Maddox's estate filed for an extension to substitute parties within a reasonable amount of time after his death, and because Steve Maddox's estate did not file for a party substitution after his death, the trial judge did not err in awarding his estate the entirety of attorney's fees. (3) Because the Sullivans obtained both the land on which the easement was granted and all the land adjoining for which the easement served, and because the Maddoxes could access their land through other land they owned, the trial judge did not err in finding no valid easement of record or an easement by implication. Therefore, the Court of Appeals affirmed in part and reversed and remanded in part the judgment of the Simpson County Chancery Court.

CONCURRENCE

Judge Greenlee argued that the amount of attorney's fees was inappropriate because the Maddoxes' counterclaim was unsuccessful. However, the amount and reasonableness of attorney's fees were not challenged on appeal, therefore he specially concurred.

CONCURRENCE IN PART/DISSENT IN PART

Judge McCarty argued that the sanction should have been reversed because the attorney filed the motion for recusal with seven affidavits and several other documents. He believed that this was in line with what a zealous attorney would have done and did not believe it was for the purpose of delay and harassment; therefore, he would have reversed the sanction.

Affirmed in Part; Reversed & Remanded in Part - 2017-CA-00418-COA (July 30, 2019)

En Banc Opinion by Presiding Judge Carlton - Special Concurrence by Judge Greenlee - Concurrence in Part/Dissent in Part by Judge McCarty

Hon. Gerald Marion Martin (Simpson County Chancery Court)

W. Terrell Stubbs & James Lawton Robertson for Appellants - James Burvon Sykes III & L. Wesley Broadhead for Appellee

Briefed by [John Forrest Kelly](#)

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KATIE HUMPHRIES

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