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This week's Brief*Serv* Newsletter, Exam Edition is below.

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## **Supreme Court – Civil**

**Caesars Ent., Inc. v. Miss. Dep't of Revenue** - Gaming Law – Tax Refund – Timely Appeal – In 2005, Caesars Entertainment, Inc. (“Caesars”) merged into a wholly owned corporate subsidiary of Harrah’s Entertainment. Due to the mid-year merger, Caesars was required to file a tax return for the period beginning in January 2005 and ending in June 2005. Caesars timely filed its 2005 tax return, and in 2007, the Mississippi Department of Revenue (“the Department”) notified Caesars that an examination of its past tax returns had been initiated. Five years and three months later, the Department finished its examination and concluded that no additional tax was due and no tax liability was overpaid. Caesars did not take an appeal from the audit assessment. In 2014, the Mississippi Supreme Court handed down its decision in *Mississippi Department of Revenue v. Isle of Capri Casinos, Inc.*, in which it held that when a casino and its affiliates file a combined return, the gaming license tax credits can be used to offset the income tax liability of the entire affiliated group. Following this opinion, Caesars filed an amended corporate-income and franchise tax return for the January 2005 to June 2005 tax period. The Department denied Caesars’ refund claim, and both the Board of Review and the Board of Tax Appeals upheld the Department’s denial. Caesars timely appealed to the Chancery Court of the First Judicial District of Hinds County, where both parties filed motions for summary judgment. In its motion, Caesars argued that Miss Code Ann. § 27-7-49(2) and § 27-7-313 allowed additional time to file a refund claim after the Department’s audit. The Chancellor ruled in favor of the Department. Caesars timely appealed.

On appeal, Caesars argued that the two aforementioned statutes work collectively to authorize a taxpayer’s refund claim after the three-year statute of limitations under § 27-7-313 has expired. The Supreme Court held that Caesars’ argument had no merit because the language of § 27-7-49(2) does not extend the notice’s tolling privilege to a taxpayer’s time to file a refund claim. Further, the Court ruled that § 27-7-49(2) relates solely to the time the Department has to examine a return and issue an assessment and, as a result, does not apply to taxpayers. Lastly, the Court held that because the Department found Caesars’ tax determination was correct, § 27-7-51(1) did not create a duty for the Department to issue a refund after its examination of Caesars’ returns, and the Department further was under no duty or obligation to conduct a second examination to establish the correct tax liability of a taxpayer. Therefore, the Supreme Court affirmed the judgment of the Chancery Court of the First Judicial District.

Justice Griffis specially concurred and stated that he found no statute that would authorize the tolling of the limitations period or that would allow the taxpayer any additional time to file an amended return during the Department’s examination.

Briefed by [Jack Byrd](#)

**Jones v. Miss. Baptist Health Sys., Inc.** - Civil Procedure – Workers’ Compensation – Evidence – Angela Jones worked as a nurse at Baptist Hospital (“Baptist”) for fourteen years. In March 2015, Jones sustained an injury to her lower back while pushing a medicine cart during her shift. She declined medical assistance and finished her shift. She also did not report the injury in Baptist’s employee injury risk management system. The following week she emailed her supervisor, saying the pain from the back injury had moved into her leg and was causing her trouble, and she scheduled a doctor’s appointment. In her first doctor’s appointment she did not describe it as an injury and did not list a cause of the injury. Later, at her second doctor’s appointment, she described it as a work injury and received an MRI. She then returned to work and continued working at Baptist until October 2015, due to the pain causing her to stop. She stated to her supervisors that her injuries were caused by the medicine cart incident and filed for workers’ compensation. An evidentiary hearing was held before an administrative judge, who found that Jones had sustained a work-related injury. Baptist appealed the decision to the full Workers’ Compensation Commission. The Commission found that there was substantial evidence supporting a decision that Jones did not sustain a compensable, work-related injury, and reversed the decision of the administrative judge. Jones appealed the decision and the Court of Appeals reversed the Commission’s decision. Baptist then filed for writ of certiorari with the Supreme Court to determine whether substantial evidence supported the Commission’s decision.

The Supreme Court is bound by the decision of the Mississippi Workers’ Compensation Commission if the Commission’s findings of fact are supported by substantial evidence. Because Jones’s health history and doctor’s visits, in which Jones repeatedly failed to report a specific work-related injury to either her healthcare providers or Baptist, reasonably supported the Commission’s order, the Commission’s finding that Jones did not suffer a compensable, work-related injury was supported by substantial evidence. Specifically, the evidence indicated that Jones was obese, gave history to a physician that was inconsistent with her allegations in the workers’ compensation case, and medical expert opinions that Jones’s pain was not caused by a work injury. Therefore, the Supreme Court reversed the judgment of the Court of Appeals, and reinstated and affirmed the decision of the Workers’ Compensation Commission.

Justice Kitchens dissented, arguing that the Court of Appeals decision should be affirmed because Jones’s evidence was sufficient to establish her Workers’ Compensation claim by a preponderance of the evidence. There was proof of an actual injury arising in the course of Jones’s employment, and a causal connection between that injury and her claimed disability. He further argued that the Commission’s decision was unsupported by substantial evidence and was arbitrary and capricious. Therefore, Justice Kitchens would affirm the decision of the Court of Appeals that reversed the Commission’s decision.

Briefed by [Winston Hudson](#)

**Samson v. Unum Life Ins. Co. of America** - Civil Procedure – Summary Judgment – Insurance Liability – Shannon Werneth requested life-insurance proceeds from Unum Life Insurance Company of America (“Unum”) for the benefit of her two minor children after the death of the children’s father. Unum requested and received a guardianship order from the Jackson County Circuit Court, naming Werneth as guardian and granting her the right to apply for and collect on behalf of each of her children funds from their father’s insurance policy. The order directed that funds were to be received in separate guardianship accounts with Keesler, Ocean Springs, Mississippi; and the funds should not be withdrawn without specific authorization of the chancery court. The order further directed Unum to make the checks out to “In the Matter of the

Guardianship of Jeffrey Jake Werneth and Shelby Lee Werneth,” the two minor children. However, Unum issued the checks payable to Werneth, and the policy proceeds were mailed directly to her residence. Werneth deposited the checks into her personal checking account and later misappropriated the funds. The chancery court then appointed a guardian ad litem for the children and eventually sued Unum in the Harrison County Circuit Court for negligence and breach of contract. The circuit court granted Unum’s motion for summary judgment, holding that because Unum was not a party to the guardianship proceeding in chancery court, Unum was not subject to liability for an alleged violation of the guardianship order. Samson appealed.

The Supreme Court held that, as a matter of law in Mississippi, insurers owe a general duty of care to the insured, independent of contractual obligations. As such, Unum owed a general duty of care to properly deliver the guardianship funds for the beneficiaries as instructed in the guardianship order. Because the guardianship order specifically instructed Unum as to how the funds were to be issued, and because Unum did not issue the funds as instructed by the order, the Supreme Court held that genuine issues of material fact precluding summary judgment existed as to Unum’s potential liability for not abiding by the guardianship order’s instruction, and the evidence precluded a finding, as a matter of law, that Unum did not breach the duty of care it owed to the minor beneficiaries named in the life-insurance policy. Therefore, the Supreme Court reversed and remanded the judgment of the Harrison County Circuit Court.

Justice Griffis dissented, arguing that the circuit judge’s grant of summary judgment should be affirmed based on the judge’s three legal rulings. First, the guardianship order did not impose any additional duty or obligation on Unum over and above its contractual duties. Second, Unum’s contractual duties were not breached. And, third, the guardianship order only granted rights to Werneth to receive the funds as guardian and imposed duties on her regarding the handling of the funds.

Briefed by [Melissa Fenwick](#)

**[Wiggins v. City of Clinton](#)** - Eminent Domain – Public Necessity – Public Use – In March 2016, Matthew Wiggins bought property in Clinton, Mississippi. Three structures on the property were dilapidated and in need of extensive repairs. Clinton assessed 1,434 code violations to Wiggins’s property, and found that the properties should be demolished due to neglect. Wiggins pled guilty to the violations. Clinton subsequently found additional violations, and the Hinds County Circuit Court found Wiggins guilty of two violations. Soon afterward, Clinton adopted an urban-renewal plan, which designated an urban-renewal area that corresponded with the Olde Towne Clinton Historic District. Wiggins’s property was within the renewal area, in part because of its historical significance. Clinton filed a complaint in the special court of eminent domain against Wiggins, seeking to take his parcel of land. The special court found Clinton’s exercise of eminent domain proper. Wiggins appealed, claiming (1) Clinton lacked the legal authority to take the property; (2) there was no public necessity for the taking; and (3) the City failed to prove a legal public use.

The Supreme Court found that sufficient evidence supported the special court of eminent domain’s judgment of a public use. Additionally, the record offered no evidence to demonstrate abuse of discretion or fraud on Clinton’s behalf, and no evidence that the determination of the special court of eminent domain was manifestly wrong. Therefore, the Supreme Court affirmed the judgment of the Hinds County Special Court of Eminent Domain.

Briefed by [Allison Middleton](#)

## Supreme Court – Post-Conviction Relief

[Galloway v. State](#) - Post-Conviction Relief – Sixth Amendment – Right to Counsel – Conflict of Interest – In 2007, Leslie Galloway pled guilty to carjacking and was later sentenced to death in a capital murder case using the carjacking conviction as an aggravating circumstance. Galloway filed a petition for post-conviction relief (“PCR”) in the Jackson County Circuit Court, claiming his attorney had a conflict of interest that required reversal of his conviction. The trial court denied his PCR petition in 2015.

The Supreme Court agreed with the trial court and decided that Galloway’s petition for PCR was time barred because it was filed after the Uniform Post-Conviction Collateral Relief Act’s three-year statute of limitations. The Supreme Court also affirmed the trial court’s decision that, notwithstanding the time bar, the petition failed on the merits because Galloway had not demonstrated a violation of his Sixth Amendment rights under the *Crawford* or *Cuyler* standards. Ultimately, the Court found no clear error with the trial court’s findings. Therefore, the Supreme Court affirmed the judgment of the Jackson County Circuit Court.

Presiding Justice Kitchens dissented, arguing that there was a per se actual conflict of interest with Galloway’s counsel and stating that Galloway’s conviction should be reversed and remanded for a new trial.

Briefed by [Joshua Crownover](#)

## Court of Appeals – Civil

[BancorpSouth Bank v. Bruce Sweet Potato, Inc.](#) - Property – Standing – Service of Process – Jurisdiction – Walter and Jane Pearson purchased real property from Richard Bailey, using BancorpSouth to finance the purchase. After the purchase, the Pearsons and BancorpSouth learned the property was subject to a default judgment entered against Bailey. The default judgment arose from a demand letter addressed to Bailey as the registered agent, president, and director of Magnolia Brand Produce and REB Cane Creek Farms. Bruce Sweet Potato served a single service of process to Bailey, REB Cane Creek Farms, and Magnolia Brand Produce rather than issuing separate summons for each defendant as required under Miss. R. Civ. P. 4(b). Bailey did not file an answer or defend himself in court and the judgment listed the defendant’s name as Bailey Richard, rather than Richard Bailey. For these reasons, BancorpSouth and the Pearsons claimed the default judgment against Bailey was void due to defective service of process. Bruce Sweet Potato enrolled their judgment prior to the Pearsons’ purchase of the property, but sought to execute its judgment against Bailey after the Pearsons took title to the property. The Chickasaw County Circuit Court and the Calhoun County Circuit Court entered three orders finding that the default judgment against Bailey was not void and that the Pearsons and BancorpSouth lacked standing to attack the default judgment as well as the writ of execution. The Pearsons and BancorpSouth appealed.

The Court of Appeals held that the Pearsons and BancorpSouth did not have standing to challenge the default judgment against Bailey because they lacked a valid, present, and complete cause of action along with a right to relief upon institution of the suit given that they purchased the property after the complaint against Bailey was filed. As such, the Pearsons’ and BancorpSouth’s argument as to whether the default judgment was void is moot. Further, the Pearsons and BancorpSouth lacked standing to challenge the judgment because only the

party upon whom process was improperly served has standing to make a motion to dismiss based on improper service. The Court of Appeals, however, held that the Pearsons and BancorpSouth did have standing to challenge the writ of execution given their colorable interest in the property and the adverse effect they would experience if the judgment was executed. Despite this, the Court of Appeals deferred to its analysis regarding their standing to challenge the default judgment on Bailey's behalf, refusing to rule on the validity of the underlying default judgment. Therefore, the Court of Appeals affirmed the Calhoun County Circuit Court's order denying the Pearsons' and BancorpSouth's motion to intervene; reversed the Calhoun County Circuit Court and Chickasaw County Circuit Court's orders denying their motions to quash and stay the writ of execution; and remanded the cases for further proceedings consistent with its opinion.

Briefed by [Charles Ellzey](#)

**Burkley v. U.S. Bank N.A.** - Contracts – Real Estate Settlement Procedure Act – Truth in Lending Act – Scott Burkley brought a claim against U.S. Bank N.A. (“U.S. Bank”) and Ocwen Loan Servicing, LLC (“Ocwen”) for allegedly failing to comply with the notice requirements of the Real Estate Settlement Procedure Act (“RESPA”) and the Truth in Lending Act (“TILA”). Burkley alleged that these failures caused him to mail his qualified written request to the wrong address and prevented him from receiving notices of delinquency, resulting in a foreclosure on his property. U.S. Bank and Ocwen were granted a motion for summary judgment on their claims. Burkley appealed.

Because Ocwen sent several notices stating that a qualified written request and any other communications “must” be sent to the correct and specified address, an earlier letter stating qualified written requests “may” be sent to specified and correct address were invalid for the purposes of bringing a claim under RESPA. Burkley's claim against U.S. Bank stated that the bank, as trustee of a trust the mortgage loan was assigned to, failed to notify Burkley of this transfer in the period required by TILA. However, because U.S. Bank notified Burkley of the transfer of the underlying loan, it did not have to notify him of the transfer of the corresponding deed of trust instrument at a later time. As a result, Ocwen was not in violation of RESPA and U.S. Bank was not in violation of TILA. Therefore, the Court of Appeals affirmed the judgment of the Desoto County Circuit Court.

Judge McCarty concurred with the majority in its decision but stated that such stringent requirements under RESPA and TILA should not be applied in a way that harms consumers, especially since the laws were enacted to protect consumers. He argued that in cases such as this, where the consumer was utilizing addresses used for prior communications, the laws should not deny redress based solely on a technicality.

Briefed by [Reid Hudson](#)

**Chitwood v. Stone Cnty. Dep't of Child Prot. Servs.** - Family Law – Parental Rights – Termination – Jason Wayne Chitwood and Cassie Nicole Ware were parents of a minor child, T.C. After receiving an anonymous call alleging that Chitwood was cooking and using methamphetamine, the Mississippi Department of Child Protective Services (“DPCS”) conducted an initial investigation. Chitwood's drug screening tested positive for methamphetamine and amphetamine. Due to Chitwood's actual residence being in Stone County, the case was transferred to the Stone County DCPS. T.C. was removed from Ware and Chitwood's custody and placed in a foster home. At the time T.C. was removed from Chitwood's custody, the minor child tested positive for methamphetamine. On April 12, 2017, T.C. was determined to be a neglected child. Chitwood subsequently

entered into two service agreements in which he was required to maintain adequate housing and employment, remain in contact with T.C., and submit to random drug screenings. Prior to his permanency hearing on November 18, 2017, Chitwood had not established adequate housing and employment, failed to meaningfully interact with T.C., and failed four out of five drug tests. Upon receiving the testimony from T.C.'s guardian ad litem ("GAL"), Althea Shaw-Milton, corroborating Chitwood's failure to comply with the service agreements, the chancery court terminated Ware and Chitwood's parental rights. Chitwood appealed.

On appeal, Chitwood argued that (1) the trial court committed reversible error in terminating his parental rights without the GAL conducting an interview with him and (2) the grounds for parental termination were not met by clear and convincing evidence. A GAL is required to protect the best interest of the child in the termination of parental rights. The Court of Appeals held that the GAL conducted a thorough investigation, including interviewing and visiting T.C. at the foster home. The GAL also provided her contact information to Chitwood and repeatedly attempted to contact Chitwood, to no avail. Therefore, the GAL sufficiently protected T.C.'s interests and the trial court did not err in relying on her recommendation to terminate Chitwood's parental rights. Additionally, the Court of Appeals held that Chitwood's habitual drug addiction and failure to comply with drug screening, as well as his overall neglectful behavior towards T.C., in clear violation of Miss. Code Ann. § 93-15-121(c)-(f), was clear and convincing evidence in support of the termination of Chitwood's parental rights. Therefore, the Court of Appeals affirmed the judgment of the Stone County Chancery Court.

Briefed by [Charles Matranga](#)

**Dildy v. McPeters Inc. Funeral Dirs.** - Workers' Compensation – Petition for Review – Timeliness – A Mississippi Workers' Compensation Commission ("MWCC") Administrative Judge issued a final order on Kathryn Dildy's workers' compensation claim. Although the final order was filed five days later, it was not mailed to the parties at the time. Nonetheless, the attorney for McPeters Inc. Funeral Directors and Old Republic Insurance Company ("Employer") found the final order while searching the MWCC website. That same day, the Employer's attorney informed Dildy that the final order had been issued. In addition to the parties becoming aware of the final order, the Employer's attorney and Dildy's attorney received the order in the mail. However, Dildy did not file her petition for review with the Commission within twenty days after the Administrative Judge's decision. The Commission dismissed Dildy's petition as untimely. Dildy appealed, contending that she should have been allowed to file her petition for review because of the Commission's delay in providing a copy of the final order.

A petition for review must be filed with the Commission within twenty days of the Administrative Judge's final order. In determining the twenty-day window, the date of the order is excluded and the last day is included. In this case, the Administrative Judge's final order was filed on December 4, 2018. Therefore, the final date to file for review was December 24, 2018. However, since State offices were closed on December 24 and December 25, Dildy's petition-for-review deadline was December 26. Dildy did not file her petition for review until December 28. Because Employer's attorney notified Dildy's attorney of the order on December 11, and because she received Dildy's attorney received the final notice on December 20, Dildy received the final order in sufficient time to file the petition of review by the December 26 deadline. As a result, the Commission's dismissal of Dildy's petition was proper. Therefore, the Court of Appeals affirmed the judgment of the Mississippi Workers' Compensation Commission.

Judge McDonald disagreed with the majority's affirmation of the Commission's decision. She reasoned that since the parties did not become aware of the existence of the final order until December 11, 2018, the Commission arbitrarily shortened the deadline nearly in half to file the petition for review. She argued that the twenty-day period should have been calculated using either December 11, or alternatively, December 20, either of which would have rendered the appeal timely.

Briefed by [David Boydston](#)

**Howard Indus. Inc. v. Wheat** - Workers' Compensation – Expert Medical Opinion – Loss of Wage-Earning Capacity – Sicily Wheat injured her back while lifting coils in the course of her employment at Howard Industries. She filed a petition to controvert with the Mississippi Workers' Compensation Commission (“the Commission”), and the administrative judge (“AJ”) entered an order finding that Wheat had not suffered a loss in wage-earning capacity because she was still employed in her pre-injury position at Howard Industries for equal or higher wages. Six months after the hearing, Howard Industries terminated Wheat due to misrepresenting her prior criminal history. Wheat petitioned the Commission to review the AJ's decision. The Commission reversed, finding that Wheat had established a loss of wage-earning capacity. The Commission considered that Wheat was no longer earning comparable wages due to her suspect post-hearing termination. Additionally, two different doctors opined that Wheat suffered a loss in wage-earning capacity. Although a third doctor disagreed, the Commission has discretion to find facts and weigh medical opinions.

The Court of Appeals held that the Commission's decision was supported by substantial evidence. The Commission properly found Wheat's post-hearing termination to be suspect, and additionally, the presumption of no lost earning capacity that the AJ relied upon was removed by Wheat's termination. Additionally, the Commission considered sufficient evidence to support its finding that Wheat had suffered lost earning capacity. Therefore, the Court of Appeals affirmed the judgment of the Mississippi Workers' Compensation Commission.

Briefed by [Eli Scott](#)

**Lefler v. Wasson** - Torts – Personal Injury – Negligence – Premises Liability – After renting a house from Tommie Wasson, Nancy Lefler slipped and fell on a brick path behind the house. Lefler sued Wasson for negligence. Wasson denied she had any notice that the bricks on the path were dangerous and moved for summary judgment. The circuit court granted the request and dismissed the lawsuit. Lefler appealed.

Although Lefler argued that Wasson knew or should have known that the brick path was dangerous because her son replaced a dislodged brick, one loose brick was not enough to create a genuine issue of material fact or lead to an inference that all of the bricks on the path were potentially loose. Because there was no proof in the record that there had been other slip-and-falls on Wasson's property that Wasson knew of, there was no genuine issue of material fact with regard to the existence of a dangerous condition. Therefore, the Court of Appeals affirmed the judgment of the Attala County Circuit Court.

Briefed by [Sarah Schofield](#)

**Neely v. Neely** - Family Law – Divorce – Property Division – Keith and Cynthia Neely were married in November, 1976 and separated in May, 2015. In May 2015, Cynthia filed for a divorce on the grounds of habitual cruel and inhuman treatment and/or, in the alternative, irreconcilable differences. At trial in April 2018, Keith and Cynthia consented to an irreconcilable-differences divorce and submitted the issue of equitable distribution to the chancellor; specifically: (1) whether the marital home was part of Cynthia’s separate estate; (2) whether Cynthia was to reimburse Keith for certain veterinarian bills associated with the death of one of Keith’s dogs; (3) whether Keith was entitled to alimony; and (4) attorney’s fees. The chancellor determined that (1) the marital home was part of Cynthia’s separate estate; (2) equitable division of marital assets adequately provided for the future income needs of both parties, thus Keith was not awarded alimony; and (3) each party was responsible for his and her own attorney’s fees. Cynthia filed a motion for reconsideration, and Keith filed a motion to amend the judgment or, alternatively, for a new trial.

Cynthia sought to classify the home as a non-marital home, so she bore the burden of tracing the home to a separate-property source under *Allgood*. Cynthia satisfied this burden by showing that she and Keith maintained separate finances after moving into the home in 1993, and that she made all payments on the home after she was received the deed in 2013. Although the chancellor here did not list every *Armstrong* factor in determining alimony, she did consider the *Armstrong* factors when making her determination that no alimony was warranted, and the chancellor was within her discretion to deny alimony. Although the marital property was not divided equally, the chancellor was only responsible for dividing the property equitably and was within her discretion in applying the *Ferguson* factors when dividing the marital property. Therefore, the Court of Appeals affirmed the judgment of the Clay County Chancery Court.

Briefed by [Luke Seymour](#)

**Rudd v. State Farm** - Insurance – Breach of Fiduciary Duty – Bad Faith – Deanna Rudd was driving when she was struck by Chrisma Houston, who was trying to merge into the same lane. Rudd claimed she injured her back, neck, and left hip. Houston was insured through Allstate. Rudd was insured through State Farm and had uninsured/underinsured motorist coverage and medical pay coverage (“Med Pay”). State Farm collected records that Rudd made previous claims on other insurance policies for injuries received from falls, sudden impacts, and other car wrecks. State Farm determined that many of Rudd’s injuries occurred before the accident with Houston. State Farm paid Rudd \$10,000 under her Med Pay coverage. State Farm maintained extensive communication with both Rudd and the Allstate agents throughout the entire claims process and paid Rudd’s medical bills until her Med Pay coverage was exhausted. State Farm made diligent efforts to update and assist Rudd on her claim, and the agents repeatedly notified Rudd of the impending statute-of-limitations. After two months of treatment following the accident, Rudd waited seven months before seeking further treatment. Rudd filed suit, claiming she was entitled to underinsured motorist benefits, and she alleged claims for breach of fiduciary duty, negligence/gross negligence in claim handling, and bad faith. The Jackson County Circuit Court granted State Farm’s motion for partial summary judgment on the issues of bad faith and extra contractual and punitive damages. Rudd appealed.

Because State Farm maintained extensive communication with Rudd and Allstate throughout the claims process, and because State Farm made diligent efforts to assist Rudd with her claim and repeatedly notified her of the impending statute of limitations, the circuit court did not err in finding that State Farm did not act maliciously, grossly negligent, or in reckless disregard in handling Rudd’s claim. Therefore, the Court of Appeals affirmed the judgment of the Jackson County Circuit Court.



Briefed by [John Forrest Kelly](#)

**Wellsgate Homeowners Ass'n v. Hilton** - Property – Contracts – Attorney's Fees – Reasonable Fees – The Wellsgate Homeowners Association (“Wellsgate”) filed a complaint against Ashley Hilton to enjoin her from renting her house in violation of Wellsgate restrictions on short-term sub-leasing. Wellsgate sought a judgment equal to the applicable daily fines for violating these restrictions, reasonable attorney's fees, court costs, and pre-judgment interest; as well as an injunction against Hilton enjoining her from future violations. Hilton's answer generally denied the allegations and pleaded various generic defenses. Hilton later moved for summary judgment against Wellsgate on the issue of her liability for the fines imposed by Wellsgate, and Hilton claimed that Wellsgate sent the notice of violation to the wrong address. The Lafayette County Chancery Court tried this matter and entered a judgment in favor of Wellsgate. The chancery court found that Hilton admitted to eleven instances of violating the Wellsgate restriction on renting out her property. Therefore, the chancery court enjoined and restrained her from renting the property in violation of the Wellsgate rules and regulations. The chancery court denied Wellsgate's request for exemplary or punitive damages for the daily fines specified in the rules and regulations. The chancery court did award attorney's fees and costs of prosecution, but only for the fees that were incurred prior to Hilton's notice of the lawsuit. Wellsgate appealed this judgment, arguing that the chancery court failed to award all of the submitted attorney's fees.

The Mississippi Supreme Court has expressly mandated that a trial court's determination of reasonable attorney's fees must consider the eight factors enumerated in Miss. R. Prof. Conduct 1.5(a). Because the chancery court erred in its calculation of the amount of attorney time for which Wellsgate was entitled to be compensated, and because the chancery court failed to apply all of the reasonableness factors enumerated in Miss. R. Prof. Conduct 1.5(a), the chancery court abused its discretion in awarding minimal attorney's fees. Therefore, the Court of Appeals reversed and remanded the judgment of the Lafayette County Chancery Court.

Briefed by [Bryant Carlton](#)

**Yates v. Triple D, Inc.** - Workers' Compensation - Causation - Evidence - In December 2016, Joe Willie Yates filed a workers' compensation claim against Triple D Inc., Nancy Denton, Scotchie Denton, and Benchmark Insurance Company, alleging that he sustained work-related injuries from a motor vehicle accident in June 2016. Nearly two years after the accident, an administrative judge conducted a hearing on the merits of Yates's claim to determine who employed Yates at the time of his accident and whether Yates sustained compensable injuries under the Mississippi Workers' Compensation Act. At this hearing, Yates testified that he was an employee of Nancy and has been a farm laborer for her family for over fifty years. He further testified that he would occasionally help Scotchie, but his obligations to Nancy always came first because she was the person that paid him. Scotchie testified that Yates had never worked for Triple D and had never driven one of his 18-wheelers, as Yates does not own a Commercial Driver's License. On the day of the accident, Scotchie asked Yates to pick up Kasey, who was located at a different farm, and to retrieve a nitrogen applicator for Nancy's farm. The accident occurred while Yates was on his way to the other farm. Upon hearing all of the testimony, the administrative judge entered an order finding the character of the work regularly performed by Yates was that of a farm laborer, which is exempted from mandatory workers' compensation coverage under Miss. Code Ann. § 71-3-5. As a result, Yates's work was not covered by the Mississippi Workers' Compensation Act. Furthermore, the administrative judge found that Nancy, Scotchie, and Triple D were not alter-ego

employers, and therefore, Triple D's purchase of workers' compensation insurance does not waive the statutory farm exemption. Yates appealed to the Mississippi Workers' Compensation Commission ("the Commission"), which affirmed the administrative judge's decision. Yates again appealed, arguing the Commission erred in determining that Yates's work constituted farm labor and in determining that Nancy, Scotchie, and Triple D are not alter-egos.

Upon review, the record clearly provided substantial evidence to support a finding that Yates performed farm labor for Nancy on the date of his accident, which was further corroborated by Yates's own testimony. As a result, he was exempt from coverage under the Mississippi Workers' Compensation Act. Lastly, Yates argued that Nancy, Scotchie, and Triple D's operations were "one in the same," and, therefore, the Court of Appeals should hold them jointly and severally liable because Triple D assumed liability by purchasing workers' compensation insurance. In order to determine whether parties constitute alter egos or dual employers, the business entities must have: (1) substantially the same management; (2) the same business purpose; and (3) the same operation, equipment, customers, supervision, and ownership. After applying these factors, the record clearly showed that Yates was an employee of Nancy's farm, which does not have the same business purpose, operation, customers, or ownership as Triple D or Scotchie. Thus, Nancy, Scotchie, and Triple D were not alter-egos or dual employers. Therefore, the Court of Appeals affirmed the judgment of the Mississippi Workers' Compensation Commission.

Briefed by [Matthew Rhea](#)

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

**Blankenship v. State** - Civil Procedure – Post-Conviction Relief – Illegal Sentence – Jonathan Blankenship entered a guilty plea to attempted aggravated assault of a law enforcement officer and was sentenced to twenty years in the custody of the Mississippi Department of Corrections ("MDOC"). Blankenship's sentence was suspended for ten years with credit for time served and he was placed on five years of post-release supervision after his release from custody. The Alcorn County Circuit Court revoked Blankenship's probation, finding that Blankenship had violated the terms of his probation because he was convicted of trespassing in Tishomingo County. Further, while Blankenship was incarcerated at the Tishomingo County Jail, he was charged with a felony crime for providing an electronic device to another inmate. The circuit court reinstated Blankenship's sentence, requiring him to serve ten years in MDOC's custody, with five years of the sentence suspended. Following Blankenship's release from custody, a MDOC probation officer filed an affidavit averring that Blankenship had violated the terms of his post-release supervision by testing positive for methamphetamine, being indicted for possession of methamphetamine, and being arrested and charged with possession of a firearm by a felon. The circuit court concluded that there was sufficient evidence that Blankenship violated the terms and conditions of his suspended sentence and post-release supervision and ordered him to serve the remainder of his sentence. Blankenship filed a post-conviction relief ("PCR") motion, claiming that his post-release supervision was unlawfully revoked and that he was subject to an illegal sentence. The circuit court denied the motion. Blankenship appealed, arguing that his revocation hearing should have been convened in Alcorn County, that he only had two technical violations, and, as a result, he should have only received 120 days at a technical violations center as his sentence.

Blankenship cited no authority for his claims on appeal, which procedurally barred the claim of error from review. Additionally, Blankenship's argument that he was entitled to have his revocation hearing conducted in

Alcorn County was not raised in his PCR motion and is waived on appeal. Further, there was no merit to Blankenship's remaining claim that he only committed two technical violations and should have been sentenced to 120 days. Moreover, because the two possession charges were felonies and not just technical violations, the circuit court had discretion to impose the remainder of Blankenship's sentence. Therefore, the Court of Appeals affirmed the judgment of the Alcorn County Circuit Court.

Briefed by [Haley Nutt](#)

**Logan v. State** - Civil – Post-Conviction Relief – Mootness – Logan was convicted of multiple felonies in Mississippi and Tennessee. The Governors of Tennessee and Mississippi entered into an executive agreement that required Logan's extradition to Mississippi for prosecution and his return to Tennessee upon the conclusion of that prosecution to complete his Tennessee sentence. Five years after the Leflore County Circuit Court in Mississippi found a verdict against him, Logan filed a pro se request to amend or reconsider his post-conviction relief ("PCR") challenge, alleging his current confinement in Mississippi was illegal and that he should be extradited to Tennessee. A few months later, Logan was extradited from Mississippi to Tennessee pursuant to the executive agreement to complete his Tennessee sentence. Eleven months after Logan's extradition to Tennessee, the circuit court dismissed Logan's pro se motion to amend or reconsider his PCR challenge, finding it "not well taken" and "moot." Logan appealed.

The Court of Appeals held that because Logan was extradited back to Tennessee prior to the circuit court's decision denying the PCR challenge, Logan was returned to the demanding state and the appeal is moot because he was no longer in Mississippi's custody. Therefore, the Court of Appeals affirmed the judgment of the Leflore County Circuit Court.

Briefed by [Daniel Bond](#)

**Pickle v. State** - Criminal Procedure – Post-Conviction Relief – Defective Indictments – C.D. Pickle Jr. was convicted of capital murder in 1975 and sentenced to death. The Mississippi Supreme Court reversed his conviction in 1977 and remanded for a new trial, which again resulted in a guilty verdict and a life sentence with the Mississippi Department of Corrections. Between 1977 and 2019, Pickle filed various motions in the Leflore County Circuit Court, some seeking permission to file an out-of-time appeal and others seeking post-conviction relief on various grounds. All his motions were denied by the trial court and affirmed on appeal. In March 2019, Pickle filed another motion for post-conviction relief, which claimed that the 1975 indictment was defective because it did not contain an essential element of the charged crime. The indictment charged that Pickle had raped the victim and then killed her. The trial court denied the motion and Pickle appealed.

Although the Mississippi Uniform Post-Conviction Collateral Relief Act created a three-year period for movants to seek relief for convictions that occurred prior to the Act's enactment, if an indictment fails to state an essential element of the crime, movants are not precluded from raising the issue after the three-year period expires. However, because the indictment named the underlying felony and tracked the language of the capital-murder statute, it sufficiently informed Pickle of the nature of the charges against him and was not defective. Accordingly, Pickle's motion for post-conviction relief was procedurally barred. Therefore, the Court of Appeals affirmed the judgment of the Leflore County Circuit Court.

Briefed by [Breland Parker](#)

**Tanner v. State** - Civil Procedure – Post-Conviction Relief – Jurisdiction – Scott Tanner was convicted of sexual battery, pursuant to Miss. Code Ann. § 97-3-95(1)(d), and sentenced to twenty years in the custody of the Mississippi Department of Corrections. Since the Court of Appeals affirmed Tanner’s conviction and sentence on direct appeal, Tanner has filed six applications with the Supreme Court for leave to file motions in the circuit court for post-conviction relief. All six of Tanner’s applications were denied. Tanner filed a “Motion for Judicial Classification of Offense as Non-Violent,” arguing that the circuit court should reclassify his sexual battery conviction as non-violent because the elements of sexual battery under Miss. Code Ann. § 97-3-95(1)(d) and statutory rape under Miss. Code Ann. § 97-3-65(1)(b) are the same. However, Tanner did not seek leave from the Supreme Court before filing this motion in the circuit court and the circuit court denied Tanner’s motion. Tanner appealed.

The Court of Appeals held that the circuit lacked jurisdiction over Tanner’s motion. First, despite Tanner’s argument that his pleading abided by the rules of a different statute, Tanner’s pleading was cognizable under the Uniform Post-Conviction Collateral Relief Act (“UPCCRA”). As a result, the Court of Appeals treated Tanner’s pleading as a PCR motion subject to the procedural rules under UPCCRA. The UPCCRA required Tanner to get permission from the Supreme Court before he could proceed with his motion in the circuit court because the Court of Appeals previously affirmed his sexual battery conviction. Considering this, the circuit court lacked jurisdiction and the distinction between the circuit court denying or dismissing Tanner’s motion was immaterial. Therefore, the Court of Appeals affirmed the judgment of the Jackson County Circuit Court.

Briefed by [Matthew Russ](#)

**Williams v. State** - Criminal Procedure – Sentencing – Probation – Absconding from Supervision – Technical Violations – After entering a plea of guilty to armed robbery, Daniel Williams was sentenced to serve twenty years, with thirteen years suspended and five years of supervised probation. After his revocation hearing, Williams’s probation was revoked because he violated the following three conditions: (1) failing to abstain from the use of drugs and testing positive for marijuana; (2) absconding supervision by failing to report to his probation officer for six months; and (3) failing to pay court assessments and supervision fees. As a result, the circuit court ordered Williams to serve the previously suspended thirteen-year portion of his original sentence. In October 2018, Williams filed a “Motion to Correct Sentence” in the circuit court, arguing that he did not abscond from supervision because he was in jail for a failed drug test. In addition, he argued that because he was seen that month, he did not fail to report and should only receive time for a technical violation. Because Williams was required to report to his probation officer from the time of his release in January 2016 until his re-arrest in July 2016, and because Williams failed to do so, the circuit court found this argument to be without merit. Further, the circuit court denied Williams’ post-conviction relief motion, under the rule that a court has no authority to reconsider the sentence once the term of court in which the defendant was sentenced has ended. Williams filed another “Motion to Correct Sentence,” which the Court of Appeals treated as a notice of appeal.

On appeal, it was determined that even if Williams was excused from reporting in January 2016, he still failed to report for six months from February 2016 through July 2016. This failure to report constituted absconding from supervision. Even if Williams did not abscond from supervision, he committed three other violations of his probation terms in addition to his failure to report: he tested positive for drugs, he failed to pay supervision

fees, and failed to pay court fees and fines. Thus, it was found that the circuit court did not err in denying Williams's PCR motion, and it was proper to sentence Williams to the remainder of his suspended sentence. Therefore, the Court of Appeals affirmed the judgment of the Lauderdale County Circuit Court.

Briefed by [Brittany Brewer](#)

## **Court of Appeals – Orders**

**Pryer v. State** - Writ of Mandamus – Filing – Parties – In July 2013, Timothy Pryer filed a civil action under the Mississippi Public Records Act in the Itawamba County Chancery Court. Records indicated that the Itawamba County Circuit Court Clerk, Carol Gates, and the Itawamba County Sheriff, Chris Dickinson, were defendants in this action. When Pryer was allegedly unable to serve process on these defendants, he filed a petition for writ of mandamus, asking the chancery court to compel the Itawamba County sheriff or constable to serve process on the two defendants he had named in his public records action. The chancery court transferred the mandamus petition to the Itawamba County Circuit Court, but retained jurisdiction of the public records action. The circuit court dismissed the mandamus petition without prejudice and also dismissed Pryer's motion for public records, despite the chancery court having specifically retained jurisdiction of that motion in its transfer order. Pryer appealed. Pryer's appeal was docketed as "*Pryer v. State of Mississippi*," which was also the caption on Pryer's and the State's appellate briefs. The only parties in the appeal were Pryer and the State, with the State being the sole appellee. In its appellee's brief, the State, as a preliminary matter, asked the Court of Appeals to stay the appeal because it was not a proper party.

Because the State did not appear as a party in the underlying proceedings, the Court of Appeals ordered that the State be dismissed as a party to the appeal and that the defendants in the original public records action be substituted in its place with the case name restyled to reflect the change. Further, the Court of Appeals ordered the Mississippi Clerk of Appellate Courts to immediately mail copies of this order to Pryer and the substituted appellees, the substituted appellees to appear within fourteen days, and the briefing period to be reset.

Judge McCarty objected to the order for lack of subject matter jurisdiction, arguing that because the mandamus petition did not dispose of all issues in the litigation, it was not a final, appealable judgment and adding other parties to appear would not make it final.

Briefed by [Kaitlin Bethay](#)

## **Court of Appeals – Criminal**

**Dean v. State** - Criminal Procedure – Burglary – Elements – Bobby Stubbs and Lorna Walker owned a house with a security camera set up to monitor the house. Stubbs and Walker did not live in the house. In July 2017, the security camera detected motion and audio and alerted the couple's cell phones. They saw a man standing in the home and Walker spoke to the intruder through the security-camera application on her phone. After she asked the man what he was doing in her house, the man left. Following the incident, a few small appliances, such as a toaster oven and a blender, were missing from the home. Walker provided the police with video footage from the security camera. The State presented the video as an exhibit at trial. In the video, a black male with a white hat, a dark colored shirt, and a red drawstring backpack was walking around the house. The video

did not show the individual taking any appliances and did not show how the individual entered or exited the house. Investigator Earl Reed was one of the responding officers following the incident. About a day after the incident, Reed apprehended Kyle Dean in the area near Walker and Stubbs's house. When Reed apprehended Dean, Dean was wearing a red drawstring backpack. At trial, Walker and Stubbs identified Dean as the man that they saw on camera in their home. Stubbs testified that he had visited the house the day before the incident to get some things for his grandchildren and to check on the renovations. However, Stubbs did not testify as to whether he made sure that the house's windows and doors were secured before he left. Likewise, the State offered no evidence about the condition of the house's doors or windows at the actual time of the incident. Ultimately, a Jones County Circuit Court jury convicted Dean of one count of burglary of a building. Dean appealed, raising the issue that "the evidence was insufficient to prove beyond a reasonable doubt that a breaking occurred," which is an essential element to burglary of a building.

Because the State did not offer any evidence as to the condition of the doors at the time of the alleged burglary or elicit testimony regarding the breaking element, and because neither Stubbs's testimony nor the video evidence confirmed a breaking, the State did not prove the element of "breaking" beyond a reasonable doubt. Therefore, the Court of Appeals reversed and rendered the judgment of the Jones County Circuit Court.

Briefed by [Frank Wood](#)

**Moberg v. State** - Evidence – Sufficiency – Exclusion – Matthew Moberg and his girlfriend, Savannah Harvison, broke up because Harvison cheated on Moberg with his good friend, Jesse Parker. After the breakup, Moberg purchased a stun gun. Moberg then picked up Parker from his home so that Parker could help Moberg move into his new trailer home. Parker never returned home. Moberg returned to Parker's home, where he encountered Parker's mother, Tina. Moberg told Tina he had dropped Parker off thirty minutes earlier, that Parker got into another car with people Moberg did not know, and that Moberg had come to the house to return Parker's cell phone that he left in Moberg's car. Tina observed that she had not heard a car approaching the house thirty minutes earlier, and that Moberg was soaking wet. Surveillance footage from a BP gas station in Wilmer, Alabama showed Moberg's truck heading west towards Mississippi at 12:22 p.m. Video footage at the Dollar General store in Lucedale, Mississippi, showed Moberg and Parker entering the store at 12:32 p.m. and leaving the store at 12:36 p.m. The same BP gas station camera that caught Moberg's truck going west toward Mississippi at 12:22 p.m. captured him heading back into Alabama at 1:47 p.m. Moberg had later shown up for work soaking wet and with wet sand on his pants. Moberg then went to his friend's home, where Moberg admitted he and Parker got into a fight and that Moberg choked him. Moberg told this friend that he convinced Parker to go with him to Mississippi by telling him that they were going to get drugs. In the initial interview with the police, Moberg repeated the story he told Tina. When the police went to clarify the timeline of events, Moberg attempted to run away, but he was apprehended. The officers noticed a Dollar General receipt on the front seat of Moberg's truck, which showed Moberg lied during his interview. Using data from a GPS tracker, the Dollar General receipt, and bank records, the officers were able to track Moberg's actual movements the day Jesse disappeared. An inmate in custody with Moberg testified that he overheard Moberg tell two other inmates that he had hit Parker over the head, stunned him four times with a stun gun, then held his head under water in the mud until he died. Parker's body was eventually found submerged in water. After a jury trial, Moberg was convicted for the capital murder of Parker during the course of a kidnapping. Moberg was sentenced to life in the custody of the Mississippi Department of Corrections without eligibility for parole. Moberg moved for a JNOV or new trial, which was denied. Moberg appealed, arguing the trial court erred in denying his post-trial motion because the evidence presented was insufficient to sustain a conviction for killing

during the course of a kidnapping. He also argued the trial court abused its discretion in allowing the State to enter a photo of Parker's decomposing body into evidence because it served no evidentiary purpose and was more prejudicial than probative.

The kidnapping statute did not require the State to prove Moberg forcibly seized Parker. The State proceeded under inveigling theory, which only requires that the State prove Moberg coaxed Parker into his vehicle with the intent to confine him against his will. Under inveigling theory, circumstantial evidence is sufficient to prove the elements of kidnapping. Because there was evidence that Moberg repeatedly misled Parker as to his intentions when picking Parker up, and because there was ample evidence in the record, there was sufficient evidence to support Moberg's conviction and the denial of Moberg's post-trial motions. Regarding the admissibility of a crime victim's photograph, there is a two-part test: first, the trial court must determine whether the proof is absolute or in doubt as to identity of the guilty party, and second, it must be determined whether the photographs are necessary evidence or simply a ploy by the prosecutor to arouse the passion and prejudice of the jury. It was reasoned that the photograph was potentially needed to verify and highlight findings in the autopsy. As such, this issue was without merit, or, in the alternative, any error was harmless because the evidence of Moberg's guilt was overwhelming. Therefore, the Court of Appeals affirmed the judgment of the Greene County Circuit Court.

Briefed by [Michael Stirgus](#)

**[Pettus v. State](#)** - Criminal Law – *Batson* Challenge – Witnesses – A jury convicted Rodney Pettus of burglary of a building other than a dwelling, and the trial court sentenced him to serve twenty-five years in the custody of the Mississippi Department of Corrections (“MDOC”) without eligibility of parole or probation. On appeal, Pettus argued that the trial court erred in (1) performing an incomplete *Batson* analysis and (2) limiting Pettus's right to cross-examine his co-indictee.

Because the trial court found the State's race-neutral reasons credible based on the trial court's rejection of Pettus's *Batson* challenge—thus accomplishing the third step of the *Batson* analysis, the trial court's denial of Pettus's *Batson* challenge was not clearly erroneous or against the overwhelming weight of the evidence. Additionally, Pettus's counsel was able to cross-examine the co-indictee about the circumstances regarding the burglary and his plea deal with the State in that same matter. The trial court also notified the jury of several witnesses' involvement in the burglary and instructed them to consider the witnesses' testimony with great caution and suspicion. Because of this, the trial court did not abuse its discretion by preventing Pettus from questioning a co-indictee about subsequent criminal activity, and Pettus was not prejudiced as a result of this ruling. Therefore, the Court of Appeals affirmed the judgment of the Kemper County Circuit Court.

Judge McDonald concurred in part and dissented in part, arguing that the trial court did not take the *Batson* challenge seriously. She argued that Pettus undoubtedly made a *prima facie* case of discrimination pursuant to the three-prong *Batson* test. Further, Judge McDonald argued that the State's supposedly race-neutral reasons for using its peremptory strikes on potential jurors were not questioned to determine if their “reasons” were mere speculations or actual facts.

Briefed by [Nicole Broussard](#)

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