

MISSISSIPPI SUPREME COURT DECISIONS – JUNE 7, 2018**SUPREME COURT - CIVIL CASES****CITY OF HORN LAKE V. SASS MUNI-V, LLC****CIVIL - OTHER**

CIVIL PROCEDURE - NOTICE - TAX SALE - Should the court clerk inadvertently fail to send the requisite notice in a tax sale, then such sale shall be void and the clerk shall not be liable to the purchaser or owner upon refund of all purchase money paid

APPELLATE PROCEDURE - RECORD - CLERICAL MISTAKE - Clerical mistakes in judgments and errors therein arising from oversight or omission may be corrected by the court at any time on its own initiative or on the motion of any party up until the time the record is transmitted by the clerk of the trial court to the appellate court and the action remains pending therein

FACTS

In 2007, the City of Horn Lake and DeSoto County levied taxes on a piece of property for the amount of \$520,508. When the property owner did not pay the taxes, the property was offered in a tax sale. Sass Muni-V, LLC (Sass Muni) was the successful bidder in the public auction. The two-year redemption period expired without the prior owners reclaiming the property. One year after the redemption period expired, Sass Muni filed its complaint in the DeSoto County Chancery Court asking the tax sale to be declared void and the purchase price to be refunded. The City and County filed motions to dismiss, citing Sass Muni's lack of standing on the principle of *caveat emptor*. Sass Muni appealed the decision, and the Mississippi Supreme Court reversed the chancery court's judgment. On remand, the chancery court held that because the attempted notice by mail was void for failure of the clerk to properly notate the tax book, the record was void of any personal or publication service. The City and the County timely filed their notice of appeal in June 2016. Sass Muni was granted its motion to review the appeal record and to stay the transmission of the record to the Court until August 22, 2016. Sass Muni filed nothing until September 2016, when it filed a motion to correct the judgment under Miss. R. App. P. 10(e). Sass Muni's attorney failed to include that notice by mail was void for the clerk's failure to make a notation in the tax book, and the judgment failed to include a statement that Sass Muni should be refunded the purchase price. The City and the County both objected to the motion. The chancery court granted the motion to correct. In a joint brief, the City and the County both appealed.

ISSUES

Whether (1) Sass Muni's cause of action to set aside its own tax sale purchase on the grounds that the clerk failed to provide notice of the expiration of the two-year redemption period to the landowner was rendered moot when the landowner waived notice of the expiration of the two-year redemption period; and (2) the chancery court had jurisdiction to amend the judgment.

HOLDING

(1) Because Miss. Code Ann. § 27-43-3 unambiguously states that failure to provide the requisite notice to the property owner renders the sale void, the property owner's belated attempt to disclaim its interest in the property cannot cure the fact that Sass Muni's tax deed had been void since the time of the tax sale. (2) Because Sass Muni sought relief to have the trial court correct the judgment to reflect the original opinion of the chancery court, the court's correction of the judgment under Miss. R. App. P. 10(e) and Miss. R. Civ. P. 60 was permissible. Therefore, the Supreme Court affirmed the judgment of the DeSoto County Chancery Court.

Affirmed - 2016-CA-00823-SCT (June 7, 2018)

Opinion by Justice Coleman

Hon. Mitchell M. Lundy, Jr. (DeSoto County Chancery Court)

Billy C. Campbell Jr. & Robert E. Quimby for Appellant - Lewie G. Negrotto, IV for Appellee

Briefed by [Jay Michael Patterson](#)

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HAMMONS V. NAVARRE

CIVIL - PERSONAL INJURY

CIVIL PROCEDURE - PLEADINGS - FICTITIOUS PARTIES - An amendment pursuant to Miss. R. Civ. P. 9(h) is not an amendment changing the party against whom a claim is asserted, and such amendment relates back to the original pleading; the purpose of the rule is to allow a plaintiff to proceed with a lawsuit where the plaintiff knows and can articulate the wrongful conduct of, and claims against, the fictitious party

PLEADINGS - AMENDED COMPLAINT - STATUTE OF LIMITATIONS - Pursuant to Miss. Code Ann. § 15-1-49, all actions for which no other period of limitation is prescribed shall be commenced within three years next after the cause of such action accrued and not after

FACTS

Robert Hammons was paralyzed from the waist down when his helicopter crashed while spraying herbicides on timber fields. In Hammons's original complaint, the only named defendant was Scott Petroleum, which supplied fuel to Hammons's employer Provine Helicopter, and purported to name Defendants A-P. After Scott Petroleum answered the complaint, Hammons filed a twenty-six-page amended complaint that identified Defendants A-F from the original complaint and added new claims unrelated to the fuel of the helicopter against those parties. The Leflore County Circuit Court ruled that Hammons had failed to comply with the fictitious-party rules and granted summary judgment for the defendants. The Court of Appeals affirmed the circuit court's judgment. Hammons appealed.

ISSUE

Whether Hammons properly named fictitious parties in his original complaint, so that his amended complaint related back to the filing of the original complaint to avoid the statute-of-limitations bar.

HOLDING

Because the amendment was not a substitution under Miss. R. Civ. P. 9(h), it does not relate back to the filing of the original complaint under Miss. R. Civ. P. 15(c)(2). Further, the amended complaint was filed outside the statute of limitations, and Hammons's claim is time-barred. Therefore, the Supreme Court affirmed the judgment of the Leflore County Circuit Court.

DISSENT

Justice Kitchens argued that *Womble v. Singing River Hosp.* should be the guiding precedent to this case, and the fictitious parties that the plaintiff later named clearly fell within *Womble*.

Affirmed - 2015-CT-00243-SCT (June 7, 2018)

En Banc Opinion by Justice Chamberlin - Dissent by Presiding Justice Kitchens

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

Wayne E. Ferrell, Jr., Adrienne P. Parker, & Bradley S. Clanton for Appellant - Timothy J. Sterling, Charles G. Copeland, James R. Moore Jr., Michael C. Gatling, Richard L. Kimmel, Mark A. Biggers, W. Scott Welch III, & Clay Gunn for Appellees

Briefed by [Mary-Katherine Black](#)

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KING V. MISS. MILITARY DEP'T

CIVIL - STATE BOARDS & AGENCIES

ADMINISTRATIVE LAW - EMPLOYEES - STATE SERVICE - Miss. Code Ann. § 25-9-107(b) defines state service as all employees of state departments, agencies, and institutions defined therein, except those excluded by the chapter; the list of officers and employees who are excluded from the state service label does not include employees of the Mississippi Military Department

ADMINISTRATIVE LAW - TERMINATION OF EMPLOYMENT - DISCRETION OF ADJUTANT GENERAL - Pursuant to Miss. Code Ann. § 33-3-11(a), the Adjutant General shall appoint all of the employees of his department and may remove any of them at his discretion; the Adjutant General's discretion is subordinate only to the Governor

FACTS

Following an investigation finding Cindy King used her position as a supervisor in the Environmental Office at Camp Shelby for personal gain, the Adjutant General of the Mississippi Military Department terminated her employment for cause pursuant to Miss. Code Ann. § 33-3-11. King appealed her termination to the Mississippi Employee Appeals Board (The Board). The Board's Chief Hearing Officer dismissed the appeal for lack of jurisdiction finding King was subject to termination at the Adjutant General's discretion because Department employees are at-will employees rather than state service employees. King appealed, arguing she had the status of a state service employee. The decision was affirmed by the full Board and the Forrest County Circuit Court. King appealed.

ISSUE

Whether the trial court erred in affirming the Board's decision by finding King was not a state service employee.

HOLDING

Because the Adjutant General has statutory discretion in the termination of the Department's employees, the trial court correctly affirmed the Board's decision to dismiss King's appeal, regardless of King's status as a state service employee. Therefore, the Supreme Court affirmed the judgment of the Forrest County Circuit Court.

Affirmed - 2017-CC-00784-SCT (June 7, 2018)

Opinion by Justice Coleman

Hon. Jon Mark Weathers (Forrest County Circuit Court)

Paul Manion Anderson, Samuel Steven McHard, & William H. Jones for Appellant - Emerson Barney Robinson III, Leland S. Smith III, & Michael Mark Majors for Appellee

Briefed by [Marilyn Higdon](#)

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M.A.S. V. MISS. DEP'T OF HUMAN SERVS.

CIVIL - ADOPTION

FAMILY LAW - PARENTAL TERMINATION RIGHTS - JURISDICTION - A county court, when sitting as a youth court with jurisdiction of a child in an abuse or neglect proceeding, has exclusive jurisdiction to hear a petition for termination of parental rights against a parent of a child

FAMILY LAW - ADOPTION - JURISDICTION - Chancery courts have full jurisdiction over a minor's affairs; this includes adoptions but not termination of parental rights

FAMILY LAW - ADOPTION - DISPUTED ADOPTION - An adoption may not take place if the parents object to an adoption proceeding and the parental rights have not been terminated under the Mississippi Termination of Parental Rights law

FACTS

After parents took month-old infant to the emergency room, physicians suspected child abuse and the child was removed from the family home and placed in foster care. The foster parent, M.A.S., housed the child for two years. In November of 2016, the youth court determined reunification with the parents was in the best interest of the child. M.A.S. then filed a petition with the Harrison County Chancery Court in January 2017. The child's parents accused M.A.S. of trying to circumvent the reunification order and asserted that the youth court had exclusive jurisdiction. The chancellor dismissed the motion of M.A.S. M.A.S. appealed.

ISSUE

Whether the trial court erred in dismissing the petition due to lack of jurisdiction.

HOLDING

Because a chancellor cannot grant an adoption contested by the parents unless the parents' rights have been terminated under the Mississippi Termination of Parental Rights Law (MTPRL), the youth court has exclusive jurisdiction over M.A.S.'s petition to terminate parental rights. Therefore, the Supreme Court affirmed the judgment of the Harrison County Chancery Court.

DISSENT

Presiding Justice Kitchens argued that the statute giving the youth court exclusive jurisdiction over termination of parental rights in situations where abuse proceedings exist was unconstitutional. He would have reversed and remanded the judgment of the Harrison County Chancery Court.

Affirmed - 2016-CA-00541-SCT (June 7, 2018)

Opinion by Justice Maxwell

Hon. James B. Persons (Harrison County Chancery Court)

Dianne Herman Ellis for Appellant - Kimberly Michelle Henry & Dalaney Lee Mecham (Att'y. Gen. Office) for Appellees

Briefed by [Jacob Swatley](#)

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SANDERSON V. SANDERSON

CIVIL - DOMESTIC RELATIONS

PRENUPTIAL AGREEMENT - SUBSTANTIVE UNCONSCIONABILITY - TERMS OF THE AGREEMENT - Substantive unconscionability occurs when the terms of the agreement are so one-sided that no one in his right mind would agree to its terms

PRENUPTIAL AGREEMENT - JOINT BANK ACCOUNT - FAMILIAL PURPOSES - Certain funds, used for familial purposes, kept in a joint bank account created after the marriage began, do not fall within the parameters of the prenuptial agreement

FACTS

After seventeen years of marriage, Tanya Sanderson was granted a divorce from her husband Hob Sanderson. Prior to their marriage in 1994, the two signed a prenuptial agreement that eliminated all rights to spousal support and entitled each to keep all separate property acquired not only before but also during the marriage. During their divorce proceedings, the chancellor enforced the prenuptial agreement, granting each party his or her separate property. Tanya appealed to the Supreme Court, arguing the chancellor erred because the agreement was not procedurally conscionable, substantively conscionable, and her marital spending converted Hob's bank account to marital property. On remand, the chancellor concluded that the terms of the prenuptial agreement were mutual, and the circumstances were not so unfair and one-sided to make the agreement unconscionable. Regarding the bank account, the chancellor concluded his authority on remand was limited to distributing the balance of the joint bank account, which was \$537.42 at the time of final separation. Tanya appealed.

ISSUES

Whether the chancellor erred (1) in ruling the prenuptial agreement was substantively conscionable; and (2) in categorizing the funds left in the joint account as the only marital asset to be distributed.

HOLDING

(1) Because equitable distribution upon divorce was never an option for Tanya and the prenuptial agreement did exactly as intended, kept the parties' property acquired before or during the marriage separate, it was not substantially unconscionable. (2) Because the Court's prior holding in *Sanderson* did not include reversing the classification of Hob's home and investment accounts as marital, the chancellor did not abuse his discretion on remand. Therefore, the Supreme Court affirmed the judgment of the Monroe County Chancery Court.

Affirmed - 2016-CA-01739-SCT (June 7, 2018)

Opinion by Justice Maxwell

Hon. John Andrew Hatcher (Monroe County Chancery Court)

Roy O. Parker for Appellant - Jak McGee Smith & Gregory M. Hunsucker for Appellee

Briefed by [Maggie Vinzant](#)

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WARD V. COLOM

CIVIL - MISCELLANEOUS

FIREARMS - CITIZEN RIGHTS - CONCEALED WEAPONS - Pursuant to Miss. Const. Art. III, Sec. XII, the right of every citizen to keep and bear arms in defense of his home, person, or property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but the Legislature may regulate or forbid carrying concealed weapons

FIREARMS - ENHANCED CONCEALED-CARRY - COURTHOUSES - Miss. Code Ann. § 97-37-7 authorizes certain persons, including enhanced concealed-carry licensees, to carry a concealed pistol in courthouses, except in courtrooms

CONSTITUTIONALITY - SEPARATION OF POWERS - JUDICIARY - When the executive branch or legislative branch has been properly delegated a power, the judiciary is without authority to assume that power

FACTS

In 2011, the Mississippi Legislature amended Miss. Code Ann. §97-37-7, granting enhanced concealed-carry licensees the privilege of carrying a concealed firearm in the courthouses of Mississippi, but not considering courtrooms which were left to judicial discretion. Three chancellors of the Fourteenth Chancery District then issued an order prohibiting enhanced concealed-carry licensees from possessing a firearm in and around courthouse buildings of the district. Ricky Ward, an enhanced concealed-carry licensee, filed a petition to dismiss or modify the order. The chancellors denied the petition. Ward then filed an Extraordinary Writ of Prohibition to the Mississippi Supreme Court. The Supreme Court granted certiorari.

ISSUE

Whether Mississippi judges can limit the ability to conceal-carry in other areas of a courthouse, not including the courtroom.

HOLDING

(1) Because Mississippi law clearly allows enhanced-carry licensees to possess a firearm in courthouses, the chancellors were not permitted to limit conceal-carry in areas of the courthouse other than the courtroom. Therefore, the Supreme Court vacated the chancellors' order

CONCURRENCE

Justice Maxwell, specially concurring, argued that the majority reached the correct result, but emphasized that the judiciary has the inherent constitutional authority to secure its courtrooms.

Justice Chamberlain, specially concurring, argued that the judiciary may be able to extend the courtroom ban for conceal-carry in special circumstances, such as gang trials.

Chief Justice Waller, concurring in part and dissenting in part, agreed that the result was correct, but it was improper solely because it was facially overbroad. Instead of vacating and holding the act as unconstitutional, he would vacate the subject order and would allow the trial judges an opportunity to show why restricting guns beyond the court room is necessary to adequately secure the courtroom.

Justice Beam, concurring in part and dissenting in part, agreed that the order was facially overbroad, but also agreed with Justice King's dissent because the order was an appropriate exercise of inherent judicial authority.

DISSENT

Justice King argued that the chancellors' order was a valid exercise of power and did not conflict with the Mississippi Constitution. Therefore, he would have upheld the order.

Vacated - 2016-M-01072-SCT (June 7, 2018)

En Banc Opinion by Presiding Justice Randolph - Concurrences by Justice Maxwell, Justice Chamberlin, & Chief Justice Waller, Dissent by Justice King

Hon. Dorothy Winston Colom, Hon. Kenneth M. Burns, & Hon. H.J. Davidson, Jr (Lowndes County Chancery Court)

Thomas E. Payne for Appellant - Dorothy Winston Colom, Kenneth M. Burns, & H.J. Davidson, Jr. for Appellees

Briefed by [Addison K. Watson](#)

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SUPREME COURT - ORDERS

IN RE: MISSISSIPPI RULES OF CRIMINAL PROCEDURE

COURT ORDER

ORDER

This en banc Order by the Mississippi Supreme Court, made after public comment to proposed amendments, amends Rules 18, 3.2, 25.3, and 26.6 of the Miss. R. Crim. P. These amendments to the Rules take effect on July 1, 2018.

[Exhibit A](#), referenced in and attached to the Order, amends (1) Rule 3.2 to allow delivery of summons by U.S. mail, (2) Rule 18.9 to follow the former Rule 9.01 of the Uniform Rules of Circuit and County Court regarding prohibited disclosures about criminal defendants, (3) Rule 25.3 to clarify when a new trial motion or motion to vacate judgment is denied as a matter of law, and (4) Rule 26.6 to prohibit the court from suspending or reducing an assessment made for a traffic violation under Miss. Code Ann. § 99-19-73.

Ordered - 89-R-99038-SCT (June 5, 2018)

En Banc Order by Presiding Justice Kitchens

Briefed by [Daniel Tankersley](#)

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SUPREME COURT - CRIMINAL CASES

HALL V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - BURDEN OF PROOF - CIRCUMSTANTIAL EVIDENCE - When a case is based on circumstantial evidence, the State bears the burden of proving guilt not only beyond a reasonable doubt, but to the exclusion of every reasonable hypothesis consistent with innocence

CRIMINAL LAW - MURDER - DELIBERATE-DESIGN - The elements the prosecution is required to prove beyond a reasonable doubt are: (1) the defendant killed the victim, (2) without authority of law, and (3) with deliberate design to effect death

CRIMINAL PROCEDURE - EVIDENCE - NEW TRIAL - The court will overturn a verdict only when it is so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice

FACTS

Kathryn Peacock was found dead in her home by her boyfriend Devonzeel Morgan on May 6, 2015. Investigators found that Peacock had been stabbed to death and recovered a bloody white tank top, a long-handled steak knife with a bent tip, a pair of bloody women's underwear in the bathroom, and a pair of Nike Air Jordan's and white shirt with blood on them in her car. Jovita Hall approached investigators and informed them that she had seen her son Derrick Hall (Hall) wearing clothes that were too small for him earlier that day. Investigators executed a search warrant at the Jovita's residence and recovered several clothing items that had blood and DNA evidence on them. The DNA profile showed the blood on the various items to belong to Peacock and a ninety-nine percent match to Hall and his patrilineal male relatives. Hall was convicted of first-degree murder, and his post-trial motion for judgment notwithstanding the verdict was denied. Hall appealed.

ISSUES

Whether (1) the State's evidence was insufficient to support his conviction; (2) the verdict was contrary to the overwhelming weight of the evidence.

HOLDING

(1) Because there were injuries on Peacock and fresh cuts on Hall's hand which suggested a struggle ensued, and because the existence of a deadly weapon is a question of fact for the jury to decide, the Court found that the State's evidence could only lead the jury to the conclusion that Peacock was murdered by deliberate design by Hall. (2) Because the jury accepted the State's evidence and its witnesses' versions of events, allowing the jury's verdict to stand does not sanction an unconscionable injustice, and the trial court did not err in denying Hall's motion for a new trial. Therefore, the Supreme Court affirmed the judgment of the Warren County Circuit Court.

Affirmed - 2017-KA-00849-SCT (June 7, 2018)

Opinion by Justice Ishee

Hon. M. James Chaney, Jr. (Warren County Circuit Court)

Pub. Def. Office for Appellant - Att'y Gen. Office for Appellee

Briefed by [D. Hunter V. Robertson](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – JUNE 5, 2018

COURT OF APPEALS - CIVIL CASES

CRUTCHFIELD V. MAGNOLIA REGIONAL HEALTH CENTER

CIVIL - PERSONAL INJURY

TORTS - MEDICAL MALPRACTICE - BURDEN OF PROOF - A plaintiff in a medical-malpractice case has the burden of proving: (1) the existence of a duty by the defendant to conform to a specific standard of conduct for the protection of others against an unreasonable risk of injury; (2) failure to conform to the required standard; and (3) an injury to the plaintiff proximately caused by the breach of such duty by the defendant

TORTS - MEDICAL MALPRACTICE - EXPERT WITNESS - Generally, an expert witness is required in order for a plaintiff to establish the elements required to carry his burden of proof in a medical malpractice case

CIVIL PROCEDURE - EXPERT WITNESS - TIMELY DESIGNATION - Rule 4.04(A) of the URCCC requires a litigant to designate any expert witness at least sixty days before trial; notwithstanding this requirement, a litigant is still required to timely designate any expert witness, and Rule 4.04(A) does not lessen the litigant's obligation to designate any expert by permitting said litigant to withhold designation until sixty days before trial

FACTS

Delton Crutchfield brought suit against Magnolia Regional Medical Center (Magnolia Regional) for negligent injury in November 2012. In September 2011, Crutchfield developed ulcers across the lower half of his body while being treated at Magnolia Regional for a heart attack, leading to an amputation of his lower-left extremity and ultimately his death before conclusion of the suit. Responding to Magnolia Regional's interrogatories around the time of initial pleadings and for several years thereafter, Crutchfield declined to designate an expert witness to support his claim of medical negligence. In May 2016, Magnolia Regional filed a motion for summary judgment on the grounds that Crutchfield could not meet his burden of proof because he had failed to designate any expert witness to support his claims. Crutchfield asked the court to reject the motion on the grounds that he is not required to designate any expert witness until up to sixty days before trial, and further moved the court to grant a continuance for further discovery. The trial court granted summary judgment for Magnolia Regional. Crutchfield filed a motion to alter or amend the judgment, wherein they proffered expert testimony supporting his claim and providing explanation as to the expert's untimely designation. The trial court rejected the motion and reaffirmed summary judgment for Magnolia Regional. Crutchfield appealed.

ISSUES

Whether the trial court erred in granting summary judgment in favor of Magnolia Regional on the grounds that Crutchfield could not meet his burden of proof because he had failed to timely designate any expert witness.

HOLDING

Because a plaintiff in a medical malpractice case carries the burden of proving that (1) the defendant has the duty to conforming to a specific standard of conduct for the protection of others against reasonable risk of injury, (2) the defendant failed to conform to the required standard, and (3) an injury to the plaintiff proximately caused by breach of such duty, and because Crutchfield failed to timely designate any expert witness that could establish any of the three of these elements, the trial court did not err in granting summary judgment in favor of Magnolia Regional. Therefore, the Court of Appeals affirmed the judgment of the Alcorn County Circuit Court.

Affirmed - 2017-CA-00111-COA (June 5, 2018)

Opinion by Presiding Judge Irving

Hon. James Seth Andrew Pound (Alcorn County Circuit Court)

Edward Clark Trout, Thomas Roy Trout, & Kristan Alicia McCray for Appellants - L. Bradley Dillard for Appellee

Briefed by [D. Kirkwood Palmer](#)

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ESTATE OF JONES V. DELTA FOUND., INC.

CIVIL - WILLS, TRUSTS, & ESTATES

CONTRACTS - AMENDMENTS - NOVATION - A novation is a mutual agreement among all parties concerned for the discharge of a valid existing obligation by the substitution of a new valid obligation on the part of the debtor or another, or a like agreement for the discharge of a debtor to his creditor by a substitution of a new creditor

CONTRACTS - AMENDMENTS - NOVATION - There are three kinds of novation: (1) where the debtor and creditor remain the same, but a new debt takes the place of the old one; (2) where the debt remains the same, but a new debtor is substituted; and (3) where the debt and debtor remain, but a new creditor is substituted

WILLS AND ESTATES - PROBATE - AMENDMENT - Pursuant to Miss. Code Ann. § 91-7-151, a seasonably filed claim against the estate of a decedent may be amended after the expiration of the time limited for the filing of claims where it is necessary or desirable to accomplish complete justice between the parties, the original statement shows a claim (or cause of action) which may be established as a valid one, upon which an amendment can be predicated, the character and identity of the claim (or cause of action) is not changed

FACTS

In 2005, George Jones and Lee Pinkston executed two promissory notes “Individually and on behalf of Three Rivers Transit, Inc.” from Delta Foundation, Inc. (“Delta”) for loans of \$109,787.57 and \$141,319.32 with a four percent interest rate. In 2008, the loans were renewed with balances \$91,801.15 and \$117,570.39, respectively, with a new seven percent interest rate. This 2008 note recited that it was secured by several parcels of Three Rivers’ and Jones’s personal real property and was signed with Jones’s signature under the typed name “Three Rivers” without any indication of agency status, but also without any indication of individual liability. Pinkston also signed the notes as a partner and guarantor. In 2012, Jones died, and his estate was opened, prompting Delta to bring a claim against Jones’s Estate (“The Estate”) for the amount owed on the notes. The Estate objected to the claim, arguing that the 2008 note erased Jones’s personal liability by creating a novation for Three Rivers in place of his personal liability. In the original filing, Delta attached only the 2008 notes to the claim. Delta amended the claim, but again accidentally attached the 2008 notes. Delta then filed an “amended motion to amend the probate claim.” Delta was able to bring the 2005 note into evidence to show that a novation was not created, and that Jones was personally liable. The Estate appealed.

ISSUES

Whether (1) a novation was created by the 2008 promissory note; (2) Delta waived all claims against Jones individually on the 2005 notes when it accepted the 2008 notes; and (3) the chancellor erred in allowing Delta to add the 2005 notes to their claim.

HOLDING

(1) Because the new debt might have extinguished the old one, but the record was limited and conflicting on whether it was intended to, this issue was reversed and remanded to determine whether the execution of the 2008 note was intended to extinguish the 2005 note. (2) Because it is not clear whether the 2005 notes were extinguished in the previous issue, it was also not clear whether Delta waived their rights to claims or defenses on the 2005 notes. (3) Because the differences between the 2005 and 2008 notes do not materially alter the character or identity of Delta’s claim, the chancellor did not err in allowing the amendment. Therefore, the Court of Appeals affirmed in part, and reversed and remanded in part the judgment of the Warren County Chancery Court.

Affirmed in Part; Reversed & Remanded in Part - 2016-CA-01345-COA (Jun. 5, 2018)

Opinion by Justice Barnes

Hon. Vicki R. Barnes (Warren County Chancery Court)

Frank G. Vollar for Appellant - Tonya P. Franklin for Appellee

Briefed by [Nikki Breeland](#)

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GOSSETT V. GOSSETT

CIVIL - DOMESTIC RELATIONS

DIVORCE - ADULTERY - SUFFICIENT EVIDENCE - *McAdory* provided that a party seeking to prove adultery must do so by clear and convincing evidence and to the exclusion of any reasonable theory of innocence

DIVORCE - EVIDENCE - WEIGHT AND CREDIBILITY - The chancellor possesses the authority to determine witness credibility, to resolve discrepancies in the evidence, and to interpret the evidence where it is capable of more than one reasonable interpretation

FACTS

Chester Gossett filed a complaint for divorce from his wife, Tiffany Gossett, on the grounds of adultery and cruel and inhuman treatment. Chester presented circumstantial evidence that Tiffany committed adultery. The chancellor, without ever making a determination as to witness credibility, concluded that Chester failed to sufficiently prove adultery. Therefore, the chancellor dismissed Chester's complaint. Chester appealed.

ISSUES

Whether the chancellor erred by denying Chester's divorce claim because he presented insufficient evidence to establish (1) adultery; and (2) cruel and inhuman treatment.

HOLDING

(1) Because the chancellor did not exercise her factfinding authority to assess witness credibility and to interpret the evidence, the chancellor erred by denying Chester's divorce claim because he presented insufficient evidence to establish adultery. (2) Because the chancellor committed no manifest error, the chancellor did not err by denying Chester's divorce claim because he presented insufficient evidence to establish cruel and inhuman treatment. Therefore, the Court of Appeals affirmed in part and reversed and remanded in part the judgment of the Washington County Chancery Court.

DISSENT

Judge Fair argued that, under *Mitchell*, sufficient proof of adultery must only lead to the conclusion of guilt. Therefore, the chancellor did not err by denying Chester's divorce claim because he presented insufficient evidence. Judge Fair would affirm.

Affirmed in Part; Reversed & Remanded in Part - 2016-CA-00672-COA (June 5, 2018)

Opinion by Judge Tindell - Dissent by Judge Fair

Hon. Marie Wilson (Washington County Chancery Court)

Tonya Yevette Powell for Appellant - Nick Crawford & Vicki L. Gilliam for Appellee

Briefed by [Nathan Simpson](#)

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GRANDBERRY V. RIH ACQUISITIONS MS II, LLC

CIVIL - PERSONAL INJURY

TORTS - PREMISES LIABILITY - FACTORS - The three factors to determine whether a property owner is liable to an injured party in a premises-liability case are: (1) the injured party's classification as an invitee, licensee, or trespasser at the time he or she was injured; (2) the duty owed by the defendant to the injured party; and (3) whether the defendant breached that duty

TORTS - PREMISES LIABILITY - DANGEROUS CONDITIONS - When a dangerous condition exists that was created by someone not associated with the business, the plaintiff must produce evidence that the owner or operator had actual or constructive knowledge of the dangerous condition as well as a sufficient opportunity to correct it

FACTS

Bettina Grandberry went to Bally's Casino. A car accident outside of the casino caused the power to go out. While the lights were out, Grandberry claimed that she was hit in the back of the head with an unknown object by an unknown person. She was transported to the hospital for her injuries. She sued Bally's for negligence under premises liability in

response to her injuries. Bally's filed a motion for summary judgment, which the circuit court granted. Grandberry appealed.

ISSUE

Whether the circuit court erred in granting Bally's motion for summary judgment.

HOLDING

Because Grandberry failed to prove that Bally's had actual or constructive knowledge of the dangerous condition, and because she failed to produce evidence in support of her claims, summary judgment was proper. Therefore, the Court of Appeals affirmed the judgment of the Tunica County Circuit Court.

Affirmed - 2017-CP-00258-COA (June 5, 2018)

Opinion by Judge Westbrook

Hon. Charles E. Webster (Tunica County Circuit Court)

Pro se for Appellant - Richard D. Underwood for Appellee

Briefed by [Tyler Alcorn](#)

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OSTROWSKI V. CITY OF D'IBERVILLE

CIVIL - PERSONAL INJURY

NEGLIGENCE - STREETS & ROADS - GOVERNMENTAL IMMUNITY - When an injury is caused solely by the effect of weather conditions on the use of streets and highways, a governmental entity is not liable for any claims arising out of the accident

MISS. TORT CLAIMS ACT - ROADWAY MAINTENANCE - DISCRETIONARY FUNCTION - The function of roadway maintenance is ministerial because it is mandated by statute

FACTS

Kenneth Ostrowski was driving on a city road after a heavy rainstorm when his car struck a displaced manhole cover, which caused his car to flip and land on its side in the property adjacent to the road. He suffered injuries and his car was damaged. He testified that he was driving below the posted speed limit. In his complaint, Ostrowski testified that the manhole cover was displaced due to "rising water because of design and deficiencies," alleging that the city's negligence in maintaining the sewer system caused the manhole cover to be displaced during the rain storm. To support his argument, he submitted an affidavit from a civil engineer, Dreux Seghers, which stated that repairs to the manhole were necessary to minimize the flow of the rain water into the sewer system. However, because Seghers's affidavit did not meet the criteria of Miss. R. Evi. 702, it was not admissible. Ostrowski did not produce any additional evidence that the sewer system contained design deficiencies or that the City was placed on notice of the manhole displacement. The Harrison County County Court granted the City's motion for summary judgment, finding the City immune under Miss. Code Ann. § 11-49-9(1)(q). Ostrowski appealed to the Harrison County Circuit Court, and the circuit court affirmed the county court's decision. Ostrowski appealed.

ISSUE

Whether the circuit court erred in affirming the county court's decision that the City was immune from liability.

HOLDING

Because Ostrowski's injuries arose solely out of the effect of weather conditions on the use of the City road in question, the City was immune from liability under Miss. Code Ann. § 11-46-9(1)(q). Therefore, the Court of Appeals affirmed the judgment of the Harrison County Circuit Court.

Affirmed - 2017-CA-01117-COA (June 5, 2018)

Opinion by Judge Lee

Hon. Lisa P. Dodson (Harrison County Circuit Court, Second Judicial Dist.)
Michael Joseph Yentzen for Appellant - Nancy L. Siples Brumeloe for Appellee
Briefed by [Caroline Loveless](#)

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SELLERS V. RINDERER

CIVIL - CUSTODY

CIVIL - CHILD-CUSTODY - CHANCELLOR'S DISCRETION - The chancellor is in the best position to listen to the witnesses, observe their demeanor, and determine the credibility of the witnesses and what weight ought to be ascribed to the evidence

CHILD-CUSTODY - ALBRIGHT FACTORS - PRIMARY CONSIDERATION - The primary consideration is the best interest and welfare of the child

CHILD-CUSTODY - ALBRIGHT FACTORS - PHYSICAL CUSTODY - The Mississippi Supreme Court has significantly weakened the once strong presumption that the mother is generally best suited to raise a young child

FACTS

Nicholas Rinderer and Renee Sellers are the natural parents of two children. They were never married and both children were born while Renee was married to another man, Michael Sellers. Michael and Renee share a daughter, and were divorced in 2014. In August 2013, Nicholas filed a complaint for adjudication of paternity, custody, support, and other matters, along with a complaint for emergency custody. A temporary order awarded joint legal custody to both parents, and temporary physical custody to Renee. Nicholas was awarded visitation two days per week. The chancellor also ordered Nicholas and Renee to be evaluated by Dr. John Pat Galloway, and a guardian ad litem (GAL) was appointed. In October 2013, Nicholas's visitation was increased to include overnight visitation, and the chancellor also ordered the parties to undergo a psychological evaluation, which was completed by Dr. Beverly Smallwood. In 2015, the Lamar County Department of Human Services filed a complaint for support and other relief against Nick for child support. The following year, the chancellor ordered Nick to pay \$193 per month and expanded his visitation to three full days per week. At the trial in 2016, the chancellor was concerned about evidence presented against Renee regarding several *Albright* factors as well as the testimony and opinions expressed by the GAL and doctors. The chancellor awarded joint legal custody of the children to both Nicholas and Renee, and physical custody to Nicholas with Renee having periods of visitation more than standard. Renee appealed.

ISSUE

Whether the chancellor erred in his *Albright* analysis of the (1) age, health, and sex of the child; (2) continuity of care; (3) parenting skills and willingness and capacity to provide primary childcare; (4) physical and mental health and age of parents; and (5) other factors relevant to the parent-child relationship.

HOLDING

(1) Because Mississippi law does not support the argument that a child's mother, as opposed to the father, is the best caregiver by default, the chancellor did not commit manifest error when he found this factor to be neutral. (2) Because the record indicated the GAL and chancellor found continuity of care in favor of Renee, this issue was raised in error. (3) Because the chancellor's findings in support of Nicholas were supported by substantial evidence in the record, including photographs of the children's condition, the claim was without merit. (4) Because there was substantial evidence in the record to support the GAL and chancellor's overall concerns for Renee's mental health, there was no manifest error in the chancellor's findings in support of Nicholas. (5) Because the findings were based on more than a shared bedroom, the chancellor's conclusions were relevant and supported by the record. Therefore, the Court of Appeals affirmed the judgment of the Lamar County Chancery Court.

Affirmed - 2016-CA-01536-COA (June 5, 2018)

Opinion by Presiding Judge Griffis

Hon. M. Ronald Doleac (Lamar County Chancery Court)
Brandon L. Brooks for Appellant - Phillip Londeree for Appellee
Briefed by [Sarah Raben](#)

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COURT OF APPEALS - POST-CONVICTION RELIEF

GUNN V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - SUCCESSIVE WRITS - PROCEDURAL BAR - The Uniform Post-Conviction Collateral Relief Act (UPCCRA) imposes a bar against successive writs

POST-CONVICTION RELIEF - PROCEDURAL BAR - EXCEPTIONS - The UPCCRA provides a number of exceptions to the successive-writ bar, including those cases in which the petitioner claims that his sentence expired, or his probation, parole or conditional release has been unlawfully revoked

POST-CONVICTION RELIEF - PROCEDURAL BAR - BURDEN OF PROOF - The movant bears the burden of proving by a preponderance of the evidence that his claim is not barred as a successive writ

FACTS

Elias Gunn was arrested and indicted for possession of cocaine while he was on probation for armed robbery. The State petitioned to revoke his probation, listing Gunn's cocaine-possession indictment as a violation of the terms of Gunn's probation. Gunn filed a motion for post-conviction relief (PCR) in the Madison County Circuit Court, seeking to have his probation reinstated based upon alleged defects and errors occurring at his revocation hearing. The circuit court found that this was Gunn's second PCR motion challenging the same probation-revocation decision and dismissed Gunn's PCR motion as a successive writ. Gunn appealed.

ISSUES

Whether (1) the trial court denied Gunn due process by not providing him with evidence relied upon to revoke his probation; and (2) the cocaine-possession indictment against Gunn was an insufficient basis for revoking his probation.

HOLDING

(1) Because Gunn's second PCR motion challenged the same revocation decision that he challenged in his first PCR motion, the court found no error in the trial court's dismissal of Gunn's second PCR motion as a successive writ. Further, Gunn raised no error that affected his fundamental due process rights that would serve as an exception to the successive-writ procedural bar. (2) Because only four types of fundamental rights have been found to survive PCR procedural bars, and because Gunn failed to show that any of these four fundamental rights applied, the court found no error in the trial court's dismissal of Gunn's second PCR motion as a successive writ. Therefore, the Court of Appeals affirmed the judgment of the Madison County Circuit Court.

Affirmed - 2017-CP-00753-COA (June 5, 2018)

Opinion by Judge Carlton

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

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

Briefed by [William L. Moorer](#)

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WILLIAMSON V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - GUILTY PLEA - WAIVER - In Mississippi, by pleading guilty, a defendant waives his right to have the State prove each element of the offense beyond a reasonable doubt

POST-CONVICTION RELIEF - SUCCESSIVE WRIT - PROCEDURAL BAR - The Uniform Post-Conviction Collateral Relief Act (UPCCRA) imposes a bar against successive writs unless an exception applies

FACTS

Daniel Williamson pled guilty to one count of manslaughter and one count of arson. The Neshoba County Circuit Court accepted Williamson's guilty plea and sentenced him to serve twenty years in for his manslaughter conviction and twenty years for his arson conviction, with the sentences to run consecutively, for a total of forty years incarcerated. Williamson filed a motion for post-conviction relief, which the trial court dismissed as a successive writ, a duplicitious request, and lacking merit. Williamson appealed.

ISSUE

Whether the trial court erred in dismissing Williamson's motion on the grounds that it was successive and duplicitious.

HOLDING

Because the UPCCRA imposes a bar against successive writs, and because Williamson's appeal did not fall within an exception to the statute, his PCR motion was procedurally barred. Therefore, the Court of Appeals affirmed the judgment of the Neshoba County Circuit Court.

Affirmed - 2017-CP-00634-COA (June 5, 2018)

Opinion by Judge Carlton

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

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

Briefed by [Luke Kelly](#)

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COURT OF APPEALS - CRIMINAL CASES

BARNES V. STATE

CRIMINAL - FELONY

CRIMINAL - SEX-OFFENDER REGISTRATION - HOMELESSNESS - An individual may register as homeless to comply with the sex-offender requirements, but they may not register as homeless while they are residing in a home in violation of the requirements

CRIMINAL - SEX-OFFENDER REGISTRATION - PROXIMITY VIOLATION - When an offender is notified of a proximity violation must relocate and register a new address

FACTS

Edward Barnes, III was found guilty for failure to register as a convicted sex offender. The registrar for the Harrison County Sheriff's Department testified at trial that she had met with Barnes for a registration visit and explained to him the requirements with which a convicted sex offender has to comply. Barnes signed the forms and acknowledged the

individual requirements by putting his initials by each requirement listed. Barnes disclosed the address of his residence, and the registrar found a proximity violation because the address was four-hundred-feet from a day care center. The registrar sent Barnes a letter notifying him of the violation and giving him fifteen days to relocate and register a new address. Barnes failed to respond to the letter. A sheriff's deputy followed up on the violation and found Barnes's mother who confirmed that Barnes lived at that address. The deputy spoke with Barnes, and Barnes confirmed he had failed to relocate but told the deputy he had nowhere else to live. Barnes was found guilty and was sentenced as a habitual offender to life without parole in the custody of the Mississippi Department of Corrections (MDOC). Barnes filed a motion for a new trial, or in the alternative, for a judgment notwithstanding the verdict. The trial court denied the motion. Barnes appealed.

ISSUE

Whether there was insufficient evidence to support the verdict.

HOLDING

Because Barnes stipulated that he had previously been convicted of a sex offense requiring registration, admitted that he lived at the address listed in close proximity to the day care center and knew that the proximity of the home to the day care center violated the sex-offender registration requirements, there was sufficient evidence to support the verdict. Therefore, the judgment of the Harrison County Circuit Court, First Judicial District was affirmed.

Affirmed - 2017-KM-00691-COA (June 5, 2018)

Opinion by Judge Barnes

Hon. Roger T. Clark (Harrison County Circuit Court, First Judicial Dist.)

Lisa D. Collums (Pub. Def. Office) for Appellant - Katy Taylor Gerber (Att'y Gen. Office) for Appellee

Briefed by [Michael Farese](#)

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PARKER V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - APPEAL - LINDSEY BRIEF - When appellate counsel does not believe there are any issues arguable on appeal, counsel must serve a brief in compliance with Rule 28 that includes a thorough review of the record to determine if there are any arguable issues and allow the client to file a pro se brief; if the client does so, counsel must file supplemental briefing on the issue

FACTS

Tradarius Parker was convicted of robbery and pled guilty to receiving stolen property. After the robbery, Parker went to the police to make a statement. He waived his *Miranda* rights and denied any involvement in the robbery. However, after spending a night in jail, Parker changed his statement and admitted that he was the driver involved in the robbery. The victim was able to identify Parker in a line up. Parker was found guilty of the robbery, and he pled guilty to the crime of receiving stolen property. Parker appealed.

ISSUE

Whether any arguable issues exist for appellate review.

HOLDING

Because Parker's counsel filed a brief pursuant to *Lindsey v. State*, because they found no arguable issues for appeal based on a thorough review of the record, and because Parker did not choose to file a pro se brief, the court did not err in deciding that there were no issues in need of further review. Therefore, the Court of Appeals affirmed the judgment of the Claiborne County Circuit Court.

Affirmed - 2017-KA-00583-COA (June 5, 2018)

Opinion by Judge Carlton
Hon. Lamar Pickard (Claiborne County Circuit Court)
Benjamin Allen Suber & George T. Holmes (Pub. Def. Office) for Appellant - Alicia Marie Ainsworth (Att'y Gen. Office) for Appellee
Briefed by [Zachary Harper](#)

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