

MISSISSIPPI SUPREME COURT DECISIONS – MAY 31, 2018***SUPREME COURT - CIVIL CASES*****CENT. INSURERS OF GRENADA, INC. v. GREENWOOD****CIVIL - INSURANCE**

CIVIL PROCEDURE - SERVICE OF PROCESS - INSURANCE COMPANIES - Service of process on an insurance company cannot be accomplished by serving the Commissioner of Insurance unless he is an authorized agent for service

CIVIL PROCEDURE - SERVICE OF PROCESS - COMMISSIONER OF INSURANCE - While Miss. Code Ann. § 83-5-11 imposes certain duties on the commissioner whenever he or she receives service of process for an insurance company, the statute does not establish the circumstances under which the Commissioner is authorized as an agent for service of process

STATUTORY INTERPRETATION - CONSIDERATIONS - LEGISLATIVE INTENT - In construing statutes the court will not only interpret the words used, but will consider the purpose and policy which the legislature had in view of enacting the law

FACTS

William Greenwood, the owner of Antique Wood Company of Mississippi, filed a complaint against Central Insurers of Grenada (Central) and three other defendants, alleging breach of contract, conspiracy, and bad faith due to the defendants' refusal to provide coverage under a commercial liability insurance policy. Instead of personally serving process on an officer or registered agent of Central or mailing a copy of the complaint and summons to Central or its registered agent, Greenwood served a copy of the complaint and summons on an employee of the Mississippi Commissioner of Insurance. Shortly after, Central filed its answer, raising the affirmative defense of failure and/or insufficient service of process. The trial court denied Central's motion to dismiss, ruling that Central was a solicitor and deliverer of application for insurance, and, thus, service upon either the Commissioner of Insurance or registered agent with the Secretary of State was proper. Central filed for interlocutory appeal.

ISSUE

Whether the Warren County Circuit Court erred in denying Central's motion to dismiss Greenwood's complaint on grounds of insufficient service of process.

HOLDING

Because Miss. Code Ann. § 83-5-11 provides no requirement that domestic insurance producers like Central appoint the Commissioner as their agent for service of process, nor does it establish circumstances under which the Commissioner is authorized as an agent for service of process, the trial court erred in holding that the Commissioner of Insurance was authorized to act as Central's agent for service of process. Therefore, the Supreme Court reversed and remanded the judgment of the Warren County Circuit Court.

Reversed & Remanded - 2016-IA-01367-SCT (May 31, 2018)

Opinion by Chief Justice Waller

Hon. Isadore W. Patrick, Jr. (Warren County Circuit Court)

Thomas L. Carpenter Jr. & Carr Allison for Appellant - Drew M. Martin & Chuck McRae for Appellee

Briefed by [Hale Neilson](#)

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HORTON V. CITY OF VICKSBURG

CIVIL - PROPERTY DAMAGE

TORTS - GOVERNMENTAL ENTITIES - IMMUNITY - While the Mississippi Tort Claims Act (MTCA) permits negligence actions against a governmental entity, to challenge the viability of a governmental actor's immunity under the MTCA, a plaintiff must first state a valid claim upon which relief may be granted

TORTS - GOVERNMENTAL ENTITIES - IMMUNITY - It is only after the plaintiff has established a prima facie case against a governmental entity that the MTCA and its immunity provision will be addressed

FACTS

Emmanuel Erves rented a room in a ninety-eight-year-old home owned by Malcolm and Rose Carson in Vicksburg, Mississippi. On February 24, 2014, Erves fell down the home's exterior concrete stairs and died as a result of the injuries he sustained. Estate administratrix for Erves, April Horton, filed suit against the City of Vicksburg and City Code Inspector Benjie Thomas, claiming that the condition and configuration of the stairs where Erves fell, along with the absence of a mandatory handrail, violated the city's housing code. Horton argued that, because of these violations, Erves was unable to regain his balance or break his fall, which ultimately resulted in fatal injuries. She claimed that the defendants breached their duty to inspect the property adequately, and that the City failed to provide reasonable supervision of Thomas in his duties. Horton further argued that both parties should have known that the home's exterior steps were not up to code, posing an unreasonable risk of harm to the public. The City filed a motion for summary judgment in circuit court, arguing that property-code enforcement is a discretionary function under the International Residential Code (IRC) and the International Property Maintenance Code (IPMC). The City asserted its immunity under the Mississippi Tort Claims Act (MTCA) as a defense to all of Horton's claims, and further argued that Horton failed to state a cognizable claim under which she could support her prima facie case for negligence because the City did not owe Erves a duty a duty related to his tenancy in a private residence. Following a hearing on the matter, the Warren County Circuit Court ultimately determined that the City's enforcement of the code was discretionary as it applied to homes in the historical district, granting the City immunity under the MTCA. Horton appealed.

ISSUE

Whether the circuit court erred in granting the City of Vicksburg's Motion for Summary Judgment.

HOLDING

Because Horton did not establish that the City of Vicksburg owed the decedent a duty to inspect or condemn the residence, and Horton did not demonstrate that the City or its employees breached a duty under any adopted ordinance or regulation, she failed to present a genuine issue of material fact for the court's consideration. Therefore, the Supreme Court affirmed the judgment of the Warren County Circuit Court.

DISSENT

Justice Kitchens argued that Horton presented affidavits in response to the motion for summary judgment, which demonstrated genuine issues of material fact over whether Vicksburg had a duty to inspect. He would have reversed and remanded the judgment of the Warren County Circuit Court.

Affirmed - 2016-IA-01595-SCT (May 31, 2018)

En Banc Opinion by Justice Beam - Dissent by Justice Kitchens

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

Ratoya Janae Gilmer, Crystal Wise Martin, & Suzanne Griggins Keys for Appellant - John Michael Coleman & Katelyn Adele Riley for Appellee

Briefed by [Katie Berry](#)

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SUPREME COURT - ORDERS

IN RE MISSISSIPPI RULES OF CIVIL PROCEDURE

COURT ORDER

ORDER

This en banc Order by the Mississippi Supreme Court, made in consideration of a letter motion filed by Chief Judge Lee for the Court of Appeals, amends Rule 54 of the Miss. R. Civ. P. This amendment to the Rules will become effective upon entry of the Order on July 1, 2018.

[Exhibit A](#), referenced in and attached to the Order, shows that Rule 54(c) is amended in regard to judgment summarily dismissing a motion for post-conviction collateral relief. When a court summarily dismisses a motion for post-conviction collateral relief under Miss. Code Ann. § 99-39-11(2), the order must identify the files, records, transcripts, and correspondence the court relied on and direct that certified copies of those documents be placed in the motion cause number's file.

Ordered - 89-R-99001-SCT (May 22, 2018)

En Banc Order by Presiding Justice Randolph

Briefed by [Emily Warwick](#)

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SUPREME COURT - CRIMINAL CASES

HAYNES V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - STANDARD OF REVIEW - SUFFICIENCY OF EVIDENCE - The relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt

CRIMINAL LAW - POSSESSION - CONSTRUCTIVE POSSESSION - Constructive possession may be shown by establishing that the drug involved was subject to the defendant's dominion or control; constructive possession is likely when the drug is found in the defendant's vehicle

FACTS

Darius Parnell Haynes and Kameshia Harris got into an altercation at a friend's house in March 2016. Haynes left the fight with Xavier Brown, and Harris went to the hospital to speak with Investigator Wendell Fountain. Harris gave Fountain a statement, stating that she had seen Haynes with a gun during the altercation and Haynes had threatened to shoot her. Fountain, when leaving the hospital, saw a car matching the description given by Harris with Haynes standing by it. Fountain approached the car and saw a baggie of white substance, obtained consent to search the car, and found a gun in the console. Brown testified at trial that the gun was Haynes's. He further testified that he and Haynes had snorted the cocaine, and that the cocaine was his. A jury found Haynes guilty of possession of cocaine while in possession of a firearm and possession of a weapon by a felon, and the court imposed a 13-year sentence. Haynes appealed.

ISSUE

Whether the evidence is legally sufficient to support Haynes’s conviction for possession of cocaine.

HOLDING

Because constructive possession may be shown by establishing that the drug involved was subject to the defendant’s control, and possession of a controlled substance may be individual or joint, the evidence was sufficient to maintain Haynes’s conviction. Further, Brown testified that he and Haynes had snorted the cocaine and the cocaine was found within Haynes’s reach in the vehicle. Therefore, the Supreme Court affirmed the judgment of the Covich County Circuit Court.

DISSENT

Chief Justice Waller, joined by Justices King, Ishee, and Kitchens, argued that they would reverse the lower court’s decision for insufficient evidence. Because mere physical proximity to the contraband does not, in itself, show constructive possession, and the car did not belong to Haynes, his “mere physical proximity” to the cocaine was insufficient to establish constructive possession.

Affirmed - 2016-KA01747-SCT (May 31, 2018)

En Banc Opinion by Justice Chamberlin

Hon. Lamar Pickard (Covich County Circuit Court)

Mollie M. McMillian & George T. Holmes (Pub. Def. Office) for Appellant - Alicia Ainsworth & Alexander C. Martin (Att’y Gen. Office) for Appellee

Briefed by [Andrew P. Cicero, III](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – MAY 29, 2018

COURT OF APPEALS - CIVIL CASES

IRBY V. MADAKASIRA & PSYCAMORE LLC.

CIVIL - MEDICAL MALPRACTICE

WRONGFUL DEATH - MINOR SAVINGS STATUTE - QUALIFIED PERSON - Pursuant to *Pioneer*, only when someone who is qualified to bring a wrongful-death suit actually files a wrongful-death suit on the minor beneficiarie’s behalf will the minors savings clause not apply; once the suit is filed, the running of the statute limitations is immaterial

WRONGFUL DEATH - INTENTIONAL ACT - IRRESISTIBLE IMPULSE - According to *Truddle*, to sustain a cause of action for suicide, the plaintiff must show that the defendant committed an intentional act that proximately caused an irresistible impulse in the decedent to commit suicide

FACTS

Graham Read Irby (Irby), by and through his mother, Karen Collins (Collins), filed a wrongful-death suit against the psychiatrist, Sudhakar Madakasira, who treated his father, Stuart Irby (Stuart), prior to Stuart’s suicide. The suit alleged that the psychiatrist’s intention and negligent acts created an irresistible impulse in Stuart to commit suicide. The circuit court dismissed the action, finding the claims of intentional acts were barred by the one-year statute of limitations for intentional torts, and Stuart’s suicide was a superseding event that barred any negligence claims. On appeal, Collins originally argued that the complaint was based on negligence, for which a two-year statute of limitations applied, and the negligence action was not barred. A short time prior to the Court of Appeal’s original decision, the Mississippi Supreme Court decided *Pioneer Community Hospital of Newton v. Roberts*, holding that the minor’s saving statue applied to wrongful-death actions where a qualified person is available to file suit during the limitation period but does not do

so. On rehearing, Collins argued under *Pioneer*, the minor's savings statute applied and prevented the dismissal of the complaint as Irby is a minor, and no qualified person brought suit during the limitations period. The Court of Appeal's issued this decision as a modified opinion on motion for rehearing.

ISSUES

Whether (1) the minor's savings clause tolled the statute of limitations; (2) Collins may sustain a negligence cause of action for Stuart's suicide; and (3) Collins's complaint alleged an intentional tort sufficient to sustain a cause of action for wrongful death by suicide.

HOLDING

(1) Because Collins was not a qualified beneficiary under the wrongful-death statute, the minor's saving statute tolled the statute of limitations, making the suit timely under either the one or two-year statute of limitations. (2) Because Collins's medical-negligence allegations do not state a claim upon which relief is granted, and because suicide breaks the causal chain, the trial court correctly dismissed the negligence allegations in the complaint. (3) Because the complaint alleged sufficient intentional acts to survive a Rule 12(b)(6) motion to dismiss, the intentional act allegation may be viable, even though those acts arose in a medical context. Therefore, the Court of Appeals affirmed in part, and reversed and remanded in part the judgment of the Rankin County Circuit Court.

PARTIAL CONCURRENCE/DISSENT

Chief Judge Lee argued Collins's medical malpractice claims were subject to a two-year statute of limitations, and that the negligence claims should be revisited on remand under *Singing River Health Systems v. Vermilyea*. As such, he would reverse and remand notwithstanding the majority's application of the minor's saving statute.

Affirmed in Part, Reversed & Remanded in Part - 2015-CA-01759-COA (May 29, 2018)

En Banc Opinion by Judge Barnes - Partial Concurrence/Dissent by Chief Judge Lee

Hon. John Huey Emfinger (Rankin County Circuit Court)

John W. Christopher & William P. Featherston Jr. for Appellant - Clifford B. Ammons & Clifford Barnes Ammons Jr. for Appellees

Briefed by [Charlotte Cooper](#)

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KEESLER FED. CREDIT UNION V. SAUCIER

CIVIL - CONTRACT

CONTRACTS - DAMAGES - INTEREST RATES - All judgments or decrees founded on any sale or contract shall bear interest at the same rate as the contract evidencing the debt on which the judgment or decree was rendered

CIVIL PROCEDURE – REVERSIBLE ERROR - BURDEN - There is a presumption that the judgment of the trial court is correct and the burden is on the Appellant to demonstrate some reversible error

FACTS

Keesler Federal Credit Union (Keesler) sued on two promissory notes from Billy Saucier. The first had been secured by a vehicle; the second was a personal loan. The deficiency following the sale of the vehicle was approximately \$5,200, and the second loan had an outstanding principal balance of about \$3,275. On the first loan, Keesler requested and received attorney's fees at the maximum rate allowed under the contract, fifteen percent of the outstanding principal, but the circuit court denied Keesler's demand for attorney's fees on the second loan. Accumulated interest, late fees, and the court costs were requested and awarded, though no post-judgment interest was added to those awards. Keesler appealed.

ISSUES

Whether the circuit court (1) should have required Saucier to pay its attorney's fees for collecting on the second contract; and (2) was required to award post-judgment interest at the contract rate on the awards of attorney's fees, court costs, accumulated interest, and late fees.

HOLDING

(1) Because the contract unambiguously provided for reasonable attorney's fees, the circuit court erred in finding otherwise. (2) Because Keesler failed to adequately brief the portion of its argument as to how the interest rate of the contract should be determined, it did not meet the burden to demonstrate reversible error by the trial court. Therefore, the Court of Appeals reversed the judgment and remanded for the circuit court to consider attorney's fees, and affirmed the contractual interest rate of the Stone County Circuit Court.

PARTIAL CONCURRENCE/DISSENT

Judge Wilson argued that there was no basis in the statute's language for denying post-judgment interest on the part of judgment, and that the statute clearly specified the interest rate for the judgment as the same rate as the contract evidencing the debt. Additionally, he argued that the court could have resolved the issue of statutory interpretation without additional argument and that, without doing so, the court invites litigation.

Affirmed in Part; Reversed & Remanded in Part- 2017-CA-00836-COA (May 29, 2018)

Opinion by Judge Fair - Partial Concurrence/Dissent by Judge Wilson

Hon. Lisa P. Dodson (Stone County Circuit Court)

Nicholas Van Wiser for Appellant - No appearance by Appellee

Briefed by [Mary-Katherine Black](#)

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STEVENSON V. GE HEALTHCARE & ELEC. INS. CO.

CIVIL - WORKER'S COMPENSATION

CIVIL PROCEDURE - APPEALS - EXCUSABLE NEGLIGENCE - When determining whether excusable neglect occurred, courts should analyze the danger of prejudice to the debtor, the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith

WORKERS' COMPENSATION - APPEALS - STANDARD OF REVIEW - The standard of review by which an appellate court resolves a workers' compensation case is that of substantial evidence; however, where the issue is one of law and not of fact, the standard of review is de novo

FACTS

Craig Stevenson filed a petition alleging that he sustained a work related injury. GE Healthcare filed a response and denied that the injury was work-related. The Mississippi Workers' Compensation Commission dismissed his claim and gave him a twenty-day window to appeal. Stevenson did not appeal within twenty days, and the dismissal was finalized. A year later, he filed a motion to reinstate his claim, which the commission denied because the statute of limitations to renew his claim had lapsed. Stevenson appealed.

ISSUE

Whether the Commission erred in denying Stevenson's motion to reinstate.

HOLDING

Because Stevenson could not demonstrate excusable neglect or give any concrete example of how he was misled by his attorney about the disposition of his claim, the Commission did not err in denying his motion. Therefore, the Court of Appeals affirmed the judgment of the Mississippi Workers' Compensation Commission.

Affirmed - 2017-WC-01016-COA (May 29, 2018)

Opinion by Presiding Judge Irving

Mississippi Workers' Compensation Commission

James R. Foster II for Appellant - Betty B. Arinder & Michelle Barlow Mims for Appellee

Briefed by [Sean Grady](#)

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WEAVER V. WEAVER

CIVIL - DOMESTIC RELATIONS

DIVORCE - DIVISION OF ASSETS - EQUITABLE DISTRIBUTION - Chancellors are directed to (1) classify the parties' assets as marital or separate, (2) determine the value of those assets, and (3) divide the marital estate equitably based upon the factors set forth in *Ferguson*

DIVISION OF ASSETS - FERGUSON FACTORS - TAX CONSEQUENCE - Among the factors to be considered by the court are the tax and other economic consequences of the property distribution

FACTS

On August 14, 2015, Melissa Weaver filed a complaint for divorce from Richard Weaver on the grounds of habitual cruel and inhumane treatment, and, in the alternative, irreconcilable differences. On March 2, 2016, the court entered an agreed temporary order. On May 5, 2016, the parties filed consent to divorce on the ground of irreconcilable differences, and the issues of equitable division of the marital estate, alimony, and attorney's fees were submitted to the court to decide. After a lengthy discovery period and a continuance, a trial was conducted on August 8, 2016, and August 31, 2016. The court issued its judgment of divorce on October 4, 2016, finding that the marital estate had a value of \$555,279.90, not including other property previously divided. The court awarded Richard fifty-five percent of the valued marital estate, and Melissa the remaining forty-five percent. The chancellor made a handwritten addition to his order, stating that: "[Melissa's attorney] did not approve this order as to form as he thought the order should mention 'tax consequences' but the [c]ourt entered this order without such language as that can be brought by the appropriate motion at a later date and time." A hearing on Melissa's motion to reconsider—addressing the tax consequences of the distribution of marital assets—was held on October 20, 2016. During said hearing, she offered into evidence the expert testimony of John Dongieux, an attorney and certified public accountant. Ultimately, the court denied the motion. Melissa appealed.

ISSUE

Whether the trial court incorrectly found that there were no tax consequences attributable to the distribution of the marital property.

HOLDING

Because the chancellor proposed possible vehicles for maintaining a tax-free asset division, the chancellor properly considered the tax consequences of the asset division. Therefore, the Court of Appeals affirmed the judgment of the Rankin County Chancery Court.

Affirmed - 2016-CA-01642-COA (May 29, 2018)

Opinion by Presiding Judge Irving

Hon. Haydn Judd Roberts (Rankin County Chancery Court)

Christopher A. Tabb for Appellant - J. Peyton Randolph II & Rick D. Patt for Appellee

Briefed by [Addison K. Watson](#)

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COURT OF APPEALS - CRIMINAL CASES

MAGEE V. STATE

CRIMINAL - FELONY

CHARACTER EVIDENCE - PRESERVATION FOR APPEAL - TIMELY OBJECTION - In order to preserve objection to inadmissible character evidence for appeal, the party must make a timely objection at trial

EVIDENCE - PREJUDICIAL INFORMATION - WEIGHT OF OTHER EVIDENCE - Where the weight of other evidence against the defendant is substantial enough to outweigh any harm done by admission of prejudicial information, the appellate court will not reverse the trial court's judgment

FACTS

Two detectives of the Gulfport Police Department conducted a controlled purchase of drugs from John Magee, in which one detective posed as an undercover buyer. The detective purchased four pills from Magee for \$150. Testing later revealed the pills were oxymorphone and hydromorphone. Law enforcement arrested Magee and, pursuant to a search warrant, searched his car. The officers found narcotics and \$21,000 cash in his car. A Harrison County Grand Jury indicted Magee on two counts of transferring a controlled substance, one count of trafficking, and one count of possession with intent to distribute. The State agreed to sever the counts, and elected to try Magee only for transfer of a controlled substance, with an enhanced penalty as a habitual offender. At trial, the State presented evidence of the \$21,000 found in Magee's car. Magee was found guilty and sentenced to sixteen years as a habitual offender. Magee appealed.

ISSUE

Whether the trial court erred in admitting evidence of the \$21,000 cash found in Magee's car.

HOLDING

Because Magee failed to object to the evidence as inadmissible character evidence under Miss. R. Evid. 404(b) during trial, he failed to preserve that objection for appeal. Further, even if admission of the specific amount of cash were more prejudicial than probative under Miss. R. Evid. 403, the error would be harmless because of the overwhelming weight of the evidence against Magee. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Circuit Court.

Affirmed - 2017-KA-00703-COA (May 29, 2018)

Opinion by Judge Greenlee

Hon. Christopher Louis Schmidt (Harrison County Circuit Court, First Judicial Dist.)

George T. Holmes (Pub. Def. Office) for Appellant - Abbie Eason Koonce (Att'y Gen. Office) for Appellee

Briefed by [Daniel Tankersley](#)

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