

MISSISSIPPI SUPREME COURT DECISIONS – MARCH 22, 2018***SUPREME COURT - CIVIL CASES*****NATCHEZ HOSP. CO., LLC. v. ADAMS CTY. BD. OF SUPERVISORS****CIVIL - STATE BOARDS & AGENCIES**

TAX ASSESSMENT - APPEALS - PAYMENT OF BOND - Miss. Code Ann. § 11-51-77 requires payment of a bond equal to twice the amount of the matter in dispute, but no less than \$100.00, to the state for a county circuit court to review an appeal on a tax assessment made by the board of supervisors or municipal authorities of a city, town, or village

STATUTORY INTERPRETATION - SEPARATE CODIFICATION - COMMON LINKAGE - Where separately codified statutes may appear to render at least one superfluous, a common statute from which they were derived may be used to show otherwise

TAX ASSESSMENT - APPEALS - STATUTORY INTERPRETATION - Miss. Code Ann. § 27-35-119 and § 11-51-77 are construed together in the grant of right of appeal for a tax assessment and the manner in which it is to be prosecuted, regulated, and controlled

FACTS

Pursuant to Miss. Code Ann. § 27-35-119, revised in 2017, Natchez Hospital Company, LLC, (“Hospital”) filed a Complaint and Petition For Reduction of Assessment on Software in the Adams County Circuit Court. An ad valorem assessment was made by the Adams County Board of Supervisors (“Board”). The Hospital paid the ad valorem taxes as assessed by the Board. The Board then filed a motion to dismiss for lack of jurisdiction, arguing that the Hospital had failed to post the necessary appeal bond required by Miss. Code Ann. § 11-51-77, thus depriving the circuit court of jurisdiction. Following a hearing on the motion, the circuit court determined that the Hospital’s failure to post the bond under Miss. Code Ann. § 11-51-77 deprived the court of jurisdiction to hear the appeal and granted the Board’s motion to dismiss. The Hospital appealed.

ISSUE

Whether the bond requirement of Miss. Code Ann. § 11-51-77 is mandatory to confer jurisdiction on a circuit court to hear an appeal from a decision of a board of supervisors regarding an assessment of taxes.

HOLDING

Because § 11-51-77 and § 27-35-121 are to be construed together, and because the Hospital failed to pay the appeal bond required by the statute, the circuit court lacked jurisdiction to review the Board’s assessment. Therefore, the Supreme Court affirmed the judgment of the Adams County Circuit Court.

CONCURRENCE

Justice King agreed with the majority’s opinion that the Hospital was required to pay both the tax and the bond in the case, but noted that the Hospital did not ask the circuit court to waive, excuse, or reduce the bond, and instead merely declined to pay the bond while arguing that it had a choice of paying the bond or paying the tax.

Affirmed - 2016-CA-00982-SCT (Mar. 22, 2018)

Opinion by Presiding Justice Randolph

Hon. Frank G. Vollar (Adams County Circuit Court)

Andy Lowry & Thomas L. Kirkland for Appellant - Scott Fletcher Slover, Elizabeth D. Martin, & Aisha Arlene Sanders for Appellee
Briefed by [Hale Neilson](#)

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SUPREME COURT - ORDERS

McCOLLUM V. STATE

COURT ORDER

FACTS

On March 9, 2017, a panel granted Charles McCollum's Petition for Interlocutory Appeal. The State sought dismissal, citing, in part, *Beckwith v. State*.

ORDER

The Mississippi Supreme Court dismissed McCollum's interlocutory appeal.

OBJECTION

Justice Coleman objected to the Order, arguing that the State's Motion to Dismiss Interlocutory Appeal was filed 340 days after the order handed down on March 9, 2017 and, therefore, should be denied. He cited Miss. R. App. P. 27(h)(3), which allows parties to request reconsideration of decisions to grant or deny petitions requesting interlocutory appeals, but only allows parties fourteen days after the decision hands down to file for reconsideration.

Ordered - 2017-IA-00026-SCT (Mar. 21, 2018)

En Banc Order by Chief Justice Waller - Objection by Justice Coleman
Briefed by [Emily A. Warwick](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – MARCH 20, 2018

COURT OF APPEALS - CIVIL CASES

LEWIS V. LEWIS

CIVIL - DOMESTIC RELATIONS

CIVIL PROCEDURE - MOTION TO DISMISS - EVIDENTIARY STANDARD - In ruling on a Rule 41(b) motion to dismiss, the judge must consider the evidence fairly, rather than in the light most favorable to the plaintiff, and should give the plaintiff's evidence such weight and credibility as the judge would ascribe to it if he were making findings of fact and rendering final judgment

FAMILY LAW - ALIMONY MODIFICATION - CHANGE IN CIRCUMSTANCE - An agreed decree as to alimony is subject to review because of a material change in circumstances, yet such a decree will not be modified unless the change in circumstances is clear and substantial

FAMILY LAW - COHABITATION - BURDEN SHIFTING - Cohabitation creates a presumption that a material change in circumstances has occurred, and this presumption will shift the burden to the recipient spouse to come forward with evidence suggesting that there is no mutual support

FACTS

Adam and Karen Lewis were granted a divorce based on irreconcilable differences in 2002. In 2015, Adam filed a complaint alleging that his obligation to pay alimony should be terminated because Karen is cohabiting or in a de facto marriage with her longtime boyfriend, Steven Dobel. Adam’s complaint to terminate alimony proceeded to trial. Subsequent to Adam’s resting his case, the chancellor found he had not met his burden of proof, commenting that Adam’s evidence consisted of assumptions and/or hearsay. The chancellor thus dismissed his complaint pursuant to Miss. R. Civ. P. § 41(b). In addition to dismissal, the chancellor awarded Karen half of the attorney’s fees that she incurred defending the case. Following the chancellor’s decision, Adam filed a motion for reconsideration on all issues. Karen filed a motion for reconsideration of the denial of half of her attorney’s fees. The chancellor denied both motions. Adam appealed.

ISSUES

Whether the chancellor erred in (1) granting Karen’s motion to dismiss because Adam met his burden of proving cohabitation, a de-facto marriage, or some other material change in circumstances; and (2) awarding Karen attorney’s fees.

HOLDING

(1) Because the chancellor did not clearly or manifestly err in finding that Adam did not meet his burden of proof on his complaint to terminate alimony, the court did not reverse the chancellor’s findings regarding the existence or non-existence of a de facto marriage. (2) Because Karen is financially able to pay her own attorney, the court found error in ordering Adam to pay Karen’s attorney’s fees. Therefore, the Court of Appeals affirmed in part and reversed and rendered in part the judgment of the Madison County Chancery Court.

DISSENT

Judge Carlton argued that the record showed the chancellor erred in dismissing Adam’s petition under Miss. R. Civ. P. 41(b) and in awarding Karen attorney’s fees because Adam presented sufficient evidence to survive dismissal under Miss. R. Civ. P. 41(b). Judge Carlton would find that the proper remedy is to reverse the chancellor’s dismissal and remand the case back to the Madison County Chancery Court to resume trial.

Affirmed in Part/Reversed & Rendered in Part - 2016-CA-01490-COA (Mar. 20, 2018)

En Banc Opinion by Judge Wilson - Dissent by Judge Carlton

Hon. Cynthia L. Brewer (Madison County Chancery Court)

Michael J. Malouf & Robert Eugene Jones II for Appellant - John Robert White Jr. & Pamela Guren Bach for Appellee

Briefed by [Charlotte Cooper](#)

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COURT OF APPEALS - POST-CONVICTION RELIEF

STACKS V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - SENTENCING - SUSPENDED SENTENCE - Miss. Code Ann. § 47-7-34 contains no language that a suspended sentence must be articulated at sentencing if the court elects to impose a post-release supervision

POST-CONVICTION RELIEF - SENTENCING - POST-RELEASE SUPERVISION - Even if an offender’s original sentence does not expressly include a “suspended sentence,” if the offender violates the conditions of a post-release supervision, the circuit court has the authority to terminate the offender’s post-release supervision and recommit the offender to MDOC custody

FACTS

In 2007, Gary Wayne Stacks pled guilty to manufacturing methamphetamine. Pursuant to a plea agreement, the State recommended a sentence of ten years in Mississippi Department of Corrections (MDOC) custody followed by five years of post-release supervision and a fine. The State also agreed to retire a second charge pursuant to the agreement. The circuit court accepted Stacks’s plea, followed the State’s recommendation, and sentenced Stacks to ten years in MDOC custody to be followed by five years of post-release supervision, a \$5,000 fine, and court costs. At his plea/sentencing hearing, the court specifically warned Stacks of the consequences of a violation of the conditions of his post-release supervision. After serving the initial ten-year sentence, and while on post-release supervision, Stacks failed multiple drug tests and the circuit court held a revocation hearing. The circuit court found that Stacks had violated the conditions of his post-release supervision, and sentenced him to serve his term of five years in the custody of MDOC. Stacks appealed.

ISSUE

Whether the circuit court lacked authority to sentence Stacks to five years in MDOC custody.

HOLDING

Because the circuit court clearly informed Stacks that he faced five additional years in MDOC custody if he violated the conditions of his post-release supervision, and Stacks stated that he understood, this issue is without merit. Therefore, the Court of Appeals affirmed the judgment of the Clay County Circuit Court.

Affirmed - 2017-CP-00353-COA (Mar. 20, 2018)

Opinion by Judge Wilson

Hon. Lee J. Howard (Clay County Circuit Court)

Pro se for Appellant - Katy Gerber (Att’y Gen. Office) for Appellee

Briefed by [Addison K. Watson](#)

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COURT OF APPEALS - CRIMINAL CASES

DUNCAN V. STATE

CRIMINAL - FELONY

EVIDENCE - WITNESSES - CREDIBILITY - The jury, as fact-finder, must determine the credibility of the witnesses and the proper weight to be assigned to their testimony

EVIDENCE - STANDARD FOR CONVICTION - ESSENTIAL ELEMENTS - 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 beyond a reasonable doubt

FACTS

Sanchez Duncan was indicted and entered a guilty plea to one count for possession of methamphetamine and one count of possession of a weapon by a convicted felon. The Hattiesburg Police Department arrested Duncan after receiving information and performing surveillance on the home of Richard Hill, Janie Sistrunk, and Jeremy Morgan. Duncan was arrested at the home, and meth and a firearm were found on his person. Forensic analysis identified the substance on Duncan as a controlled substance. Sistrunk was also indicted and entered a guilty plea to a felony charge

related to the incident. As part of her plea, Sistrunk agreed to provide testimony at Duncan's trial. Duncan was sentenced to serve six years for Count I, and ten years, with five years suspended, for Count II, with the sentences to run consecutively. Duncan filed a motion for a judgment notwithstanding the verdict, which was denied. Duncan appealed.

ISSUES

Whether Duncan's motion for judgment notwithstanding the verdict was denied in error due to (1) the prosecution putting forth witnesses who should not have been deemed credible; and (2) insufficiency of the evidence.

HOLDING

(1) Because any conflicts in evidence are for the jury to resolve, denial of Duncan's motion was not made in error. (2) Because there was sufficient evidence in the record to support Duncan's convictions, the denial of his motion was not in error. Therefore, the Court of Appeals affirmed the judgment of the Forrest County Circuit Court.

Affirmed - 2017-KA-00249-COA (Mar. 20, 2018)

Opinion by Presiding Judge Griffis

Hon. Jon Mark Weathers (Forrest County Circuit Court)

W. Daniel Hinchcliff (Pub. Def. Office) for Appellant - Billy L. Gore (Att'y Gen. Office) for Appellee

Briefed by [Sean Grady](#)

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