

MISSISSIPPI SUPREME COURT DECISIONS – OCTOBER 11, 2018**SUPREME COURT - CIVIL CASES****MISSISSIPPI BAPTIST MED. CTR., INC. V. PHELPS****CIVIL - MEDICAL MALPRACTICE**

TORTS - MEDICAL MALPRACTICE - PRIMA FACIE CASE - In order to establish a prima facie case of medical malpractice, a plaintiff must prove: (1) a duty existed requiring the defendant to conform to a specific standard of conduct for the protection of others against an unreasonable risk of injury, (2) a failure to conform to the required standard occurred, and (3) such breach of duty by the defendant proximately caused an injury to the plaintiff

TORTS - MEDICAL MALPRACTICE - EXPERT TESTIMONY - Expert testimony is essential in medical malpractice cases because it demonstrates how the required standard of care was disregarded

TORTS - MEDICAL MALPRACTICE - SUMMARY JUDGMENT - In a prima facie case of medical malpractice, summary judgment is proper when a plaintiff fails to provide expert testimony establishing the essential elements of the claim

FACTS

On May 2, 2013, Dr. Jeff Almand performed a left-knee arthroscopy on Janice Phelps at Mississippi Baptist Medical Center (“MBMC”). Shortly after surgery, Phelps experienced shortness of breath. Dr. Jeffrey LeDuff ordered a chest x-ray and placed her on oxygen. Dr. LeDuff subsequently discharged her on May 4, 2013. Two days later, Phelps’s shortening of breath worsened. She went to the emergency room at Southwest Mississippi Regional Medical Center (“SMRMC”). At SMRMC, Phelps was diagnosed with pneumonia. Several days later, SMRMC discharged Phelps with a diagnosis of Cerebrovascular Accident and Ventilator Dependence and transferred her to Baton Rouge Rehabilitation Hospital. On April 30, 2015, Phelps filed suit against MBMC, Dr. Almand, Dr. LeDuff and others (collectively, “Defendants”), alleging medical malpractice arising out of her care and treatment at MBMC. After Defendants answered Phelps’s complaint by denying the allegation, they served her with written discovery requests. Phelps responded to discovery by providing the name of her expert witness and a brief description of his expected testimony. Fourteen months later, Defendants filed motions for summary judgment. The day before the hearing on the motions, Phelps responded to Defendants’ motion for summary judgment by again providing only the name of her expert witness and a brief description of his expected testimony. On May 25, 2017, Judge Kidd entered an order denying Defendants’ motion for summary judgment. Defendants appealed.

ISSUE

Whether the trial court erred in failing to grant summary judgment in favor of the Defendants despite Phelps’s failure to provide any sworn expert testimony to support her medical malpractice claim.

HOLDING

Because Phelps did not produce any sworn expert testimony establishing the essential elements of her medical-malpractice claim, the trial court erred by denying the Defendants’ summary judgment motions. Therefore, the Supreme Court reversed and rendered the judgment of the Hinds County Circuit Court.

Reversed & Rendered - 2017-IA-00826-SCT (Oct. 11, 2018)

Opinion by Justice Beam

Hon. Winston L. Kidd (Hinds County Circuit Court)

Gaye Nell Lott Currie, D. Collier Graham Jr., Mildred M. Morris, Timothy Lee Sensing, & Stephen P. Kruger for Appellants - Alton Lamar Watts for Appellee
Briefed by [Whitney Jackson](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – OCTOBER 9, 2018
COURT OF APPEALS - CIVIL CASES

BURNS V. GRAY

CIVIL - PERSONAL INJURY

CIVIL PROCEDURE - SUMMARY JUDGMENT - NEGLIGENCE - In order to survive a motion for summary judgment in a negligence action, the plaintiff must put on evidence showing that the defendant breached a duty of care and that the breach proximately caused the injury

EVIDENCE - ADMISSIBILITY - EXPERT TESTIMONY - Miss. R. Evid. 702 provides that a witness who is an expert may testify if the testimony is based on sufficient facts or data

EVIDENCE - EXPERT TESTIMONY - COURT'S DISCRETION - The admission of expert testimony is within the sound discretion of the judge, and the decision of a judge will stand unless the discretion was arbitrary and clearly erroneous, amounting to an abuse of discretion

FACTS

Debra Darlene Burns and her husband William Dale Burns filed a complaint against their landlords, Matthew and Jody Gray, after Debra fell while walking down the stairs. The complaint alleged Debra incurred physical injuries and that William incurred a loss of consortium and services as a result of the injuries. Neither Debra nor William had personal knowledge of how or why Debra fell, Debra had no memory of the day of the incident, and Debra's nephew, Michael Faulkner, was the only person with her when she fell. Faulkner did not see Debra's feet when she fell, and he testified he did not know why she fell. An expert witness, Daniel Jason Ramsey, inspected and took measurements of the stairway and reviewed building codes. Ramsey submitted an affidavit stating the steepness and narrow width of the steps were the proximate cause of or a substantial contributing factor causing Debra's fall. Ramsey subsequently testified in his deposition that he did not really know why Debra fell and that he could not rule out other causes. He also testified that some of his opinions were based solely on information provided to him by Faulkner or the Burns' counsel. The Lauderdale County Circuit Court granted the Grays' motions for summary judgment and to strike Ramsey's testimony. The Burns' appealed.

ISSUES

Whether the circuit court erred in (1) granting summary judgment; and (2) striking Ramsey's testimony.

HOLDING

(1) Because the Burns' failed to present sufficient evidence to prove the necessary element of causation for a negligence claim, summary judgment was proper. (2) Because Ramsey's testimony regarding causation and his overall opinion were not based on sufficient facts or data, but instead, on speculation and conjecture, the circuit court did not abuse its discretion in striking Ramsey's testimony. Therefore, the Court of Appeals affirmed the judgment of the Lauderdale County Circuit Court.

Affirmed - 2017-CA-01121-COA (Oct. 9, 2018)

Opinion by Presiding Judge Griffis

Hon. Lester F. Williamson Jr. (Lauderdale County Circuit Court)

Frank H. Shaw Jr. & F. Gregory Malta for Appellants - Edward C. Taylor & Nancy Siples Brumeloe for Appellees

Briefed by [Baxter Geddie](#)

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EMMANUEL RIDGE CMTY. SERVS. INC. V. LOGGINS

CIVIL - WORKERS' COMPENSATION

APPELLATE PROCEDURE - PROCEDURAL BAR - LACK OF CITATION - Failure to cite any authority is a procedural bar, and the court is under no obligation to consider the assignment of error

WORKERS' COMPENSATION - PETITION FOR REVIEW - TIMELINESS - A petition filed even one day after the statutory time limit is untimely

WORKER'S COMPENSATION - PETITION FOR REVIEW - TIMELINESS - The fact that the last statutorily allowed day to file a petition for review is a non-legal holiday is not a unique fact that would permit the petition to be considered constructively filed

FACTS

Nedra Loggins, an employee of Emmanuel Ridge Community Services, Inc. ("Emmanuel Ridge"), was injured on the job. She notified her supervisor and quickly sought treatment. She also filed a petition with the Commission. The administrative judge awarded benefits to Loggins on September 19, 2017. On October 21, 2017, Emmanuel Ridge filed a petition for review with the Commission. The Commission dismissed the petition as untimely, but referred to the date as October 11, not October 10. Emmanuel Ridge filed for reconsideration, and the Commission dismissed again, this time with the correct filing date. Emmanuel Ridge appealed.

ISSUES

Whether (1) failing to cite any authority is a procedural bar to appeal; (2) Emmanuel Ridge filed their petition for review within the twenty-day limit; and (3) there were unique facts that would permit the petition to be considered constructively filed.

HOLDING

(1) Because failing to cite any authority is a procedural bar to appeal, the appeal was automatically barred. (2) Because October 10, 2017 was one day past the statutory limit of 20 days, the petition was untimely. (3) Because October 9, 2017 was not a legal holiday and the offices of the Commission were open, there were no unique facts that would permit the petition to be considered constructively filed. Therefore, the Court of Appeals affirmed the judgment of the Mississippi Workers' Compensation Commission.

Affirmed - 2017-WC-01624-COA (Oct. 9, 2018)

Opinion by Judge Greenlee

Mississippi Workers' Compensation Commission

Pro se for Appellant - Matthew Ivan Hetzel for Appellee

Briefed by [James Adamoli](#)

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GIRANI V. LOVORN

CIVIL - REAL PROPERTY

PROPERTY - USE OF ANOTHER'S LAND - EASEMENTS BY ESTOPPEL - An easement by estoppel is one which is created when a landlord voluntarily imposes apparent servitude on his property and another person reasonably believes the servitude is permanent and in reliance on that fact does something or does not do something that he would not have done otherwise

PROPERTY - LICENSE - IRREVOCABLE LICENSE - While a license merely gives someone authority to do a particular act on another's land and may be created orally, an irrevocable license is really an easement instead of a license

FACTS

John Girani and Taylor Lovorn own adjoining lots on a lake. Before Girani or Lovorn owned the lots, the previous owners decided to extend access to the lake by deepening a drainage ditch, building a boat ramp, and constructing retaining walls. In exchange for sharing the costs, all of the families were granted permission to use the boat ramp. After Girani purchased his land from a previous owner, Girani as well as the remaining contributing families performed repairs and renovations on the ramp. No formal written easement ever existed. Once Lovorn acquired the lot, he barred access to Girani. Girani claimed that he had an easement by estoppel to the boat ramp. Alternatively, Girani asked the chancellor to hold he possessed an irrevocable license to use both the water channel and the boat ramp. The chancellor denied with prejudice Girani's request for acknowledgement of an easement by estoppel and an irrevocable license. Girani appealed.

ISSUES

Whether (1) Girani had an easement by estoppel to the boat ramp that would prevent Lovorn from blocking his use; and (2) Girani held an irrevocable license to access the boat ramp.

HOLDING

(1) Because easements by estoppel are generally not recognized, the Court declined to modify existing case law and upheld the chancellor's finding. (2) Because precedent does not recognize irrevocable licenses, the chancellor's finding was upheld. Therefore, the Court of Appeals affirmed the judgment of the Rankin County Chancery Court.

Affirmed - 2017-CA-00457-COA (Oct. 9, 2018)

Opinion by Judge Tindell

Hon. John S. Grant III (Rankin County Chancery Court)

David Ringer & Brenton Matthew Carter for Appellant - James Walter Newman IV for Appellee

Briefed by [Andie Szabo](#)

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KOHNKE V. TATE

CIVIL - REAL PROPERTY

PROPERTY - PARTITION - CATHEY - Partition is a statutory right in Mississippi, and any party in interest may institute proceedings for the partition of lands in chancery courts

PROPERTY - QUIET TITLE - DERAIGNMENT OF TITLE - Deraignment is sufficient if it shows title out of the sovereign and a deraignment of title for not less than sixty years prior to the filing of the complaint

FACTS

Bertha Tate filed a complaint for a partition of property, which was devised to several family members in the will of Annie Boone. Jewel Lean Kohnke, among other co-tenants of the property, desired to remain common owners of the property. The chancery court ordered the partition of the land and adjudicated the owners of the parcels. Each party received an equal part in the land, based on the number of beneficiaries remaining at the time of the partition. All parties were given unfettered use and access to two ponds on the property. Kohnke appealed.

ISSUES

Whether (1) the property was improperly partitioned based upon acreage rather than value; (2) there was mathematical error in the calculations used to determine the interests of co-tenants; and (3) the chancellor improperly accepted the deraignment of title without a hearing.

HOLDING

(1) Because the record sufficiently reflected the benefits and detractions of each parcel of land and the easements allowed to each co-tenant, the chancellor's division of the property was justified and not unfair. (2) Because an agreed order delineated the property interests of each party as calculated by the parties' attorneys, this issue was without merit. (3) Because the statutory requirement of proof of title was fulfilled and Kohnke admitted the accuracy of the deraignment in her answer, this issue was without merit. Therefore, the Court of Appeals affirmed the judgment of the Marion County Chancery Court.

Affirmed - 2017-CA-00257COA (Oct. 9, 2018)

Opinion by Judge Barnes

Hon. Deborah J. Gambrell (Marion County Chancery Court)

Larry Stamps & Anita M. Stamps for Appellant - R. Andrew Foxworth for Appellee

Briefed by [Jack Schultz](#)

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MYERS V. MYERS

CIVIL - CUSTODY

FAMILY LAW - CUSTODY - BEST INTEREST OF CHILD - The polestar consideration in all child custody cases is the best interest and welfare of the children

FAMILY LAW - CUSTODY - ALBRIGHT FACTORS - In determining the child's best interest, the chancellor considers the following factors: (1) age, health, and sex of the child; (2) a determination of the parent that has had the continuity of care prior to the separation; (3) which parent has the best parenting skills and which has the willingness and capacity to provide primary child care; (4) the employment of the parent and responsibilities of that employment; (5) physical and mental health and age of the parents; (6) emotional ties of parent and child; (7) moral fitness of the parents; (8) the home, school, and community record of the child; (9) the preference of the child at the age sufficient to express a preference by law; and (10) stability of the home environment and employment of each parent and other factors relevant to the parent-child relationship

FACTS

Tommy Myers filed for a divorce from his wife, Angela Myers. Tommy and Angela had two children, nine-year-old STM and four-year-old AEM. STM had dyslexia, ADHD, and was borderline autistic. Following a bifurcated trial, the chancellor granted Tommy a divorce. During the second trial, the chancellor conducted an analysis of the *Albright* factors to determine custody, and awarded Tommy physical custody of the two children. Angela was awarded visitation rights and ordered to pay child support. Angela appealed.

ISSUE

Whether the chancellor erred in his *Albright* analysis.

HOLDING

Because Tommy had closer emotional ties with STM than Angela, continued to reside in the children's childhood home, performed most of the parenting responsibilities, had better parenting skills, had no mental problems, STM's entire family and support group lived in Jones County, and Tommy's employment weighed in his favor, there was substantial evidence in the record to support the chancellor's award of custody to Tommy. Therefore, the Court of Appeals affirmed the judgment of the Jones County Chancery Court.

Affirmed - 2017-CA-00551-COA (Oct. 9, 2018)

Opinion by Judge Greenlee

Hon. Franklin C. McKenzie Jr. (Jones County Chancery Court, Second Judicial Dist.)

Barron Cruz Gray for Appellant - Risher Grantham Caves & Terry L. Caves for Appellee

Briefed by [Lauren Rogers](#)

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RUSH V. R & D PROPERTIES LLC

CIVIL - REAL PROPERTY

REAL PROPERTY - HOMESTEAD EXEMPTION - INCOME TAX COMPLIANCE - Pursuant to Miss. Code Ann. § 27-33-63(2), no claimant for homestead exemption is eligible for the exemption if the claimant or claimant's spouse fails to comply with income tax laws of the state

REAL PROPERTY - NOTICE - STATUTORY SALE - Miss. Code Ann. § 27-43-1 sets forth the timing requirements and form of the statutory tax sale notice

FACTS

In an application for a homestead exemption, Patricia Rush listed herself as the taxpayer, James H. Rush as her spouse, and her marital status as "married." Her homestead exemption was denied because of a charge-back for her ad valorem taxes due to James's outstanding state income tax liability. When Patricia failed to pay the ad valorem taxes, her property was auctioned to R & D Properties LLC. Patricia filed a petition to set aside the tax sale alleging that she told the clerk in the tax assessor's office that she was married but that she and James were "not together" and that the clerk mistakenly marked her marital status as "married." The chancery court denied Patricia's petition and confirmed the tax sale as valid. Patricia appealed.

ISSUE

Whether the chancery court erred in denying Patricia's petition to set aside the tax sale of her property and in validating the tax sale.

HOLDING

Because the record reflected that the tax sale was conducted in the manner required by law as to Patricia and was done according to the sworn information Patricia provided, the chancery court did not err in denying Patricia's petition to set aside the tax sale of her property and in validating the tax sale. Therefore, the Court of Appeals affirmed the judgment of the Winston County Chancery Court.

Affirmed - 2017-CA-01441-COA (Oct. 9, 2018)

Opinion by Judge Carlton

Hon. Joseph Kilgore (Winston County Chancery Court)

James H. Arnold Jr. for Appellant - Roy Gregg Rogers for Appellee

Briefed by [Katie Humphries](#)

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COURT OF APPEALS - POST-CONVICTION RELIEF

JONES V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - JURISDICTION - PROBATIONARY PERIOD - Probation may be revoked beyond the probationary period if a revocation petition is filed prior to the end of the probationary period

POST-CONVICTION RELIEF - DUE PROCESS - PRELIMINARY REVOCATION HEARING - For a preliminary revocation hearing, plaintiff must show prejudice resulted from lack of preliminary revocation hearing
EVIDENCE - REVOCATION HEARING - INEFFECTIVE ASSISTANCE OF COUNSEL - If a party offers only his affidavit, his ineffective counsel claim is without merit unless he can show good cause for failing to obtain other affidavits

FACTS

In 2001, Dahne Jones was sentenced to ten years in the custody of the Mississippi Department of Corrections (“MDOC”), with four years to serve and six years of post-release supervision (PRS). Jones was released on PRS in 2005, and after numerous PRS violations and failure to appear in court, a bench warrant for his arrest was issued. Jones was also convicted of crimes in Alabama where he served time in prison. When Jones was released on parole in Alabama in 2016, he was transferred to MDOC based on the 2005 bench warrant. The Mississippi trial court revoked Jones’s PRS and ordered him to serve the rest of his sentence. Jones appealed.

ISSUES

Whether (1) the trial court had jurisdiction to revoke his PRS; (2) Jones received notice of his PRS violations; (3) Jones was denied a preliminary revocation hearing; (4) Jones’s counsel was ineffective; and (5) the trial court failed to issue a written statement supporting the revocation.

HOLDING

(1) Because the petition to revoke Jones’s PRS was filed within the PRS period, the trial court had jurisdiction to revoke Jones’s PRS. (2) Because Jones admitted he had received written notice of his PRS violations, this issue was without merit. (3) Because Jones waived his right to a preliminary hearing and was afforded all due-process protections as required, he was not improperly denied a preliminary hearing. (4) Because Jones only supported his application with affidavits of his own, he did not show his counsel’s performance was deficient and prejudiced his defense. (5) Because the trial court entered an order of revocation that listed the PRS violations that Jones committed, the trial court did not fail to issue a written statement. Therefore, the Court of Appeals affirmed the judgment of the Jackson County Circuit Court.

Affirmed - 2017-CP-00775-COA (Oct. 9, 2018)

Opinion by Chief Judge Lee

Hon. Kathy King Jackson (Jackson County Circuit Court)

Pro se for Appellant - Jeffrey A. Klingufuss (Att’y Gen. Office) for Appellee

Briefed by [Karen Lott](#)

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SMITH V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - STATUTE OF LIMITATIONS - EXCEPTIONS - A petitioner cannot successfully argue that an expired sentence is excepted from the three-year time bar for filing PCR motions when the sentence is being served consecutively to a prior life sentence

POST-CONVICTION RELIEF - AMENDING PLEADINGS - PRISONERS - A prisoner must move to amend his PCR motion within thirty days of filing

POST-CONVICTION RELIEF - AMENDING PLEADINGS - COURT RULING - A motion for leave to file additional or supplemental pleadings outside of the thirty-day time limit must be secured by a court ruling; otherwise, these pleadings are procedurally barred from appellate review

FACTS

In 1985, Jerold Smith was convicted of burglary and sentenced to seven years in prison as a habitual offender. The following year, he was convicted for possession of a controlled substance and sentenced to life in prison without opportunity for parole. Smith then pled guilty to armed robbery and was sentenced to ten years in prison. The armed robbery sentence was to run concurrently with the seven-year burglary sentence and consecutively with his life sentence. In October 2016, Smith filed a motion for post-conviction relief requesting a trial court order that his ten-year armed robbery sentence had expired. Four months later, Smith filed a motion for leave to file additional pleadings in support of his PCR motion and then filed these additional pleadings before securing a court ruling. The additional pleadings claimed double jeopardy and ineffective assistance of counsel. The trial court denied his PCR motion because the three years remaining on his armed robbery conviction ran consecutively with his life sentence, and thus had not expired. Smith filed a motion for reconsideration seeking a ruling on the double-jeopardy and ineffective-assistance-of-counsel claims, which the trial court denied because the motion failed to assert any new law or facts for the court to consider. Smith appealed.

ISSUES

Whether the trial court erred in (1) denying Smith’s PCR motion that claimed his armed robbery sentence had expired; and (2) denying Smith’s supplemental PCR claims that alleged double jeopardy and ineffective assistance of counsel.

HOLDING

(1) Because a prison sentence running consecutively with a prior life sentence is not exempted from the three-year time limit for filing a PCR motion, and because the remaining three years of Smith’s 1986 armed robbery sentence runs consecutively with his life sentence and will not expire until after expiration of his life sentence, the issue was time-barred and without merit; (2) Because a prisoner must move to amend a PCR motion within thirty days of filing and must secure a ruling on that motion, and because Smith failed to follow this procedure for his double-jeopardy and ineffective-assistance-of-counsel claims, the claims were procedurally barred from appellate review. Therefore, the Court of Appeals affirmed the judgment of the Jackson County Circuit Court.

Affirmed - 2017-CP-01027-COA (Oct. 9, 2018)

Opinion by Judge Carlton

Hon. Dale Harkey (Jackson County Circuit Court)

Pro se for Appellant - Jeffrey A. Klingfuss (Att’y Gen. Office) for Appellee

Briefed by [Tucker Hood](#)

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COURT OF APPEALS - CRIMINAL

SMITH V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - ESCAPE - HOUSE ARREST - A person who violates a house-arrest order can be prosecuted for the crime of escape under Miss. Code Ann. § 97-9-45

CRIMINAL LAW - STATUTORY INTERPRETATION - COMPANION STATUTES - Statutes on the same subject should, if possible, be construed in harmony with each other to give effect to each

FACTS

Rodney Wayne Smith pled guilty to racketeering on May 12, 2014, and the Pearl River County Circuit Court sentenced him to twenty years in prison. The trial court suspended eighteen years of Smith’s sentence and placed him under two years of house arrest, followed by eighteen years of post-release supervision. While on house arrest, Smith wore an electronic ankle monitor and was only permitted to leave his house for work or other activities that had been

preapproved by his house-arrest supervising officer, Scott Davis. On December 22, 2014, Smith missed a required check-in with Davis. Davis tracked Smith through his ankle monitor to Smith's girlfriend's house, but Smith had left. His ankle monitor notified Smith of a "device tamper" because Smith had cut the device off his ankle and left the monitor at his house. On January 6, 2015, Davis received information that Smith was at another house, but when Davis arrived, Smith fled into the woods. On January 13, 2015, Smith was apprehended by U.S. Marshals at his ex-wife's house in Hancock County. Smith was subsequently indicted for escape under Miss. Code Ann. § 97-9-45. Smith filed a motion to dismiss the indictment, arguing that the statutory definition of the crime of "escape" did not include house arrest. The trial court denied the motion, and Smith was convicted following a jury trial. Smith appealed.

ISSUE

Whether an escape from house arrest is an escape within the meaning of Miss. Code Ann. § 97-9-45.

HOLDING

Because the Legislature has broadly defined "penitentiary" and because the companion statute on house arrest, Miss. Code Ann. § 47-5-1007, indicated that violating an order of house order could lead to prosecution for the crime of escape, the trial court did not err in dismissing Smith's motion to dismiss the indictment. Therefore, the Mississippi Court of Appeals affirmed the judgment of the Pearl River County Circuit Court.

Affirmed - 2017-KA-01170-COA (Oct. 9, 2018)

Opinion by Judge Wilson

Hon. Dina Richelle Lumpkin (Pearl River County Circuit Court)

Daniel Hinchcliff (Pub. Def. Office) for Appellant - Alicia Ainsworth (Att'y Gen. Office) for Appellee

Briefed by [Michael Lambert](#)

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TUBWELL V. STATE

CRIMINAL - MISDEMEANOR

CIVIL PROCEDURE - PLEADINGS - PRO SE LITIGANTS - Pleadings filed pro se are to be held to less stringent standards than formal pleadings drafted by lawyers; leeway and deference will be given to pro se litigants, so as to prevent the loss of a meritorious claim due to inartful pleadings

FACTS

On October 14, 2015, Joe Tubwell was found guilty of a seat-belt violation involving Mississippi's child-restraint law, Miss. Code Ann. § 63-7-301. Following Tubwell's conviction, he was assessed a fine and court costs totaling \$278. Tubwell filed his notice of appeal in the county court the following day, along with a motion to proceed in forma pauperis. When Tubwell filed his appeal from the October 14 judgment, he had been adjudged a pauper in the same county court, albeit in a different case. On May 2, 2016, the county court, on its own motion, pursuant to the former Rule 12.02 of the Uniform Rules of Circuit and County Court, dismissed Tubwell's appeal with prejudice. The county court reasoned that Tubwell had failed to perfect his appeal under Rule 12.02 by paying the \$278 fine or by getting permission to proceed in forma pauperis. The county court also issued an order of procedendo dismissing the appeal and remanding the case to the municipal court for execution of the October 14, 2015 judgment. On May 4, 2016, Tubwell filed an appeal in the DeSoto County Circuit Court as well as another motion for leave to proceed in forma pauperis and an affidavit to support indigency. The circuit court dismissed Tubwell's May 4, 2016 appeal with prejudice after finding that he was attempting to appeal a non-appealable order. Tubwell appealed.

ISSUE

Whether the circuit court erred in relying on the effects of an erroneous dismissal from the county court.

HOLDING

Because Tubwell had already been adjudged a pauper in a different case pending at the same time, and because there was nothing in the record to suggest that Tubwell's financial status had been changed during the overlapping time period, the circuit court erred in dismissing Tubwell's appeal in relying on the county court's determination that Tubwell had not paid his costs or achieved in forma pauperis status. Therefore, the Court of Appeals reversed and remanded the judgment of the Desoto County Circuit Court.

Reversed & Remanded - 2017-CP-00622-COA (Oct. 9, 2018)

Opinion by Presiding Judge Irving

Hon. Gerald W. Chatham Sr. (Desoto County Circuit Court)

Pro se for Appellant - Robert E. Hayes Jr. & Wayne Douglas Hollowell III (Att'y Gen. Office) for Appellee

Briefed by [Carson Phillips](#)

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