

MISSISSIPPI SUPREME COURT DECISIONS – JUNE 2, 2016

SUPREME COURT - CIVIL CASES

H.A.S. ELEC. CONTRACTORS, INC. v. HEMPHILL CONSTR. CO., INC.

CIVIL – CONTRACT

CIVIL PROCEDURE - PEREMPTORY STRIKES - BATSON HEARINGS - A Batson hearing is a three-step process. First, the party objecting to the use of the peremptory strike has the burden to make a prima facie case that race was the criterion for the strike. Second, if the objecting party makes such a showing, the burden shifts to the striking party to state a race-neutral reason for the strike. Third, after the striking party offers its race-neutral explanation, the court must determine if the objecting party met its burden to prove purposeful discrimination in the exercise of the peremptory strike – that the stated reason for the strike was merely a pretext for discrimination

PEREMPTORY STRIKES - EQUAL PROTECTION - RACIAL DISCRIMINATION - The privilege to use peremptory strikes is subject to the commands of the Equal Protection Clause. The Equal Protection Clause prohibits using peremptory strikes to engage in racial discrimination

PEREMPTORY STRIKES - BATSON HEARINGS - REBUTTAL - Only one instance – not a consistent pattern – of purposeful discrimination is enough to prove a discriminatory purpose

FACTS

Subcontractor, H.A.S. Electrical Contractors, Inc., sued contractor, Hemphill Construction Company, Inc., for breach of contract, quantum meruit, and conversion. Hemphill countersued and the dispute went to trial. During jury selection Hemphill accepted Jurors 1-3 and 5-6 who were all white females. Hemphill then used a peremptory strike on Juror 7 who is a black male. They accepted Juror 8, a black female, Juror 9, a black male, and Jurors 11 and 12, both white females. Hemphill then struck Juror 13, another black male and H.A.S. objected. The court upheld both strikes and the case went to trial where the jury found in Hemphill's favor. H.A.S. appealed.

ISSUES

Whether the trial judge conducted proper Batson hearings for Jurors 7 and 13 during jury selection.

HOLDING

Because H.A.S. was provided the chance but gave no rebuttal to the race-neutral reason provided by Hemphill in regards to Juror 13, the court did conduct a proper Batson hearing for Juror 13. Because the court did not allow H.A.S. to rebut the race-neutral reason provided by Hemphill in regards to Juror 7, the court did not conduct a proper Batson hearing for Juror 7. Therefore, the Mississippi Supreme Court reversed with directions the judgment of the Rankin County Circuit Court.

CONCURRENCE

Justice Randolph agreed with the Court's decision to remand and lists things the trial judge may consider as to ensure compliance with the third step of Batson.

CONCURRING IN PART AND DISSENTING IN PART

Justice King agreed with the Court's conclusion that the trial court erred in its Batson analysis for Juror 7. Justice King disagrees with the Court's finding that the trial court may not consider Hemphill's explanation for striking Juror 13 on remand because he believed that there are serious concerns as to the pretextual nature of both of Hemphill's proffered explanation.

Remanded with Directions - 2015-CA-00596-SCT (June 2, 2016)

En Banc Opinion by Justice Maxwell - Concurrence by Justice Randolph - Concurrence and Dissent by Justice King
Hon. John Huey Emfinger (Rankin County Circuit Court)
Jim L. Davis, III for Appellant - David Bonds Ellis & Danny Alton Drake for Appellee
Briefed by [Darian Etienne](#)

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MISS. TRANSP. COMM'N V. ADAMS

CIVIL - WRONGFUL DEATH

CIVIL PROCEDURE - PRE-TRIAL DISPOSITION - SUMMARY JUDGMENT - Under Miss. R. Civ. P. 56(c), trial courts should grant motions for summary judgment if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law

MISSISSIPPI TORT CLAIMS ACT - PROCEDURAL BAR - SOVEREIGN IMMUNITY - Immunity under the MTCA is an entitlement not to stand trial rather than a mere defense to liability and, therefore, should be resolved at the earliest possible stage of litigation

MISSISSIPPI TORT CLAIMS ACT - DISCRETIONARY-FUNCTION IMMUNITY – MINISTERIAL-FUNCTION EXCEPTION - Governments and agencies generally cloaked with immunity under the Mississippi Tort Claims Act are liable to suit if the acts in question were ministerial (i.e., required compliance to prescribed procedure without the use of judgment by the person performing the act or duty) rather than discretionary

MISSISSIPPI TORT CLAIMS ACT - RULINGS ON SUMMARY JUDGMENT MOTIONS – STANDARD OF REVIEW - Appellate courts review de novo the application of the MTCA and grants or denials of summary judgment motions

FACTS

Christopher Adams died from injuries he sustained after a motorcycle wreck in a construction zone. Adams's wife, Dominique, subsequently sued the Mississippi Department of Transportation (MDOT) and the Mississippi Transportation Commission (MTC). In the complaint, Dominique alleged the defendants failed to comply with pertinent regulations, including the Mississippi Standard Specifications for Road and Bridge Construction (the "Red Book") and the Manual on Uniform Traffic Control Devices; failed to place proper warnings in advance of the uneven pavement that caused Adams to lose control of the motorcycle; failed to act with reasonable and ordinary care under the circumstances of the construction zone; created and allowed a hazardous condition to exist in the construction zone; and further negligent acts to be shown at trial. In their answer, the defendants denied all claims and subsequently filed a motion to dismiss (or for summary judgment) and a motion asking the trial judge to hold their summary judgment motion in abeyance and to enter a scheduling order for discovery on its immunity defenses. The trial judge ultimately entered an agreed scheduling order setting various deadlines for discovery on the defendants' immunity-related defenses. During discovery, the defendants' experts testified that MDOT and its agents complied with the pertinent construction regulations at all times during the construction in question. Plaintiff's expert testified that defendants violated sections of the Red Book that require road construction zones to utilize lane and edge lines. After the immunity-defense discovery period terminated, the defendants submitted their supplemental motion to dismiss (or for summary judgment), arguing they were entitled to discretionary-function immunity for all issues related to traffic-control devices, notwithstanding any other statutes or regulations addressing traffic-control-device placement. The trial court denied defendants' motion for summary judgment, holding their traffic-control-device duties were ministerial rather than discretionary and, thus, they were not entitled to immunity under the Mississippi Tort Claims Act (MTCA). MDOT filed an interlocutory appeal.

ISSUES

Whether (1) Adams's claims that MDOT failed to use proper traffic-control devices were barred by the MTCA (specifically §§ 11-46-9(1)(d) and 11-46-9(1)(p)); (2) Miss. Code Ann. §§ 65-1-65 and 65-1-67 applied to Adams's claims;

(3) the trial judge erred when he ruled “essentially” that Red Book provisions “supersede” Miss. Code § 63-3-303; and (4) Adams failed to demonstrate a causal connection between the defendants’ alleged negligence and the motorcycle accident.

HOLDING

(1) Because Adams produced evidence that the defendants breached ministerial duties—i.e., certain narrower discretionary duties were rendered ministerial via *Brantley*—they did not enjoy discretionary-function immunity under the MTCA. (2) Because the plain language of Miss. Code Ann. §§ 65-1-65 and 65-1-67 did not allow defendants discretion to ignore relevant statutes and regulations (including the Red Book and the Traffic Control Plan), they could not claim discretionary-function immunity under the MTCA. (3) Because Adams produced evidence that the defendants had breached certain specific ministerial duties imposed by their own duly adopted regulations (namely, the Red Book provisions), the trial court did not err in denying the defendants’ motion for summary judgment. (4) Because the defendants raised the causation argument for the first time on appeal, such issue was procedurally barred. Therefore, the Supreme Court affirmed the decision of the Jackson County Circuit Court and remanded the case to trial.

CONCURRENCE

Justice Maxwell concurred in result only, arguing that the majority should have applied the “longstanding public-policy function test” rather than relying upon *Brantley* in reaching its decision. The public-policy function test is two-pronged: First, courts consider whether the activity in question involved an element of judgment or choice; secondly, courts consider whether such judgment or choice involved social, economic, or political-policy considerations.

Affirmed & Remanded- 2014-IA-01419-SCT (June 2, 2016)

Opinion by Justice Lamar – Concurrence by Justice Maxwell

Hon. Robert P. Krebs (Jackson County Circuit Court)

Stephen G. Peresich, Johanna M. McMullan, & Mary W. Van Slyke for Appellants - Patricia L. Beale & Paul T. Benton for Appellee

Briefed by [J. Matthew Orr](#)

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PITTMAN V. PITTMAN

CIVIL - DOMESTIC RELATIONS

DOMESTIC RELATIONS - GROUNDS FOR DIVORCE - HABITUAL CRUEL AND INHUMAN TREATMENT - To establish habitual cruel and inhuman treatment, a party must introduce evidence that proves conduct that 1) endangers life, limb, or health, or creates a reasonable apprehension of such danger rendering the relationship unsafe for the party seeking relief, or 2) is so unnatural and infamous as to make the marriage revolting to the party seeking relief and render it impossible for that spouse to discharge the duties of the marriage, thus destroying the basis for its continuance

DOMESTIC RELATIONS - GROUNDS FOR DIVORCE - HABITUAL CRUEL AND INHUMAN TREATMENT - A party seeking relief based on habitual cruel and inhuman treatment must prove something more than unkindness or rudeness or mere incompatibility or want of affection, and a party must corroborate the testimony

DOMESTIC RELATIONS - GROUNDS FOR DIVORCE - HABITUAL CRUEL AND INHUMAN TREATMENT - It is common sense that abuse or mistreatment of a person’s child may constitute cruelty to that person; therefore, chancery courts may consider evidence of child abuse or mistreatment as conduct supporting the grant of a divorce based on habitual cruel and inhuman treatment

FACTS

Ty and Propst Pittman were married in 1992. Two children were born of the marriage. Ty and Propst separated in June 2010. In August 2010, Propst filed a complaint for divorce on the grounds of habitual cruel and inhuman treatment. At Ty’s request, the chancellor dismissed the claim for divorce on the grounds of habitual cruel and inhuman treatment. The court awarded joint legal custody of the children against the GAL’s recommendation. Propst appealed.

ISSUE

Whether violence against a child may be considered in the determination of whether one spouse has engaged in the habitual cruel and inhuman treatment of the other spouse.

HOLDING

Because the chancellor failed to consider acts of child mistreatment by Ty in the assessment of whether sufficient evidence of cruel and inhuman treatment existed, the chancellor did not apply the correct legal standard. Therefore, the Supreme Court reversed and remanded the judgment of the Panola County Chancery Court.

DISSENT

Justice Beam dissents on grounds that the record lacked evidence the chancellor failed to consider the child abuse or that he applied the wrong legal standard.

Reversed & Remanded - 2013-CT-00149-SCT (June 2, 2016)

En Banc Opinion by Justice King - Dissent by Justice Beam
Hon. Percy L. Lynchard Jr. (Panola County Chancery Court)
Ben Logan for Appellant - T. Swayze Alford & Kayla Fowler for Appellee
Briefed by [Katherine M. Portner](#)

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REYNOLDS V. ALLIED EMERGENCY SERVICES, PC

CIVIL - MEDICAL MALPRACTICE

CIVIL PROCEDURE - JURY INSTRUCTIONS - PROPER INSTRUCTIONS - It is the trial court's responsibility to properly instruct the jury, and failure to do so will result in no official verdict

CONTRACTS - INTERPRETATION - PAROL EVIDENCE - When the language of a contract is ambiguous, parol evidence may be admitted to clarify the ambiguity

FACTS

Patrina Reynolds sued St. Dominic's, Allied Emergency Services, PC, and Dr. Paul Bracey for medical malpractice. During the jury's deliberations, they requested a copy of the jury instructions. Instead of providing the jury with the approved instructions, the bailiff provided the wrong instructions that included a peremptory instruction. The jury returned a unanimous defense verdict. When the trial judge discovered the mistake, he called the parties back to the courthouse and ordered a new trial. The defendants filed a motion to enforce the high/low settlement agreement that the parties had entered into prior to trial. The trial judge ruled in favor of defendants, and rescinded his prior order granting a new trial. Reynolds appealed.

ISSUES

Whether (1) the trial judge erred by not granting a mistrial and (2) the language of the agreement prohibited a new trial.

HOLDING

(1) Because there was no official jury verdict due to improper jury instructions, the high/low agreement has no effect.
(2) Because the Court found the phrase "appeal rights" unambiguous, the trial court erred by considering what he classified as "parol evidence." Therefore, the Court of Appeals reversed and remanded the judgment of the Lee County Chancery Court.

Reversed and Remanded - 2014-CA-01005-SCT (June 2, 2016)

Opinion by Justice Lamar
Hon. John Andrew Hatcher (Lee County Chancery Court)
Rogen K. Chhabra, Darryl M. Gibbs, Ashley L. Hendricks, David Neil McCarty, John D. Giddens, & Baskin L. Jones for Appellant - Whitman B. Johnson, III, & Lorraine W. Boykin for Appellees
Briefed by [Paul Wallace](#)

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SWEET VALLEY MISSIONARY BAPTIST CHURCH V. ALFA INS. CORP.

CIVIL - INSURANCE

PREJUDGMENT INTEREST - JUDGMENTS OR DECREES - CONTRACT RATE - 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

PREJUDGMENT INTEREST - ACCRUAL - POST-FILING - All judgments or decrees, other than those founded on any sale or contract, shall bear interest at a per annum rate set by the judge hearing the complaint from a date determined by such judge to be fair but in no event prior to the filing of the complaint

PREJUDGMENT INTEREST - ACCRUAL - POST-FILING - Section 75-17-7 does not allow interest to accrue prior to the complaint's filing

FACTS

After Hurricane Katrina, Sweet Valley Missionary Baptist Church (Sweet Valley) notified Alfa Ins. Corp. (Alfa) of damage to its premises. Alfa appraised the damages at \$9,951.89. Sweet Valley filed suit against Alfa for breach of contract, alleging that Alfa undervalued its claim. Sweet Valley requested prejudgment interest in its complaint. Alfa invoked the appraisal provision in the insurance policy, and it was determined that Sweet Valley was entitled to \$462,761.89. Alfa remitted the full amount to Sweet Valley. Alfa then filed a motion for summary judgment. The trial court granted summary judgment and dismissed Sweet Valley's claim. Sweet Valley appealed.

ISSUE

Whether the trial court erred in denying Sweet Valley prejudgment interest.

HOLDING

Because no dispute remained for adjudication, the trial court correctly entered an order dismissing the case with prejudice. Therefore, the Supreme Court affirmed the judgment of the Marion County Circuit Court.

Affirmed - 2014-CA-01748-SCT (June 2, 2016)

En Banc Opinion by Justice Beam

Hon. Anthony Alan Mazingo (Marion County Circuit Court)

Marc L. Frischhertz & David Lee Brewer for Appellant -- Michael Andrew Rueff & Toby Justin Gammill for Appellee

Briefed by [Shayna Giles](#)

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SUPREME COURT - CRIMINAL CASES

LOMAX V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - SEVERANCE - CORLEY FACTORS - In determining whether severance is proper the trial court should consider (1) whether the time period between the occurrences is insignificant, (2) whether the evidence proving each count would be admissible to prove each of the other counts, and (3) whether the crimes are interwoven

EVIDENCE - IMPEACHMENT THROUGH PRIOR INCONSISTENT STATEMENT - EXTRINSIC EVIDENCE - Mississippi Rule of Evidence 613(b) states that "extrinsic evidence of a prior inconsistent statement by

a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate him thereon, or the interests of justice otherwise require. This provision does not apply to admissions of a party-opponent as defined in Rule 801(d)(2)”

EVIDENCE - IMPEACHMENT - SPECIFIC INSTANCES OF CONDUCT - “Specific instances of conduct of a witness, for the purpose of attacking or supporting the witness’s character for truthfulness, other than conviction of crime as provided in Rule 609 may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross examination of the witness (1) concerning the witness’s character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified”

FACTS

Dequane Lomax was indicted by a Hinds County grand jury on two counts of forcible rape and two counts of simple assault on a law enforcement officer. The Hinds County Circuit Court severed one count of rape from the other three counts. Lomax proceeded to trial on the three counts. At trial, Lomax requested that the two simple assault charges be severed from the forcible rape charge but the court refused. At the trial Lomax attempted to enter into evidence a video recording of statements made by S.C. (the victim) while Gowen (the social worker and forensic interviewer) was out of the room. The trial court ruled that the video was inadmissible, and additionally did not allow Lomax’s defense counsel to cross-examine Gowen regarding the interview tape. The jury found Lomax guilty on the charge of forcible rape against S.C., but not guilty of the two counts of simple assault against the law-enforcement officers. Lomax appealed.

ISSUES

Whether the trial court erred in (1) refusing to sever the simple-assault charges from the rape charge, (2) not allowing the video recording as extrinsic evidence to be used as impeachment evidence, and (3) not allowing Lomax’s defense counsel to cross-examine Gowen accordingly.

HOLDING

(1) Because the Court revisited the Corley factors analysis completed by the trial court and found that the trial court incorrectly determined that the time period between the occurrences was insignificant, correctly determined that the evidence necessary to prove each count differed, and incorrectly determined that the crimes were interwoven the Court found that the trial court erred in refusing to sever the simple assault charges from the rape charge. (2) Because the Court agreed with the trial court that the video recording was largely incomprehensible, could not be put into context and would be prejudicial to the State’s case, the trial court did not abuse its discretion in excluding the video. (3) Even though the video recording was confirmed to be inadmissible, the Court held that the trial court erred in not allowing Lomax’s defense counsel to cross-examine Gowen regarding statements made while S.C. was alone in an interview because it was deemed to be a specific instance of conduct pursuant to Mississippi Rule of Evidence 608(b). Therefore, the Supreme Court reversed and remanded the judgment of the Hinds County Circuit Court.

CONCURRENCE

Justice Kitchens concurs in part and result, but would have deemed the video recording of S.C. to be admissible because withholding the evidence violated Lomax’s state and federal constitutional rights to cross examine the witnesses against him in full.

Reversed and Remanded - 2014-KA-00835-SCT (Jun. 2, 2016)

En Banc Opinion by Justice Beam- Concurrence by Justice Kitchens

Hon. Jeff Weill, Sr. (Hinds County Circuit Court)

Hunter Nolan Aikens & George T. Holmes (Pub. Def. Office) for Appellant - Abbie Eason Koonce (Att’y Gen. Office) for Appellee

Briefed by [Autumn T. Breeden](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – MAY 31, 2016

COURT OF APPEALS - CIVIL CASES

BELL V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - PROCEDURAL BARS - SUCCESSIVE WRITS - Miss. Code Ann. § 99-39-26 prevents successive motions for post-conviction relief unless a valid exception is present

POST-CONVICTION RELIEF - PROCEDURAL BARS - EXCEPTIONS TO PROCEDURAL BARS - Only errors affecting fundamental constitutional rights are excepted from the procedural bars; there must be some basis in truth of the asserted claim before the bars will be waived

POST-CONVICTION RELIEF - PROCEDURAL BARS - STATUTE OF LIMITATIONS - Under Miss. Code Ann. § 99-39-5, all post-conviction relief motions not brought within three years of sentencing are procedurally barred

FACTS

Sylvester Bell pled guilty to statutory rape in 2007. He was sentenced to thirty years in prison as a habitual offender, without eligibility for parole, probation, or early release. In 2009, Bell filed his first post-conviction relief (“PCR”) motion; finding no merit to Bell’s argument, the Court of Appeals upheld the dismissal of his first motion. In 2014, Bell filed his second PCR motion asserting a variety of claims challenging his plea, his indictment, his sentence, and ineffective assistance of counsel. The Tunica County Circuit Court dismissed Bell’s second PCR motion. Bell appealed.

ISSUE

Whether the trial court erred in dismissing Bell’s second PCR motion as a successive writ and procedurally barred.

HOLDING

Because (1) Miss. Code Ann. § 99-39-26(6) prohibits successive PCR motions and Miss. Code Ann. § 99-39-5(2) prohibits PCR motions not filed within three years of conviction, the trial court did not err in dismissing Bell’s motion as both a successive writ and time barred. Because (2) Bell failed to demonstrate his claims were excepted from the procedural bars, the issues raised in his appeal were dismissed without merit. Therefore, the Court of Appeals affirmed the judgment of the Tunica County Circuit Court.

Affirmed - 2014-CP-01370-COA (May 31, 2016)

Opinion by Judge Irving

Hon. Johnnie E. Walls Jr. (Tunica County Circuit Court)

Pro se for Appellant - Alicia Marie Ainsworth (Att’y Gen. Office) for Appellee

Briefed by [John G. Archer](#)

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CONLEY V. WRIGHT

CIVIL - WILLS, TRUSTS, AND ESTATES

CIVIL PROCEDURE - MOTION TO DISMISS - STANDARD - A motion to dismiss should be granted when it appears beyond doubt that the movant will be unable to prove any set of facts in support of his claim

CIVIL PROCEDURE - STATUTE OF LIMITATIONS - DEED/FRAUD - A three-year statute of limitations applies to an action to set aside a deed on the basis of fraud

CIVIL PROCEDURE - STATUTE OF LIMITATIONS - RECOVERY OF LAND - A person may not make entry or commence an action to recover land except within ten years next after the time at which the right to make the entry or bring the action shall have first accrued

CIVIL PROCEDURE - STATUTE OF LIMITATIONS - LIFE ESTATE - When a life estate is tied to property, the statute of limitations does not run on a successive possessor's claim to the property until the person holding the life estate has passed

CIVIL PROCEDURE - APPELLATE REVIEW - PROCEDURAL BAR - Issues not raised at trial cannot be raised on appeal

FACTS

In 1998, several deeds were filed concerning eighteen acres of property owned by Annie Conley, mother of Ulysses Conley and Mary Wright. These deeds transferred ownership of the property from Annie to Mary at the exclusion of her sibling, Ulysses. When Annie died in 2000, Mary probated and ultimately closed the estate in 2004. In 2011, Ulysses claimed to have discovered the deeds for the first time and asserted they were illegal. He filed his complaint in 2013. In 2014, the trial court granted Mary's motion to dismiss citing Ulysses's lack of diligence and a three-year statute of limitations barring any action. Ulysses appealed.

ISSUE

Whether (1) the trial court improperly applied the three-year general statute of limitations instead of the ten-year statute of limitations regarding recovery of property; (2) the property was subject to a constructive trust that would not fall within an applicable statute of limitations.

HOLDING

(1) The trial court did err in its reference to the three-year statute of limitations, but because the error was harmless considering the length of time from the accrual of Ulysses's right to file the action and the date the action was filed, the claim was properly dismissed. (2) Because issues not raised at trial cannot be raised on appeal, the Court of Appeals is without authority to review this argument. Therefore, the Court of Appeals affirmed the judgment of the Carrol County Chancery Court.

Affirmed - 2014-CA-01152-COA (May 31, 2016)

Opinion by Judge Ishee

Hon. Joseph Kilgore (Carrol County Chancery Court)

Venecca Green Mason for Appellant - Edward D. Lancaster for Appellee

Briefed by [Daniel McDonald](#)

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DIGGS V. STATE

CIVIL - POST-CONVICTION RELIEF

CRIMINAL PROCEDURE - PLEAS - VOLUNTARINESS - The burden of proving that a guilty plea was involuntary is on the defendant and must be proven by a preponderance of the evidence

POST-CONVICTION RELIEF - INEFFECTIVE ASSISTANCE OF COUNSEL - BURDEN OF PROOF

- In order for a defendant to prevail on an ineffective-assistance-of-counsel claim, he must show by a preponderance of the evidence that counsel's performance was deficient, and but for the deficiencies, the trial court outcome would have been different

POST-CONVICTION RELIEF - INEFFECTIVE ASSISTANCE OF COUNSEL - SUPPORTING EVIDENCE - In cases involving postconviction collateral relief, where a party offers only his affidavit, his ineffective assistance of counsel claim is without merit

CRIMINAL PROCEDURE - WAIVER - ENTRAPMENT - Entrance of a voluntary guilty plea waives any defense a movant may have had to a charge, including the defense of entrapment

FACTS

In October 2012, Diggs was contacted by an acquaintance, who was acting as a confidential informant to the local authorities, and asked to return cathinone tablets that Diggs had previously purchased from the acquaintance's boyfriend. Diggs agreed to return the tablets in exchange for money. Diggs met the acquaintance at a gas station across the street from a church and exchanged the tablets for cash. Immediately following the exchange, officers surrounded Diggs and arrested him. Diggs was charged with selling a controlled substance within close proximity to a church. Diggs pleaded guilty to the charge in the circuit court and was sentenced to thirty years in the custody of the MDOC, with twenty years suspended, ten years to serve, and five years of PRS. Diggs appealed.

ISSUES

Whether (1) Diggs's plea was voluntarily given, (2) Diggs's counsel was constitutionally ineffective, and (3) the use of the confidential informant constituted entrapment.

HOLDING

(1) The dialogue that took place between Diggs and the Court demonstrates that Diggs acknowledged the consequences of pleading guilty and thus his plea was voluntarily given. (2) Because Diggs did not indicate any dissatisfaction with his counsel during his plea hearing, his ineffective assistance of counsel claim is without merit. (3) Because Diggs entered a voluntary guilty plea, the defense of entrapment was waived. Therefore, the Court of Appeals affirmed the judgment of the Rankin County Circuit Court.

Affirmed - 2015-CP-00074-COA (May 31, 2016)

Opinion by Judge Ishee

Hon. John Huey Emfinger (Rankin County Circuit Court)

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

Briefed by [L. Morgan Eason](#)

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LARSON V. LARSON

CIVIL - DOMESTIC RELATIONS

DOMESTIC RELATIONS - PROPERTY DIVISION - MARITAL HOME - All property division, lump sum or periodic alimony payment, and mutual obligations for child support should be considered together and divided as equity demands

DOMESTIC RELATIONS - ALIMONY - DISCRETION - The court will not disturb a chancellor's findings regarding the award or amount of alimony unless there is manifest error

FACTS

Mark Larson and Diana Larson married on February 14, 1992. Mr. Larson filed for divorce on September 8, 2008, on grounds of irreconcilable differences. On September 11, 2008, Mr. Larson amended his complaint to include the grounds of adultery, habitual cruel and inhuman treatment, abandonment, and, in the alternative, irreconcilable differences. On December 17, 2010, the chancellor issued a ruling granting Mr. Larson a divorce on the ground of adultery. On January 7, 2011, the chancery court issued a judgment of divorce. On February 2, 2011, Mrs. Larson appealed the court's decision. On March 3, 2013, the Court of Appeals affirmed in part and reversed and remanded in part the trial court's judgment. On remand, the trial court awarded Mrs. Larson \$80,000 in equity, but the record supported a finding that there was in fact only \$28,500 worth of equity in the home. On December 17, 2013, the chancery court entered its judgment denying Mrs. Larson's request for periodic and rehabilitative alimony. Mrs. Larson appealed.

ISSUES

Whether the trial court erred in (1) determining the equity in the marital home, and (2) not awarding permanent or rehabilitative alimony.

HOLDING

(1) Because the trial court weighed all the factors in its decision and attempted to make an equitable division, being fair to both sides, the trial court did not err in determining the equity in the marital home. (2) Because the chancellor went step by step through each factor when determining alimony, the trial court did not err in not awarding permanent or rehabilitative alimony. Therefore, the Court of Appeals confirmed the judgment of the Panola County Chancery Court.

Affirmed - 2014-CA-00598-COA (May 31, 2016)

Opinion by Judge Irving

Hon. Mitchell M. Lundy Jr. (Panola County Chancery Court)

James Roger Franks Jr. & William Rufus Wheeler Jr. for Appellant - Thomas Alan Womble for Appellee

Briefed by [Andrew B. Lintner](#)

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LUNSFORD V. PROCESS TECHNOLOGIES SERVICING, LLC

CIVIL - RELIEF FROM JUDGMENT

CIVIL PROCEDURE - RULE 60(B) - RELIEF FROM JUDGMENT - On motion, a court may relieve a party from a final judgment for the following reasons: (1) fraud, misrepresentation, or other misconduct of an adverse party; (2) accident or mistake; (3) newly discovered evidence; or (4) any other reason justifying relief from judgment

CIVIL PROCEDURE - RULE 60(B)(6) - WHEN RELIEF IS APPROPRIATE - Relief under Rule 60(b)(6) is reserved for extraordinary and compelling circumstances and Rule 60(b)(6) motions will be denied when they are merely attempts to re-litigate a case

RULE 60(B)(6) - STANDARD OF REVIEW – ABUSE OF DISCRETION - An appellate court is bound to affirm the chancellor’s decision unless it was manifestly wrong, clearly erroneous, or applied an incorrect legal standard

FACTS

Process Technologies Services, LLC (“PTS”), a company involved in the biofuel industry in Mississippi, decided to invest in Mississippi Investment Petroleum Company (“MIPCO”) based on the following understandings: that MIPCO would use certain equipment, that principals Jon Lunsford and Mike Cook had invested \$600,000 in equipment to MIPCO, and that a secret formula used in the biofuel process was being transferred to MIPCO. PTS sought to rescind their agreement and MIPCO sought to compel arbitration. The arbitrator awarded PTS \$406,892 to reimburse their investment plus interest. PTS produced attorneys’ billing statements in their request for attorneys’ fees. Through these documents, MIPCO claimed that they learned of communications between PTS and the Mississippi Secretary of State’s office. MIPCO filed a Rule 60(b)(6) and argued that PTS gave untruthful testimony regarding its knowledge of a complaint filed against MIPCO with the Secretary of State’s office and that a letter sent to PTS from the office should have been produced to MIPCO at arbitration. MIPCO contended this concealment amounts to PTS obtaining the arbitration award through fraud. The chancery court affirmed the award and denied MIPCO’s Rule 60(b)(6) motion. MIPCO appealed.

ISSUE

Whether the chancery court erred in denying MIPCO’s Rule 60(b)(6) motion.

HOLDING

Because MIPCO’s counsel was aware of communications between PTS and the Secretary of State’s office during the arbitration proceedings evinced by their request that PTS provide a specific letter sent to PTS from the Secretary of State’s office, the chancellor did not err in denying MIPCO’s Rule 60(b)(6) motion. Therefore, the Court of Appeals affirmed the judgment of the Monroe County Chancery Court.

Affirmed - 2015-CA-00663-COA (May 31, 2016)

Opinion by Presiding Judge Griffis

Hon. Jacqueline Estes Mask (Monroe County Chancery Court)

Paul E. Rogers for Appellants - Kathryn H. Hester & Samuel Trent Favre for Appellee

Briefed by [Wes Bulgarella](#)

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McKENZIE V. MISS. MUN. SERV. CO.

CIVIL - CONTRACT

CIVIL PROCEDURE - DEFAULT JUDGMENT - TRIAL COURT'S DISCRETION - With the exception of an abuse of discretion, the decision to grant or set aside a default judgment is in the discretion of the trial court

CONTRACTS - ENFORCEABLE CONTRACT - ELEMENTS - An enforceable contract requires an offer, acceptance of the offer, and consideration

CIVIL PROCEDURE - ISSUES RAISED ON APPEAL - PROCEDURALLY BARRED - Issues presented for the first time on appeal are procedurally barred from consideration

FACTS

On April 22, 2010, the McKenzies were involved in a car wreck with a police officer employed by the City of Laurel. The Mississippi Municipal Service Company (“MMSC”) negotiates and litigates on the behalf of the City of Laurel. After negotiations, the McKenzies accepted an offer to only cover property damages. On September 12, 2011, MMSC sent an additional offer to the McKenzies to settle any medical claims. The McKenzies responded with a counter-offer. MMSC rejected the counter-offer and sent a final offer, which was rejected by the McKenzies. On March 2, 2012, the McKenzies filed their complaint. The complaint was amended as the McKenzies voluntarily withdrew every cause of action except their specific-performance claim. The chancery court set aside the default judgment that had been entered by the clerk. The chancery court granted MMSC’s motion for summary judgment. The McKenzies appealed.

ISSUES

Whether the chancery court erred in (1) setting aside the clerk’s entry of default, (2) granting summary judgment, and (3) calculating the statute of limitations.

HOLDING

(1) Because the decision of whether or not to set aside an entry of default falls within the chancery court’s discretionary purview and there was no abuse of discretion, the chancery court did not err in setting aside the clerk’s entry of default.

(2) Because there was no genuine issue of material fact as to if a contract was entered into, the chancery court did not err in granting summary judgment. (3) Because the McKenzies did not raise the issue of the calculation of the statute of limitations during the trial court proceedings, they are barred from raising it on appeal. Notwithstanding the procedural bar, MMSC’s continued negotiations after the passage of the statute of limitations did not create a contract between the two parties. Therefore, the Court of Appeals affirmed the judgment of the Jones County Chancery Court.

Affirmed - No. 2014-CA-01034-COA (May 31, 2016)

Opinion by Judge Irving

Hon. Franklin C. McKenzie Jr. (Jones County Chancery Court)

Vanessa J. Jones for Appellants - L. Grant Bennett Sr. for Appellee

Briefed by [Addie Clark](#)

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VON HERRMANN V. VON HERRMANN

CIVIL - DOMESTIC RELATIONS

FAMILY LAW - ALIMONY - HYBRID-ALIMONY INTERPRETATION - When an alimony order is ambiguous or vague as to the type of alimony awarded and cannot be determined by the plain meaning of the order, the courts should consider extrinsic or parole evidence to determine the purpose for the award

FACTS

Andrew and Denise Von Herrmann were married in 1990 and divorced in 2012. Denise made \$180,000 at the time of divorce and was ordered to pay Andrew alimony. The order described the alimony as periodic alimony, which would terminate on September 15, 2022, upon the death of either party, or upon Andrew remarrying or cohabitating with another woman. In 2013, Denise filed a complaint seeking to amend her alimony payments based on a reduction of her income. The chancellor denied modification, ruling that the alimony was a lump sum, and thus non-modifiable. Denise appealed.

ISSUE

Whether the alimony order was a lump-sum order and thus non-modifiable, or a periodic alimony order subject to modification.

HOLDING

The Court of Appeals held that the alimony assigned was periodic alimony, and thus is modifiable. The court conceded that the alimony agreement contained characteristics of both lump sum and periodic alimony. However, the court pointed out that the alimony was labeled as periodic, and also was originally ordered as a means to support Andrew after the divorce, rather than an equitable reimbursement. The intent of support rather than equitable reimbursement is a characteristic of periodic alimony. Therefore, the Court of Appeals reversed and remanded the judgment of the Forrest County Chancery Court.

Reversed and Remanded - 2014-CA-00995-COA (May 31, 2016)

Opinion by Judge Irving

Hon. Johnny Lee Williams (Forrest County Chancery Court)

Nancy E. Steen for Appellant - Shawn M. Lowrey for Appellee

Briefed by [Reginald R. Lewis](#)

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COURT OF APPEALS - CRIMINAL CASES

ROLLINGS V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - DIRECTED VERDICT/JNOV - SUFFICIENT EVIDENCE - In determining whether the evidence was sufficient to sustain a conviction, the relevant question is whether the evidence was such that a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt

CRIMINAL PROCEDURE - NEW TRIAL - BURDEN OF PROOF - A new trial will not be granted unless the verdict is so contrary to the overwhelming weight of the evidence that an unconscionable injustice would occur by allowing the verdict to stand

CRIMINAL PROCEDURE - BURGLARY – BREAKING - The act of opening a closed, unlocked door is sufficient to establish the breaking element of burglary

CRIMINAL PROCEDURE - BURGLARY – INTENT - Unless one expresses his intent, the only method by which intent may be proven is by showing the acts of the person involved at the time in question, and by showing the circumstances surrounding the incident

CRIMINAL PROCEDURE - FORCIBLE RAPE - STATUTORY INTERPRETATION - Miss. Code Ann. § 97-3-65(4)(a) is the correct statute to include in an indictment for forcible rape

FACTS

In 2013, A.J., an alias given by the trial court to protect the victim, was attacked and raped in her home. When police arrived, she told them “Peanut,” meaning Daniel Rollings, was who broke into her house and sexually assaulted her.

She was taken to the hospital where a sexual assault evidence collection kit was completed. Later, A.J. identified Rollings in a photographic lineup. Police arrested Rollings that day for burglary and rape. Rollings told police that he and A.J. had consensual sexual relations because they were friends. Rollings' DNA was taken and tested, returning as a match for the DNA gathered during the completion of A.J.'s sexual-assault evidence collection kit. Rollings made a motion for directed verdict, which was denied by the trial court. Rollings presented no witnesses of his own, and the jury found him guilty of both burglary and rape. In a post-trial motion, Rollings moved for a new trial or judgment notwithstanding the verdict (JNOV), which the trial court denied. Rollings appealed.

ISSUES

Whether the trial court erred in (1) denying Rollings' motion for a directed verdict, his motion for a JNOV, and his proposed peremptory jury instruction because the evidence was insufficient to support the convictions of rape and burglary; (2) denying Rollings' motion for a new trial because the verdict was against the overwhelming weight of the evidence, and (3) finding that Miss. Code Ann. § 97-3-65 was the proper statute for Rollings' indictment of rape.

HOLDING

(1) Because sufficient evidence existed for the jury to find that Rollings entered A.J.'s home with criminal intent beyond a reasonable doubt, the Court of Appeals concluded that this issue was without merit. (2) Because Rollings only argued bare assertions of error in the State's presentation of evidence, the Court of Appeals concluded that the trial court properly denied his motion for a new trial. (3) Because the statute Rollings was convicted under also addressed forcible rape, the Court of Appeals concluded he was indicted under the proper statute. Therefore, the Court of Appeals affirmed the judgment of the Leflore County Circuit Court.

Affirmed - 2015-KA-00214-COA (May 31, 2016)

Opinion by Presiding Judge Griffis

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

K. Elizabeth Davis for Appellant - Billy L. Gore (Att'y Gen. Office) for Appellee

Briefed by [Rachel Smith](#)

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STEWART V. STATE

CRIMINAL - FELONY

HOMICIDE - MANSLAUGHTER - ELEMENTS - Manslaughter requires that an actor engage in conduct that is reckless or done with a wanton disregard for human life

HOMICIDE - MANSLAUGHTER - ACCESSORY - To be considered an accessory before the fact, an actor must engage in conduct evincing conscious and wanton or reckless disregard of the probabilities of fatal consequences to others as the result of the willful creation of an unreasonable risk

FACTS

In 2010, Natasha Stewart began communicating with Karima Gordon, both of whom were "urban models" (Stewart in Jackson, Gordon in Atlanta). Gordon sought information from Stewart related to who helped Stewart enhance her buttocks. In February of 2012, Stewart told Gordon that she went to Tracey Garner, who Stewart believed to be a nurse in Jackson, Mississippi, for her buttock enhancing operations. Stewart texted Gordon's number to Garner, and Gordon payed Stewart \$200 as a way of thanking her. One month later, Gordon and a friend traveled to a house in Jackson where Garner administered the injections. On their trip back to Atlanta, Gordon began coughing and had difficulty breathing. After multiple trips to the emergency room, Gordon died one week after the operation because of the silicone injections. A jury found Stewart guilty of manslaughter and conspiracy to commit manslaughter. She timely filed a motion for a judgment notwithstanding the verdict ("JNOV") for both counts. The JNOV for the conspiracy verdict was granted but the JNOV for the manslaughter verdict was denied. Stewart appealed.

ISSUE

Whether the circuit court erred in denying Stewart's JNOV motion with respect to the manslaughter conviction.

HOLDING

Because Stewart did not act recklessly or with a wanton disregard for human life in referring Gordon to Garner, the circuit court erred in denying Stewart's JNOV motion with regard to the manslaughter conviction. Therefore, the Court of Appeals reversed and remanded the judgment of the Hinds County Circuit Court.

DISSENT

Judge Carlton argued that there was sufficient evidence to support the jury's verdict, and that Stewart did act with wanton or reckless disregard for human life. Carlton stated that the jury could have determined that Stewart created a dangerous environment which would make her an accessory before the fact and guilty of manslaughter.

Reversed and Remanded - 2014-KA-01101-COA (May 31, 2016)

Opinion by Judge Ishee - Dissent by Judge Carlton

Hon. William A. Gowan Jr. (Hinds County Circuit Court)

Jared Keith Tomlinson & Kevin Dale Camp for Appellant - Jeffery A. Klingfuss (Att'y Gen. Office) for Appellee

Briefed by [Cody D. Samples](#)

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