

MISSISSIPPI SUPREME COURT DECISIONS – JULY 30, 2020***SUPREME COURT - CIVIL CASES*****B&S MS HOLDINGS, LLC V. LANDRUM****CIVIL - OTHER**

CONTRACTS - ARBITRATION - FORMALITIES - Members of a limited-liability company have the right to agree to arbitration

CIVIL PROCEDURE - ENFORCEMENT - INTERPRETATION - A court is obligated to enforce a contract executed by legally competent parties where the terms of the contract are clear and unambiguous

CIVIL PROCEDURE - JUDICIAL DISSOLUTION - FORMALITIES - The operating agreement may not vary a court's power to decree dissolution

FACTS

David and Jill Landrum developed land in Madison County, Mississippi. Upon seeking financial assistance from Michael Sharpe, Sharpe invested substantially in the business and his wife, Marna, gained a membership interest. In January 2010, Livingston Holdings, LLC ("Livingston") was formed, with the original members being Jill, Marna, and Sara Williams. Livingston ultimately acquired William's ownership interest and Marna assigned her membership interest to B&S MS Holdings, LLC ("B&S"), making Livingston's current members B&S and Jill Landrum. An operating agreement was executed containing an arbitration provision, stating that "any dispute, claim, or controversy in connection with or arising under this Operating Agreement . . . shall be finally and exclusively resolved by arbitration." In July 2014, a second amended operating agreement was executed, stating that Marna had made greater contributions to the company than Landrum. As a result, it stated that Marna's contributions would be converted to a loan, her membership in the company would be fifty-one percent, and Jill's would be forty-nine percent. In February 2018, B&S filed a complaint to dissolve Livingston, alleging that Livingston had "become involved with a purported business turnaround consultant which . . . acquired dominant influence over Livingston." The complaint further stated that Mark Calvert and his company, Cascade Capital Group, LLC ("Cascade"), acquired Livingston's principal debt and demanded payment from Livingston. Cascade then filed suit in the United States District Court for the Southern District of Mississippi against Livingston, Chestnut Developers, LLC, David Landrum, and Michael Sharpe. Jill filed a motion to dismiss or to compel arbitration, arguing that the parties agreed to arbitration in the operating agreement. The trial court agreed with Jill and ordered the parties to conduct binding arbitration. B&S appealed.

ISSUES

Whether (1) the trial court erred by ordering the parties to arbitration in accordance with the operating agreement and (2) the judicial dissolution fell outside the scope of the operating agreement arbitration clause.

HOLDING

(1) Because the parties agreed to waive their right to maintain action for judicial dissolution, the trial court did not err in ordering the parties to submit to arbitration. (2) Because the dissolution of the company by majority vote was provided for in the operating agreement, and because dissolution accordingly fell under the arbitration position, judicial dissolution did not fall outside the scope of the operating agreement's arbitration clause. Therefore, the Supreme Court affirmed the judgment of the Madison County Chancery Court.

DISSENT

Presiding Justice Kitchens argued that although the operating agreement contained an arbitration provision, Miss. Code Ann. § 79-29-123(3)(m) states that an operating agreement cannot vary the court's power to decree dissolution when it

is not reasonably practicable to carry on business in conformity with the operating agreement. As a result, he argued that chancery court erred in ordering the parties to submit to arbitration and that the arbitration order should be reversed and remanded for further proceedings.

Affirmed - 2018-CA-01734-SCT (July 30, 2020)

Opinion by Presiding Justice King - Dissent by Presiding Justice Kitchens

Hon. Robert George Clark III (Madison County Chancery Court)

John G. Corlew & Lynn Chain Wall for Appellant - Harris H. Barnes III & James Williams Janoush for Appellees

Briefed by [Gabrielle Beech](#)

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CARRICK V. TURNER

CIVIL - CONTRACT

CONTRACTS - ARBITRATION - MOTION TO COMPEL - Under the Federal Arbitration Act (“FAA”), the validity of a motion to compel arbitration is determined by whether (1) the parties intended to arbitrate and (2) external legal constraints foreclose the possibility of arbitration

CONTRACTS - ARBITRATION - METHOD OF ARBITRATION - If a contract’s arbitration provision does not establish a method of arbitration, the FAA provides that upon application of either party, the court shall designate an arbitrator with authority equal to that he would have had he been named in the arbitration provision

CONTRACTS - ASSIGNMENT OF RIGHTS - SUCCESSOR IN INTEREST - A successor in interest to the signatory of a contract cannot be denied the benefits of the provisions upon which it relied to delineate its contractual duties and responsibilities

FACTS

Bettye Turner originally hired David Carrick to manage and invest \$2 million on her behalf while he was employed with Morgan Stanley Smith Barney (“Morgan Stanley”). Carrick later ceased employment with Morgan Stanley and found work with brokerage firm Stern, Agee & Leach, Inc. (“Stern Agee”). Turner and Carrick transferred Turner’s funds into a Stern Agee investment account for Carrick’s continued management. Turner completed and signed a Stern Agee Account Application, which incorporated by reference a Client Account Agreement. The application stated that the applicant acknowledged receiving a copy of the Account Agreement and that she agreed to all terms therein by “signing below,” though there was no signature line on the page. During litigation, Carrick submitted two versions of the Account Agreement. One was dated 2012, despite Turner having signed in 2009. Although it was unknown which version was given to Turner, Turner conceded that she received some version of the Account Agreement. Both versions referenced a pre-dispute arbitration clause found in Paragraph 22. In the 2012 version, however, the arbitration clause was stated in Paragraph 19. The 2012 version also included an “assignment of rights” provision allowing the brokerage to assign the applicant’s duties to the brokerage’s successor. Later, Stifel, Nicolaus & Company, Inc. (“Stifel”) acquired Stern Agee and the two companies merged. Stern Agee then assigned its rights under the agreement to Stifel. Turner filed a lawsuit against Carrick and Stifel for negligent management and supervision of her investment account. Carrick filed a motion to compel arbitration pursuant to the Federal Arbitration Act (“FAA”), the Account Application, and the Account Agreement. Turner argued she was not bound to arbitration because (1) she contracted with Stern Agee, not Stifel; (2) she received no notice of the assignment of Stern Agee’s rights to Stifel; and (3) of the discrepancy in the 2012 Account Agreement’s reference to an arbitration agreement in Paragraph 22, which was actually in Paragraph 19. The trial court ordered limited discovery to produce the contract documents and to clarify the relationship between Stern Agee, Stifel, and Stifel’s parent company, Stifel Financial Corp. Turner argued the Account Agreement was invalid since she did not sign it. The Greene County Circuit Court found that there was no genuine contract between the parties and, accordingly, held that the arbitration clause failed and ordered that the case be set for trial. Carrick appealed.

ISSUE

Whether the trial court erred by refusing to compel arbitration because a valid agreement to arbitrate existed between the parties.

HOLDING

Because the language of the Account Agreement was sufficient to indicate the parties' intent to arbitrate despite an erroneous paragraph number reference to the arbitration clause, and because Stifel was a successor in interest to Stern Agee that was accounted for under the Account Agreement's "assignment of rights" provision, the FAA could provide for how to determine the method of arbitration in instances of ambiguity, Stifel could contractually compel Turner into arbitration, and the trial court erred by failing to compel arbitration. Therefore, the Supreme Court reversed and remanded the judgment of the Greene County Circuit Court.

Reversed & Remanded - 2019-CA-00617-SCT (July 30, 2020)

Opinion by Presiding Justice King

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

John Ernest Wade Jr. & Claire W. Ketner for Appellants - William Harvey Barton for Appellees

Briefed by [Cameron Johnson](#)

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STRATTON V. MCKEY

CIVIL - REAL PROPERTY

EVIDENCE - ADMISSIBILITY - EXPERT TESTIMONY - Admissibility of expert testimony is viewed in light of Miss. R. Evid. 702; such testimony is admissible if it is found to be relevant and reliable

CIVIL PROCEDURE - CONTEMPT - DISCRETION - Contempt is an issue of fact to be decided on a case-by-case basis; the chancery court has substantial discretion in deciding whether a party is in contempt

CIVIL PROCEDURE - LIMITATION OF ACTIONS - FILING COMPLAINT - The filing of a complaint even without service of process tolls the three-year statute of limitations for a 120-day period

FACTS

Robert W. Stratton, Sr. owned an antique truck, which he delivered to John Shivers's repair and restoration business. Stratton and Shivers contemplated that Shivers would restore the truck at some point in the future, but they made no firm plans for the restorations and they never agreed that Shivers would charge a storage fee. Stratton's truck remained at Shiver's shop until Jerry McKey bought the business from Shivers. Shivers told McKey that Stratton owned the truck, but neither Shivers nor McKey notified Stratton of the change in the business's ownership. When Stratton learned of the change in ownership, he contacted McKey and requested possession of the truck. McKey refused to let Stratton have his truck unless he paid storage fees. Stratton sued McKey for replevin, and the trial court ruled that Stratton was entitled to possession of the truck conditioned upon paying McKey for storage fees within thirty days. Stratton then filed a motion for contempt, alleging that McKey continued to withhold the truck from him. Stratton also filed a complaint against McKey for damages related to McKey's failure to relinquish the truck and requested damages for the depreciation to the truck, loss of income, intentional infliction of emotional distress, outrageous conduct, and conversion. McKey counterclaimed for storage fees, averred that he had sold the truck for scrap, and conceded that he was liable to Stratton for the value of the truck. The trial court held that Stratton was entitled to recover the truck's value but that no evidence supported his claims for damages over and above the truck's value and that McKey was entitled to storage fees. Stratton appealed.

ISSUES

Whether the circuit court erred in (1) the valuation of the truck; (2) not holding McKey in contempt for selling the truck during the pendency of appeal; and (3) granting McKey's counterclaim for storage fees.

HOLDING

(1) Because the truck had not been fully restored, and because an expert witness testified the original valuation of the truck was correct, the circuit court did not err in its valuation of the truck. (2) Because Stratton did not apply to either the circuit court or appellate court for a stay, the argument of contempt was without merit. (3) Because McKey filed the counterclaim for storage fees outside the three-year statute of limitations, the counterclaim was untimely and the circuit court erred by awarding storage fees. Therefore, the Supreme Court affirmed in part and reversed in part the judgment of the Amite County Circuit Court.

Affirmed in Part & Reversed in Part - 2019-CP-00822-SCT (July 30, 2020)

Opinion by Presiding Justice Kitchens

Hon. Forrest A. Johnson Jr. (Amite County Circuit Court)

Pro se for Appellant - *Pro se* for Appellee

Briefed by [Morgan Hart](#)

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SUPREME COURT - ORDERS

DAVIS V. STATE

ORDER

ORDER

Kevin Terrence Davis filed an Application for Leave to Proceed in the Trial Court. Because Davis's claim related to the peremptory strike of a juror was rejected both in the direct appeal and in Davis' first petition for post-conviction relief, the claim was barred by res judicata. Because Davis presented no arguable basis for his claims and no exception to the procedural bar exists, the Supreme Court denied the petition. Because Davis raised frivolous claims in his successive petition, the Supreme Court warned that future frivolous filings could result in monetary sanctions or in restrictions on his ability to file applications for post-conviction collateral relief in forma pauperis. Therefore, the Supreme Court denied the Application for Leave to Proceed in the Trial Court.

OBJECTION

Presiding Justice King agreed Davis's claim should be dismissed as moot, but argued that the claim was weak as opposed to frivolous. Further, he argued that threatening monetary sanctions for post-conviction relief in forma pauperis hinders an indigent defendant's constitutional right to appeal.

Denied - 2020-M-00480 (July 27, 2020)

Order by Justice Coleman - Objection by Presiding Justice King

Briefed by [Bess Fisher](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – JULY 28, 2020

COURT OF APPEALS - CIVIL CASES

B.G. EX REL. GRANTHAM V. BANKS

CIVIL - TORTS

CIVIL PROCEDURE - LIMITATION OF ACTIONS - FILING COMPLAINT - The filing of a complaint even without service of process tolls the three-year statute of limitations for a 120-day period

TORTS - INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS - STATUTE OF LIMITATIONS

- Pursuant to Miss. Code Ann. § 15-1-35, an intentional infliction of emotional distress claim is subject to a one-year statute of limitations

MISS. TORT CLAIMS ACT - GOVERNMENTAL ENTITY - IMMUNITY - Under the Miss. Tort Claims Act, a governmental entity is immune from claims arising from a non-obvious dangerous condition on government property, or failure to warn of such condition, absent actual or constructive notice

FACTS

In November 2013, B.G., a minor, stole a vehicle and the belongings found in it, drove the vehicle to the local high school field house, and proceeded to steal a four-wheeler in order to cut “do-nuts” on the football field. After admitting to the crimes, B.G. was arrested and detained for four days in the Leflore County, Mississippi Detention Center. On the day of his release, the field house was burglarized a second time. B.G. was arrested and detained for this event without a formal petition, the arrest based solely upon the court documents the Carroll County Youth Court issued for the first incident. In April 2015, Marion Grantham was appointed as B.G.’s legal guardian and he filed a civil suit against the Carroll County Sheriff’s Department, including certain deputies, on B.G.’s behalf. The district court dismissed the claims with prejudice. On September 19, 2017, Grantham filed a complaint in the Carroll County Circuit Court. Grantham’s complaint was also dismissed with prejudice. Grantham appealed.

ISSUES

Whether the trial court erred in dismissing Grantham’s complaint based on the running of the applicable statutory limitations.

HOLDING

Because Grantham’s complaint was filed after the applicable statute of limitations had run, because any remaining claims failed to satisfy the notice requirements under the Miss. Tort Claims Act, and because the defendants enjoyed governmental immunity, the circuit court did not err in dismissing the complaint. Therefore, the Court of Appeals affirmed the judgment of the Carroll County Circuit Court.

Affirmed - 2019-CA-00894-COA (July 28, 2020)

Opinion by Judge Westbrook

Hon. George M. Mitchell, Jr. (Carroll County Circuit Court, First Judicial Dist.)

Andy Turner Arant Jr., Preston Ray Garrett, & Jesse Marion McRight III for Appellant - Mark Kevin Horan, Daniel Judson Griffith, J. Rhea Tannehill Jr. & Jacob Bystrom Jordan for Appellees

Briefed by [Jacob Hamm](#)

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HESLER V. ALCORN CTY. CORR. FACILITY

CIVIL - STATE BOARDS & AGENCIES

ADMINISTRATIVE LAW - APPEALS - FILING - Pursuant to Miss. Code Ann. § 47-5-807, a party may seek judicial review within thirty days of receipt of the agency’s final decision

CONTRACTS - PRO SE PLEADING - MAILBOX RULE - Under *Easley*, a pro se pleading is considered filed when mailed by the inmate, rather than when it is received by the circuit clerk

FACTS

In 2018, Larry Chapin Hesler II, an inmate in the custody of the Mississippi Department of Corrections (“MDOC”), was issued a Rule Violation Report for fighting with another inmate. In a hearing in accordance with the MDOC’s Administrative Remedy Program, Hesler was found guilty of the violation. Following a request for review, the MDOC upheld the decision. On April 17, 2019, Hesler received notice of the MDOC’s decision. On May 14, 2019, Hesler mailed a petition for judicial review to the Alcorn County Circuit Court. The petition was filed on June 3, 2019. On

September 10, 2019, the circuit court denied the petition, citing lack of jurisdiction based on Miss. Code Ann. § 47-5-807 requiring a petition to be filed within thirty days of receiving the MDOC's decision. Hesler appealed.

ISSUE

Whether the circuit court erred in dismissing Hester's petition for judicial review as untimely filed.

HOLDING

Because Hesler mailed his petition for his judicial review within thirty days of receiving notice of the MDOC's final decision, and because Hesler failed to provide MDOC with notice of his petition, Hesler's petition was not untimely filed but the circuit court lacked personal jurisdiction. Therefore, the Court of Appeals vacated and remanded the judgment of the Alcorn County Circuit Court.

Vacated & Remanded - 2019-CP-01582-COA (July 28, 2020)

Opinion by Judge Westbrook

Hon. Paul S. Funderburk (Alcorn County Circuit Court, First Judicial Dist.)

Pro se for Appellant - William Hull Davis Jr. for Appellee

Briefed by [Schyler Burney](#)

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KINNEY V. HARRISON CTY. BD. OF SUPERVISORS

CIVIL - STATE BOARDS & AGENCIES

ADMINISTRATIVE LAW - APPELLATE REVIEW - AGENCY CONCLUSIONS - An agency's conclusions must remain undisturbed unless the agency's order (1) is not supported by substantial evidence; (2) is arbitrary or capricious; (3) is beyond the scope or power granted to the agency; or (4) violates one's constitutional rights

ADMINISTRATIVE LAW - APPELLATE REVIEW - CONDITIONAL USE PERMITS - The grant of a conditional use permit with imposed conditions is tantamount to a finding of fact that required elements for a conditional use permit were answered and found in favor of the applicants

ADMINISTRATIVE LAW - APPELLATE REVIEW - BURDEN OF PROOF - Under *Perez*, the party challenging the governing body bears the burden of proof showing that the decision rendered is arbitrary, capricious, discriminatory, or beyond the legal authority of the city board, or unsupported by substantial evidence

FACTS

In August 2015, Dennis Ratcliff applied to the Harrison County Planning Commission ("the Commission") for a conditional use permit to place a manufactured home on his property. A month later, the Commission granted a conditional use permit. The Commission explained that the conditional use permit was valid for six months from date of issuance and variances and, unless the Commission otherwise specified, would be void if the project had not commenced within one year of approval. Ratcliff was not prepared to place a manufactured home on his property until May 2017 and sought an extension. He stated that he was seeking the extension for a "double wide mobile home." The Commission granted an extension of his original permit. Henry Kinney, a Harrison County resident, appealed the Commission's decision to the Board of Supervisors of Harrison County ("the Board"). The Board approved the appeal and sent the case back to the Commission for a new hearing. Kinney appeared at the hearing in opposition to the extension. After the Commission had heard all of the testimony and reviewed the record, the Commission again granted Ratcliff an extension. Kinney appealed to the Board, and the Board voted three to one to dismiss the appeal. Kinney then appealed to the circuit court, and it affirmed the Board's decision and denied Kinney's motion for a new trial. Kinney appealed.

ISSUES

Whether the trial court erred in affirming (1) that the Board did not exceed its authority in granting a conditional use permit for a manufactured home; (2) the Board was not required to make specific findings of fact because it imposed

conditions with the granting of the conditional use permit; and (3) the Board's decision was supported by substantial evidence.

HOLDING

(1) Because Ratcliff's original application exclusively used the term "manufacturing home," and because Ratcliff requested an extension of the original permit, the trial court properly affirmed that the Board never granted an impermissible conditional use permit for a mobile home and the Board did not exceed its authority in granting a conditional use permit for a manufactured home. (2) Because the Board considered many of the eight provisions required, and because the Board granted the permit under the condition it be used exclusively for a manufactured home, which is tantamount to a finding of fact that the required elements were properly met, the trial court did not err by affirming the Board did not have to make specific findings of facts. (3) Because the Board based its decision on its thorough review of the testimony, evidence from both sides, and the Board members' personal knowledge, the decision was fairly debatable and not arbitrary and capricious and the trial court did not err by affirming the Board's decision to grant the conditional use permit. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Circuit Court.

Affirmed - 2019-CC-00909-COA (July 28, 2020)

Opinion by Judge McCarty

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

Pro se for Appellant - Tim C. Holleman & Hollis Taylor Holleman for Appellee

Briefed by [Mackinlee Rogers](#)

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TURNAGE V. BROOKS

CIVIL - REAL PROPERTY

CIVIL PROCEDURE - JURISDICTION - COUNTY COURT - Pursuant to Miss. Code Ann. § 9-9-21, county courts have exclusive jurisdiction over matters of unlawful entry and detainer

FAMILY LAW - JURISDICTION - SUPPORT - The court where the action commenced is granted concurrent jurisdiction under Miss. Code Ann. § 9-9-15 over paternity actions regarding the enforcement of orders awarding custody, necessary support, and maintenance

CONTRACTS - UNJUST ENRICHMENT - REAL PROPERTY - Pursuant to Miss. Code Ann. § 89-7-5, when there is no contract a landlord may maintain an action to recover reasonable satisfaction for the use and occupation of the lands held and enjoyed by another

CONTRACTS - UNJUST ENRICHMENT - REAL PROPERTY - Pursuant to Miss. Code Ann. § 11-25-111, in an action for arrears of rent, a landlord may claim and establish by evidence reasonable compensation for the use and occupation of the land

FACTS

Ellis Turnage bought property to provide housing to Mary Brooks and their children, Ellis and Alex Brooks. Mary filed an action in the Bolivar County Chancery Court to adjudicate paternity and establish child support. The chancery court awarded child support and ordered Turnage to pay a percentage of Alex's college expenses, including housing. The chancery court also concluded that Turnage's allowing the family to reside at the property was a gift not to be considered for credit towards child support. Turnage attempted to evict the Brookses twice and failed. In 2016, Turnage filed a complaint, seeking monetary damages for unlawful entry and detainer in the County Court of Madison County. The county court ordered that Alex was entitled to the property because housing was part of Turnage's college expense responsibilities. Turnage filed a motion for reconsideration, which the county court denied. Turnage also filed a notice of appeal with the Madison County Circuit Court, which affirmed the county court's decision. Turnage appealed.

ISSUES

Whether the county court erred in (1) finding Alex was entitled to possession of the property until May 31, 2018 and (2) denying Turnage's request for monetary damages.

HOLDING

(1) Because the chancery court retained continuing jurisdiction over the support and maintenance issues under Miss. Code Ann. § 93-9-15, because Alex Brooks had housing at college, and because Turnage's allowing the Brookses to reside at the property was a gift separate from Turnage's support obligations, the county court erred in allowing Alex to maintain possession of the property in addition to his college housing. (2) Because Turnage may be able to establish by evidence reasonable compensation for the use of the property under Miss. Code Ann. § 11-25-111, the county court erred in denying Turnage's request for monetary damages. Therefore, the Court of Appeals reversed and remanded the judgment of the Madison County Circuit Court.

Reversed & Remanded - 2019-CA-00522-COA (July 28, 2020)

Opinion by Chief Judge Barnes

Hon. Steve S. Ratcliff III (Madison County Circuit Court)

Tamekia Rochelle Goliday for Appellant - *Pro se* for Appellees

Briefed by [Mckenzie Williamson](#)

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WILDMAN V. WILDMAN

CIVIL - DOMESTIC RELATIONS

FAMILY LAW - ALIMONY - ARMSTRONG FACTORS - Pursuant to *Armstrong v. Armstrong*, twelve factors must be considered in allocating alimony: (1) the income and expenses of the parties; (2) the health and earning capacities of the parties; (3) the needs of each party; (4) the obligations and assets of each party; (5) the length of the marriage; (6) the presence or absence of minor children in the home, which may require that one or both of the parties either pay or personally provide, child care; (7) the age of the parties; (8) the standard of living of the parties, both during the marriage and at the time of the support determination; (9) the tax consequences of the spousal support order; (10) fault or misconduct; (11) wasteful dissipation of assets by either party; or (12) any other factor deemed by the court to be 'just and equitable' in connection with the setting of spousal support

FAMILY LAW - CHILD SUPPORT - STATUTORY GUIDELINES - According to Miss. Code Ann. § 43-19-101, the percentage of adjusted gross income that should be awarded for child support for two children is twenty-percent

FAMILY LAW - CUSTODY - FINAL AUTHORITY - The custodial parent may determine the child's upbringing, including education and health, and such discretion is inherent in custody

FAMILY LAW - MINOR-CHILD TAX DEDUCTION - LOUK FACTORS - Pursuant to *Louk v. Louk*, five factors must be considered in determining which party claims the minor children for tax purposes: (1) the value of the exemption at the marginal tax rate of each parent; (2) the income of each parent; (3) the age of the children and how long the exemption will be available; (4) the percentage of the cost of supporting the children borne by each parent; and (5) the financial burden assumed by each parent under the property settlement in the case

FACTS

Dan and Jenney Wildman married in 2003 and, due to Dan's infidelity, consented to divorce in 2018. The parties agreed their two minor children were to live in the marital home with Jenney. Dan was a certified registered nurse anesthetist and made approximately \$10,049.40 a month. Jenney worked part time as a nurse, but had training as an intensive care nurse and as a pre-operative and post-operative nurse. She earned approximately \$1,726.34 a month. The chancery court ordered Dan to pay \$3,000 a month in alimony, as well as lump-sum alimony in the amount of \$55,000, and \$1,800 a month in child support. The chancery court also determined that a Mississippi Tax Commission Credit Union account ("MSTC account") bearing both Jenney's name and her father's name was not considered part of Jenney's assets and, therefore, was not considered a factor in calculating alimony. Dan's requests to have visitation

every fifth weekend and phone calls every night was denied, but he was granted visitation every other fifth weekend and three phone calls a week. The chancery court granted both Dan and Jenney the right to claim one child for tax purposes. Dan filed a motion to alter or amend the judgment, which the chancery court denied. Dan appealed.

ISSUES

Whether the chancery court erred in (1) calculating Dan's monthly periodic alimony payment; (2) calculating Dan's monthly child support payment; (3) determining Dan's limitations on visitation with the minor children; (4) determining which party may claim the minor children for tax deductions; and (5) granting Jenney final authority to make final health, education, and welfare decisions for the minor children.

HOLDING

(1) Because Jenney had the training and ability to double her income by working full time, because paying \$3,000 a month in alimony, combined with the lump-sum alimony and his monthly child support payments, would not leave Dan with enough income to meet his basic needs, and because the MSTC account bearing the names of both Jenney and Jenney's father could be included in Jenney's assets, the \$3,000 monthly alimony payment was improper. (2) Because the monthly child support payment, standing alone, did not exceed the twenty-percent threshold of the statutory child-support guidelines, the \$1,800 monthly child support was properly awarded. (3) Because the chancery court's order allowed for liberal visitation, visitation was properly awarded. (4) Because both parties benefited by claiming one child as a dependent, child tax benefits were properly awarded. (5) Because Jenney had more frequent care and physical custody of the children, the right to make final health, education, and welfare decisions was properly awarded to Jenney. Therefore, the Court of Appeals affirmed in part and reversed and remanded in part the judgment of the Lauderdale County Chancery Court.

CONCURRENCE IN PART/DISSENT IN PART

Chief Judge Barnes dissented with the majority's reversal of the monthly alimony payment. Judge Barnes argued the \$3,000 a month alimony payment should not have been reversed because the chancellor used his discretion and considered Dan's infidelity when awarding alimony.

Affirmed in Part; Reversed & Remanded in Part - 2018-CA-01540-COA (July 28, 2020)

En Banc Opinion by Judge Lawrence - Concurrence in Part and Dissent in Part by Chief Judge Barnes

Hon. Jerry G. Mason (Lauderdale County Chancery Court)

Kacey Guy Bailey & J. Richard Barry for Appellant - Jason Edwin Weeks for Appellee

Briefed by [Kathleen Workman](#)

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COURT OF APPEALS - CRIMINAL CASES

DIXON V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - JURY SELECTION - *BATSON* CHALLENGE - A *Batson* challenge is a three-step process in which the defendant bears the initial burden: (1) the defendant must make out a prima facie case by showing that the totality of the relevant facts gives rise to an inference of discriminatory purpose; (2) once the defendant has made out a prima facie case, the burden shifts to the State to explain adequately the racial or gender exclusion by offering permissible, gender-neutral justifications for the strikes; and (3) if a gender-neutral explanation is tendered, the trial court must then decide whether the opponent of the strike has proved purposeful gender discrimination.

CRIMINAL PROCEDURE - *BATSON* CHALLENGE - PRIMA FACIE CASE - To establish a prima facie case of gender-based discrimination in the selection of jurors pursuant to *Batson* and *J.E.B.*, a defendant must show that the facts and any other relevant circumstances raise an inference that the prosecution excluded potential jurors on the basis of their gender

CRIMINAL PROCEDURE - JURY SELECTION - VOIR DIRE - Although a defendant is not entitled to a jury of any particular composition, a defendant may show a prima facie case of discrimination by demonstrating that the percentage of peremptory strikes exercised on members of the protected class was significantly higher than the percentage of members of the protected class in the venire

FACTS

While on patrol, Sheriff's Deputy Scott Smith saw Matthew Dixon driving a vehicle. Deputy Smith knew that Dixon's driver's license was suspended, so he activated his lights to pull Dixon over. At trial, Deputy Smith testified that Dixon sped up to elude the traffic stop. After a two-mile chase, Deputy Smith caught up with Dixon and used his front bumper to tap Dixon's bumper. Dixon's vehicle was sent into a ditch and Deputy Smith took Dixon into custody. A Forrest County grand jury indicted Dixon for one count of felony eluding law enforcement in violation of Miss. Code Ann. § 97-9-72(2). When trial began, the State used five of its six peremptory strikes on female venire members. Dixon's attorney raised a *Batson* challenge pursuant to *J.E.B. T.B.*, alleging the prosecution purposefully discriminated against women. The trial court ended the challenge after ruling that Dixon failed to show the prosecution used its challenges in a discriminatory manner. The final jury included eight women. Dixon was convicted as charged and sentenced to serve three years. Dixon filed a motion for a JNOV or alternatively, a new trial. The trial court denied the post-trial motion. Dixon appealed.

ISSUE

Whether the trial court erred in concluding that Dixon failed to establish a prima facie case of discrimination.

HOLDING

Because the jury panel at the time of Dixon's *Batson* challenge included five female jurors and the prosecution exercised five peremptory strikes on women, and because the number of women on Dixon's petit jury exceeded the female makeup of the venire, Dixon was unable to show that the peremptory strikes exercised on members of the protected class were significantly higher than the percentage of members of the protected class in the venire and the trial court did not err in concluding that Dixon failed to establish a prima facie case of discrimination. Therefore, the Court of Appeals affirmed the judgment of the Forrest County Circuit Court.

Affirmed - 2019-KA-01050-COA (July 28, 2020)

Opinion by Judge Westbrook

Hon. Jon Mark Weathers (Forrest County Circuit Court)

Justin Taylor Cook (Pub. Def. Office) for Appellant - Billy L. Gore (Att'y Gen. Office) for Appellee

Briefed by [Rachel Fewell](#)

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THAMES V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - APPELLATE REVIEW - REVERSIBLE ERROR - A trial court's admission or exclusion of evidence is reviewed for an abuse of discretion and is reversible only if the error adversely affects a substantial right of a party

EVIDENCE - ADMISSIBILITY - HEARSAY - Hearsay is a statement that the declarant does not make while testifying at the current trial or hearing, offered in evidence to prove the truth of the matter asserted in the statement

EVIDENCE - HEARSAY - EXCEPTIONS - Testimony about information a witness receives is not hearsay if it is offered to explain a subsequent course of action of the witness based on that information

CRIMINAL PROCEDURE - APPELLATE REVIEW - ERROR PRESERVATION - Issues not raised below may not be raised for the first time on appeal

FACTS

In August 2018, Patrick Burns entered the Piggly Wiggly in Summit, pointed his gun at a store employee, and demanded the employee and assistant manager, Joshua Thames, put the store’s money in a black duffle bag. They complied. Officer William Harris arrived soon after, noticed suspicious parking lot and store conditions, and decided to perform a business check. Officer Harris saw Thames unloading cash from a store safe and pounded on the glass door until Thames reluctantly let him in. Officer Harris discovered Burns in robber attire holding a nine-millimeter handgun. Burns relinquished his handgun and was arrested. Officer Harris discovered that Thames lived with Burns, which led him to remark that this was an “inside job.” At trial, Burns testified that he planned the robbery with Thames, who was subsequently charged with conspiracy and armed robbery. Thames testified in his own defense. Defense counsel asked Thames about his instructions as assistant manager regarding robberies, as well as the procedure for counting money in the manager’s office. The State objected to the testimony as hearsay and the trial court sustained the objections. Thames was found guilty of conspiracy and armed robbery and sentenced to twenty years. Thames appealed.

ISSUE

Whether the trial court erred and prejudiced Thames by sustaining the State’s objections to Thames’s testimony as hearsay.

HOLDING

Because any argument that the trial court erred in sustaining Thames’s testimony as hearsay was not raised before the trial court, because the information defense counsel sought to elicit was established by Thames’s or other witnesses’ testimony, and because none of his substantial rights were adversely affected, such arguments were waived even though the testimony was ultimately not hearsay, Thames’s defense was not prejudiced, and the trial court did not create reversible error. Therefore, the Court of Appeals affirmed the judgment of the Pike County Circuit Court.

Affirmed - 2019-KA-00992-COA (July 28, 2020)

En Banc Opinion by Chief Judge Barnes

Hon. David H. Strong Jr. (Pike County Circuit Court)

George T. Holmes (Pub. Def. Office) for Appellant - Scott Stuart (Att’y Gen. Office) for Appellee

Briefed by [Jack Hall](#)

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