

MISSISSIPPI SUPREME COURT DECISIONS – AUGUST 18, 2016

SUPREME COURT - CIVIL CASES

CITY OF JACKSON V. JORDAN

CIVIL – OTHER

PROPERTY - CONVEYANCES – MINORITY - A deed conveyed by a minor is voidable at his option, and he may, by his actions, affirm the deed upon majority

CIVIL PROCEDURE – MOTION TO DISMISS – APPEAL - Pursuant to Miss. Code Ann. § 11-51-75, the ten-day statutory limit in which to appeal a decision rendered by municipal authorities is both mandatory and jurisdictional; when an appeal of a decision rendered by municipal authorities is not perfected within the statutory time constraint of ten days, no jurisdiction is conferred upon the appellate court, i.e., the circuit court, but when notice to appear at a hearing is deficient, the remedy of appeal provided for in § 11-51-75 is not exclusive

CONSTITUTIONAL LAW – DUE PROCESS – NOTICE - An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections

CONSTITUTIONAL LAW – SOVEREIGN IMMUNITY – EXEMPTIONS - Sovereign immunity does not protect the city from claims based on constitutional violations

CIVIL PROCEDURE DAMAGES – BURDEN OF PROOF - The plaintiff bears the burden of going forward with sufficient evidence to prove their damages by a preponderance of the evidence

FACTS

When the City of Jackson was unable to effect notice on Willie B. Jordan by certified mail that his property was subject to condemnation and demolition, the city sought to effect notice by publication. Notice of hearing was posted on the house and published in *The Clarion-Ledger*, rescheduling the hearing to November 7, 2006. The house was demolished on June 11, 2007. Pursuant to the Mississippi Tort Claims Act, Jordan filed a claim against the city for constitutional due process violations. The city filed a motion for summary judgment. The city also filed a 12(b)(6) motion pursuant to § 11-51-75 for time-barred appeal. The trial court granted the city summary judgment. Jordan filed a motion to reconsider, which was granted. Subsequently, the city learned during Jordan’s deposition that he had acquired the property from his nephew while the nephew was a minor. The city filed a second motion for summary judgment, claiming Jordan lacked standing, as his interest in the property was premised on a “void” deed. The trial court denied the city’s motion, finding the conveyance voidable. In a bench trial, Jordan submitted receipts claiming various damages. The trial court entered a judgment for Jordan in the amount of \$12,513.53. The city appealed.

ISSUES

(1) Whether the trial court erred in failing to dismiss because Jordan lacked standing. (2) Whether the trial court erred in failing to dismiss because Jordan failed to timely appeal pursuant to § 11-51-75. (3) Whether the trial court erred in denying the city’s motion for summary judgment based on the city’s claim of immunity arising out of legislative or judicial action or inaction, or administrative action or inaction of a legislative or judicial nature. (4) Whether the trial court erred in its calculation and assessment of damages.

HOLDING

(1) Because the now-of-age grantor of the property had not sought to avoid the previously executed deed and has ratified it by affidavit, the trial court did not err in finding Jordan had standing to file his claim. (2) Because the city’s notice failed to provide the statutorily required two-weeks’ notice, the period of time which the Legislature has deemed adequate under

§11-51-75, the statute's time-bar is inapplicable and the trial court did not err in failing to dismiss for lack of jurisdiction. (3) Because the city did not provide Jordan actual notice of the hearing prior to its taking place, violating its right to due process, the trial court did not err in denying the city's motion for summary judgment. (4) Because the city waived the issue of the proper method of determining damages by failing to preserve the issue at trial and on appeal, the trial court did not abuse its discretion in its determination of damages.

Affirmed - 2013-CA-02100-SCT (August 18, 2016)

Opinion by Justice Randolph

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

James Richard Davis, Jr. & Monica Davis Joiner for Appellant - B. Blake Teller for Appellee

Briefed by [Daniel E. Smith IV](#)

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EWING V. NEESE

CIVIL - OTHER

CIVIL - SEALED DOCUMENTS - DISCRETION TO REFUSE ACCESS - Courts have discretion to seal and refuse access to documents where there exists a legal basis to do so

PUBLIC POLICY - CONFIDENTIALITY OF SETTLEMENTS - PURPOSE OF SEALING - Confidentiality agreements and sealing orders are not intended to prevent individuals from obtaining information about cases in which they participated; the purpose for an order sealing documents is to prevent public dissemination of the litigation and settlement

FACTS

Tommy Ewing was the appointed guardian of his minor son Tamarcus Ewing after a motor vehicle accident in 2002 that resulted in severe injuries to Tamarcus and the death of Tamarcus's mother. Tommy filed a personal injury and wrongful death suit against multiple defendants. The parties settled the case, and the Noxubee County Chancery Court authorized the acceptance of the settlement and sealed the guardianship file in 2003. In 2006, the Noxubee County Chancery Court transferred Tamarcus's guardianship proceeding to the Lowndes County Chancery Court, with the case to remain sealed. In 2010, Tommy was removed as guardian of Tamarcus's estate for misappropriation of the minor's funds. In 2014, Tommy sent a letter to the Lowndes County Chancery Court Clerk, Neese, requesting a copy of the 2003 settlement documents. Tommy named Neese as respondent in his petition seeking unredacted copies of the settlement documents. The chancellor dismissed the chancery court clerk, Neese, as not a proper party. The Lowndes County Chancery Court dismissed the petition and denied Tommy's request for unredacted copies of the 2003 settlement records. Tommy appealed.

ISSUES

Whether (1) the chancery court file was ever sealed; (2) Tommy was entitled to the settlement documents.

HOLDING

(1) Because, the parties in the personal injury and wrongful death action stipulated to and agreed to seal the estate case's file, the file was properly sealed. (2) Because Tommy was guardian of Tamarcus's estate he was a participant in the case and was entitled to access the sealed settlement documents. Therefore, the Supreme Court reversed the Lowndes County Chancery Court's ruling denying Tommy a copy of the settlement documents and remanded the case for further proceedings.

DISSENT

Presiding Justice Randolph argued that the chancellor's ruling was not an abuse of discretion because no reasonable chancellor would entertain a suit, against his or her own clerk, praying for the clerk to contravene an order issued by the court. Presiding Justice Randolph further stated that Tommy's mismanagement of Tamarcus's funds and removal as guardian indicated that Tommy made his request with unclean hands and had no colorable interest in any pending

litigation. Presiding Justice Randolph would affirm the judgment of the Lowndes County Chancery Court and remand the case for a hearing on sanctions and attorney fees.

Reversed & Remanded - 2014-CA-01555-SCT (Aug. 18, 2016)

En Banc Opinion by Presiding Justice Dickinson - Dissent by Presiding Justice Randolph

Hon. Dorothy Winston Colom (Lowndes County Chancery Court)

Roberta Lynn Haughton for Appellant - Courtney Bradford Smith for Appellee

Briefed by [Allison Bruff](#)

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KINNEY V. S. MISS. PLANNING & DEV. DIST., INC.

CIVIL - OTHER

PUBLIC RECORDS ACT - PUBLIC BODIES - Miss. Code Ann. § 25-61-3 states that public bodies are entities created by the Mississippi Constitution, statute, or executive order

JUDICIAL CONDUCT - RECUSAL - BURDEN OF PROOF - On appeal, the presumption that the trial judge was unbiased and qualified can be overcome only by showing beyond a reasonable doubt that the judge was biased or unqualified

CIVIL PROCEDURE - INTERVENTION - INTEREST - An intervening party must show more than a mere economic interest

FACTS

Southern Mississippi Planning and Development District (“District”) had a closed-door selection of its new executive director. Henry Kinney filed record requests under the Public Record Act regarding the new executive director. After District failed to produce the records, Kinney filed a declaratory judgment for the District as a public agency and the invalidity of the hiring of the executive director. District, joined by Mississippi Association of Planning and Development District, Inc. (“MAPDD”), filed motions for summary judgment. The trial court granted the motions for summary judgment. Kinney appealed.

ISSUES

Whether (1) the evidence establishes that the District is a public body subject to certain Mississippi statutes regulating public and governmental bodies, (2) the chancery court erred in relying exclusively on Attorney General Opinions and ignored statutory language and documents which establish that the District is a public body subject to certain Mississippi statutes regulating public governmental bodies, (3) the deposition of Lynn Cartlidge supports a finding that the District is a public body subject to certain Mississippi statutes regulating public governmental bodies, the District’s status as a non-profit corporation prohibits any consideration of said District as a public or governmental body, (4) the Mississippi Supreme Court erred in denying Kinney’s Motion for Recusal, (5) the chancery court erred by granting intervention to MAPDD.

HOLDING

(1) Because the Mississippi Constitution, statute, or executive order did not create the District, the evidence does not establish that the District is a public body. (2) The chancery court did not err in relying exclusively on Attorney General Opinions. (3) The deposition of Lynn Cartlidge does not support a finding that the District is a public body. (4) Because Kinney did not overcome the presumption by showing beyond a reasonable doubt that the judge was biased or unqualified, the Mississippi Supreme Court did not err in denying Kinney’s Motion for Recusal. (5) Because MAPDD showed its interest was its status as the “trade organization” for all districts in Mississippi, the chancery court did not err in granting intervention. Therefore, the Supreme Court affirmed the judgment of the Harrison County Chancery Court.

CONCURRENCE

Chief Justice Waller agreed with the Court's rulings on the issues of recusal and intervention. He dissented with the majority's decision that the District was not a public agency.

Affirmed - 2015-CA-01177-SCT (August 18, 2016)

Opinion by Justice Coleman - Concurrence by Chief Justice Waller

Hon. Sanford R. Steckler (Harrison County Chancery Court)

Michael Adelman & Donald Raferty for Appellant - Hugh D. Keating, Je'Nell Blocher Blum, & James H. Herring for Appellees

Briefed by [Jonathan Barnes](#)

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LAGNIAPPE LOGISTICS, INC. v. BURAS

CIVIL-CONTRACT

CONTRACTS - CONSIDERATION - SUFFICIENCY OF AGREEMENT - A contract lacking consideration does not require a claim invalidating such a contract

CONTRACTS - STATUTE OF LIMITATIONS - INVALIDATION OF A CONTRACT - A claim for unjust enrichment is not subject to a statute of limitations when no contract ever existed

FACTS

Carlos Rodriguez and Scott Buras were co-founders of Lagniappe Logistics in 2004. In the following years, the business relationship of the two deteriorated, ultimately resulting in Buras' departure from the business in 2013. Buras then filed a suit for unjust enrichment against Rodriguez and Lagniappe. Rodriguez moved to have the claim dismissed, arguing that the statute of limitations of three years had expired and that the claim was time barred. Buras responded, arguing that as a result of the contract lacking the exchange of consideration, no contract existed. The Chancery Court ruled in favor of Buras. Rodriguez appealed

ISSUES

Whether the trial court erred in dismissing Defendant's motion to dismiss by recognizing that no contract had existed between the two parties.

HOLDING

Because there was no agreed upon contract and no exchange of consideration, there was no need for plaintiff to file a claim to invalidate the agreement. As no agreement had existed, there was no time preclusion after three years, as the purported agreement required no action. The Supreme Court determined that while plaintiff may ultimately fail to show that there was no agreed upon exchange of consideration, there was nothing in the complaint to suggest that there was no doubt that plaintiff could prove that his claim was not time barred. Therefore, the Supreme Court of Mississippi affirmed the judgment of the Hinds County Chancery Court.

DISSENT

Justice Maxwell argued that taking the face of the complaint as fact and taking Buras' allegations as true demonstrated that Buras' claim was 5 years expired. Maxwell argued that the language of a 2006 agreement between Rodriguez and Buras expressed an intention and expression of the exchange of consideration. Maxwell explained that Buras' claim that there was no consideration is flawed in that Buras waited eight years to express a lack of consideration, years after the agreement expressing such purported consideration. Maxwell argues that while the contractual presumption was rebuttable, such a rebuttal was still subject to time-barred restrictions, which had passed for Buras.

Affirmed - 2014-IA-01090-SCT (Aug. 18, 2016)

En Banc Opinion by Justice Dickinson - Dissent by Justice Maxwell

Hon. Denise Owens (Hinds County Chancery Court)

Joshua J. Wiener for Appellant - Andrew S. Harris for Appellee

Briefed by [Horacio Hernandez](#)

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SUPREME COURT - CRIMINAL CASES

CLEMONS V. STATE

CRIMINAL - FELONY

CRIMINAL - DRIVING UNDER THE INFLUENCE - ABSENCE OF EVIDENCE - Miss. Code § 63-11-30(1)(a), which makes it unlawful for anyone to operate a vehicle “under the influence of intoxicating liquor,” comes into play primarily when there were no accurate test results, where an individual tested below the legal limit, or where the test was refused

CRIMINAL - DRIVING UNDER THE INFLUENCE - SUFFICIENT EVIDENCE - Evidence of slurred speech, bloodshot eyes, or erratic driving can constitute sufficient evidence of impairment to support a conviction under Miss. Code § 63-11-30(1)(a)

FACTS

Despite no relevant readings from the Intoxilyzer machine, the trial court found Clemons guilty of his third offense of driving under the influence of alcohol based on Officer McDade’s testimony that Clemons was driving erratically, smelled of alcohol, and slurred his speech. Clemons entered a motion for a new trial because he believed the verdict was against the overwhelming weight of the evidence, arguing that his testimony and the testimony of another officer contradicted Officer McDade’s opinion that Clemons was driving under the influence. The trial court denied the motion. Clemons appealed.

ISSUE

Whether the trial court erred in denying Clemons’ motion for a new trial.

HOLDING

Because the officer’s testimony of Clemons’ slurred speech, bloodshot eyes, and erratic driving is sufficient evidence under Mississippi’s statute defining driving under the influence, Clemons was not entitled to a new trial. Therefore, the Supreme Court affirmed the verdict of the Kemper County Circuit Court.

Affirmed - 2015-KA-00742-SCT (Aug. 18, 2016)

Opinion by Chief Justice Waller

Hon. Robert Walter Bailer (Kemper County Circuit Court)

Benjamin A. Suber & George T. Holmes for Appellant - Alicia M. Ainsworth for Appellee

Briefed by [Spencer Newman](#)

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ROBERSON V. STATE

CRIMINAL - FELONY

JURY INSTRUCTIONS - CIRCUMSTANTIAL EVIDENCE - LIMITATIONS - While the law provides a criminal defendant the right to have jury instructions which present his theory of the case, that right is limited in that the court is allowed to refuse an instruction which incorrectly states the law, is covered fairly elsewhere in the instructions, or is without foundation in the evidence

EVIDENCE - DUTY TO PRESERVE EVIDENCE - IN GENERAL - The State's duty to preserve evidence is limited to evidence that is expected to play a significant role in the appellant's defense

EVIDENCE - DUTY TO PRESERVE EVIDENCE - CONSTITUTIONALLY SIGNIFICANT ROLE - To play a constitutionally significant role in the defense, the exculpatory nature of the evidence must have been (1) apparent before the evidence was destroyed and (2) of such nature that the defendant could not obtain comparable evidence by other reasonable means

EVIDENCE - EVIDENCE WITHHELD OR FALSIFIED - SPOILIATION INSTRUCTION - A defendant is not entitled to a spoliation instruction absent evidence that the State destroyed the evidence with an intent to suppress the truth

MISTRIAL - DISCRETION OF COURT - IN GENERAL - When the trial judge determines that the error does not reach the level of prejudice warranting a mistrial, the judge should admonish the jury to disregard the impropriety in order to cure its prejudicial effect

CIVIL PROCEDURE - STANDARD OF REVIEW - SUFFICIENCY OF THE EVIDENCE - In assessing the sufficiency of the evidence under Mississippi Rule of Evidence 104(b), the trial court must consider all evidence presented to the jury

CIVIL PROCEDURE - STANDARD OF REVIEW - REASONABLE DOUBT - When this Court reviews the sufficiency of the evidence to support the jury's verdict, the Court inquires as to whether any rational trier of fact could have found the essential elements of the crime to be beyond a reasonable doubt

FACTS

Terry Roberson was convicted of the murder of Tonya Burton and for being a felon in possession of a firearm in Coahoma County Circuit Court. An officer responded to a call at Roberson's home. Roberson fled but was caught and placed under arrest. Roberson's neighbor told authorities that Roberson admitted to an altercation with his girlfriend. A bloody shirt and bloody women's shorts were found in the back yard in a garbage can and a shotgun and a number of 12-gauge shotgun shells were recovered from an overgrown grassy area behind the home. The State's pathologist said the size of the gunshot wound exceeded that of a handgun. A jury convicted Roberson in Coahoma County Circuit Court of first-degree murder and possession of a firearm by a convicted felon. Roberson appealed.

ISSUES

Whether the circuit judge erred by (1) denying Roberson's proposed circumstantial-evidence instruction, (2) failing to grant a mistrial or spoliation instruction due to a missing audiotape, (3) failing to grant a mistrial based on hearsay testimony, (4) admitting a shotgun and several shotgun shells in evidence, and (5) whether the state presented insufficient evidence to support Roberson's murder conviction.

HOLDING

(1) The trial court did not err by denying Roberson's proposed circumstantial evidence instruction because it was presented fairly elsewhere in the instructions. (2) Because it is unknown as to whether or not the exculpatory nature of the evidence was apparent before the evidence was destroyed and because no request was made to preserve the audio recording, the circuit judge did not err in failing to grant a mistrial or spoliation instruction due to a missing audiotape. (3) Because the trial judge used his discretion and concluded that the prejudice created by the statement did not warrant a mistrial, a mistrial was not necessary. (4) Because a reasonable jury could conclude that the shotgun was the murder weapon, the circuit judge did not abuse his discretion in admitting the shotgun and several shotgun shells into evidence. (5) The state did not present insufficient evidence to support Roberson's murder conviction because a reasonable juror could have found Roberson guilty beyond a reasonable doubt and to the exclusion of every reasonable hypothesis consistent with innocence. Therefore, the Mississippi Supreme Court affirmed the judgment of the Coahoma County Circuit Court.

Affirmed - 2015-KA-00968-SCT (Aug. 18, 2016)

Opinion by Justice Dickinson

Hon. Charles E. Webster (Coahoma County Circuit Court)

Azki Shah for Appellant - Ladonna C. Holland & Brenda Fay Mitchell (Att'y Gen. Office) for Appellee.

Briefed by [J. Marc McMillian](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – AUGUST 16, 2016

COURT OF APPEALS - CIVIL CASES

BOOTH V. WILLIAMS

CIVIL - MEDICAL MALPRACTICE

CIVIL PROCEDURE - SERVICE OF PROCESS - TIME EXTENSIONS - Mississippi Rule of Civil Procedure 6(b) provides that a court may extend the time a party has to act (1) for cause shown, if within the initial time period, or (2) upon a finding of excusable neglect after the expiration of the time period

CIVIL PROCEDURE - SUBSEQUENT EXTENSIONS - GOOD CAUSE - Once a party has received a first extension of time in which to serve process, a second or subsequent extension of time to effectuate service of process may be granted by the trial court only upon a showing of good cause

CIVIL PROCEDURE - GOOD CAUSE - FACTORS - The following factors should be considered in a good-cause determination: (a) the conduct of a third person, typically the process server; (b) whether the defendant has evaded service of process or engaged in misleading conduct; (c) plaintiff's diligence in effectuating service or presence of understandable mitigating circumstances; (d) pro se or in forma pauperis proceedings

FACTS

Myrtle Booth, as executor of Gladys Gardner's estate, filed a wrongful-death lawsuit against Dr. Steven C. Williams. Booth filed two ex parte motions to extend the deadline to serve process. The trial court granted Williams' motion to dismiss. Booth appealed.

ISSUE

Whether the trial court abused its discretion by setting aside its two previous orders that granted Booth extensions of time to effectuate service of process.

HOLDING

Because the record contained substantial credible evidence to support the trial court's finding that Booth failed to show good cause for her second requested extension, the trial court did not abuse its discretion by setting aside the second extension. Therefore, the Court of Appeals affirmed the judgment of the Pike County Circuit Court.

Affirmed - 2015-CA-00346-COA (Feb. 4, 2015)

Opinion by Judge Carlton

Hon. Michael M. Taylor (Pike County Circuit Court)

Janessa Emontan Blackmon for Appellant - George F. Bloss III & J. Robert Ramsay & Mary Margaret Kuhlmann for Appellees

Briefed by [Kyle Hansen](#)

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FORKNER V. STATE

CIVIL – POST CONVICTION RELIEF

CIVIL PROCEDURE - POST-CONVICTION RELIEF - SUBSEQUENT MOTIONS - Pursuant to Miss. Code Ann. § 99-39-7 and Uniform Post-Conviction Collateral Relief Act (UPCCRA), where the conviction and sentence

have been affirmed on appeal or the appeal has been dismissed, the motion shall not be filed in the trial court until an order by the Supreme Court of Mississippi grants the filing of such motion in the trial court

CIVIL PROCEDURE - POST-CONVICTION RELIEF - SUBSEQUENT MOTIONS - The failure of the movant to obtain the prior permission of the Supreme Court of Mississippi to file post-conviction-relief motions deprives the circuit court and the court of appeals authority to reach the merits of the motion

CIVIL PROCEDURE - POST-CONVICTION RELIEF - SUBSEQUENT MOTIONS - Pursuant to Miss. Code Ann. § 99-39-27(9) and the UPCCRA, the Supreme Court of Mississippi's denial of an application for leave to seek post-conviction relief in the circuit court is a final judgment and bars successive applications for relief

CIVIL PROCEDURE - POST-CONVICTION RELIEF - RULE 60(b) MOTION – Rule 60(b) is for extraordinary circumstances, for matters collateral to the merits and should not be used to relitigate cases or as a substitute for a timely appeal

FACTS

Winfred Forkner was charged as a habitual offender and sentenced to life without parole. The Court of Appeals affirmed his conviction and sentence. Later, Forker filed three applications for permission to file a motion for post-conviction relief (PCR) in trial court. The first motion was denied; the second was dismissed; and the Mississippi Supreme Court dismissed the third. Forkner then filed a motion under Mississippi Rule of Civil Procedure 60(b)(4) and (6) with the circuit court, seeking relief from the judgment. The circuit court denied Forkner's motion. Forkner appealed.

ISSUES

Whether the circuit court erred in denying Forkner's motion for relief from the judgment.

HOLDING

Because Forker's motion was not proper under Rule 60(b) and the Mississippi Supreme Court denied all requests for permission to file a PCR motion, the circuit court and the court of appeals lacked jurisdiction to consider his motion. Therefore, the Court of Appeals dismissed Forkner's appeal.

Dismissed- 2015-CP-01142-COA (August 16, 2016)

Opinion by Judge Barnes

Hon. Lillie Blackmon Sanders (Wilkinson County Circuit Court)

Pro se for Appellant - Laura Hogan Tedder (Att'y Gen. Office) for Appellee

Briefed by [Kaitlyn McMellon](#)

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KENDALL V. MAY

CIVIL -REAL PROPERTY

PROPERTY - PRESCRIPTIVE EASEMENT - PERMISSION - Where the use of a private way by a neighbor is by the expressed or implied permission of the owner, the continued use is not adverse and cannot ripen into a prescriptive right

PROPERTY - PRESCRIPTIVE EASEMENT - NEIGHBOR COURTESY - The law does not authorize courts to compel acts of neighborly courtesy in particular cases, but rather, the law encourages voluntary acts of courtesy among neighbors by making clear that such courtesies will not result in a forfeiture of property rights

PROPERTY - REMEDIES - EQUITABLE RELIEF - Equity must follow the law, but where the law provides no remedy, equity may do so.; however, since equity must follow the law, where the law prohibits a remedy, equity may not provide one either

FACTS

Kersh May and Wanda Gayle Mullen May filed a petition to establish a prescriptive easement over Coleman Road, located on Tina Mullen King and Anita Mullen Greenwood's property. The Mays also named Jimmy D. Kendall, Jr.,

Alexis K. Kendall, and Virginia Taylor Mullen, who all owned land in the area and used the gate, as defendants. Coleman road was once a public road but had been abandoned by the county and became private. The Mays used the road until 2013, when the Appellants prevented the Mays from further use. The chancellor found that the May's claim for a prescriptive easement failed; however, the chancellor ordered that the Mays be furnished a key and allowed to use the road. The defendants appealed.

ISSUE

Whether, despite the Mays' inability to establish a prescriptive easement, the chancellor had authority to order the defendants to give the Mays a key to the gate and to allow them to use the road.

HOLDING

The law grants the defendants a right to exclude others, including the Appellees, from their property. Accordingly, the chancellor had no equitable authority to order the Appellants to give the Appellees a key and access to their property. Therefore the decision of the Tallahatchie County Chancery Court was reversed and rendered.

Reversed & Rendered - 2015-CA-01548-COA (Aug. 16, 2015)

Opinion by Judge Wilson

Hon. John C. Ross Jr. (Tallahatchie County Chancery Court)

James Walker Sturdivant for Appellants - *Pro se* for Appellees

Briefed by [Blake Brookshire](#)

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PEARSON V. BROWNING

CIVIL - DOMESTIC RELATIONS

DOMESTIC RELATIONS - CONSENT JUDGEMENT - SIGNATURE REQUIREMENT - Pursuant to Uniform Rule of Chancery Court 5.03, every consent Judgment must be approved and signed by counsel for all parties to the suit who may be represented by counsel and interested in or affected thereby before being presented to the Chancellor for his signature

DOMESTIC RELATIONS - CONSENT JUDGEMENT - RECORDED PROCEEDINGS - The Mississippi Supreme Court has found that proceedings recorded by a court reporter are sufficient to prove agreement by the parties
RECUSAL - IMPARTIALITY - PRESUMPTION - The court presumes that a judge, sworn to administer impartial justice, is qualified and unbiased; to overcome the presumption, the evidence must produce a reasonable doubt about the validity of the presumption

FACTS

Dennis Pearson and Patricia Browning were granted a divorce on the ground of irreconcilable differences. In October of 2005, the Chancellor entered an order of modification to the divorce agreement signed by Browning and her attorney; but neither Pearson nor his attorney signed the order. On May 22, 2013, Browning filed a complaint for contempt based on the divorce decree of the parties. The Chancellor ruled in favor of Browning. Pearson appealed.

ISSUES

Whether the chancellor erred in (1) entering the agreed order of modification and (2) not recusing himself from the case.

HOLDING

(1) Because Pearson clearly consented to the judgement, the Chancellor's order of modification was valid. (2) Because Pearson did not present any evidence that the chancellor was biased, Pearson failed to overcome the presumption that the Chancellor was qualified and unbiased. Therefore, the Court of Appeals affirmed the judgement of the Jackson County Chancery Court.

Affirmed - 2014-CA-00790-COA (Aug. 16, 2016)

Opinion by Judge Irving

Hon. D. Neil Harris Sr. (Jackson County Chancery Court)

Dustin Norman Thomas for Appellant - E. Foley Ranson for Appellee

Briefed by [Zachary Roberson](#)

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SMITH V. WILLIAMS

CIVIL - DOMESTIC RELATIONS

FAMILY LAW - PATERNITY - FATHER'S LIABILITY - According to Miss. Code Ann. § 93-9-7, the father of a child born out of matrimony is liable to the same extent as a father of a child born in lawful matrimony

FAMILY LAW - PATERNITY - ATTORNEY'S FEES - According to Miss. Code Ann. § 93-9-45, if an order of filiation declares paternity and orders child support, the cost of the attorney's fees is taxed against the defendant and must be reasonable

FACTS

Sarah Smith filed a complaint for filiation and child support in 2009, alleging that James Williams was the father of her child born earlier that year. After paternity was established, Williams began making voluntary child-support payments of \$1,000 to Smith each month for five years. At trial in December 2014 the contested items were the amount of compensation that Smith should receive for medical expenses related to the pregnancy, back child support for a ten-month period that Williams did not pay, attorney's fees, and expenses for unique medical needs of the child. The chancellor decided that Smith was entitled to \$3,000 for the ten-month period and \$1,000 in attorney's fees, while refusing to award Smith any compensation for expenses related to the pregnancy or the child's unique medical needs. Smith appealed.

ISSUES

Whether the trial court erred in (1) refusing to award compensation for pregnancy expenses, (2) awarding only \$3,000 in back child support, (3) refusing to award expenses necessary for the child's medical conditions, and (4) awarding only \$1,000 in attorney's fees.

HOLDING

(1) Because Smith failed to offer proper proof of expenses related to the pregnancy to the court and those documents were not properly submitted into evidence, the chancellor did not err in deciding Smith was not entitled to compensation. (2) Because Smith failed to offer proper proof of expenses related to back child support, the chancellor did not err in finding there was inadequate proof of the expenses and awarding the \$3,000. (3) Because Smith failed to offer proper proof of expenses related to her child's medical conditions, the chancellor did not err in refusing to award compensation. (4) Because there is no evidence in the record in order for the chancellor to conduct his analysis, he did not err in only awarding \$1,000 in attorney's fees. Therefore, the Court of Appeals affirmed the judgment of the Rankin County Chancery Court.

Affirmed - 2015-CA-00061-COA (Aug. 16, 2016)

Opinion by Presiding Judge Irving

Hon. Kent McDaniel (Rankin County Chancery Court)

Jane E. Tucker for Appellant - B. Ruth Johnson & Michele Dawn Biegel for Appellee

Briefed by [Tony Sax](#)

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COURT OF APPEALS - CRIMINAL CASES

COOPER V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - CIRCUMSTANTIAL EVIDENCE - JURY INSTRUCTIONS - In matters where a case is based ‘purely’ on circumstantial evidence, a defendant is entitled to a two-theory instruction along with a general circumstantial evidence instruction

EVIDENCE - DIRECT EVIDENCE - EXAMPLES - Examples of direct evidence are admission or confession by the defendant to a significant element of the offense, or eyewitness testimony to a substantial part of the offense charged

APPEALS - JURY SELECTION - QUASHING - On appeal, a jury panel should not be quashed unless a defendant can show that he sustained prejudice, there was fraud or there was a flagrant violation of duty that could amount to fraud

CONSTITUTIONAL LAW - SIXTH AMENDMENT - JURY SELECTION - The exclusion of one person from a courtroom does not violate a person’s Sixth Amendment right to a public trial

FACTS

Nathaniel Cooper was arrested for dog fighting and for conspiracy to fight dogs. During the trial, the animal control sergeant testified about the dog fighting evidence found at the scene. The defense objected to numerous statements by the officer on the grounds that the State was trying to elicit expert opinion testimony. These objections were sustained. A jailhouse tape between Cooper and his brother, which contained statements that were subtle admissions to dog fighting, was admitted into evidence. At the end of the trial, the defense moved for a directed verdict, which the trial court denied. Cooper was convicted of dog fighting and conspiracy to fight dogs and sentenced to a consecutive 3 and 5-year term. Cooper brought post-trial motions, which the trial court denied. Cooper appealed.

ISSUES

Whether Cooper’s conviction and sentence should be overturned because: (1) the trial court abused its discretion in refusing to grant a proffered circumstantial-evidence instruction; (2) the trial court improperly excluded certain jurors and impeded public access to voir dire; (3) prosecutorial misconduct violated Cooper’s due-process rights and his right to a fair trial; (4) the trial court erred in allowing the State to introduce extrinsic evidence; (5) the trial court erred in failing to grant a mistrial; and (6) the evidence was insufficient to sustain a guilty verdict.

HOLDING

(1) Because physical evidence and an audio tape were entered into evidence and the case was not based on purely circumstantial evidence, the trial court did not err in refusing to grant a proffered circumstantial-evidence instruction. (2) Because jurors were only excluded for tardiness to jury duty and not based on any status or category and because the defense counsel was not sure whether all of the excluded people were arriving for voir dire, Cooper’s right to a fair trial was not violated and he did not sustain prejudice. (3) Because the trial court regularly sustained the defense’s objections to opinion testimony of the animal control officer and because the trial court instructed the jury to disregard certain statements, Cooper’s due-process rights and right to a fair trial were not violated. (4) Because items found at the scene constituted evidence used to commit and facilitate the crime of dog fighting, they were not character evidence and the issue was without merit. (5) Because a witness was arrested and charged with perjury outside of the presence of the jury, Cooper’s right to a fair trial was not violated and the trial court did not err in failing to grant a mistrial. (6) Because the State provided a jailhouse taped recording, expert testimony, and numerous photographs of the scene, the State provided sufficient evidence at trial to support Cooper’s conviction. Therefore, the Court of Appeals affirmed the judgement of the Rankin County Circuit Court.

Affirmed - 2015-KA-00355-COA (Aug. 16, 2016)

Opinion by Judge Carlton

Hon. William E. Chapman III (Rankin County Circuit Court)

Thomas Jon-William Bellinder for Appellant - Jeffrey A. Klingfuss for Appellee

Briefed by [Desire'e Martinelli](#)

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DAVIS V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - STANDARD OF REVIEW - WEIGHT OF THE EVIDENCE - A challenge to the weight of the evidence will be successful only when the verdict is so contrary to the overwhelming weight of the evidence when viewed in a light most favorable to the verdict that to allow it to stand would sanction an unconscionable injustice

CRIMINAL PROCEDURE - FIREARMS - FELON IN POSSESSION - To establish that a felon is in possession of a firearm, the state must prove that the defendant was a convicted felon and willfully possessed a firearm

CRIMINAL PROCEDURE - POSSESSION - CONSTRUCTIVE POSSESSION - Constructive possession may establish possession of contraband when evidence of actual possession is absent, and it is established by facts that warrant a finding that the defendant was aware of the presence and character of the contraband and was intentionally and consciously in possession of it

SENTENCING - POST-RELEASE SUPERVISION - PROBATION - Probation is not subject to the totality of sentence concept found in Mississippi's post-release supervision statute and no part of the time that one is on probation is considered a part of the time he or she is sentenced to serve

FACTS

Dana Owens was driving a vehicle with Joseph Davis in the front passenger seat. After pulling over the vehicle and smelling marijuana, police officers detained the occupants and searched the vehicle. The search revealed three guns, one of which was stolen. Davis's thumbprint was on the magazine of another gun. During the search, Davis told Owens that the guns were not stolen, and he also said to "leave my truck alone." Davis was a convicted felon. The trial court found Davis guilty of being a felon in possession of a firearm, which has a maximum sentence of ten years. He was sentenced to ten years in custody and five years of supervised probation. Davis appealed.

ISSUES

Whether (1) the verdict was against the overwhelming weight of the evidence and (2) Davis's sentence was illegal.

HOLDING

(1) Because there was ample evidence to show that Davis constructively possessed at least one of the guns, the verdict was not against the overwhelming weight of the evidence (2) Because the five-year-probation period was not part of Davis's actual prison sentence, his sentence was not illegal. Therefore, the Court of Appeals affirmed the judgment of the Rankin County Circuit Court.

Affirmed - 2015-KA-01047-COA (Aug. 16, 2016)

Opinion by Judge Fair

Hon. John Huey Emfinger (Rankin County Circuit Court)

George T. Holmes (Pub. Def. Office) for Appellant - Alicia Marie Ainsworth (Att'y Gen. Office) for Appellee

Briefed by [Alison Guider](#)

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MCMANUS V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - STANDARD OF REVIEW - WEIGHT OF THE EVIDENCE - The Court of Appeals will only disturb a verdict when it is so contrary to the overwhelming evidence that to allow it to stand would sanction an unconscionable injustice

CRIMINAL PROCEDURE - CREDIBILITY OF WITNESSES - JURY'S ROLE - It is well established that it is the jury's role to assess the weight and credibility of the evidence and resolve any conflicts in the evidence

CRIMINAL PROCEDURE - SEXUAL BATTERY - DATE OF THE INCIDENT - A specific date of the incident is not an element of sexual battery and thus, a vague timeline of events does not discredit a victim's testimony

FACTS

Jason McManus was charged with the sexual battery of the fifteen-year-old daughter of his current wife. They were not married at the time of the assault. During testimony, seemingly contradictory and inconsistent evidence was presented to the jury including the time frame of the offense and the victim's recanting of her accusations to various witnesses. Despite these inconsistencies, the Rankin County Circuit Court found McManus guilty. McManus made a motion for a judgment notwithstanding the verdict and for a new trial; both were denied. McManus appealed.

ISSUE

Whether the Rankin County Circuit Court erred in denying McManus's motion for a new trial because of (1) numerous inconsistencies in the evidence and (2) a vague timeline of events.

HOLDING

(1) Because it is well established that it is the jury's role to assess the weight and credibility of the evidence and resolve any inlying conflicts, the jury acted within its discretion to not give the inconsistent evidence great weight. (2) Because a specific date is not an element of sexual battery, a vague timeline of events does not discredit the victim's testimony. Therefore, the judgment of the Rankin County Circuit Court was affirmed.

Affirmed -2015-KA-00705-COA (Aug. 16, 2016)

Opinion by Judge Barnes

Hon. William E. Chapman III (Rankin County Circuit Court)

Benjamin Allen Suber (Pub. Def. Office) for Appellant - Abbie Eason Koonce (Att'y Gen. Office) for Appellee

Briefed by [Joseph Rychlak](#)

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