

**MISSISSIPPI SUPREME COURT DECISIONS – FEBRUARY 23, 2017**

**SUPREME COURT - COURT ORDERS**

**BIRKHEAD V. STATE**

**COURT ORDER**

**POST-CONVICTION RELIEF - STATUTE OF LIMITATIONS - STATUTORY EXCEPTIONS** - Miss. Code Ann. § 99-39-5 states that the exceptions to the three-year statute of limitations for a motion for post-conviction relief are as follows: (1) an intervening judicial decision of either the Mississippi Supreme Court or the United States Supreme Court that would have had an actual, adverse effect on the conviction or sentence; (2) new evidence not discoverable at the time of trial; (3) the existence of untested DNA or DNA evidence subject to additional testing; and (4) cases in which the petitioner claims that his sentence has expired or probation, parole, or conditional release has been revoked unlawfully

**POST-CONVICTION RELIEF - PROCEDURAL BAR - FUNDAMENTAL RIGHTS EXCEPTION** - The Mississippi Supreme Court has recognized a non-statutory, fundamental-rights exception to the statute of limitations for post-conviction relief, applicable when errors affect certain constitutional rights

**FACTS**

Richard Birkhead was convicted of capital murder by a Washington County jury, and the Supreme Court issued its mandate affirming his conviction and sentence on March 10, 2011. Birkhead filed, *pro se*, an Application for Leave to Proceed in the Trial Court, which the Supreme Court denied on April 25, 2013. In the Application before the court, *en banc*, Birkhead claimed that he received ineffective assistance of counsel based on his (1) trial and appellate counsel's failure to advance speedy-trial claims, (2) trial counsel's alleged conflict of interest, and (3) trial counsel's failure to protect his due process right to a competency hearing.

**ISSUE**

Whether Birkhead's claims for post-conviction relief are waived or barred by the statute of limitations.

**ORDER**

Because Birkhead's claims based on his counsel's (1) failure to advance speedy-trial claims and (2) alleged conflict of interest were waived and/or lacked an arguable basis, the Supreme Court denied the Application in part. The Supreme Court granted Birkhead's Application in part based on the claim that his counsel (3) failed to protect his due process right to a competency hearing. Therefore, the Supreme Court granted in part and denied in part Birkhead's Application.

**OBJECTION**

Justice Coleman objected to the Order granting in part Birkhead's Application because (1) the petition was barred by the statute of limitations and (2) Birkhead failed to make a substantial showing of the denial of any fundamental state or federal right. He argued that the Application before the Supreme Court was filed more than three years after the mandate issued in Birkhead's direct appeal and did not meet any of the exceptions to the statute of limitations. Justice Coleman would have denied Birkhead's Application to Proceed in the Trial Court for post-conviction relief.

**Granted - 2013-M-00330 (Feb. 22, 2017)**

En Banc Order by Justice Beam - Objection by Justice Coleman  
Briefed by [Allison Bruff](#)

**MISSISSIPPI COURT OF APPEALS DECISIONS – FEBRUARY 21, 2017**

**COURT OF APPEALS - CIVIL CASES**

**110 SOUTH STREET, LLC V. ATRIUM GENTLEMANS CLUB, INC.**

**CIVIL - REAL PROPERTY**

**REMEDIES - DAMAGES - ATTORNEY'S FEES** - Attorney's fees are a special remedy available only when expressly provided for in either a statute or contract, or where there is sufficient proof to award punitive damages

**CIVIL PROCEDURE - CHANCERY COURT - STANDARD OF REVIEW** - A Chancellor's findings are only disturbed by an appellate court when they are manifestly wrong or clearly erroneous, or if the chancellor applied an incorrect legal standard

**FACTS**

110 South Street, LLC and Atrium Gentlemans Club agreed that Atrium would pay per month to lease a property from 110 South Street, and Atrium would take possession April 1, 2014. Atrium never signed or executed this proposed lease agreement. The parties agreed that Atrium would not pay rent for the initial ninety days. In August, after Atrium failed to make payments, 110 South Street sought relief for Atrium's unpaid rent, expenses, and costs; Atrium's failure to provide proof of insurance; Atrium's failure to transfer utilities; and Atrium's failure to execute a written lease agreement. The parties entered into a forbearance agreement, which allowed Atrium to remain open for some time, in exchange for it not asserting any defenses to the prior claims. The Chancellor ordered that Atrium pay the unpaid rent. The Chancellor also found that although Atrium took possession of the property, since Atrium never signed the lease agreement, then no enforceable lease existed between the parties. The Chancellor granted 110 South Street a lien against Atrium, but the lien would be extinguished and Atrium could recover certain personal property, including all fixtures, if Atrium paid the judgment within 20 days. 110 South Street appealed and Atrium cross-appealed.

**ISSUES**

Whether the Chancellor erred in (1) failing to award 110 South Street attorney's fees and damages, (2) finding that the rental period of the property commenced on April 1, 2014, and (3) granting 110 South Street a lien on the property.

**HOLDING**

(1) Because neither the forbearance agreement nor applicable statute provided for the award of attorney's fees and because Atrium failed to assert statutory damages, the Chancellor did not err in not awarding attorney's fees or damages. (2) Because the Chancellor examined the record before him, including the testimony and arguments of both parties, the Chancellor did not err in finding that the rental period of the property commenced on April 1, 2014. (3) Because the Court of Appeals found that Atrium owed 110 South Street for rent payments beginning April 1, and no enforceable agreement between the parties existed, the Chancellor did not abuse his discretion by granting a lien on the property. Therefore, the Court of Appeals affirmed the Chancellor's judgment.

**CONCURRENCE**

Judge Wilson concurred with the majority that the Chancellor did not err by not awarding attorney's fees to 110 South Street because it did not argue that the forbearance agreement was an admission of liability for attorney's fees or specific damages

**DISSENTS**

Judge Wilson argued that the record did not support the finding that the rental period began in April because it should have begun in June as per the oral agreement between parties. Furthermore, Atrium never signed or accepted the proposed lease agreement that the rent period started in April.

Judge Barnes argued that the forbearance agreement included the provision that Atrium pay attorney's fees because 110 South Street's claims for relief included attorney's fees. Hence, the forbearance agreement barred any defenses to that claim by Atrium.

**Affirmed - 2015-CA-00882-COA (Feb. 21, 2017)**

Opinion by Judge Carlton (En Banc) - Concurrence by Judge Wilson - Dissents by Judge Wilson & Judge Barnes  
Hon. J. Dewayne Thomas (Hinds County Chancery Court, First Judicial Dist.)  
Jeffrey Dale Rawlings & Jon Jerdone Mims for Appellant - Mel J. Breeden Jr. for Appellee  
Briefed by [Morgan L. Stringer](#)

[Click here to view the full opinion](#)

## ESTATE OF GARDNER V. GARDNER

### CIVIL - WILLS, TRUSTS, & ESTATES

**WILL CONTEST - JNOV - STANDARD** - A movant is entitled to a judgment notwithstanding the verdict if the facts so considered point so overwhelmingly in favor of the movant that reasonable jurors could not have arrived at a contrary verdict

**WILL EXECUTION - TESTIMONY - SUBSCRIBING WITNESS** - The Supreme Court of Mississippi has held that the testimony of subscribing witnesses is entitled to greater weight than the testimony of witnesses who were not present at the time of the will's execution or did not see the testator on the day of the will's execution

**WILL EXECUTION - TESTIMONY - LACK OF CAPACITY** - Overly broad or generalized testimony indicating a lack of capacity will be deemed insufficient where it is contradicted by competent evidence and is obviously based upon the infirmities of advancing age rather than upon any abnormal conduct indicative of mental aberration

### FACTS

Richard Gardner died leaving a will that devised his entire estate to his wife, Mae Otha Gardner. A fire destroyed a building owned by the estate and the subsequent insurance proceeds were sufficient to pay the estate's debts and leave a surplus for Mae Otha. Richard's children filed a petition to contest the will because Richard did not sign the will and lacked testamentary capacity. A jury returned a verdict for the children on both issues. The Chancellor then granted Mae Otha's motion for judgment notwithstanding the verdict. Richard's children appealed.

### ISSUES

Whether the Chancellor erred in granting Mae Otha's motion for judgment notwithstanding the verdict.

### HOLDING

Both subscribing witnesses to the will testified unequivocally that they personally observed Richard sign the will and that he was mentally alert and capable of understanding what he was doing at the time of execution. Because the children presented no evidence that Richard lacked testamentary capacity or that he did not sign the will, the Chancellor's grant of the judgment notwithstanding the verdict was without error. The Court of Appeals affirmed the Chancellor's judgment.

**Affirmed - 2015-CA-01447-COA (Feb 21, 2017)**

Opinion by Judge Wilson  
Hon. Jon M. Barnwell (Tallahatchie County Chancery Court, First Judicial District)  
Joshua A. Turner for Appellants - William R. Sanders Jr. & Darrin Jay Westfaul for Appellee  
Briefed by [Zachary Roberson](#)

[Click here to view the full opinion](#)

## GRANTHAM V. OLD LIBERTY CEMETERY ASSOCIATION

### CIVIL - REAL PROPERTY

**PROPERTY - EASEMENTS - PRESCRIPTION** - In order to establish a claim of adverse possession, a claimant must prove by clear and convincing evidence that the possession was (1) under claim of ownership; (2) actual or hostile; (3) open, notorious, and visible; (4) continuous and uninterrupted for a period of ten years; (5) exclusive; and (6) peaceful

**PROPERTY - ADVERSE POSSESSION - PERMISSION** - A prescriptive easement is an easement obtained by adverse possession over another's land, so an owner's permission to use the easement defeats a party's claim

**TORTS - SLANDER OF TITLE - REQUIREMENTS** - Claimant must show that another has falsely and maliciously published statements that disparage or bring into question that claimant's right of title to the property, thereby causing special damage to the claimant

**CHANCELLOR - FINDINGS OF FACTS - STANDARD OF REVIEW** - A Chancellor's factual findings will not be reversed unless they are manifestly wrong or clearly erroneous

### FACTS

Cathy Grantham and the Old Liberty Cemetery Association sued each other over the title status of 1.55 acres constituting the Old Liberty Cemetery. The two cases were consolidated. The Chancellor found that Liberty Baptist Church had adversely possessed the portion of the land in dispute and granted a prescriptive easement to the Old Liberty Cemetery Association. The Chancellor also dismissed both parties' claims for slander of title. Grantham moved for a new trial, or in the alternative, for an amended judgment granting her a prescriptive easement and to confirm her slandered title claim. The Chancellor denied her motion after a hearing. Grantham appealed.

### ISSUES

Whether the Chancellor erroneously failed to (1) award her a prescriptive easement over the road running adjacent to the southern boundary line of the Cemetery; and (2) find that the actions of Grantham's sister, as an agent for the Association, rose to the level of malice necessary to support her counterclaim for slander of title.

### HOLDING

(1) Because Grantham presented no evidence of any open, notorious, or exclusive occupancy of any portion of the Cemetery property for more than ten years, and because she has permission to use the easement due to a relative buried there, she is not entitled to no greater or lesser interest in an easement than any descendent of anyone buried there. (2) Because Grantham and the Association used the same surveyor, and both requested that Sutherland plat the property in such a way as to embody their separate claims, the association did not intentionally, falsely, and maliciously publish claims of boundaries totally unsupported by any evidence. Therefore, the Court of Appeals affirmed the Chancellor's judgment.

**Affirmed - 2015-CA-01069-COA (Feb. 21, 2017)**

Opinion by Judge Fair

Hon. Edward C. Fenwick (Carroll County Chancery Court, First Judicial District)

James H. Powell III for Appellant - Jonathan Ryan Taylor & Alan D. Lancaster for Appellee

Briefed by [Jonathan Barnes](#)

[Click here to view the full opinion](#)

## HUNT V. MISSISSIPPI DEPARTMENT OF CORRECTIONS

### CIVIL - STATE BOARDS AND AGENCIES

**ADMINISTRATIVE AGENCIES - DECISIONS - UNSUPPORTED OR ARBITRARY DECISIONS** - The decision of an administrative agency shall not be disturbed unless unsupported by substantial evidence; arbitrary or capricious; beyond the agency's scope or powers; or violative of the constitutional or statutory rights of the aggrieved party

**DISMISSAL - ACTUAL CONTROVERSY AT TRIAL - CONTROVERSY EXPIRED** - Cases in which an actual controversy existed at trial, but the controversy has expired at the time of review, become moot

### FACTS

In 2008, Gary Hunt was incarcerated in the custody of the Mississippi Department of Corrections after being sentenced to serve eight years for aggravated assault. In 2013, Hunt pled guilty to possession of a controlled substance in a correctional facility and was sentenced to serve seven years – two years in the custody of the MDOC and five years' post-release supervision. On December 16, 2015, Hunt was found with a cell phone. Hunt received a Rule Violation Report five days later. After a hearing, the hearing officer determined that Hunt had violated MDOC rules against possessing contraband. His punishment was the loss of 180 days' served time. Hunt's appeals through the Administrative Remedy Program were denied. On May 4, 2016, Hunt appealed to this Court, but he was later released on probation on July 28, 2016.

### ISSUES

Whether (1) the MDOC unlawfully revoked Hunt's earned time and (2) the MDOC's decision was supported by substantial evidence.

### HOLDING

Because Hunt was released on probation, there is no actual controversy at the time of review, and the appeal is moot. Therefore, the Court of Appeals dismissed the appeal as moot.

#### **Appeal Dismissed - 2016-CP-00674-COA (Feb. 21, 2017)**

Opinion by Judge Fair

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

*Pro se* for Appellant - Antony Louis Schmidt Jr. (Att'y Gen. Office) for Appellee

Briefed by [J. Marc McMillian](#)

[Click here to view the full opinion](#)

## **JAMES V. DEDEAUX**

### **CIVIL - TORTS - OTHER THAN PERSONAL INJURY AND PROPERTY DAMAGE**

**EMPLOYMENT LAW - THE BORROWED-SERVANT DOCTRINE** - The Mississippi Supreme Court "has identified three criteria for determining whether one is a borrowed servant: (1) whose work is being performed, (2) who controls or has the right to control the workman as to the work being performed, and (3) [whether] the workman voluntarily accepted the special employment." *Gorton v. Rance*, 52 So. 3d 351, 359 (Miss. 2011)

**APPELLATE REVIEW - SUMMARY JUDGMENT - EMPLOYMENT LAW** - "Summary judgment is appropriate where a temporary employment agency assigns an employee to another employer and the employee performs the normal work of the second employer and is controlled and supervised by that employer." *N. Elec. Co. v. Phillips*, 660 So. 2d 1278, 1282 (Miss. 1995)

**EMPLOYMENT LAW - CONTRACTS** - Contrary evidence can override contractual terms saying that a worker is explicitly not a "joint employee" of the two separate companies

### FACTS

Michael James and Brian Dedeaux were working on a construction project at Keesler Air Force Base when the scissor lift Dedeaux was operating struck James, severely injuring him. At the time, James was an employee of Aladdin Construction Co., while Dedeaux was employed by Constructor Services Inc. ("CSI"). CSI had a contract with Aladdin to provide labor for the Keesler project. James filed a negligence suit against Dedeaux and CSI in the Harrison County Circuit Court. The circuit court found that Dedeaux had been "loaned" to Aladdin by CSI, limiting James to workers' compensation benefits under the exclusivity provision of the

Mississippi Workers' Compensation Law. The circuit court granted Dedeaux's and CSI's motion for summary judgment. James appealed.

### **ISSUE**

Whether the trial court erred in granting summary judgment because James was limited to workers' compensation benefits.

### **HOLDING**

Because the evidence showed, notwithstanding contractual provisions to the contrary, that Dedeaux was essentially working as an employee of Aladdin, the Court found that CSI was a temporary employment agency and that Dedeaux was working as a temporary employee of Aladdin at the time of James's injury. Dedeaux was performing the normal work of Aladdin employees, using Aladdin's tools, and was under Aladdin's control and supervision. Dedeaux voluntarily accepted the special employment. Consequently, he was a loaned servant of Aladdin at the time he injured James, and James is limited to worker's compensation benefits as his exclusive remedy. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Circuit Court.

### **DISSENT**

Judge Carlton argued that the record reflects that questions of material fact exist in this case and that the trial court erroneously construed the facts and questions of disputed fact in the light most favorable to the Appellees, the movants for summary judgment.

#### **Affirmed - 2015-CA-01791-COA - (Feb. 21, 2017)**

Per Curiam Opinion by Judge Fair - Dissent by Judge Carlton

Hon. Christopher Louis Schmidt (Harrison County Circuit Court, Second Judicial District)

Matthew Jason Sumrall, Zachary Mori Bonner, Brian Christopher Whitman, & W. Thomas McCraney III for Appellant - Myles Ethan Sharp & Robert Elliott Briggs III for Appellee.

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

[Click here to view the full opinion](#)

---

## ***COURT OF APPEALS - POST-CONVICTION RELIEF***

### **LOTT V. STATE**

#### **CIVIL - POST-CONVICTION RELIEF**

**CRIMINAL LAW - POST-CONVICTION RELIEF - REVERSAL** - When reviewing a circuit court's dismissal of a post-conviction relief motion, appellate court will only reverse a circuit court's factual finding if the findings are determined to be clearly erroneous

**CRIMINAL LAW - CRIMINAL PROCEDURE - REVOCATION OF PAROLE** - Before one released on parole may be returned to custody, the State must show that he has violated the terms and conditions of parole, of which a parolee is entitled to a written statement by the fact finders as to the evidence relied on and reasons for revoking parole

### **FACTS**

Dwight Lott was convicted of murder in 1988. In 2000, Lott received parole and was released. In 2010, Lott was arrested for sexual battery and child molestation, resulting in a revocation of his parole. Soon after, Lott filed a motion for post-conviction relief on issues related to his parole. Following a denial, Lott's appeal was subsequently dismissed for lack of jurisdiction, as Lott originally pled guilty in Pearl River County. Lott also filed a motion in the Mississippi Supreme Court, asking for leave to proceed in the trial court. The Supreme Court dismissed the motion considering that Lott pled guilty in 1988 and therefore Lott did not need the Supreme Court's permission. Lott then filed a motion for post-conviction relief in the Pearl River County Circuit Court. After a request for an evidentiary hearing that never occurred, the circuit court found no error in Lott's parole revocation. Lott appealed.

### **ISSUE**

Whether the trial court erred in dismissing Lott's motion for post-conviction relief and affirming the Mississippi Parole Board's decision to revoke Lott's parole.



## **HOLDING**

(1) Because Lott’s motion was dismissed without an evidentiary hearing, the State must show that the offender violated the terms and conditions of one’s parole before the offender is returned to custody, and no record exists demonstrating the evidence relied on by the Mississippi Parole Board, the trial court erred in dismissing Lott’s motion for post-conviction relief. Therefore, the Court of Appeals reversed the decision of the Pearl River County Circuit Court and remanded for an evidentiary hearing.

### **Reversed & Remanded - 2015-CP-00242-COA (Feb. 21, 2017)**

Opinion by Chief Judge Lee

Hon. Anthony Alan Mozingo (Pearl River County Circuit Court)

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

Briefed by [Horacio Hernandez](#)

[Click here to view the full opinion](#)

---

## ***COURT OF APPEALS - CRIMINAL CASES***

### **LOMAX V. STATE**

#### **CRIMINAL - FELONY**

**CRIMINAL PROCEDURE - JURY SELECTION - CHALLENGE FOR CAUSE** - Before a claim related to a denial of a challenge for cause may be valid, the defendant must have exhausted all of his peremptory challenges and an incompetent juror must be forced by the trial court’s erroneous ruling to sit on the jury

**CRIMINAL PROCEDURE - JURY SELECTION - BATSON CHALLENGES** - If a defendant makes a *Batson* challenge and fails to make out a prima facie case showing a discriminatory purpose for a peremptory strike, the inquiry ends

**CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - BURDEN OF PROOF** - Under *Strickland v. Washington*, a claimant of ineffective assistance of counsel bears the burden of proof to show that (1) counsel’s performance was deficient and (2) the deficiency prejudiced his defense

#### **FACTS**

George Lomax committed sexual battery of a sixteen-year-old student at the school where he was assistant principal. The victim reported the incident and Y-DNA consistent with Lomax’s was found in her underwear. During voir dire, the prosecution challenged, for cause, a juror and struck two jurors using its peremptory challenges. Lomax was convicted of sexual battery and received a sentence of thirty years in the custody of the Mississippi Department of Corrections and was required to register as a sex offender. Lomax appealed.

#### **ISSUES**

Whether the trial court erred in (1) excusing a juror for cause, (2) refusing to excuse a juror for cause, (3) overruling a *Batson* challenge, (4) admitting hearsay evidence, (5) sustaining an objection to a leading question, and (6) refusing to allow DNA evidence.

#### **HOLDING**

(1) Because the juror failed to answer questions during voir dire and health issues would have made serving on the jury difficult, the trial court did not abuse its discretion in excusing her for cause. (2) Because the defendant used all his peremptory challenges and made no effort to show that an incompetent juror sat on the jury, the trial court did not err in refusing to remove a juror for cause. (3) Because the defendant failed to make a prima facie case of discrimination in the prosecution’s peremptory strikes, the trial court did not err in overruling his *Batson* challenge. (4) Because the defendant failed to object to hearsay evidence that would have fallen under an exception or would have been harmless, the trial court did not err in admitting that evidence, nor did defendant’s counsel provide ineffective assistance. (5)

Because the trial court sustained defendant's objection to the prosecution's leading question, the defendant failed to show any reversible error. (6) Because the trial court admitted the Y-DNA evidence the defendant claimed was precluded, this issue held no merit. Therefore, the Court of Appeals affirmed the judgment of the Holmes County Circuit Court.

**Affirmed - 2015-KA-00844-COA (Feb. 21, 2017)**

Opinion by Judge Fair

Hon. Jannie M. Lewis (Holmes County Circuit Court)

Damon Ramon Stevenson for Appellant - Billy L. Gore & Akillie Malone Oliver (Att'y Gen. Office) for Appellee

Briefed by [Tony Sax](#)

[Click here to view the full opinion](#)

## RANDLE V. STATE

### CRIMINAL - FELONY

**CRIMINAL PROCEDURE - SEQUESTRATION OF WITNESSES - PURPOSE** - The rule's purpose is to exercise a restraint on witnesses tailoring their testimony to that of earlier witnesses and aid in detecting testimony that is less candid; Miss. R. Evid. 615 guards against falsification, inaccuracy, and collusion

**EVIDENCE - CHARACTER EVIDENCE - VICTIM'S PAST SEXUAL BEHAVIOR** - A defendant who intends to offer evidence of a victim's past sexual behavior must make a motion accompanied by an offer of proof describing the evidence, file the written motion, and offer of proof at least 15 days before trial, unless the court sets a later time, and serve all parties and the victim

**CRIMINAL PROCEDURE - APPEALS - INEFFECTIVE ASSISTANCE OF COUNSEL** - While appealing a conviction, a court may only consider the merits of an ineffective assistance of counsel claim if (1) the record affirmatively shows ineffectiveness of constitutional dimensions, or (2) the parties stipulate that the record is adequate to allow the appellate court to make the finding without consideration of the findings of fact of the trial judge

**CRIMINAL - APPEAL - 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 that to allow it to stand would sanction an unconscionable injustice

### FACTS

On March 9, 2010, Theotis Randle raped a twenty-year-old, Carol, in her home. Prior to this encounter, Carol's family hired Randle to do handyman work around the house. At trial, the State presented DNA evidence matching Randle's DNA to a vaginal swab taken from Carol. A Clay County Circuit Court jury convicted Randle of sexual battery and sentenced Randle to twenty-five years in the custody of the MDOC. Randle appealed.

### ISSUES

Whether (1) there was sufficient evidence to support the verdict; (2) the verdict was against the overwhelming weight of the evidence; (3) the trial court erred in allowing Deputy Williams to remain in the courtroom; (4) the trial court erred in limiting a witness's testimony and stating that the State is entitled to a fair trial; and (5) defendant counsel's performance constituted ineffective assistance of counsel.

### HOLDING

Because there was sufficient evidence to support the verdict; Deputy Williams was not present for any other witness's testimony; the judge's comment regarding the State's right to a fair trial was only a passing comment; and Randle failed to show ineffectiveness of constitutional dimensions, the Court of Appeals affirmed the verdict of the Clay County Circuit Court jury.

**Affirmed - 2015-KA-00981-COA (Feb. 21, 2017)**

Opinion by Judge Barnes



Hon. Lee Sorrels Coleman (Clay County Circuit Court)  
Mark Andrew Cliett for Appellant - Ladonna C. Holland (Att’y Gen. Office) for Appellee  
Briefed by [Blake Brookshire](#)

[Click here to view the full opinion](#)

**MISSISSIPPI CASES EDITOR**  
**JACOB A. BRADLEY**

**ASSOCIATE CASES EDITORS**  
**KATHRYN FOWLER,**  
**BREANNA GOFF,**  
**ALEXANDER ASH, &**  
**SEAN DORAN**

*Thank you for supporting the Mississippi Law Journal.*

Questions or comments: Jacob A. Bradley, [newsletter@mississippilawjournal.org](mailto:newsletter@mississippilawjournal.org)

*All subscribers to BriefServ receive access to our website, providing searchable access to our briefs since January 2007. If you have questions about accessing or using the BriefServ website, please contact us at [support@mississippilawjournal.org](mailto:support@mississippilawjournal.org).*