MISSISSIPPI SUPREME COURT DECISIONS - FEBRUARY 4, 2016

SUPREME COURT - CIVIL CASES

CITY OF TCHULA V. MISS. PUB. SERV. COMM'N

CIVIL - UTILITY RATE

ADMINISTRATIVE LAW - DEFERENCE - AGENCY INTERPRETATION - An agency's interpretation of a rule or statute is reviewed de novo with great deference to the agency's interpretation

PUBLIC UTILITIES ACT - EXEMPTIONS - OWNED OR OPERATED - Except as otherwise provided in Section 77-3-6, any public utility as defined in paragraph (d) of Section 77-3-3, owned or operated by a municipality shall not be subject to the provisions of this article, except as to extension of utilities greater than one (1) mile outside corporate boundaries after March 29, 1956

STATUTORY INTERPRETATION - LANGUAGE - PROVINCE OF THE COURT - Where the language of a statute is plain and unambiguous, it is not within the province of the court to add to the law as the Legislature has written it

STATUTORY INTERPRETATION - LANGUAGE - DEFINITIONS - In the absence of a legislative definition, reference to a dictionary is proper

FACTS

The cities of Tchula and Port Gibson own their respective gas-distribution systems, which were put in place prior to the passage of the Public Utilities Act on March 29, 1956. Private companies have always operated the systems through leases with the cities, and Miss. River Gas (MRG) is the current operator. The cities' gas-distribution centers extended beyond one mile of their city limits and have not been expanded after March 29, 1956. MRG filed with the Miss. Public Service Commission (Commission) a notice of intent to change rates only for those customers beyond one mile of the city limits in each system. The cities intervened and filed motions to dismiss, arguing that the Commission lacked subject matter jurisdiction under Miss. Code Ann. § 77-3-1. The Commission denied the motion to dismiss, finding that MRG was subject to regulation because it is neither owned nor operated by the cities. The Commission held that the phrase "owned or operated" in Section 77-3-1 was ambiguous and should be read as "owned and operated." Furthermore, the Commission held that the term "extension of utilities" was ambiguous and should be read to mean "the total range over which something extends." The Commission assumed jurisdiction because the cities continued to provide services beyond one mile of their city limits after March 29, 1956. The Commission granted MRG's amended rate-increase request. The cities appealed.

ISSUE

Whether the Commission erred in asserting jurisdiction to regulate the rates charged to taxpayers on Tchula's and Port Gibson's gas-distribution systems despite the exemption provided by Miss. Code Ann. § 77-3-1 as part of the Public Utilities Act.

HOLDING

Because Section 77-3-1 creates an exemption for any public utility owned or operated by a municipality, the Commission erred in assuming rate-setting jurisdiction over Tchula's and Port Gibson's municipally owned, but not operated, public-utility systems. Because these cities had not extended their gas-distribution services beyond one mile of their city limits since passage of the Public Utilities Act, the Commission erred in assuming jurisdiction over rates

charged to customers beyond one mile of the cities' limits. Therefore, the Supreme Court reversed and remanded the judgment of the Miss. Public Service Commission.

Reversed & Remanded - 2014-UR-01425-SCT (Feb. 4, 2016)
En Banc Opinion by Justice Randolph
Miss. Public Service Commission
Willie James Perkins, Sr., John Prince Martin, C.R. Montgomery, & Deborah McDonald for Appellants - Frank Ford Farmer, Laura Hill Dixon, & William Bruce McKinley (Att'y Gen. Office) for Appellees
Briefed by Shayna Giles

Click here to view the full opinion

SUPREME COURT - CRIMINAL CASES

COLLIER V. STATE

CRIMINAL - FELONY

EVIDENCE - IMPEACHMENT - RULE 609(b) - A party must provide advance written notice if seeking to impeach a witness with a conviction more than 10 years old
CRIMINAL LAW - APPEALS - HARMLESS ERROR ANALYSIS - The court should not reverse a conviction for small errors or defects that have little, if any, likelihood of having changed the result of the trial
CRIMINAL LAW - APPEALS - JNOV - The court will only reverse a jury's verdict when the facts and inferences point in favor of the defendant on any element of the offense with sufficient force that a reasonable jury could not have found beyond a reasonable doubt that the defendant was guilty

FACTS

A Rankin County grand jury indicted Larry Collier on four counts of selling cocaine, and as a subsequent drug offender. At trial, a seasoned felon turned confidential informant testified to working with the police and purchasing crack cocaine from Collier multiple times. But during her testimony the confidential informant disclosed forgery, and felony drug charges but failed to disclose three other convictions. Collier attempted to impeach the confidential informant using the undisclosed convictions, but was ultimately prohibited from doing so by the trial judge. The trial judge overruled the attempt with the support of M.R.E. 609(b). The State additionally called two expert witnesses from the Miss. Crime Lab who both testified that the substance Collier allegedly sold was cocaine. The Rankin County Circuit Court found Collier guilty on all counts. Collier moved for a new trial, which was denied. Collier then appealed.

ISSUES

Whether the trial court (1) wrongly prohibiting Collier from cross-examining the confidential informant about her undisclosed criminal convictions, and (2) ruled against the overwhelming weight of the evidence.

HOLDING

(1) Because the confidential informant's credibility had already been tarnished, and because of the substantial evidence that established the drug sales, the Court deemed non-disclosure of three more convictions inconsequential. Therefore, under the facts of this case, the Court found that the trial judge's decision to prevent Collier's attorney from cross-examining the confidential informant on the other three convictions was harmless. (2) Because there was enough evidence for a reasonable jury to have found Collier guilty of selling cocaine the issue was without merit. Therefore, the Supreme Court affirmed the judgment of the Rankin County Circuit Court.

Affirmed - 2014-KA-00087-SCT (Feb 4, 2016)
En Banc Opinion by Presiding Justice Dickinson

Hon. Hon. William E. Chapman, III (Rankin County Circuit Court)
Pro se for Appellant - Stuart Scott (Att'y Gen. Office) for Appellee
Briefed by Autumn T. Breeden

Click here to view the full opinion

HALE V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - DEFENSES - ENTRAPMENT - Entrapment is the act of inducing or leading a person to commit a crime not originally contemplated by him, for the purpose of trapping him for the offense. Entrapment is an affirmative defense which must be proved by the defendant, and the burden of proof does not shift to the State to show the predisposition for committing the crime until the defendant has made out a prima facie case of entrapment. Once the defendant makes out a prima facie case of entrapment, he is entitled to have the issue of entrapment submitted to the jury on proper instructions

CRIMINAL LAW - DEFENSES - INVOLUNTARY INTOXICATION - Also known as automatism. It is an involuntary condition in which the patient may perform simple or complex actions in a more or less skilled or uncoordinated fashion without having full awareness of what he is doing. A successful automatism defense negates the requisite intent for a criminal offense, but it also eliminates the voluntariness of the criminal act

CRIMINAL LAW - JURY INSTRUCTIONS - STANDARD OF REVIEW - The jury instructions actually given must be read as a whole. When so read, if the instructions fairly announce the law of the case and create no injustice, no reversible error will be found

FACTS

On June 20, 2013, plain-clothed officers were carrying out a search warrant at an apartment complex. During the execution, John Hale approached them and asked if the officers wanted drugs. The officers said yes. Hale sold prescription pills to the officers including oxycodone, morphine, and alprazolam. The officers paid for the pills with prerecorded money, and after the sale, they arrested Hale. He was intoxicated but coherent. Hale claimed that he became involuntarily intoxicated by drinking grapefruit juice that interacted with his medication. There was no grapefruit juice found in his labs. Hale's primary defense at trial was an unforeseen interaction between his prescription medication and the grapefruit juice. The trial court denied the requested involuntary intoxication instruction. At the conclusion of trial, Hale offered instruction pertaining to the defense of entrapment. The trial court denied this instruction. Hale was convicted of four counts of sale or transfer of a controlled substance and was sentenced as an habitual offender to serve a total of sixteen years' imprisonment without the possibility of parole. Hale appealed.

ISSUES

Whether the trial court erred in denying (1) the requested jury instruction on involuntary intoxication; and (2) Hale's proffered entrapment instruction.

HOLDING

(1) Hale failed to provide sufficient evidence indicating that his medication, or some interaction between grapefruit juice and his medication, could cause the sort of behavior in which he engaged on the night in question. Even so, his theory of the case was covered by other instructions instructing the jury to find to consider whether or not his actions were willful. (2) Hale claimed that he did not remember selling pills to the investigators, therefore he offered no evidence on government inducement nor did he deny the officer's testimony that Hale had initiated contact and sale, therefore the trial court did not err in denying Hale's proffered entrapment instruction. Therefore, the Supreme Court affirmed the judgment of the Harrison County Circuit Court.

Affirmed - 2014-KA-01778-SCT (Feb. 04, 2016)
Opinion by Chief Justice Waller
Hon. Roger T. Clark (Harrison County Circuit Court)

Mollie M. McMillin, George T. Holmes & Hunter N. Aikens (State Pub. Defender Office) for Appellant - Jeffrey A. Klingfuss & Joel Smith (Att'y Gen. Office) for Appellee
Briefed by Breanna Goff

Click here to view the full opinion

MISSISSIPPI COURT OF APPEALS DECISIONS - FEBRUARY 2, 2016

COURT OF APPEALS - CIVIL CASES

CAMPBELL V. JONES

CIVIL - PERSONAL INJURY

TRIAL - OBJECTIONS - WAIVING ISSUE FOR APPEAL - If one party fails to object to an issue during trial, the failure operates as a waiver of the ability to assert the issue as an error on appeal

POST-TRIAL MOTIONS - MOTION TO REFORM THE VERDICT - STANDARD - A motion to reform the verdict will not be granted when a jury renders a complete verdict, and the verdict is not ambiguous, confusing, or improper

POST-TRIAL MOTIONS - MOTION FOR A NEW TRIAL - STANDARD OF REVIEW - The grant or denial of a motion for a new trial is within the trial court's discretion, as such, the appellate court may only reverse when the trial court has abused its discretion

FACTS

On May 15, 2009, James Jones's car collided with the rear of James Terry Campbell's trailer. Marquiz Thomas was a passenger in Campbell's car. When the accident occurred, Campbell was turning off of Highway 21 onto a private driveway. Highway Patrol Officer Joshua Dobbs testified that Jones admitted to driving at 65mph--ten miles per hour over the speed limit--at the time of the accident; however, Jones admitted to driving only 55mph. Jones testified that he did not see any signal lights from Campbell's truck or trailer. Campbell admits the signal lights on the trailer were not working. Campbell and Thomas subsequently sued Jones alleging he caused the accident resulting in mental and physical injuries. At the end of the trial, the parties agreed to use a special-verdict interrogatory, asking the jury to determine negligence and damages and to apportion fault. Both parties also agreed that the bailiff could advise the jury to simply fill in the blanks of the special interrogatory provided. After the jury reached the verdict, the trial court polled the jury, determining that the verdict was unanimous. The trial court instructed the clerk to read the dollar amounts awarded. The jury awarded $200,000 to Campbell and $5,000 to Thomas. The trial court excused the jury, yet Campbell never requested to poll the jury prior to their dismissal. At this point, the trial court inquired if anything further need be addressed, in which Jones replied that there was a question of fault and its apportionment. The trial court instructed the clerk to read the entire special verdict, including where the jury found both Campbell and Jones negligent, apportioning eighty percent to Campbell and twenty percent to Jones. The trial court then asked if anything further needed to be discussed, in which Campbell's attorney replied "No, sir." Neither party asked for the jury to be returned. Campbell then moved to reform the verdict and for a new trial. Campbell appealed.

ISSUES

Whether the trial court erred by (1) ordering the clerk to read a portion of the verdict before polling and dismissing the jury; (2) failing to have the jury returned to be polled regarding the apportionment of fault; (3) failing to allow Campbell to poll the jury as to fault apportionment; (4) denying Campbell's motion to reform the verdict; and (5) denying Campbell's motion for a new trial.

HOLDING

Because Campbell's attorney failed to object to any issues pertaining to the jury and verdict by indicating that no further discussion was needed, he waived his right to assert on appeal that the trial court erred in (1) the reading of the jury verdict; (2) declining to return the jury; and (3) polling the jury. Additionally, Campbell's Motion to Reform the

Verdict lacked merit because the jury rendered a complete verdict that was not ambiguous, confusing, or improper; and Campbell's Motion for New Trial was denied because the verdict was not against the overwhelming weight of evidence and the trial court did not abuse its discretion in instructing the jury that Campbell was negligent per se for driving without taillights on his trailer. Therefore, the Court of Appeals affirmed the judgment of the Scott County Circuit Court.

Affirmed - 2014-CA-01281-COA (Feb. 2, 2016)

Opinion by Judge Lee
Hon. Vernon R. Cotten (Scott County Circuit Court)
Eugene Coursey Tullos & Thomas D. Lee for Appellants - W. Wright Hill Jr. for Appellee
Briefed by Katherine M. Portner

Click here to view the full opinion

GRAY V. GRAHAM

CIVIL - MEDICAL MALPRACTICE

CIVIL PROCEDURE - MOTION PRACTICE - SUMMARY JUDGMENT - Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact, and the evidence must be viewed in light most favorable to the non-moving party

MEDICAL MALPRACTICE - PRIMA FACIE CASE - EXPERT TESTIMONY - Malpractice cannot be established without medical testimony that the defendant failed to use ordinary skill and care; an expert is necessitated to identify the action or inaction which allegedly constituted a breach of duty and which proximately caused the patient's injury

MEDICAL MALPRACTICE - STANDARD OF CARE - SPECIALISTS - Physicians may be held to the standard of care of another specialty other than their own if they assume the duties of the specialty, two factors help determine whether a doctor assumed the duties of another specialty: (1) whether assurances were given by the doctor to the patient, and (2) whether consultations or referrals to a doctor of another specialty were or should have been made

FACTS

Carol Gray visited the Grahams' medical facility to repair a thoracic fracture. During the procedure, the Grahams learned that Gray suffered from multiple myeloma. The Grahams never told Gray. Later, Gray began suffering from additional spinal fractures. Gray visited M.D. Anderson Cancer Center for a diagnosis. M.D. Anderson confirmed the multiple myeloma diagnosis and began treatment. After receiving treatment, Gray claimed she was in partial remission and had not suffered from any further spinal fractures. Gray sued the Grahams for failing to advise her of the biopsy results for approximately one year, claiming that this failure diminished the quality of her remaining life. Of Gray's three expert witnesses, only Dr. Avery directly addressed whether the Grahams' failure to inform her of the biopsy caused the additional spinal fractures. Dr. Avery argued that because Gray achieved success with treatment at M.D. Anderson, she would have had success the previous year, thereby preventing the fractures she suffered after the Grahams received the biopsy. The circuit court ruled Dr. Avery's opinions regarding causation were conclusory and therefore granted summary judgment in favor of the Grahams. Gray appealed.

ISSUE

Whether the trial court erred in granting the Grahams' motion for summary judgment on the basis of Gray's medical expert's conclusory causation testimony.

HOLDING

Despite the fact that Dr. Avery provided factual support to support his opinion, genuine issues of material fact remained, precluding summary judgment to defendants. Dr. Avery's testimony was not conclusory. Therefore, the Court of Appeals reversed and remanded the judgment of the Harrison County Circuit Court.

Reversed & Remanded - 2014-CA-00069-COA (Feb. 2, 2016)
Opinion by Judge Ishee
Hon. Lawrence Paul Bourgeois Jr. (Harrison County Circuit Court)
Jonathan B. Fairbank, John F. Hawkins, & Edward Gibson for Appellant - Stephen Peresich, Johanna M. McMullan, Mary Van Slyke, & Lauren R. McCrory for Appellees
Briefed by Paul Wallace

Click here to view the full opinion

MONROE V. BLEVENS

CIVIL - WRONGFUL DEATH

CIVIL PROCEDURE - DISMISSAL - FAILURE TO STATE A CLAIM - Parties facing summary judgment are entitled to notice that they must come forward with their evidence on a given issue, and they must have an opportunity to respond
TORTS - WRONGFUL DEATH - STANDARD OF CARE - The standard of care is an element of a plaintiff's burden of proof in a medical malpractice suit, and expert testimony is required to establish it
CIVIL PROCEDURE - DISCOVERY - DISCLOSURE OF EXPERT WITNESS - Under Miss. R. Civ. P. 26(b)(4), facts known and opinions held by experts, and as to each proposed testifying expert, the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion, are required disclosures

FACTS

William Wallace Ray died after Dr. Alexander Blevens allegedly failed to diagnose his fractured hip. Ray's wrongful-death beneficiaries (the "Beneficiaries") sued Dr. Blevens. At trial, Dr. David Bomboy, whom the beneficiaries designated as an expert in medicine and orthopedics, had attempted to testify as to the standard of care and how it was breached by Dr. Blevens. Blevens objected, arguing that the beneficiaries had failed to adequately disclose the opinion in discovery. The trial court granted a mistrial and Blevens's subsequent motion to dismiss after refusing to allow the beneficiaries to supplement their discovery responses. The Beneficiaries appealed.

ISSUE

Whether the trial court erred in dismissing the case after refusing to allow the Beneficiaries to supplement their discovery responses.

HOLDING

Because expert testimony is required to prove the standard of care, and the Beneficiaries did not introduce such evidence due to their failure to properly disclose such expert testimony, the trial court properly dismissed the case. Therefore, the Court of Appeals affirmed the judgment of the Jackson County Circuit Court.

Affirmed - 2013-CA-01964-COA (Feb. 2, 2016)
En Banc Opinion by Judge Fair
Hon. Dale Harkey (Jackson County Circuit Court)
W. Eric Stracener Jr., John W. Kitchens, & Walter Andrew Neely for Appellants - Stephen Giles Peresich, Johanna Malbrough McMullan & Mary Winter Van Slyke for Appellee
Briefed by Alexander Ash

Click here to view the full opinion

MORRIS V. INSIDE OUTSIDE, INC.

CIVIL - CONTRACT

CONTRACTS - REVOCATION - NOTICE - Prior to filing suit, a buyer must provide notice to the seller of the revocation of acceptance and afford the seller a reasonable opportunity to cure the defects
CONTRACTS - REVOCATION - NONCOMFORMITY - The buyer may revoke his acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to him if he has accepted it on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured
CONTACTS - REVOCATION - LIMITS ON RIGHT TO CURE - There comes a time 'when enough is enough' and a purchaser is entitled to seek revocation 'notwithstanding the seller's repeated good faith efforts

FACTS

M.C. and Linda Morris owned a home in Gulfport that was damaged when Hurricane Katrina struck the area. The Morrises contracted with Inside Out on Jan. 19, 2006, to purchase kitchen cabinets and other items for their kitchen. When the cabinets were unwrapped, Mr. Morris was displeased with the cabinets and thought they looked like "cheap particle board." The cabinets had multiple defects. Inside Out said they would order replacement items. The Morrises were displeased with the installation times for their cabinets and counters. After an argument, Inside Out told Mr. Morris they would have all his cabinets removed and money refunded. The parties contacted attorneys in order to coordinate a settlement. Initially, the agreement indicated that Inside Out would provide a full refund of the deposited funds. The Morrises said the settlement had to include the money paid to install the cabinets. The Morrises then attempted to revoke their acceptance of the cabinets. Inside Out notified the Morrises that it was willing to complete its contractual obligations. The Morrises sued in Sept. 2006. The trial court entered a judgment in favor of Inside Out and dismissed the Morris's complaint. The Morrises then filed a motion to alter or amend the judgment. The trial court denied this motion. The Morrises appealed.

ISSUES

Whether (1) trial court erred in finding that the Morrises had not properly revoked acceptance of the cabinets; (2) the trial court erred denying their motion to alter or amend the judgment; (3) whether the original settlement was a binding agreement.

HOLDING

(1) Inside Out was willing and able to complete its contractual obligations, and the trial court did not abuse its discretion in finding that the Morrises did not properly revoke acceptance of the cabinets because they did not allow Inside Out time to correct the mistakes. (2) Because the contracts for the unreceived items stated that no refund or exchange was available, the trial court did not abuse its discretion by denying the Morrises' motion to alter or amend the judgment. (3) When Inside Out refused the revisions to the settlement, nothing was agreed upon, and the Morrises filed suit. Thus, the parties never entered into a binding settlement agreement. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Circuit Court.

Affirmed - 2014-CA-01451-COA (Feb. 2, 2016)
Opinion by Chief Judge Lee
Hon. Michael H. Ward (Harrison County Circuit Court)
William E. Whitfield III & Johnny L Nelms for Appellants - Virgil G. Gillespie for Appellee
Briefed by Kathryn Fowler

Click here to view the full opinion

WALZ V. HWCC TUNICA, INC.

CIVIL - PERSONAL INJURY

CIVIL PROCEDURE - MOTION PRACTICE - SUMMARY JUDGMENT - Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact, with the evidence viewed in the light most favorable to the non-moving party

TORTS - PREMISES LIABILITY - BURDEN OF PROOF - To succeed on a theory of premises liability, a plaintiff must show: (i) defendant's negligence caused plaintiff's injury; or, (ii) defendant had actual knowledge of a dangerous condition on his property, but failed to warn plaintiff; or, (iii) the dangerous condition on defendant's property remained long enough to impute constructive knowledge to defendant

EVIDENCE - NEGLIGENCE - RES IPSA LOQUITUR – Under the doctrine of circumstantial evidence, the jury may only draw an inference of defendant's negligence when such an inference is the *only* reasonable conclusion

FACTS

Darlene Walz and her friend, Steve Bruck, checked into a hotel room at the Hollywood Casino and Hotel in Tunica for a few days of gambling. They dropped off their luggage in the room and left to gamble. At some point, the pair returned to the room, where Walz allegedly sustained injuries after falling over the bed's box spring while trying to turn on the light. Walz subsequently visited the doctor and alerted the hotel of the accident. Walz later sued HWCC Tunica, Inc. ("HWCC")—the owner of the Hollywood Casino and Hotel—on a premises liability theory. During discovery, Alice Stapleton, who was allegedly the last person to enter the hotel room before Walz and Bruck checked in, testified that the bed in question was properly on its frame. Walz, conversely testified that neither she nor Bruck had ventured far enough into the room to ascertain the condition of the bed before Walz fell. HWCC filed a motion for summary judgment, arguing Walz failed to prove that a dangerous condition existed in the room at the time of the accident and that, even if a dangerous condition *did* exist, Walz failed to prove the dangerous condition was caused by HWCC. The trial court granted HWCC's motion for summary judgment. Walz appealed.

ISSUES

Whether (1) the trial court erred in granting HWCC's motion for summary judgment, and (2) Walz's circumstantial evidence led only to one conclusion: that HWCC's negligence caused her injuries.

HOLDING

(1) Because Walz failed to demonstrate that a genuine issue of material fact regarding the non-existence of a dangerous condition, the trial court did not err in granting HWCC's motion for summary judgment. (2) Because other "reasonable inferences" existed as to what caused Walz's fall, the circumstantial evidence did not lend itself wholly to an inference that HWCC was negligent. Therefore, the Court of Appeals affirmed the judgment of the Tunica County Circuit Court.

Affirmed - 2014-CA-00620-COA (Feb. 2, 2016)
Opinion by Presiding Judge Griffis
Hon. Johnnie E. Walls Jr. (Tunica County Circuit Court)
Edward P. Connell Jr. & Corrie Schuler for Appellant - Alfred Thomas Tucker III for Appellee
Briefed by J. Matthew Orr

Click here to view the full opinion

MISSISSIPPI CASES EDITOR
JORDAN B. REDMON

ASSOCIATE CASES EDITORS
JOHN JURICICH, JORDAN MATHEWS, MICHAEL SHOPTAW, AND JENNIE VEE SILK

Thank you for supporting the Mississippi Law Journal.
Questions or comments: Jordan B. Redmon, newsletter@msbriefserv.com

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@msbriefserv.com.