

MISSISSIPPI SUPREME COURT DECISIONS – JUNE 15, 2017**SUPREME COURT - CIVIL CASES****GUTIERREZ V. GUTIERREZ****CIVIL - DOMESTIC RELATIONS**

DIVORCE - DISTRIBUTION OF MARITAL PROPERTY - ASSETS & LIABILITIES - The court considers both assets and liabilities accumulated during marriage as marital property for the purpose of allocating property in divorce proceedings

DIVORCE - DISTRIBUTION OF MARITAL PROPERTY - MORTGAGE - In considering the allocation of a mortgage during the distribution of marital property, mortgages should be construed as debts rather than contingent liabilities, and the court should find both parties jointly obligated to any debts accumulated during the marriage

DIVORCE - DISTRIBUTION OF MARITAL PROPERTY - ALIMONY - Alimony is an award in equity to reduce the disparity in assets after distribution of property; alimony and equitable distribution of property should be considered together in assessing the need for an award, either during the deliberation or during review of the final judgment

CIVIL PROCEDURE - APPEALS - CLAIM PRECLUSION - A claim that is brought on appeal must have first been brought in the lower court and must cite specific authority in support of an error of judgment, else it is precluded from consideration

CIVIL PROCEDURE - TEMPORARY ORDERS - CONTEMPT OF COURT - Contempt is in the discretion of the chancery court to find a party in noncompliance with any court order that is reasonably specific

FACTS

Trisha Gutierrez filed for divorce from Clay Gutierrez. Clay filed a counterclaim, and the couple agreed to an irreconcilable-differences divorce. At trial, the chancery court found Clay in contempt of court for failing to comply with two temporary orders regarding Clay's continuing support obligations. The court made a final judgment that distributed the marital property and adopted the Gutierrez's child-custody agreement. The judgment included an accounting of a second mortgage on the Gutierrez home in the distribution of marital property. The court also awarded Trisha alimony. Clay appealed on four grounds, and the Supreme Court remanded with instruction to the lower court to clarify, first, its findings regarding the calculation and distribution of assets and liabilities and, second, its findings on alimony, contempt, and attorney's fees. In the first of three consecutive orders, the chancellor issued a certified judgment clarifying its original ruling regarding the second mortgage, finding that the second mortgage could not be an allocated liability in the assessment of marital property, and further that Clay and Trisha were both liable for one-half of the second mortgage debt. The chancellor then granted, in its second order, Trisha's motion to amend the final judgment to include for a start date for Trisha's lump-sum alimony award. Additionally, the chancellor amended Trisha's award to reflect additional obligations Clay owed arising from the temporary orders dating back to the first trial. Clay subsequently made a second appeal to the first and second order to the Supreme Court. In its final order, the chancellor granted Trisha's second motion to amend and ordered Clay to begin monthly periodic alimony payments. The chancellor also mandated the distribution of college costs between Clay and Trisha and defined the scope of "college costs." Finally, the court revisited and clarified its finding that Clay was in contempt of its temporary orders and entered a judgment against him plus attorney's fees. Clay appealed a third time, and the court consolidated the two actions.

ISSUES

Whether the chancellor erred in (1) his calculation of the marital assets and liabilities on remand and improperly decided the issue separately from the context of alimony, (2) his decisions on alimony, (3) failing to award or credit Clay for the

amount of court-ordered expenses attributed to the minor children, and (4) in holding Clay in contempt of court on remand, and subsequently awarding Trisha a judgment and attorney's fees.

HOLDING

(1) Because the court considers the distribution of marital property—including assets and liabilities—and alimony as separate issues and because Trisha was jointly obligated to the second-mortgage debt, the chancellor did not err in his calculation of marital assets and the second mortgage. (2) Because awards of alimony fall within the court's discretion to seek reasonable equity and because Trisha was unable to meet her monthly needs, the chancellor's awards were reasonable. (3) Because an issue cannot be raised for the first time on appeal and because Clay in his second and third appeals only offered alternative awards rather than a demand to render second judgment, the chancery court's decision was not subject to review. (4) Because court orders need only be reasonably specific to be enforceable and because Clay did not carry his burden to prove an inability to pay defense, the chancellor did not abuse his discretion in finding Clay in contempt of court. Therefore, the Mississippi Supreme Court affirmed the judgment of the Harrison County Chancery Court.

DISSENT

Presiding Justice Dickinson dissented in part, arguing that the chancery court erred in entering its most recent contempt judgment against Clay. Because the Mississippi Supreme Court instructed the lower court on remand to separate and vacate its judgment for contempt with attorney's fees relating to noncompliance of the ambiguous temporary orders, Justice Dickinson argued the court improperly held Clay again in contempt for noncompliance with the ambiguous temporary orders.

Affirmed - 2016-CA-00129-SCT (consolidated with 2016-CA-00393-SCT) (June 15, 2017)

En Banc Opinion by Justice Beam Dissent by Presiding Justice Dickinson

Hon. James B. Persons (Harrison County Chancery Court)

David Alan Pumford for Appellant - Dean Holleman for Appellee

Briefed by [D. Kirkwood Palmer](#)

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TUNICA COUNTY DEMOCRATIC EXEC. COMM. v. JONES

CIVIL - ELECTION CONTEST

ELECTION LAW - ELECTION CONTEST ISSUES - PRIMARY CONTEST - Miss. Code Ann. § 23-15-961 provides that a party aggrieved by the action or inaction of the appropriate executive committee regarding the qualifications of a candidate for nomination in a party primary may file a petition for judicial review in the circuit court, and that procedure shall be the sole and only manner in which the qualifications of a candidate seeking public office as a party nominee may be challenged prior to the time of his nomination or election

ELECTION LAW - ELECTION CONTEST ISSUES - PRIMARY CONTEST - Miss. Code Ann. § 23-15-921 provides the procedural vehicle to challenge a primary election contest after it has occurred, and Miss. Code Ann. § 23-15-927 provides for judicial review of executive committee action or inaction following a contest

ELECTION LAW - ELECTION CONTEST ISSUES - PRIMARY CONTEST - Miss. Code Ann. § 23-15-961 provides the trial court no authority to vacate any primary elections or order new primary elections and is the exclusive remedy for deciding election contest issues

ELECTION LAW - ELECTION CONTEST ISSUES - PRIMARY CONTEST - Deciding that a primary election that has occurred is invalid because of the failure to follow a court order regarding qualification is an election contest issue

CONSTITUTIONAL LAW - JUDICIAL POWERS & FUNCTIONS - ADVISORY OPINIONS - The Supreme Court does not issue advisory opinions

FACTS

Craig Jones filed a petition for judicial review of the Tunica County Democratic Executive Committee's (TCDEC) decision that he was not qualified to run for the position of county supervisor. The Tunica County Circuit Court found that Jones was qualified to be a candidate and directed that Jones's name be placed on the ballot. TCDEC appealed but failed to pay the appeal costs, which resulted in the appeal's dismissal. TCDEC kept Jones's name off the ballot of the primary election. McKinley Daley won the democratic primary. Jones petitioned for relief to vacate the primary election. On November 2, 2015, one day before the general election, the trial court ordered the primary election be vacated and that a special election be held with Jones and all other qualified candidates on the ballot. The general election was held with Daley and William Pegram on the ballot. Pegram won the general election. Because the Democratic primary had been vacated by the circuit court order, the Board of Supervisors refused to seat Pegram and instead appointed Daley as an interim supervisor. Neither TCDEC nor Daley filed an election challenge to the general election. The TCDEC filed an emergency motion for clarification and stay. Jones filed a motion to set aside the order, noting that the circuit court was without authority to vacate the primary or to order a new election. He also noted that the relief granted in the November 2, 2015, order was not permitted by law. Pegram filed a motion to intervene in the action. On February 18, 2016, the circuit court found justification under Miss. R. Civ. P. 60 to set aside the November 2, 2015, order. The circuit court further found that Pegram was the duly elected supervisor and that Daley should be removed from the seat immediately. TCDEC appealed.

ISSUES

Whether the trial court had the authority to (1) issue the November 2, 2015, and February 18, 2016, orders; (2) find Conley in contempt a second time; and (3) grant Pegram's motion to intervene.

HOLDING

(1) Because Miss. Code Ann. § 23-15-961 was the exclusive remedy for deciding election contests, and gave the trial court no authority to vacate any primary election or order new primary elections, the trial court's November 2, 2015, and February 18, 2016, orders were without authority. (2) Because the record gave no indication the trial court found Conley in contempt a second time, and because the Supreme Court does not issue advisory opinions, Conley was not found to be in contempt. (3) Because the Supreme Court vacated the trial court's November 2, 2015, and February 18, 2016, orders, Pegram's motion to intervene was moot and was not addressed. Further, because no election contests were filed, the uncontested election results remained valid. Therefore, the Supreme Court vacated the decision of the Tunica County Circuit Court.

Vacated - 2016-EC-00400-SCT (June 15, 2017)

Opinion by Justice King

Hon. Henry L. Lackey (Tunica County Circuit Court)

James Kevin Littleton III for Appellant - Jamie Ferguson Jacks & Charles Beckley Graves Jr. for Appellees

Briefed by [William L. Moorer](#)

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SUPREME COURT - CRIMINAL CASES

EVANS V. STATE

CRIMINAL - DEATH PENALTY - DIRECT APPEAL

CAPITAL MURDER - DEATH PENALTY - COMPETENCY - The burden of proof rests on the defendant to prove that he is mentally incompetent to stand trial; the court should weigh all evidence and determine whether there is reasonable ground to believe that the defendant is incompetent

SENTENCING - DEATH PENALTY - JURY SELECTION - Alternate jurors shall replace jurors who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties

EVIDENCE - PHOTOGRAPHS - EFFECT - Where a court weighs the probative value of a photograph versus the prejudicial effect of that photo and determines the value is more probative than prejudicial, the photograph can be admitted

TRIAL - CLOSING ARGUMENT - JUDICIAL INTERVENTION - While attorneys are given latitude in making closing arguments, judicial intervention is required if the argument is so inflammatory that the trial court should object

CRIMINAL - ONE-CONTINUOUS-TRANSACTION DOCTRINE - CONSTITUTIONALITY - The one-continuous-transaction doctrine that allows a felony-murder conviction based on mere temporal proximity between a homicide and one of the felonies listed in the capital-murder statute does not violate the Sixth and Fourteenth Amendments

JURY INSTRUCTIONS - AGGRAVATORS - AMALGRAM - Jury instructions on the aggravator of a case can be an amalgam of two separate aggravators

AGGRAVATING CIRCUMSTANCES - MITIGATING CIRCUMSTANCES - BURDEN OF PROOF - A jury is required to find the existence of aggravating circumstances beyond a reasonable doubt but is not required to find that aggravating circumstances outweigh mitigating circumstances beyond a reasonable doubt

FACTS

Timothy Nelson Evans was tried and convicted of capital murder for the killing of Wenda Holling. Evidence adduced at trial revealed that Evans attempted to take Holling's credit card and, after being caught by Holling, manually strangled her and deposited her body in the woods in Harrison County. At sentencing, the jury found that the murder was committed for pecuniary gain during the course of Evans's theft of Holling's credit card and determined that Evans should receive the death penalty. Evans appealed.

ISSUES

Whether (1) the trial court erred by failing to hear and adjudicate the question of Evans's competency after expressly ordering that Evans be evaluated for competency; (2) the jury selection process was constitutionally infirm and required reversal of Evans's conviction and sentence of death; (3) issues with the jury, exacerbated by its apparent inability to follow judicial instructions, also infected the trial itself with reversible error; (4) the trial court committed reversible evidentiary error at both phases of the proceedings; (5) Evans's conviction must be reversed because of the prosecutor's misconduct of making a constitutionally improper and prejudicially inflammatory closing argument; (6) the trial court deprived Evans of his constitutional rights at the guilt phase by refusing his requested manslaughter instructions and granting the State's requested instructions on one continuous transaction and voluntary intoxication; (7) the sentencing-phase instructions require vacation of the death sentence and remand for a new sentencing proceeding; (8) the death sentence was imposed in violation of the United States Constitution; (9) the death sentence was constitutionally and statutorily disproportionate; and (10) the cumulative effect of the errors in the trial court mandated reversal of the verdict of guilt and/or the sentence of death entered pursuant to it.

HOLDING

(1) Because there was no evidence of a violation of Evans's right not to be convicted while incompetent, there was no discernible error by the trial judge. (2) Because there was not a strong inference of prejudice in the jury selection process, the trial court did not commit plain error in conducting jury selection. (3) Because Miss. Code Ann. § 13-5-67 allows the substitution of alternate jurors in capital cases, the court's allowance of jury substitution in the sentencing phase did not violate Mississippi's statutory capital sentencing scheme. (4) Because the trial court did not abuse its discretion in excluding Holling's blood-alcohol content, dismissing Evans's motion to suppress his statements due to incompetency, admitting a photo of Holling's body as more probative than prejudicial, and allowing the State's cross of Dr. Storer, the trial court did not err. (5) Because Evans did not object during the prosecutor's closing arguments, Evans's arguments were procedurally barred; further, the prosecutor's closing argument was not so inflammatory to require trial court intervention. (6) Because the trial court found that Evans's statement of killing Holling after she found him stealing her credit card was not an indication or hint of passion or anger and thus did not disclose an immediate and reasonable provocation, the trial court's voluntary intoxication instruction was proper based on evidence of Evans's intoxication, Evans's failure to object to the one-continuous-transaction rule instruction was procedurally barred, the trial court committed no error. The Supreme Court considered but ultimately rejected Evans's argument that the one-continuous-transaction rule in this context violates the Sixth and Fourteenth Amendments. (7) Because Evans did not object to the jury instruction on the sole aggravator of this case, he was procedurally barred from raising this issue on appeal. The

Supreme Court found, though, that there was no error in the jury instruction that contained an amalgam of two aggravators or in the use of the same facts to capitalize and aggravate. (8) Because the Supreme Court has previously held that the death penalty in this state was constitutional, that jurors are required to find aggravating circumstances exist beyond a reasonable doubt but are not required to find beyond a reasonable doubt that those aggravating circumstances outweigh mitigating circumstances, that Mississippi's capital-sentencing scheme is constitutional and provides for meaningful review, the death sentence was not imposed in violation of the United States Constitution. (9) Because the court, when conducting a proportionality review, is not required to consider all cases in which the death sentence was considered but not imposed and because the court has upheld sentences of death for capital murder where the underlying felony was robbery, the death sentence was not disproportionate. Further, the evidence did not establish Evans suffered from mental health problems, and Evans admitted he planned the killing in advance. Consequently, the sentence of death was not the result of passion, prejudice, or other arbitrary factors. (10) Because no errors occurred, there was no cumulative error to mandate reversal. Therefore, the Supreme Court affirmed the judgment of the Hancock County Circuit Court.

CONCURRENCE

Justice Coleman agreed with the majority's opinion but wanted the record to expressly show Evans did receive a competency hearing. He argued the rule does not provide any specific requirements, only that a hearing must occur. Justice Coleman would not fault the trial court for not holding a larger hearing than was necessary.

DISSENT

Justice Kitchens argued the trial court failed to hold a competency hearing, which could not be waived by Evans's counsel. Further, he argued the trial court erred during voir dire by preventing Evans's counsel from questioning prospective jurors' abilities to consider alcohol abuse as mitigating and that seating an alternate juror during sentencing violated the capital sentencing statute. Justice Kitchens would reverse and remand for a new trial.

Affirmed - 2013-DP-01877-SCT (June 15, 2017)

En Banc Opinion by Presiding Justice Randolph - Concurrence Justice Coleman - Dissent by Justice Kitchens

Hon. Lisa P. Dodson (Hancock County Circuit Court)

Alison R. Steiner & Frank P. Wittmann IV (Pub. Def. Office) for Appellant - Cameron Leigh Benton (Att'y Gen. Office) for Appellee

Briefed by [Kelsey Dismukes, Michael Farese, & Sarah Raben](#)

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SUPREME COURT - ORDERS

IN RE: MISSISSIPPI RULES OF APPELLATE PROCEDURE

COURT ORDER

ORDER

The Supreme Court modified the Mississippi Rules of Appellate Procedure, specifically Rule 40(b), after considering the Motion to Amend Certain Rules to Provide for Word Counts. The Supreme Court granted in part and denied in part, creating a twenty-five-page limit on responses to Motions for Rehearing. This modification to the Rules of Appellate Procedure took effect on June 12, 2017.

[Exhibit A](#), referenced in and attached to the Order, indicates the substantive modification to the Mississippi Rules of Appellate Procedure as a result of the adoption of the twenty-five-page limit for responses to Motions for Rehearing.

Granted in Part, Denied in Part - 89-R-99027-SCT (June 12, 2017)

En Banc Order by Presiding Justice Dickinson

Briefed by [Nikki Breeland](#)

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JORDAN V. STATE

COURT ORDER

ISSUES

Whether (1) the State’s use of midazolam in its lethal injection protocol violates Miss. Code Ann. § 99-19-51, and (2) executing an inmate more than forty years after he was first sentenced to death amounts to cruel and unusual punishment, violating the United States and Mississippi Constitutions.

ORDER

(1) Because the Legislature has amended the Miss. Code Ann. § 99-19-51(1) to require “an appropriate anesthetic or sedative”—rather than “an ultra short-acting barbiturate—Jordan’s first issue was moot. The Supreme Court refused to address whether midazolam is permissible under the current statute. (2) Because the Fifth Circuit has rejected the argument that inordinate pre-execution delays amount to cruel and unusual punishment and the Supreme Court of the United States has recently denied cert on similar claims, the Eighth Amendment claim lacked merit. Further, although the circumstances surrounding the pre-execution incarceration were unusual, Jordan’s death sentence punishment was not unusual, so the Miss. Const. art. 3, § 28 claim was denied. Therefore, the Supreme Court ordered Jordan’s successive petition for post-conviction relief dismissed as moot to claim one and denied as to claim two.

OBJECTION

Justice Kitchens argued that supplemental briefing should have been ordered to allow the parties to present arguments based on the new statutory change and to address whether executing an inmate more than forty years after he was sentenced to death violates the prohibition on cruel or unusual punishment found in Miss. Const. art. 3, § 28. Justice Kitchens emphasized the language of “cruel or unusual punishment” under the state constitution, distinguishing this disjunctive formulation from the federal constitution’s conjunctive formulation.

Ordered - 2016-DR-00960-SCT (June 13, 2017)

En Banc Order by Presiding Justice Dickinson - Objection by Justice Kitchens

Briefed by [Caroline Loveless](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – JUNE 13, 2017

COURT OF APPEALS - CIVIL CASES

ALI V. ALI

CIVIL - DOMESTIC RELATIONS

FAMILY LAW - DIVORCE - STANDARD OF REVIEW - When an appellate court reviews a chancellor’s decision in a case involving divorce and all related issues, the court’s scope of review is limited by the substantial evidence/manifest error rule

FAMILY LAW - DIVORCE - ALIMONY - The chancery court has broad discretion in deciding whether to award alimony and in what amount

FAMILY LAW - CHILD SUPPORT - STANDARD OF LIVING - It is not an abuse of discretion for the chancellor to consider the standard of living to which the child is accustomed in deciding what amount of support is reasonable

FAMILY LAW - DIVORCE - ALIMONY - Recognizing the possibility that an alimony payor may fall behind in periodic-alimony payments and then die leaving those vested payments unsatisfied, Mississippi has acknowledged a chancellor's authority to require the alimony payor to maintain a life-insurance policy to protect the recipient spouse against such a contingency

FACTS

Dr. Ronnie Ali and nurse practitioner Amy Ali married in 2003, and the couple had a child together. The couple later separated, and Amy filed for divorce. On March 7, 2013, Amy was granted a divorce on habitual cruel and inhuman treatment grounds. The remaining issues were tried in February and March of 2014. One year later, the chancellor divided their property and awarded Amy custody of the minor child, child support, and alimony. Ronnie appealed.

ISSUES

Whether the chancellor erred in determining (1) visitation, (2) alimony, (3) attorney's fees, (4) child support, and (5) life insurance.

HOLDING

(1) Because the chancellor's final judgment contained no express order for permanent holiday or summer visitation, the issue was remanded. (2) Because the chancellor has broad discretion in determining whether to award alimony and in what amount, the chancellor's alimony determination was not in error. (3) Because the chancellor acted within his discretion in awarding attorney's fees and Ronnie provided no authority for his argument, the award of attorney's fees was proper. (4) Because the chancellor thoroughly considered the issue of child support and provided sound reasons for his decision, the amount of child support was affirmed. (5) Because the chancellor ordering Ronnie to maintain a life insurance policy valued at \$2 million—with Amy to receive \$1.5 million and the minor daughter to receive \$500,000—was excessive, the issue was remanded to determine an appropriate award. Therefore, the Court of Appeals affirmed in part and reversed and remanded in part the judgment of the Harrison County Chancery Court.

DISSENT

Chief Judge Lee dissented in part, arguing that the chancellor abused his discretion by awarding periodic alimony to Amy. He argued that since the couple was married for only seven years before filing for divorce, and Amy had the ability to earn a living, the alimony award was excessive. However, Chief Judge Lee concurred with the majority on the issues of attorney's fees, child support, visitation, and insurance.

Affirmed in Part; Reversed & Remanded in Part - 2015-CA-01246-COA (June 13, 2017)

Opinion by Judge Fair - Dissent by Chief Judge Lee

Hon. James B. Persons (Harrison County Chancery Court, First Judicial Dist.)

Dean Holleman for Appellant - Earl L. Denham, Phillip Lane Norwood, & Matthew Paul Pavlov for Appellee

Briefed by [Victoria Jones](#)

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BRADSHAW V. MOORE

CIVIL - CUSTODY

CIVIL PROCEDURE - RESPONSIVE PLEADINGS - CHILD CUSTODY CASES - Under Miss. R. Civ. P. 81(d)(4), child custody cases do not require responsive pleadings; parties in Rule 81 matters are merely required to appear and defend

FAMILY LAW - CUSTODY - NATURAL-PARENT PRESUMPTION - The natural-parent presumption is a doctrine that precludes a court from granting custody to a third party over the objection of a natural parent absent clear

and convincing evidence that the natural parent has abandoned or deserted the child, has engaged in immoral conduct harmful to the child, or is an unfit parent

FAMILY LAW - CUSTODY - BEST INTEREST OF THE CHILD - The foremost consideration in child-custody cases is the best interest and welfare of the child

FACTS

Erica Moore had a child, L.M., with Patrick Bradshaw in November 2009. Since her birth, L.M. lived with Moore and her grandparents, the Santuccis. Bradshaw became aware that he was the father in April 2010. Since finding out he was the father, Bradshaw only saw L.M. twice, never visited her at her home, and never sent any financial support. A petition for paternity was initiated twice against Bradshaw but for various reasons was never completed. In March 2014, due to financial reasons, Moore transferred sole physical and legal custody of L.M. to the Santuccis. Both parties testified that they believed that Moore could have physical and legal custody returned to her at any point and that the parties understood the arrangement to be temporary. The Santuccis were granted legal and physical custody of L.M. on April 2, 2014. Bradshaw was never notified of the action because they could not find a valid address for him. In September 2014, the DHS paternity test confirmed that Bradshaw was L.M.'s biological father, and he was required to provide child support for L.M. Bradshaw then brought complaint for custody against Moore. The chancery court set aside the previous order granting custody to the Santuccis because Bradshaw had been deprived of due process since he was not notified of the action. The Santuccis and Moore jointly answered Bradshaw's complaint, arguing that it should be denied. Bradshaw counterclaimed for custody against the Santuccis. The Santuccis withdrew their petition for custody at trial. The chancellor dismissed the Santuccis' original petition for custody and replaced Moore as the original plaintiff. The chancellor awarded Moore sole physical and legal custody of L.M., subject to Bradshaw's reasonable visitation rights. Bradshaw appealed.

ISSUES

Whether the chancellor erred by awarding Moore sole legal custody because (1) Moore did not initially petition the court for legal custody of L.M. and (2) Moore waived her natural-parent presumption when she consented to the Santuccis' petition for custody of L.M.

HOLDING

(1) Because the chancellor properly replaced Moore as the original plaintiff once the Santuccis' custody petition was dismissed, the chancellor did not err in awarding her custody simply because she did not initially petition for custody. Further, Bradshaw's argument that the chancellor's ruling was an unfair surprise was without merit since his original complaint was filed against Moore rather than the Santuccis, and he did not object to the substitution of Moore as the petitioner. (2) Because the order granting custody to the Santuccis was set aside for lack of notice to Bradshaw, Moore did not forfeit any natural-parent presumption, so the presumption did not apply in this case. The chancellor's finding that awarding Moore sole legal custody was in the best interests of L.M. was supported by substantial credible evidence. Therefore, the Court of Appeals affirmed the judgment of the DeSoto County Chancery Court.

Affirmed - 2016-CA-00525-COA (June 13, 2017)

Opinion by Chief Judge Lee

Hon. Percy L. Lynchard Jr. (DeSoto County Chancery Court)

Byron Russell Mobley for Appellant - A.E. (Rusty) Harlow Jr. & Kathi Crestman Wilson for Appellee

Briefed by [Mallory Bland](#)

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COLLINS V. MISS. DEP'T OF HUMAN SERVS.

CIVIL - DOMESTIC RELATIONS

FAMILY LAW - CHILD SUPPORT - AMOUNT DUE - The amount of money the noncustodial parent is required to pay for the support of their minor children should not be determined by the amount of love shown towards the parent; rather, the amount should be determined by what is in the best interest of the child

FAMILY LAW - CHILD SUPPORT - FORFEITURE - It is possible for a minor child—as young as fifteen—to forfeit his or her right to child support through his or her actions, but those actions would have to be clear and extreme

FAMILY LAW - CHILD SUPPORT - ESTRANGEMENT - Estrangement is not a basis for deviation from statutory child-support guidelines and is not an excuse for failing to pay child support

FACTS

Adam Summers was born to Lisa and her then-husband, Albert Ralph Summers. When Adam was 18 months old, his parents separated and later divorced. Adam lived with his mother Lisa until he was eight years old. Lisa remarried to Arnold Owens, who did not have a good relationship with Adam, causing him to move in with his father Ralph. Ralph subsequently died when Adam was thirteen years old, and Adam then moved back in with his mother and her third husband, Geoffrey Collins. Because of behavioral issues, Adam moved between relatives for the next three years. After a fight between Adam and Geoffrey, which resulted in Adam choking Geoffrey, Geoffrey biting Adam, and Lisa being injured, Adam and Lisa had no further contact with one another. Adam then moved in with his paternal uncle Victor Summers and Victor's wife Debbie. After exhibiting inappropriate behavior, such as bestiality, Victor and Debbie entered Adam into a program for emotionally disturbed children. On November 20, 2014, Mississippi Department of Human Services brought action against Lisa, requesting her to pay child-support for Adam. Lisa claimed that she should not have to pay child support because Adam abandoned their relationship and counterclaimed for emancipation. After a hearing, the chancellor dismissed Lisa's emancipation counterclaim and entered a judgment requiring Lisa to pay 14% of her income to Adam in child support. Lisa appealed.

ISSUES

Whether (1) the chancellor erred in requiring Lisa to pay child support for Adam, and (2) the chancellor's factual findings were not supported by substantial evidence.

HOLDING

(1) Because the chancellor properly found that Adam had not led to the deterioration of the parent-child relationship, at least any more so than Lisa, the chancellor did not err by ordering Lisa to pay child support. (2) Because the chancellor's findings of fact and decision were supported by substantial evidence, the chancellor did not err in entering judgment against Lisa. Therefore, the Court of Appeals affirmed the decision of the Pontotoc County Chancery Court.

Affirmed - 2016-CA-00230-COA (June 13, 2017)

Opinion by Judge Carlton

Hon. C. Michael Malski (Pontotoc County Chancery Court)

Dalton Clinton Middleton for Appellant - Jeff Skinner, Joshua Lee Eure, & Lewis Clark Hunter for Appellee

Briefed by [Blake Brookshire](#)

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IN RE ESTATE OF BYAS

CIVIL - WILLS, TRUSTS, & ESTATES

CIVIL PROCEDURE - CRIMINAL CONTEMPT - Criminal contempt is designed to punish the defendant for disobedience of a court order; this is proper only when the contemnor has willfully, deliberately and contumaciously ignored the court or the court's directive

CIVIL PROCEDURE - CRIMINAL CONTEMPT - CONSTRUCTIVE - Constructive criminal contempt punishes a party for noncompliant conduct outside the court's presence; the contemnor must pay constructive criminal-contempt fines to the court, rather than to an injured party

FACTS

Vivian Byas died in June 2014. Victor, Mary, and Paulette are three of Vivian's children. Paulette filed a petition to probate Vivian's will. After a hearing, the chancellor entered an order in August 2014 to continue the probate matter. The chancellor ordered the parties involved to remove their personal belongings from Vivian's house and also ordered the house be vacated and remain locked until the matter was resolved. The chancellor appointed Victor to temporarily collect rental income and pay Vivian's mortgages along with the utilities and homeowners' insurance. The locks on the house were changed, and the keys were retained by the Sunflower County Chancery Clerk. In October 2014, Paulette filed a motion for contempt, alleging that Victor and Mary had entered the house in violation of the previous order. The chancellor found both Victor and Mary in contempt for failing to abide by the court's prior order and ordered both to pay fines to the court. Victor and Mary appealed.

ISSUE

Whether the chancellor erred in finding both Victor Byas and Mary Byas in contempt.

HOLDING

Because there was no evidence that either Victor or Mary willfully, deliberately, and contumaciously ignored the court order, there was insufficient evidence to support a finding of constructive criminal contempt. Therefore, the Court of Appeals reversed the judgment of the Sunflower County Chancery Court.

Reversed & Rendered - 2015-CA-00749-COA (June 13, 2017)

Opinion by Chief Judge Lee

Hon. Marie Wilson (Sunflower County Chancery Court)

Alsoe McDaniel for Appellants - Vallrie Lanette Dorsey for Appellee

Briefed by [Lora Wuerdeman](#)

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J.F.G. v. PEARL RIVER COUNTY DEP'T OF HUMAN SERVS.

CIVIL - CUSTODY

PARENTAL RIGHTS - INVOLUNTARY TERMINATION - EVIDENTIARY STANDARD - When reviewing a termination of parental rights, the appellate court looks for whether credible proof exists to support the chancellor's finding of fact by clear and convincing evidence

PARENTAL RIGHTS - INVOLUNTARY TERMINATION - STATUTORY GROUNDS - If the chancellor is satisfied by clear and convincing evidence that at least one of eight statutory grounds for termination exists, he or she may order termination of parental rights

FACTS

J.F.G. is the biological mother of four minor children. C.L.G. was the legal father of three, and the biological father of two of J.F.G.'s children. In August 2012, the children were placed into the custody of the Pearl River County Department of Human Services (DHS). On November 14, 2012, the children were adjudicated as neglected. The mother and father entered into separate service agreements with DHS, which they failed to successfully complete. Specifically, the mother failed to complete drug rehabilitation, maintain sufficient housing, maintain visitation with the children, and complete a psychological exam. After her arrest in March 2013 for use of crystal methamphetamine, she was admitted to the Mississippi State Hospital at Whitefield for drug treatment. After completion of the program in May 2013, the mother and DHS entered into a second service agreement, which she again failed to complete. In November 2013, the mother was arrested again for use of crystal methamphetamine and sentenced to a program overseen by the drug court. The father similarly failed to complete his service agreement, and after testing positive for methamphetamine, was arrested and incarcerated for possession of a controlled substance with intent to distribute. On April 30, 2014, the youth court determined that reunification was no longer in the best interest of the children. On October 22, 2014, DHS filed

a petition to terminate the mother and father's parental rights. At trial, the original DHS social worker assigned to the case testified that from 2008 to 2012 the mother kept her children at the home of a friend who was living with a registered sex offender, where the children were repeatedly subject to incidents of molestation. The guardian ad litem (GAL) also testified that the children observed their parents engage in sexual activities and viewed a pornographic video depicting the same. The children revealed that two of them performed oral sex on each other and that one of them threatened to kill the other if he ever told anyone about the abuse. The GAL also testified that the children indicated a desire to be adopted, were currently split between homes due to their sexual activity and physical threats made between them, and that all of them were thriving in their current environments. On December 17, 2015, a judgment was entered terminating the mother's and father's parental rights after the chancellor found by clear and convincing evidence that termination was in the best interests of the children in accordance with the GAL'S recommendation. The mother and father appealed.

ISSUES

Whether the chancellor (1) erred in holding that the grounds for termination existed by clear and convincing evidence, and (2) considered all of the evidence before her.

HOLDING

(1) Because the DHS reunification efforts were futile, and because the parents failed to either exercise visitation with the children or follow their respective placements plans, the chancellor's finding grounds for termination was supported by clear and convincing evidence. Termination was also proper because the children had been adjudicated as abused and neglected. (2) Because the chancellor acknowledged all of the evidence of the parents' behavior and progress between the time the permanency-plan goal was changed and the time of the termination hearing, the record showed that the chancellor appropriately considered all the evidence. Therefore, the Court of Appeals affirmed the judgment of the Pearl River County Chancery Court.

Affirmed - 2016-CA-00099-COA (June 13, 2017)

Opinion by Judge Greenlee

Hon. Dawn H. Beam (Pearl River County Chancery Court)

James L. Gray for Appellants - Steven Patrick Wansley (Att'y Gen. Office) for Appellee

Briefed by [Amber Kipfmiller](#)

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MOSLEY V. MISS. DEP'T OF EMP'T SEC.

CIVIL - STATE BOARDS & AGENCIES

ADMINISTRATIVE LAW - EMPLOYMENT-SECURITY - UNEMPLOYMENT BENEFITS - Individuals are entitled to unemployment benefits if the claimant meets the statutory eligibility requirements set forth in Miss. Code Ann. § 71-5-511

ADMINISTRATIVE LAW - EMPLOYMENT-SECURITY - UNEMPLOYMENT BENEFITS - An individual seeking unemployment benefits must establish monetary eligibility, which requires the claimant to have earned a sufficient amount of wages for covered employment with an employer during the claimant's base period

ADMINISTRATIVE LAW - UNEMPLOYMENT BENEFITS - WEEKLY BENEFIT - The weekly benefit amount to be paid is determined by dividing the claimant's highest quarter earnings by twenty-six and rounding to the next lower dollar; if that amount is less than \$30, the claimant is not entitled to benefits

FACTS

Shanese Mosley applied for unemployment insurance benefits, but the Mississippi Department of Employment Security (MDES) denied her claim, finding that she failed to meet the monetary-eligibility requirements, as her weekly benefit

amount was below the minimum amount. Mosley appealed to the MDES Board of Review, which affirmed. Mosely then appealed to the circuit court, which also affirmed the MDES decision. Mosely appealed to the Supreme Court, but while the case was pending, the MDES filed a motion seeking remand of the case to MDES, so it could consider income earned by Mosely in another state. The Supreme Court granted the motion and remanded the case, but after MDES considered the other income, it again ruled Mosely had failed to meet the eligibility requirements. Mosley again appealed the decision to the circuit court, which affirmed the MDES decision. Mosely appealed.

ISSUE

Whether the trial court erred in affirming MDES's denial of benefits.

HOLDING

Because Mosley's highest quarter wages were \$482, she was only entitled to a weekly benefit of \$18, less than the minimum of \$30. Therefore, the Court of Appeals affirmed the judgment of the Marshall County Circuit Court.

Affirmed - 2016-CC-00692-COA (June 13, 2017)

En Banc Opinion by Presiding Judge Irving

Hon. Andrew K. Howorth (Marshall County Circuit Court)

Pro se for Appellant - Albert B. White & Anna Crain Clemmer for Appellee

Briefed by [Alison Guider](#)

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COURT OF APPEALS - POST-CONVICTION RELIEF

TURNER V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - REVOCATION HEARING - OBJECTION TO EVIDENCE - The failure to make a contemporaneous objection bars a defendant from raising the issue for the first time on appeal

POST-CONVICTION RELIEF - MOTION FOR RELIEF - TIME BAR - Under the Uniform Post-Conviction Collateral Relief Act, a motion for relief following a guilty plea is untimely unless filed within three years after entry of the judgment of conviction

FACTS

On September 28, 2011, Tim Turner entered a guilty plea on one enhanced count of the sale of a controlled substance (cocaine). Turner was sentenced to thirty years in the custody of the Mississippi Department of Corrections. Twenty-eight years of the sentence were suspended, followed by five years of post release supervision (PRS). Turner was given two years credit for time served and was released on PRS. After violating the conditions of his PRS, the State filed a petition to revoke Turner's PRS. Instead, the court ordered that he complete an in-patient rehabilitation program. A few months later, Turner was discharged from the program after testing positive for cocaine. The State filed a second petition to revoke Turner's PRS, and Turner asserted irregularities in his urinalysis. Due to the alleged irregularities, Turner performed a hair-follicle drug test, and the follicle test returned positive for cocaine as well. Turner then sought to have his urine sample retested, but the lab had disposed of the urine. The circuit court found Turner in violation of the terms of his modified PRS and imposed Turner's twenty-eight-year sentence, with eight years suspended and five years to serve on PRS. On November 3, 2015, Turner filed his second PCR petition, which the circuit court dismissed, finding that it unmeritorious. Turner appealed.

ISSUES

Whether (1) Turner's due-process right to confront an adverse witness was denied; (2) there was sufficient evidence presented to support the revocation of Turner's PRS; and (3) Turner's PCR petition was time-barred and successive-writ-barred.

HOLDING

(1) Because Turner never explicitly objected to the admission of the urinalysis results during the hearing, the trial court had no obligation to subpoena the lab technician to aid Turner in his defense. (2) Because the hair-follicle test, standing alone, established a preponderance of the evidence that Turner had used cocaine while on PRS, Turner's PRS revocation was supported by sufficient evidence. (3) Because Turner filed his second PCR petition more than three years after his guilty plea, this PCR petition was time-barred and successive-writ-barred. Therefore, the Court of Appeals affirmed the judgment of the Itawamba County Circuit Court.

Affirmed - 2015-CP-01892-COA (June 13, 2017)

Opinion by Judge Westbrook

Hon. James Seth Andrew Pounds (Itawamba County Circuit Court)

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

Briefed by [TreMarcus Rosemon](#)

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COURT OF APPEALS - CRIMINAL CASES

ELDRIDGE V. STATE

CRIMINAL - FELONY

TRIAL - JURY INSTRUCTIONS - REFUSAL OF INSTRUCTIONS - A defendant is entitled to have every legal defense he asserts to be submitted as a factual issue for determination by the jury under proper instruction of the court; however, the court may refuse an instruction which incorrectly states the law, is covered fairly elsewhere in the instructions, or is without foundation in the evidence

REVIEW - JURY INSTRUCTIONS - LESSER-INCLUDED-OFFENSE - A lesser-included-offense instruction should be granted unless the trial court, and ultimately the appellate court, can say that taking all the evidence in the light most favorable to the accused, no reasonable jury could find the defendant guilty of the lesser-included-offense and conversely not guilty of at least one essential element of the principal offense

FACTS

Edward Parker Eldridge broke into the dwelling of Charles Flowers, rummaged through Flowers's personal items, and then fled before he could steal anything. Subsequently, Eldridge was convicted of burglary and sentenced to twenty years, with twelve years suspended and eight years in custody of the Mississippi Department of Corrections. After sentencing, Eldridge filed a motion for a judgment notwithstanding the verdict or, alternatively, a new trial, which was denied. Eldridge appealed.

ISSUE

Whether the trial court erred in refusing Eldridge's request for a lesser-included-offense instruction on trespass.

HOLDING

Because a reasonable jury could not have found Eldridge guilty of criminal trespass only, there was no reversible error in the trial court's refusal of the jury instruction. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Circuit Court.

Affirmed - 2016-KA-00166-COA (June 13, 2017)

Opinion by Judge Westbrook
Hon. Lawrence Paul Bourgeois Jr. (Harrison County Circuit Court, Second Judicial Dist.)
W. Daniel Hinchcliff (Pub. Def. Office) for Appellant - Scott Stuart (Att'y Gen. Office) for Appellee
Briefed by [Catherine Norton](#)

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