

MISSISSIPPI SUPREME COURT DECISIONS – OCTOBER 20, 2016

SUPREME COURT - CIVIL CASES

CLEVELAND NURSING AND REHABILITATION, LLC v. GULLY

CIVIL - WRONGFUL DEATH

CIVIL PROCEDURE - FILING REQUIREMENTS - M.R.C.P. 79(a) - All papers filed with the clerk and judgments shall be noted in this general docket on the page assigned to the action and shall be marked with its file number; these entries shall be brief but shall show the nature of each paper filed or writ issued and the substance of each order or judgment of the court. . . The entry of an order or judgment shall show the date the entry is made

CIVIL PROCEDURE - EFFECTIVE JUDGEMENT - M.R.C.P. 58 - A judgment shall be effective only when entered as provided in M.R.C.P. 79(a)

CIVIL PROCEDURE - CHANGES TO TESTIMONY - M.R.C.P. 26(f) - If a witness changes his testimony in a manner that conflicts with prior discovery responses, the sponsoring party has a duty under Rule 26(f) seasonably and formally to amend or supplement the response

FACTS

The Estate of Annie Mae Gully (Estate) brought a negligence claim against Cleveland Nursing and Rehabilitation, LLC (Cleveland) after Gully died as a result of surgical complications from a fall that occurred while she was in Cleveland's care. Cleveland filed a motion for a new trial, which the trial court rejected. Cleveland appealed.

ISSUES

On direct appeal, whether Cleveland is entitled to a new trial because: (1) the trial court admitted undisclosed testimony by the Estate's expert; and (2) the trial court prohibited Cleveland's physician expert from offering disclosed opinions to rebut cause-of-death opinions from Plaintiff's physician expert.

On cross appeal, whether the trial court erred in allowing Cleveland to refile its Motion for New Trial and whether its Notice of Appeal should be dismissed as untimely.

HOLDING

(1) The trial court erred in applying a surprise test instead of Rule 26(f) and allowing the Estate's nurse expert to testify regarding a topic undisclosed in discovery. (2) The trial court did not err in prohibiting Cleveland's expert from testifying as to his opinion of the cause of death of Gully because he did not fully disclose this opinion in discovery. Therefore, on direct appeal, the Supreme Court reversed in part and remanded for a new trial the judgment of the Bolivar County Circuit Court.

Because the original judgement of the trial court was not properly entered according to Miss. R. Civ. P. 79(a), the trial court did not abuse its discretion in allowing Cleveland to refile its Motion for New Trial, and Cleveland's motion for a new trial was not untimely. Therefore, on the cross-appeal, the Supreme Court affirmed judgment of the Bolivar County Circuit Court.

On Direct Appeal: Affirmed in Part; Reversed in Part and Remanded. On Cross-Appeal: Affirmed - 2014-CA-01660-SCT (Oct. 20, 2016)

Opinion by Presiding Justice Randolph
Hon. Charles E. Webster (Bolivar County Circuit Court)

George Clanton Gunn IV, Bradley Witherspoon Smith, & Andrea La'Verne Ford Edney for Appellant - Levi Boone III & Kelvin Cedell Pulley for Appellee
Briefed by [Brittany Bane](#)

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HUDSPETH REGIONAL CENTER V. MITCHELL

CIVIL - WORKERS' COMPENSATION

WORKERS' COMPENSATION - ELIGIBILITY - GENERALLY - Miss. Code Ann. § 71-3-7 provides that compensation shall be payable for disability or death of an employee from injury or occupational disease arising out of and in the course of employment, without regard to fault as to the cause of the injury or occupational disease

WORKERS' COMPENSATION - DISABILITY - GENERALLY - Miss. Code Ann. § 71-3-3 defines disability as incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or other employment, which incapacity and the extent thereof must be supported by medical findings

WORKERS' COMPENSATION - ELIGIBILITY - EARNING CAPACITY - To be due compensation under the Workers' Compensation statutes, the employee's work-related injury—and not some other cause—must affect the employee's capacity to earn the wages which the employee was receiving at the time of injury in the same or other employment

WORKERS' COMPENSATION - POST-INJURY RETURN - PRESUMPTION - Where an injured employee returns to work and receives the same or greater earnings as those prior to his injury, there is created a rebuttable presumption that he has suffered no loss in his wage-earning capacity

FACTS

Linda Mitchell fell and injured her back while working as a registered nurse at Hudspeth Regional Center, and was treated at Baptist Hospital following the incident. Six weeks later, Mitchell returned to her pre-injury position at Hudspeth, where she carried out the same duties as she did prior to the accident. Hudspeth terminated Mitchell for cause seven months later relating to tardiness and insubordination. Her treating physician for her injuries recommended her to a physical therapist, which concluded that her 3% permanent partial impairment to her body allowed her to perform sedentary work, but she should avoid prolonged standing. She filed a petition to controvert with the Mississippi Workers' Compensation Commission, which concluded that Mitchell's injury resulted in a total loss in earning capacity and awarded her disability benefits. The Commission and the Court of Appeals affirmed the Administrative Law Judge's ruling. Mitchell appealed.

ISSUE

Whether the Administrative Law Judge committed legal error by failing to recognize that a rebuttable presumption exists that Mitchell suffered no loss in earning capacity when she returned to work.

HOLDING

Because Mitchell returned to her pre-injury position at the same or higher rate of pay for nearly seven months before being terminated, a rebuttable presumption existed that she did not suffer a loss in earning capacity. Further, because Mitchell's case was indistinguishable from Mississippi Supreme Court case, *Omnova Solutions, Inc. v. Lipa*, where the Court reversed the Administrative Law Judge's findings because the loss of earning capacity was not related to the injury, the Court held that reversible legal error was committed. Therefore, the Mississippi Supreme Court reversed the decision of the Mississippi Workers' Compensation Commission.

Reversed and Remanded - 2014-CT-01730-SCT (Oct. 20, 2016)

En Banc Opinion by Presiding Justice Dickinson

Mississippi Workers' Compensation Commission

Joseph T. Wilkins, III & Nicholas Denson Garrard for Appellant - Steven Hiser Funderburg for Appellee

Briefed by [Patrick Huston](#)

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IN RE UNIFORM RULES OF YOUTH COURT PRACTICE

ORDER

RULES & REGULATIONS – MISSISSIPPI UNIFORM RULES OF YOUTH COURT PRACTICE - AMENDMENT - The Supreme Court amends rules so that the rules conform with recent legislative changes, to clarify procedures in the existing rules, and to correct any errata

FACTS

District Attorney Robert Shuler Smith was temporarily disqualified from any and all participation in any grand jury proceedings in Hinds County. Smith appealed.

ISSUE

Whether the Mississippi Council of Youth Court Judges is permitted to strike their prior Petition on Amending Certain Rules of Uniform Rules of Youth Court Practice and substitute that petition with their Petition on Amending Certain Rules of the Mississippi Uniform Rules of Youth Court Practice to Conform with Recent Legislative Changes and to Clarify Procedures.

ORDER

The Council was permitted to strike its prior petition and substitute their previous changes with their proposed amendments to take effect December 1, 2016.

Granted - No. 89-R-99033-SCT (Oct. 17, 2016)

En Banc Order by Justice Dickinson

Briefed by [Ally Heine](#)

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PASCAGOULA-GAUTIER SCHOOL DISTRICT V. BOARD OF SUPERVISORS OF JACKSON COUNTY

CIVIL – OTHER

CIVIL PROCEDURE - JURISDICTION - STANDING - Parties have standing to sue when they assert a colorable interest in the subject matter of the litigation, experience an adverse effect from the conduct of the defendant, or as otherwise provided by law

TAX ASSESSMENT - APPEALS - RIGHT TO JURY TRIAL - The right to a jury trial exists in tax assessment appeals to circuit courts

CIVIL PROCEDURE - JOINDER - NECESSARY PARTY - Miss. R. Civ. P. 19(a)(2)(ii) requires that a party be joined when he claims an interest relating to the subject of the action, and is so situated that the disposition of the action in his absence may leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or inconsistent obligations by reason of his claimed interest

FACTS

The Pascagoula-Gautier School District and the City of Pascagoula took issue with the Jackson County Board of Supervisors' approval of the Tax Assessor's methodology in assessing taxes on Chevron's leasehold interest in property it leased from Jackson County. After several years of litigation, and after the Jackson County Circuit Court denied two motions to dismiss for lack of standing, the court sua sponte reversed course and granted the second motion to dismiss for lack of standing. It reasoned that the School District and the City lacked standing because Miss. Code Ann. § 11-

51-77 does not specifically grant them standing. Additionally, the trial court granted the Board's demand for a jury trial, and denied the School District's motion to join Chevron as a party. The School District and the City appealed.

ISSUES

Whether the trial court erred in (1) granting the Board's motion to dismiss for lack of standing, (2) granting the Board's demand for jury trial, and (3) denying the School District's motion to join Chevron as a party.

HOLDING

(1) Because the School District and the City are not required to show a specific statute authorizing standing, and because they otherwise demonstrated an adverse effect different from the adverse effect experienced by the general public to establish standing, the trial court erred in granting dismissal. (2) Additionally, because the Court has held that the right to a jury trial exists in tax assessment appeals to circuit courts, the trial court properly granted the Board's demand for a jury trial. (3) Moreover, the majority agreed that the trial court erred in denying joinder, either (A) because Chevron "waived" its right to object to joinder by participating in the case, or (B) because, under Miss. R. Civ. P. 19(a)(2)(ii), Chevron asserted an interest relating to the subject matter of the action, and the failure to join Chevron as a party would leave both the School District and the Tax Assessor at a substantial risk of facing double litigation. Therefore, the Court reversed the trial court's grant of dismissal for lack of standing, affirmed the trial court's decision to grant the Board's demand for a jury trial, reversed the trial court's order declining to join Chevron as a party, and remanded the case for further proceedings.

CONCURRENCE AND DISSENT

Justice Coleman agreed with the Court's analysis of standing and the Board's right to a jury trial. However, he disagreed with the majority's analysis of the joinder issue, arguing (1) that there was no legal basis to support the contention that Chevron waived its right to object to joinder, and (2) that the joinder of Chevron was not supported by Miss. R. Civ. P. 19. Therefore, Justice Coleman would have held that the circuit court did not abuse its discretion in denying joinder.

Affirmed in Part; Reversed in Part and Remanded - 2014-CA-01774-SCT (Oct. 20, 2016)

Opinion by Justice King – Concurrence and Dissent by Justice Coleman

Hon. Samac S. Richardson (Jackson County Circuit Court)

William E. Whitfield, III, Kimberly Dawn Saucier Rosetti, & Eddie C. Williams for Appellants – Jackye C. Bertucci for Appellee

Briefed by [James Kelly](#)

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STATE V. SCOTT

ORDER - RECORD SUPPLEMENTATION

CIVIL PROCEDURE - RECORD SUPPLEMENTATION - M.R.A.P. 10(e) - If any difference arises as to whether the record truly discloses what occurred in the trial court, the difference shall be submitted to and settled by that court and the record made to conform to the truth; if anything material to either party is omitted from the record . . . [an] appellate court on proper motion or of its own initiative, may order that . . . a supplemental record be filed

CIVIL PROCEDURE - RECORD SUPPLEMENTATION - M.R.A.P. 10(f) - Nothing in Rule 10 shall be construed as empowering the parties or any court to add to or subtract from the record except insofar as may be necessary to convey a fair, accurate, and complete account of what transpired in the trial court with respect to those issues that are the bases of appeal

CIVIL PROCEDURE - RECORD SUPPLEMENTATION - BRIEFS AND ATTACHED EXHIBITS - Appellate courts must decide each case by the facts shown in the record, not assertions in the brief

CIVIL PROCEDURE - RECORD SUPPLEMENTATION - FACTS ASSERTED TO EXIST - Facts asserted to exist must be definitively proved and placed in the record before the appellate court, otherwise the appellate court cannot know them

FACTS

The State attached an exhibit to their appellate brief entitled “Petitioner’s Proposed Findings of Fact and Conclusions of Law,” which was originally submitted by Kevin Scott to the trial court. It is unknown as to whether this document was submitted prior to the trial court’s final decision on January 14, 2015. The State is arguing that the trial court adopted almost verbatim the proposed findings of fact and conclusions of law presented by Scott, however the alleged offending findings of fact and conclusions of law are not included in the record (to which the State gave its approval). The State’s exhibit is the Court’s first introduction to the alleged invalid findings of fact and conclusions of law. The Court took up the matter on its own motion.

ISSUE

Whether the record may be supplemented with the State’s exhibit entitled “Petitioner’s Proposed Findings of Fact and Conclusions of Law.”

HOLDING

As supplementation of the record is sometimes necessary to convey a fair, accurate, and complete account of what transpired in the trial court with respect to those issues that are the bases of appeal, the Court ordered that the trial court shall determine if the document entitled “Petitioner’s Proposed Findings of Fact and Conclusions of Law” was submitted prior to the trial court’s final order. If it was, then the trial court shall supplement the record with the document.

DISSENT

Justice King argued that the State did not file an objection as to the accuracy or completeness of the record before the Court, nor was there any indication that the State requested an opportunity to supplement the record to include the alleged offending findings of fact and conclusions of law. For the Court, of its own volition, to mandate supplementation of the record creates a slippery slope. An extension of the Court’s reasoning in the order could lead to searches of trial judges’ and clerks’ computers to see what legal research was done prior to decisions. Further, the Court went against well-established precedent which states that briefs and attached exhibits are not a part of the trial record, and cannot serve as a basis for the Court’s decisions.

Order - 2014-KA-00123-SCT (Oct. 18, 2016)

En Banc Opinion by Justice Maxwell - Dissent by Justice King

Hon. Johnnie E. Walls, Jr. (Bolívar County Circuit Court)

Briefed by [Josh Rhodes](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – OCTOBER 18, 2016

COURT OF APPEALS - CIVIL CASES

CRATER V. BANK OF NEW YORK MELLON

CIVIL - REAL PROPERTY

DEED OF TRUST - ASSIGNMENT - STANDING TO CHALLENGE - A borrower who is not a party to the assignment of his or her security interest has no standing to challenge the assignment of that interest

NON-JUDICIAL FORECLOSURE - HOLDER IN DUE COURSE - PROOF OF ASSIGNMENT - The party initiating a foreclosure proceeding does not have to present an associated promissory note along with the assignment of the deed of trust to be considered the holder in due course; Mississippi has rejected the “show me the note” theory that requires conclusive proof of assignment of the trustee instrument

CIVIL PROCEDURE - MOTION TO AMEND - FUTILITY OF AMENDMENT - The Mississippi Rule of Civil Procedure 15(a) provides that a court shall give leave to amend a complaint when justice so requires but that a court should not give leave if the amendment would be futile and cause undue prejudice to the opposing party

FACTS

Brenda Crater secured a home loan from Home Loan Corporation by a deed of trust in 2004. In 2012, HLC assigned the deed of trust to Bank of New York Mellon. The Bank began a foreclosure action on the home after Crater had not made a payment in three years. Crater filed suit against the Bank and sought injunctive relief and compelled mediation based on three claims: the assignment of the deed of trust without an assignment of the associated promissory note was null and void; the Bank had no standing to initiate foreclosure proceedings; and the Bank violated the Mississippi Consumer Protection Act. The DeSoto County Chancery Court granted the Bank's motion to dismiss for failure to state a claim and denied Crater's subsequent motion to amend the complaint which sought to add claims of fraudulent concealment against HLC and violation of the Truth in Lending Act against the Bank. Crater appealed.

ISSUES

Whether the trial court (1) erred by granting the Bank's motion to dismiss, and (2) abused its discretion by not ruling on Crater's motion to amend the complaint prior to granting the motion to dismiss.

HOLDING

(1) Because Crater was not a party to the transaction between HLC and the Bank, she had no standing to challenge the assignment of the deed of trust, and because the holder of a deed of trust does not have to present an original contract or promissory note for purposes of initiating a foreclosure, the trial court did not err by granting the Bank's motion to dismiss for failure to state a claim. (2) Because Crater's motion to amend included claims against a non-party and claims against the Bank that were devoid of factual allegation and expired by the statute of limitations, the trial court did not abuse its discretion by ruling on Crater's motion to amend the complaint prior to granting the motion to dismiss.

Affirmed - 2015-CA-01331-COA (Oct. 18, 2016)

Opinion by Judge Greenlee

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

Drayton D. Berkley for Appellant - Clarence Webster III, Kathleen Shields O'Bierne, & Megan Barber Conner for Appellee

Briefed by [Allison Bruff](#)

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DORMAN V. POWER

CIVIL - REAL PROPERTY

CIVIL PROCEDURE - PLEADINGS - SPECIFICITY - Pursuant to Miss. R. Civ. P. 9(b), in all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be pled with particularity

CIVIL PROCEDURE - PLEADINGS - AMENDMENTS - Pursuant to Miss. R. Civ. P. 15(a), a party may amend a pleading as a matter of course at any time before a responsive pleading is served; otherwise a party may amend a pleading only by leave of court or upon written consent of the adverse party

CIVIL PROCEDURE - SUMMARY JUDGMENT - BURDEN OF PROOF - The moving party has the burden of demonstrating that no genuine issue of material fact exists, while the nonmoving party should be given the benefit of every reasonable doubt

CIVIL PROCEDURE - SUMMARY JUDGMENT - FRAUD - Claims alleging fraud or misrepresentation are fact-based questions, and are generally inappropriate for disposition at the summary judgment stage; yet, summary judgment may be upheld where no genuine issue existed as to whether the jury could have found fraud by the clear and convincing standard

REAL PROPERTY - ADVERSE POSSESSION - ESTABLISHING CLAIM - In order to establish a claim of adverse possession, a claimant must prove by clear and convincing evidence that the possession was (1) under a claim

of right or 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

FACTS

Arlan Dorman filed suit to confirm title and remove cloud on title to two parcels of land. The trial court granted the defendant's motions for summary judgment and dismissed Dorman's fraud, inadequate consideration and adverse possession claims. Dorman appealed.

ISSUES

Whether the trial court erred in (1) granting summary judgment on Dorman's fraud claim; (2) granting summary judgment without addressing whether Dorman could amend his complaint; (3) granting summary judgment on Dorman's claim of inadequate consideration; and (4) dismissing Dorman's adverse possession claim based on a typographical error.

HOLDING

(1) Because Dorman's failure to plead fraud with specificity as required by Rule 9 resulted in his failure to show a genuine dispute of material fact, the trial court properly granted summary judgment. (2) Because a party against whom claims are asserted may, at any time, move for a summary judgment, the trial court did not err by granting summary judgment before ruling on Dorman's motion to amend his complaint. (3) Because the warranty deed expressly stated that adequate consideration was provided and Dorman's submitted affidavit failed to raise a genuine issue of material fact, the trial court properly granted summary judgment. (4) Because Dorman failed to present evidence to create a genuine issue of material fact as to whether he adversely possessed or occupied the property continuously and uninterrupted for a period of ten years, the trial court properly dismissed the adverse possession claim. Therefore, the Court of Appeals affirmed the judgment of the Montgomery County Chancery Court.

CONCURRENCE

Judge Greenlee agreed with the majority's holding that the trial court properly granted summary judgment on all claims. He further argued that real property law provides another reason for granting summary judgment on the fraud claim because Mississippi is a race-notice state and there was no evidence that the subsequent grantees of the property were on notice of any adverse claims.

Affirmed - 2014-CA-01705-COA (Oct. 18, 2016)

En Banc Opinion by Judge Carlton - Concurrence by Judge Greenlee

Hon. Vicki B. Daniels (Montgomery County Chancery Court)

James H. Arnold Jr. for Appellant - Artis Franklin Power (Pro se) & Charles Hays Burchfield & Jason Edward Dare for Appellees

Briefed by [Kaylee Beauchamp](#)

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MOSLEY V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - MOTION TO VACATE JUDGMENT - APPEAL SUBSTITUTION - Motions for relief under Rule 60(b)(6) should be denied when they are merely attempting to relitigate the case, and are not to be used as a substitute for appeal

POST-CONVICTION RELIEF - POST-RELEASE SUPERVISION - RE-SENTENCING ON VIOLATION - The court is authorized to impose the full suspended portion of a sentence once it has determined that the post-release supervision has been violated

FACTS

Tramendez Mosley pled guilty to possession of cocaine with intent to distribute as part of a plea deal. Mosley indicated that he understood the plea deal. He was placed on post-release supervision. Mosley's post-release supervision was later revoked, and the trial court ordered him to serve his remaining sentence in the custody of the Mississippi Department of Corrections. Mosley filed a post-conviction relief motion and argued that the trial court set aside the initial sentence and imposed a new one, which violated double jeopardy. The trial court denied his motion. Mosley appealed that decision with a 60(b) motion, since he did not file a timely notice of appeal. The trial court denied this appeal. Mosley appealed.

ISSUES

Whether the circuit court erred in (1) denying Mosley's 60(b) motion and (2) whether his claim should have been denied on its merits.

HOLDING

(1) Because Mosley's 60(b) motion to vacate judgment simply reargued the merits of his initial post-conviction relief motion, his motion was properly denied. (2) Because Mosley understood the terms of his appeal, and the trial court found that Mosley violated the conditions of his post-release suspension, the circuit court was authorized to impose the full suspended portion of Mosley's sentence. Therefore, the Court of Appeals affirmed the judgment of the Lauderdale County Circuit Court.

Affirmed - 2016-CP-00267-COA (Oct. 18, 2016)

Opinion by Judge Wilson

Hon. Lester F. Williamson (Lauderdale County Circuit Court)

Pro se for Appellant - Billy L. Gore (Att'y Gen. Office) for Appellee

Briefed by [Morgan L. Stringer](#)

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SERIO V. SERIO

CIVIL – DOMESTIC RELATIONS

CIVIL PROCEDURE - STANDARD OF REVIEW - DOMESTIC RELATIONS – The standard of review in domestic relations matters is very limited in that appellate courts should not disturb the chancellor's decision unless the chancellor was manifestly wrong

DOMESTIC RELATIONS – STANDARD OF REVIEW - ALIMONY AWARDS – A chancellor's award of alimony is primarily within the discretion of the chancery court because it has the opportunity to sense the equities of the situation before it

DOMESTIC RELATIONS - SPOUSAL SUPPORT - PERMANENT ALIMONY – Permanent alimony is a substitute for the marital support obligation, which requires a financially independent spouse to support the financially dependent spouse in a manner the dependent spouse was supported during the marriage, subject to material changes in circumstances

DOMESTIC RELATIONS - PROPERTY DISTRIBUTION - MARITAL PROPERTY – Because assets owned by a spouse are presumed to be marital property, the party seeking to classify property as non-marital property must prove that the asset is from a separate property source

FACTS

After nineteen years of marriage, Jose and Melissa Serio were granted a divorce. The chancery court computed Jose's monthly income and found that there was a significant disparity between his income and Melissa's. Considering this income gap, length of their marriage, and that Melissa would have trouble re-entering the workplace at her age, the court awarded Melissa permanent monthly alimony. The chancellor also classified Melissa's bank account as separate property and awarded the account to her because it was her inheritance from her late mother. Additionally, the chancellor assigned responsibility to Jose for all taxes owed on Jose's 2013 tax return. Jose appealed.

ISSUE

Whether the chancery court erred in (1) computing Jose's income; (2) awarding Melissa permanent alimony rather than rehabilitative alimony; (3) not classifying a tax liability as marital debt and requiring Melissa to pay a portion; and (4) classifying her bank account as non-marital property.

HOLDING

Given the appellate court's deferential standard of review and the chancery court's thorough consideration of the applicable law, the chancellor did not err in (1) computing Jose's income (2) awarding Melissa permanent alimony; and (3) classifying the 2013 tax liability as Jose's responsibility. (4) The chancery court erred in classifying Melissa's bank account as separate marital property because there was insufficient evidence to prove that all of the funds in her account were from her inheritance. Therefore, the Court of Appeals affirmed in part and reversed and remanded in part the judgment of the Adams County Chancery Court.

Affirmed in Part and Reversed and Remanded in Part -2015-CA-00570-COA (Oct. 18, 2016)

Opinion by Presiding Judge Tyree Irving

Hon. Hollis McGehee (Adams County Chancery Court)

R. Kent Hudson, William Abraham Orlansky & Susan Latham Steffey for Appellant - David Bridges for Appellee

Briefed by [Bethany Poppelreiter](#)

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VANCE V. MISSISSIPPI DEPT. OF HUMAN SERVICES

CIVIL - DOMESTIC RELATIONS

DOMESTIC RELATIONS - CHILD SUPPORT - MODIFICATIONS - Absent modification of the original order, the support obligation continues and all payments vest in the child

DOMESTIC RELATIONS - CHILD SUPPORT - OBLIGATIONS - The support obligation will be enforced on behalf of the judicially designated payee even when the child has been removed by youth court order from the home of the parent designated to receive the child support

DOMESTIC RELATIONS - CHILD SUPPORT - MISSISSIPPI AFDC GRANTS - States receiving AFDC grants must require individuals participating in AFDC to assign any right to child support which accrues during the period that the family receives assistance under the program

DOMESTIC RELATIONS - CHILD SUPPORT - REIMBURSEMENT - States are directed to pay to the family any remaining amount of collected child support after any appropriate reimbursement or fee to the government

DOMESTIC RELATIONS - CHILD SUPPORT - RESTITUTION - Mississippi law provides that child support be used as restitution for monies expended for public assistance

FACTS

Sheyuna Vance and Perris Harris obtained a divorce in February 2008. Vance received custody of their minor child, with Harris paying monthly child support to Vance pursuant to a court order. In 2009, Vance enrolled in Mississippi's Aid to Families with Dependent Children ("AFDC"), a joint state-federal program administered by the Mississippi Department of Human Services ("MDHS"). Harris complied with the regulation from MDHS by directing that child-support payments be sent to MDHS instead of directly to Vance. The minor child was removed from Vance's custody in January 2011, and then spent time with a grandmother, then in foster care, and then with an aunt. In April 2011, MDHS placed disbursement of the child-support payments on hold due to the minor child's frequent changes of home. Vance eventually regained custody of the child in May 2014. Vance filed an action seeking distribution of the approximately \$25,000 in child support on hold with MDHS. The chancellor distributed the money pro rata between Vance, the child's grandmother, and the child's aunt. The chancellor also ordered the child support collected while the child was in foster care to be returned to the father, Harris. Vance appealed, arguing that she was entitled to the entirety

of the held child support, while the State argued that the chancellor's order should be affirmed except that the State was entitled to reimbursement for the cost of the child's foster-care placement.

ISSUES

Whether the chancellor erred in (1) declining to award the entirety of the accrued child support to Vance and (2) ordering the support accrued during the child's foster-care placement to be returned to the noncustodial parent.

HOLDING

(1) Because Vance assigned her rights as payee to MDHS by participation in AFDC prior to the custody adjudication, the chancellor did not err in ordering disbursement of the collected child support to the various custodial family members. (2) Because amounts collected by a State as child support shall be retained by the State to the extent necessary to reimburse it for the foster care maintenance payments made with respect to the child during such period, the chancellor erred in ordering the money to be returned to the child's father. Therefore, the Court of Appeals affirmed in part and reversed in part the judgment of the Hinds County Chancery Court.

Affirmed in Part; Reversed and Rendered in Part - 2015-SA-00412-COA (Oct. 18, 2016)

Opinion by Judge Greenlee

Hon. Patricia D. Wise (Hinds County Chancery Court)

Terris Caton Harris and Dennis C. Sweet III for Appellant - Jennifer Ann Coleman and David Lee Love for Appellee

Briefed by [Spencer H. Newman](#)

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WALKER V. STATE

CIVIL- POST CONVICTION RELIEF

CRIMINAL PROCEDURE - SENTENCING - JURISDICTION OVER PROBATION REVOCATION -

The court issuing the probation sentence may extend or terminate the probation as well as continue or revoke all or any part of the probation or the suspension of sentence

CRIMINAL PROCEDURE - SENTENCING – DUE PROCESS OF PROBATION REVOCATION

HEARING - Requirements on a court for probation violation hearings include notice of claimed violations, disclosure of evidence, opportunity to be heard and to present witnesses and evidence, right to confront and cross examine witnesses, a neutral and detached hearing body and a statement by the factfinder as to the evidence relied on for probation revocation

CRIMINAL PROCEDURE - SENTENCING – STANDARD FOR PROBATION REVOCATION - For probation revocation to be proper, the State is only required to prove that the probationer more likely than not violated the terms of probation

CRIMINAL PROCEDURE - SENTENCING – TECHNICAL VIOLATION REVOCATION - If the court revokes probation for a technical violation, the court shall impose a period of imprisonment not to exceed ninety days for the first violation

FACTS

Demario Walker was convicted of false pretense and was sentenced to a five year suspended sentence contingent on the completion of a five-year probationary period, along with restitution payments. As a result of violations of the conditions of his probation, the circuit court issued a warrant for Walker's arrest. When arrested, Walker waived his right to preliminary probation-revocation hearing, right to notice and waiting period prior to the probation hearing and right to notice and waiting period prior to probation-revocation hearing. Soon after, Walker's probation was revoked and Walker was ordered to serve the full five years of his original sentence. Walker's motion for post-conviction relief was dismissed. Walker appealed.

ISSUES

Whether the trial court erred in (1) exercising jurisdiction and authority to revoke Walker’s probation; (2) denying Walker due process at his revocation hearing; (3) improperly revoking Walker’s probation; and (4) improperly sentencing Walker to serve the full 5-year suspended sentence.

HOLDING

(1) Because the circuit court was the court that initially sentenced Walker to probation and Walker had commenced his probation, the claim of lack of jurisdiction was without merit. The court issuing the probation may continue, revoke or extend any part or all of the probation and retains jurisdiction to revoke if the probation is violated. (2) Because the circuit court provided Walker with the alleged probation violations, Walker chose not to cross-examine his probation officer, and Walker waived a variety of his rights, the circuit court did not deny Walker due process. Walker was made aware of his probation commencement and did not object when the judge assumed the role of the prosecutor or requested a recusal of the judge. The court was not required to provide counsel to Walker absent reasonable grounds of incompetency when Walker claimed he needed counsel as a result of a history of mental illness. (3) Because the court proved that Walker more likely than not violated his probation when considering his conduct, probation was properly revoked. Walker admitted that he was on probation and subsequent documentation corroborated Walker’s probation rather than parole as he argued. (4) Because Walker’s probation violation was technical and was the first of such, the circuit court was excessive in ruling that he serve the entire suspended sentence. Therefore, the Court Appeals affirmed the circuit court decision in part and reversed and remanded in part.

Affirmed in Part; Reversed and Remanded in Part - 2015-CP-00912-COA (Oct. 18, 2016)

Opinion by Judge Greenlee

Hon. Anthony A. Mozingo (Jefferson Davis County Circuit Court)

Pro se for Appellant - Billy L. Gore & Jason L. David (Att’y Gen. Office) for Appellee

Briefed by [Horacio Hernandez](#)

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WILLARD V. STATE PAROLE BOARD

CIVIL - STATE BOARDS AND AGENCIES

STATE BOARDS AND AGENCIES - PAROLE BOARD - AUTHORITY - By statute, the Parole Board is given absolute discretion to determine who is entitled to parole within the boundaries of the factors set forth in Mississippi Code Annotated section 47-7-3

STATE BOARDS AND AGENCIES - PAROLE BOARD - PRISONER’S RIGHT - Prisoners have no constitutionally recognized liberty interest in parole and cannot complain of the denial of parole based on an allegation of a denial of due process, abuse of discretion, or consideration of false or improper factors

FACTS

Boyce Willard was convicted of murder, and sentenced to life in prison, with eligibility for parole consideration after serving ten years of his sentence. The Parole Board reconsidered Willard for parole several times, but each time, it denied him parole. Most recently, it denied Willard parole after finding that Willard lacked the ability or willingness to fulfill the obligations of a law-abiding citizen and imposed a five-year set-off for reconsidering Willard’s parole. Willard filed a motion with the circuit court for declaratory and injunctive relief, arguing that the Parole Board’s ruling violated his due-process rights. The circuit court entered an order dismissing Willard’s motion with prejudice, concluding that no due-process violation occurred. Willard subsequently filed a motion to amend the circuit court’s findings or to make additional findings and amend the circuit court’s judgment accordingly. Treating Willard’s filing as a motion for reconsideration, the circuit court denied the motion. Willard appealed.

ISSUE

Whether the trial court erred in dismissing Willard’s motion for declaratory and injunctive relief against the Mississippi State Parole Board for its denial of parole.

HOLDING

Because the Court determined that there is no constitutionally protected liberty of parole and denial of parole is entirely within the Parole Board's discretion, Willard's due-process rights were not violated. Therefore, the Court of Appeals affirmed the judgment of the Sunflower County Circuit Court.

Affirmed - 2015-CP-01095-COA (Oct.18, 2016)

Opinion by Judge Carlton

Hon. Richard A. Smith (Sunflower County Circuit Court)

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

Briefed by [Davis Vaughn](#)

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