

**MISSISSIPPI SUPREME COURT DECISIONS – SEPTEMBER 3, 2020*****SUPREME COURT - CIVIL CASES*****ADARA NETWORKS INC. V. LANGSTON****CIVIL - OTHER**

**CIVIL PROCEDURE - PERSONAL JURISDICTION - LONG-ARM STATUTE** - Satisfaction of any of the three prongs of the long-arm statute, be it through contracting with a resident of the state, committing a tort in whole or in part of the state, or doing business in the state, establishes personal jurisdiction over a nonresident corporation

**CIVIL PROCEDURE - PERSONAL JURISDICTION - LONG-ARM STATUTE** - Alleging a tort invokes Mississippi's long-arm statute and provides sufficient notice to the defendant

**CIVIL PROCEDURE - SUBJECT MATTER JURISDICTION - ACCOUNTING** - Cases involving accounting should be heard in chancery court rather than circuit court

**FACTS**

At the time of filing, Adara Networks Inc. (“Adara”) was a Florida corporation with its principal place of business in California. Shane Langston was a Mississippi resident when the events in question began, but resided in Texas at the time of filing. While a Mississippi resident, Langston purchased one million shares of Adara preferred stock for \$500,000. Langston was unaware that Ken Primos, Langston’s then neighbor who urged him to purchase the shares, was being compensated by Adara to influence investors to purchase its stock at CEO Eric Johnson’s direct instruction. Primos later persuaded Langston’s to invest an additional \$250,000 in the form of a convertible loan to Adara, which Langston converted into several hundred thousand shares of common stock. After numerous attempts to examine corporate documents were denied, Langston and other Mississippi investors signed a letter demanding financial disclosures. Adara produced a few select documents and forced the shareholders to sign a confidentiality agreement, which contained a clause designating Mississippi law to govern any disputes that may arise. These documents showed that more than ninety percent of Adara’s cash assets were deposited in a Mississippi bank in 2012, and this percentage grew annually until the company made large withdrawals in 2016. The shareholders requested additional documents, arguing the documents supplied failed to cover the request. After this was ignored, Langston filed a complaint for accounting in the Hinds County Chancery Court. Adara moved to dismiss for lack of personal jurisdiction under Miss. R. Civ. P. 12(b)(2), claiming it had not subjected itself to the benefits and protections of Mississippi law. Adara’s only shareholder meeting during the twenty years in which Langston has been a shareholder took place in Jackson, Mississippi. Its CEO and CFO conducted multiple meetings with Langston in Jackson. Its CEO listed the University of Mississippi as a customer and claimed the Mississippi Division of Medicaid and the Mississippi Bar Association would utilize its products. Adara’s motion to dismiss was denied. Adara appealed.

**ISSUES**

Whether the trial court erred in determining (1) Mississippi courts could properly exercise personal jurisdiction over Adara without violating the Due Process Clause of the Fourteenth Amendment and (2) the Hinds County Chancery Court had subject matter jurisdiction over Langston’s suit.

**HOLDING**

(1) Because Adara committed a tort in Mississippi, conducted business in Mississippi, and submitted itself to the laws of Mississippi, the chancery court correctly found that personal jurisdiction in Mississippi was proper. (2) Because precedent dictates that cases involving accounting should be heard in chancery court rather than circuit court, the chancery court correctly found that subject matter jurisdiction was proper. Therefore, the Supreme Court affirmed the judgment of the Hinds County Chancery Court.

## DISSENT

Justice Beam argued that establishing personal jurisdiction over Adara violated the Due Process Clause. She argued that the majority incorrectly applied Miss. Code Ann. § 13-3-57 by extending it to a non-resident plaintiff against non-resident defendants.

### **Affirmed & Remanded - 2018-IA-01686-SCT (Sept. 3, 2020)**

En Banc Opinion by Chief Justice Randolph - Dissent by Justice Beam

Hon. Patricia D. Wise (Hinds County Chancery Court, First Judicial Dist.)

Stephen L. Thomas, Sheldon G. Alston, Robert Richard Cirilli Jr., & Simon Turner Bailey for Appellants - Shane F. Langston, Rebecca M. Langston, Kevin Jerrell White, & Christopher Justin Broome for Appellee

Briefed by [Brie Mansoor](#)

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## **DELTA ELECTRIC POWER ASS'N V. CAMPBELL**

### **CIVIL - CONTRACT**

**CONTRACTS - ARBITRATION - MOTION TO COMPEL** - To determine the validity of a motion to compel arbitration under the Federal Arbitration Act, courts conduct a two-pronged inquiry to determine whether (1) there is a valid arbitration agreement and if the parties' dispute is within the scope of the arbitration agreement and (2) legal constraints external to the parties' agreement foreclosed arbitration of those claims

**CORPORATIONS - BOARD AUTHORITY - REVENUES & RECEIPTS** - Miss. Code Ann. § 77-5-235 states that "[t]he revenues and receipts of a corporation shall first be devoted to such operating and maintenance expenses and to the payment of such principal and interest and thereafter to such reserves for improvement...as the board may from time to time prescribe;[ r]evenues and receipts not needed for these purposes shall be returned to the members by such means as the board may decide"

### **FACTS**

Delta Electric Power Association ("Delta"), a not-for-profit electric cooperative corporation, required every member to submit a one-page application to receive electrical service. Although there was no explicit arbitration clause, the application stated that "rules and regulations as may, from time to time, be adopted by the Corporation, all of which are made a part of this contract." Delta's board of directors eventually amended its bylaws to include an arbitration provision, as well as a provision that a member may seek arbitration "with respect to the allocation or retirement of capital credits." Archie Campbell and other cooperative members, who signed the agreement, filed a lawsuit against Delta, alleging that Delta was retaining excess revenues to fund its operations. Campbell then filed a Motion for Declaratory Judgment, requesting that the Montgomery County Chancery Court find that Campbell did not agree to the arbitration provision and that the provision was unconscionable and unenforceable. In response, Delta filed a Motion to Compel Arbitration. The chancery court denied Delta's motion and held that the arbitration provision was unenforceable. Delta appealed.

### **ISSUES**

Whether the chancery court erred by failing to acknowledge the delegation clause in the parties' contracts for electrical service and, in doing so, erred by failing to apply the correct standard of review.

### **HOLDING**

Because in *Virgil v. Sm. Miss. Electric Power Ass'n*, which was decided after Delta appealed, the Supreme Court upheld arbitration provisions in cooperative bylaws identical to Delta's provisions and bylaws, the board's provision was lawful and the trial court's erred in denying Delta's motion to compel arbitration. Therefore, the Supreme Court reversed and remanded the judgment of the Montgomery County Chancery Court.

### **Reversed & Remanded - 2019-CA-00206-SCT (Sept. 3, 2020)**

Opinion by Presiding Justice King  
Hon. Mitchell M. Lundy Jr. (Montgomery County Chancery Court)  
Christina M. Schwing, Sam N. Fonda, Robert McLaughlin Gore, & Jay Gore III for Appellant - Walker (Bill) Jones III, Michael D. Simmons, David Wayne Baria, Brannon Lee Berry, & Justin Ronald Glenn for Appellees  
Briefed by [Rod Bridges](#)

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## KUHN V. HIGH

### CIVIL - OTHER

**PROPERTY - PETITION - CONDEMNATION** - Miss. Const. art. IV, § 110 provides for condemning rights of way for private roads but such rights of way “shall not be provided for in incorporation cities and towns”

**JUDGMENT - ATTORNEY'S FEES - INTEREST** - Miss. Code Ann. § 75-17-7 provides that the judge hearing the complaint determines the interest at a per annum rate

**CIVIL PRACTICE - LITIGATION ACCOUNTABILITY ACT - FRIVOLOUS FILING** - Miss. Code Ann. § 11-55-5(1) provides that the court may order reasonable attorney fees against a party upon a finding that an attorney or party brought an action “that is without substantial justification”

### FACTS

Todd and Angela Kuhn filed a petition in the Harrison County Special Court of Eminent Domain for the establishment of a private road across Cheryl High’s property in Gulfport, Mississippi pursuant to Miss. Code. Ann. § 65-7-201. The Kuhns’ petition sought access to their property, which was landlocked except for a fifteen-foot easement in an inconvenient location. High moved to dismiss on the ground that Miss. Const. art. IV, § 110 prohibited the condemnation of a private road within an incorporated city or town. The special court condemned a private road across High’s property and ordered a jury trial on damages. The Supreme Court granted High’s petition for an interlocutory appeal, holding that Miss. Const. art. IV, § 110 prohibited the condemnation of a private road across High’s property. Also, High moved for attorney fees and expenses under Miss. Code Ann. § 11-27-37. The special court denied High’s motion on the ground that, because Miss. Const. art. IV, § 110 barred the Kuhn’s attempt, Miss. Code Ann. § 11-27-37 did not apply. The Supreme Court reversed and remanded to determine whether to award statutory attorney’s fees and, if so, in what amount under Miss. Code Ann. § 11-27-37. On remand, High filed a motion requesting attorney fees for a frivolous filing under the Mississippi Litigation Accountability Act (“LAA”). High testified that two attorneys represented her in the litigation: Robert Schwartz initially and Steven Newton. After a hearing, the special court awarded attorney’s fees to High as a sanction for the Kuhn’s frivolous filing. The Kuhns filed a motion to reconsider, which the special court denied and amended the judgment to add \$1,000 for defense of the motion for reconsideration. The special court found that interest in the amount of 2.25% per annum was reasonable and awarded High a judgment in the amount of \$30,049.60. The Kuhns appealed.

### ISSUES

Whether the special court erred by (1) adopting High’s findings of fact and conclusions of law; (2) awarding a judgment to one of High’s attorneys who was not a party to the lawsuit; (3) ordering sanctions for filing a frivolous lawsuit; (4) awarding interest; and (5) allowing attorney fees in excess of those permitted by Miss. Code Ann. § 11-27-37.

### HOLDING

(1) Because the Supreme Court no longer applies the heightened scrutiny test, and because Judge Lumpkin requested that only the winning party draft a proposed order, the special court did not err in its use of High’s proposed findings and conclusions. (2) Because the amended judgment increased the amount to be paid directly to Schwartz’s law firm, the Supreme Court reversed the amended judgment in part and rendered a judgment correcting the error. (3) Because the LAA provides that the court may order reasonable attorney’s fees against a party who brought an action that is without substantial justification, the imposition of sanctions for a frivolous filing was within the special court’s discretion. (4) Because the Kuhns did not cite any authority that the special court abused its discretion by selecting

2.25% as a fair interest rate, this issue was procedurally barred and, notwithstanding the procedural bar, the interest rate was fair because the only limit pursuant to Miss. Code Ann. § 75-17-7 regarding the time when interest can be awarded is that it can “in no event [be] prior to the filing of the complaint.” (5) Because the special court awarded attorney’s fees under the LAA and not under Miss. Code Ann. § 11-27-37, this argument was without merit and the amount was reasonable. Therefore, the Supreme Court affirmed in part and reversed and rendered in part the judgment of the Harrison County Special Court of Eminent Domain.

**Affirmed in Part; Reversed & Rendered in Part - 2018-CA-01760-SCT (Sept. 3, 2020)**

Opinion by Presiding Justice Kitchens

Hon. Dina Richelle Lumpkin (Harrison County Special Court of Eminent Domain)

*Pro se* for Appellants - Steven N. Newton for Appellee

Briefed by [MaryScott Polk](#)

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## MISS. BAR V. EASTERLY

### CIVIL - BAR MATTERS

**BAR MATTERS - RECIPROCAL DISCIPLINE - FACTORS** - Factors to consider when addressing reciprocal discipline are (1) the nature of the misconduct involved; (2) the need to deter similar misconduct; (3) the preservation of the dignity and reputation of the profession; (4) protection of the public; (5) the sanctions imposed in similar cases; (6) the duty violated; (7) the lawyer’s mental state; (8) the actual or potential injury resulting from the misconduct; and (9) the existence of aggravating and/or mitigating factors

**BAR MATTERS - RETROACTIVE SANCTION - FACTORS** - Factors to consider when determining whether the discipline should be applied retroactively are whether (1) the conduct is part of a continuing pattern or a single instance; (2) the relationship between the misconduct and the practice of law is significantly attenuated; and (3) the passage of time mitigates the severity of the discipline required

**BAR MATTERS - DISCIPLINE - PURPOSE** - The purpose of lawyer discipline is to maintain appropriate standards of professional conduct necessary to protect the public and the administration of justice, not so much to punish the errant attorney

### FACTS

In May 2019, Connie M. Easterly, an attorney licensed to practice in Mississippi and Louisiana, was arrested and charged with driving under the influence of alcohol (“DUI”). As a result, the Supreme Court of Louisiana suspended Easterly in May 2019 from practicing law for one year and one day. The DUI was a first-time offense for Easterly. In July 2019, the Mississippi Bar filed its formal complaint asking the Supreme Court to impose reciprocal discipline for her “unprofessional and unethical conduct and conduct evincing unfitness for the practice of law.” Easterly waived her right to service of process and failed to file any responsive pleadings to contest the proceedings.

### ISSUES

Whether the Supreme Court should (1) impose reciprocal discipline and (2) apply any sanctions retroactively or prospectively.

### HOLDING

(1) Because the misconduct was Easterly’s first and only DUI, and because there were no aggravating circumstances warranting a lengthy suspension, a ninety-day suspension was an appropriate reciprocal disciplinary action. (2) Because there was no evidence suggesting a pattern of misconduct, and because the relationship between the misconduct and the practice of law was significantly attenuated, the reciprocal discipline was applied retroactively. Therefore, the Supreme Court applied a retroactive ninety-day reciprocal sanction set to start the same day as the previous Louisiana sanction.

**Suspended From Practice of Law for Ninety Days - 2019-BD-01181-SCT (Sept. 3, 2020)**

En Banc Opinion by Presiding Justice Kitchens  
Melissa Selman Scott for Appellant - *Pro se* for Appellee  
Briefed by [Ashley Pruitt](#)

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## RAY V. RAY

### CIVIL - DOMESTIC RELATIONS

**FAMILY LAW - DIVORCE - PROPERTY SETTLEMENT CREDIT** - A party may not claim a credit for supporting stepchildren in a property settlement if there is no proof of funds spent directly supporting the stepchildren  
**FAMILY LAW - DIVORCE - MARITAL DEBT** - Expenses incurred for the family are marital debt and should be treated as such upon dissolution of the marriage; if both parties contributed to the debt, a division of the marital debt is proper

**FAMILY LAW - DIVORCE - ALIMONY DETERMINATION** - Separate assets are not precluded from being considered as income for purposes of alimony determination

### FACTS

George Ray, Sr. and Johnnita Ray divorced on grounds of irreconcilable differences. The parties left the chancery court to decide issues of equitable distribution of marital property, alimony, and attorney's fees. George and Johnnita did not share any children, but Johnnita had two children from a previous marriage whom George supported. The chancery court awarded Johnnita a judgment against George and rehabilitative alimony. George appealed.

### ISSUES

Whether the trial court erred by (1) not crediting George in the property settlement for supporting Johnnita's children; (2) holding George responsible for the joint debt; and (3) including George's military-retirement income into the alimony determination.

### HOLDING

(1) Because there was no evidence of funds George spent directly supporting Johnnita's children, and because George did not raise this issue properly at trial, a credit in the property settlement was not warranted and he was barred from bringing it on appeal. (2) Because there was sufficient evidence to support the finding that both parties contributed to the debt, and because the chancellor did not hold George solely responsible for the debt, an equal division of the marital debt was proper. (3) Because separate assets are not precluded from being included as income for the determination of alimony, George's military-retirement income was properly included. Therefore, the Supreme Court affirmed the judgment of the Lamar County Chancery Court.

**Affirmed - 2019-CA-01420-SCT (Sept. 3, 2020)**

Opinion by Justice Beam  
Hon. Sheila Havard Smallwood (Lamar County Chancery Court)  
William L. Ducker for Appellant - *Pro se* for Appellee  
Briefed by [Glory Crocco](#)

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## SEALS V. PEARL RIVER RESORT AND CASINO

### CIVIL - WORKERS' COMPENSATION

**WORKERS' COMPENSATION - MAXIMUM MEDICAL IMPROVEMENT - STANDARD** - Maximum medical improvement is the date after which further medical recover from, or lasting improvement to, an injury or disease can no longer be anticipated based upon reasonable medical probability

**WORKERS' COMPENSATION - LOSS OF WAGE-EARNING CAPACITY - FACTORS** - Factors which should be considered in determining loss of wage-earning capacity include the amount of education and training which the claimant has had, his inability to work, his failure to be hired elsewhere, the continuance of pain, and any other related circumstances

### FACTS

Shaun Seals worked as director of transportation at Pearl River Resort and Casino ("Pearl River"). In April 2012, Seals suffered a work-related back injury in an accident, putting him on workers' compensation. In 2012, Pearl River changed management, which consolidated and eliminated many positions. In 2013, Seals was let go from Pearl River because his position was eliminated. The Mississippi Workers' Compensation Commission ("the Commission") found that Seals reached maximum medical improvement on November 13, 2015 and that Seals did not prove any permanent disability or loss of wage-earning capacity. The Commission noted that two doctors released Seals to return to work without restriction and that he was let go due to unrelated economic reasons, for which he received severance pay and other benefits. Further, Seals remained employed by Pearl River for nine months after the accident. Seals appealed the Commission's decision to the Court of Appeals. The Court of Appeals held that the Commission was correct as to the date of maximum medical improvement, but that the Commission erred in finding that Seals failed to prove any loss of wage-earning capacity. The Court of Appeals reversed and remanded the Commission's decision and directed the Commission to calculate Seals' loss of wage-earning capacity and award corresponding compensation. Pearl River petitioned for writ of certiorari.

### ISSUE

Whether substantial evidence supported the Mississippi Workers' Compensation Commission's decision.

### HOLDING

Because multiple medical evaluations and opinions suggested that Seals was not a candidate for surgery and that his pain was best managed through other means, because multiple doctors released Seals to return to work without restrictions, and because Seals remained employed by Pearl River for nine months after the accident, the Mississippi Workers' Compensation Commission had substantial evidence to support the decision that Seals had reached maximum medical improvement on November 13, 2015 and suffered no loss to his wage-earning capacity. Therefore, the Supreme Court affirmed in part and reversed in part the judgment of the Court of Appeals and affirmed and reinstated the decision of the Mississippi Workers' Compensation Commission.

### DISSENT

Presiding Justice Kitchens argued that there were marked differences in the relative strengths of medical evidence. He criticized the well-established rule that the Supreme Court will affirm the Commission's decision when the expert medical testimony is in conflict. Therefore, he argued that the Mississippi Workers' Compensation Commission lacked substantial evidence to support its finding that Seals presented insufficient medical evidence of disability.

**The Judgment of the Court of Appeals is Affirmed in Part & Reversed in Part. The Decision of the Mississippi Workers' Compensation Commission is Reinstated & Affirmed - 2019-CT-00012-SCT (Sept. 3, 2020)**

En Banc Opinion by Chief Justice Randolph - Dissent by Presiding Justice Kitchens

Benjamin Seth Thompson & Joseph Franks for Appellant - Amy K. Taylor for Appellees

Briefed by [Caroline Heavey](#)

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**WASTE MGMT. OF MISS., INC. V. JACKSON RAMELLI WASTE, LLC**

**CIVIL - CONTRACT**

**CIVIL PROCEDURE - MOTION PRACTICE - DIRECTED VERDICT** - When determining whether the evidence was sufficient to support a verdict, the critical inquiry is whether the evidence is of such quality that reasonable and fair-minded jurors in the exercise of fair and impartial judgment might reach different conclusions

**CONTRACTS - REMEDIES - QUANTUM MERUIT** - A prerequisite to establishing grounds for quantum meruit is claimant's reasonable expectation of compensation, if there was no contract involved but one party has conferred a benefit on the other party with a reasonable expectation of being compensated, unjust enrichment would result if the defendant were allowed to retain the benefits without compensating the plaintiff

**CONTRACTS - RECOVERY - QUANTUM MERUIT** - Where the recovery is based on quantum meruit, the amount of recovery is limited to the monetary equivalent of the reasonable value of the services rendered

## **FACTS**

Waste Management of Mississippi, Inc. ("Waste Management") and Jackson Ramelli Waste, LLC ("Jackson Ramelli") entered into a written subcontract governing residential trash-collection services. Upon the contract's expiration, the parties continued to do business on a month-to-month basis and continued to observe the subcontract's terms. During this time, Jackson Ramelli invoiced Waste Management for the services on a monthly basis, and Waste Management paid the invoices in full. Waste Management and Jackson Ramelli later agreed that the number of homes served would substantially increase based on Jackson Ramelli's acquiring of Metro Waste's service routes. As a result, Jackson Ramelli increased the amount it invoiced Waste Management to reflect the additional houses it acquired. Jackson Ramelli accepted each Waste Management check and continued to provide the services, but did not invoice Waste Management for any Consumer Price Index ("CPI") adjustments or for any further houses served. During this time, however, Jackson Ramelli raised the possibility of additional compensation to reflect the CPI changes and the increase in the number of houses Jackson Ramelli claimed to be servicing. After the business relationship between Waste Management and Jackson Ramelli ended, Jackson Ramelli filed a complaint, asserting claims for breach of contract, tortious breach of contract, and breach of the implied covenant of good faith and fair dealing. Waste Management responded and filed a counterclaim. Waste Management moved to dismiss and Jackson Ramelli moved to amend its complaint to add a claim for quantum meruit. At the hearing on the motions, Jackson Ramelli did not attempt to amend its complaint to add a quantum meruit claim and Waste Management's motion to dismiss was denied. At trial, Jackson Ramelli raised a quantum meruit claim. Waste Management objected and asserted the quantum meruit claim had been abandoned. The trial court ruled Jackson Ramelli was limited to the claims in its original complaint, but, nonetheless, Jackson Ramelli was allowed to pursue its quantum meruit claim. On the last day of trial, the trial court allowed Jackson Ramelli to amend its complaint to add a quantum meruit claim. Waste Management moved for a directed verdict on the quantum meruit claim, but the trial court denied the motion and found it was an issue for the jury. The jury returned a general verdict in favor of Jackson Ramelli. Waste Management subsequently filed a motion for judgment notwithstanding the verdict ("JNOV"), which the trial court denied. Waste Management appealed and the Court of Appeals found the trial court abused its discretion by allowing the quantum meruit amendment after the close of evidence. As a result, the Court of Appeals reversed and remanded the claim for further discovery and a new trial. Waste Management petitioned for writ of certiorari.

## **ISSUES**

Whether (1) the trial court erred in denying Waste Management's motions for a directed verdict and JNOV on the quantum meruit claim and (2) the Court of Appeals erred in remanding the quantum meruit claim for a new trial.

## **HOLDING**

(1) Because Jackson Ramelli failed to prove the necessary elements of quantum meruit, the trial court erred by denying Waste Management's motions for a directed verdict and a JNOV. (2) Because the record established that the additional work claimed by Jackson Ramelli was contemplated in its contract, and because Jackson Ramelli did not have a reasonable expectation of additional compensation, the quantum meruit claim was without merit and the Court of Appeals erred by remanding the claim for a new trial. Therefore, the Supreme Court reversed and rendered the judgment of the Hinds County Circuit Court.

## **DISSENT**

Presiding Justice Kitchens argued a rational jury could find that Jackson Ramelli had a reasonable expectation that Waste Management would pay it for each and every house from which it collected garbage. Therefore, the evidence presented

was sufficient to support a jury finding on each element of quantum meruit and he would affirm the Court of Appeals' decision to reverse and remand.

**Reversed & Rendered - 2018-CT-00164-SCT (Sept. 3, 2020)**

En Banc Opinion by Justice Griffis - Dissent by Presiding Justice Kitchens

Hon. Tomie T. Green (Hinds County Circuit Court)

Latoya Cheree Merritt, Fred L. Banks Jr., Mark David Fijman, & Nikita Sherrell McMillian for Appellant - Sheldon G. Alston, Joseph Anthony Sclafani, Matthew Wade Allen, & Catherine E. Lasky for Appellee

Briefed by [Lynette Potter](#)

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## ***SUPREME COURT - ORDERS***

### **MASON V. STATE**

#### **ORDER**

#### **ORDER**

Sanford Mason filed an Application for Leave to Proceed in the Trial Court. Because there was no exception, the petition was untimely and successive. Further, because Mason's claims were rejected in prior proceedings, they were barred by res judicata. Additionally, because Mason presented no arguable basis for his claims, and because no exception to the procedural bars exists, the petition should be dismissed. Mason was also warned that future filings deemed frivolous could result in monetary sanctions or in restrictions on his ability to file applications for post-conviction collateral relief in forma pauperis. Therefore, the Supreme Court ordered that the Application for Leave to Proceed in the Trial Court be dismissed.

#### **OBJECTION IN PART**

Presiding Justice King argued that, although Mason's application for post-conviction should be dismissed, the application was not frivolous and disagreed with the warning that future filings deemed frivolous may result in monetary sanctions or restrictions on filing applications for post-conviction collateral relief in forma pauperis. Additionally, he claimed that Mason made reasonable arguments in his application for post-conviction relief, and thus he disagreed with the Supreme Court's determination that Mason's application was frivolous. Further, he disagreed with the warning that filings may result in monetary sanctions or restrictions on filing applications for post-conviction relief in forma pauperis because the imposition of monetary sanctions only serves to punish or preclude a defendant from his lawful right to appeal. He asserted that, instead of punishing Mason for filing a motion, the Supreme Court should have denied or dismissed motions that lacked merit. Justice King also argued that cutting off an indigent defendant's right to proceed in forma pauperis is to cut off his access to the courts and violates the defendant's constitutional rights.

**Ordered - 2020-M-00555 (Sept. 3, 2020)**

Opinion by Justice Maxwell - Objection in Part by Presiding Justice King

Briefed by [Mackinlee Rogers](#)

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## ***SUPREME COURT - CRIMINAL CASES***

### **WARE V. STATE**

#### **CRIMINAL - FELONY**



**CRIMINAL PROCEDURE - NEW TRIAL - SUFFICIENCY OF EVIDENCE** - When reviewing a challenge for sufficiency of evidence, the court must determine whether, after the viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt

**CRIMINAL PROCEDURE - NEW TRIAL - WEIGHT OF EVIDENCE** - A new trial will not be ordered unless the court is convinced that the verdict is so contrary to the overwhelming weight of the evidence that to allow the verdict to stand would be to sanction an unconscionable injustice; this high standard is necessary because any factual disputes are properly resolved by the jury, not by an appellate court

**CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - BURDEN OF PROOF** - Under *Strickland*, a claimant of ineffective assistance of counsel bears the burden of proof to show that: (1) counsel's performance was deficient and (2) the deficiency prejudiced his defense; allegations of ineffective assistance of counsel must be made with specificity and detail, and are assessed by the totality of the circumstances

## **FACTS**

In December 2011, Dontorius Ware met some friends in Shaw, Mississippi to hang out and shoot dice. Ware was carrying a large amount of cash, which James Coleman Jr and others present noticed. While shooting dice, James Jr. pulled out and pointed a gun at Ware, and said, "who's the 'B' now." At the time, Ware thought that James Jr. wasn't being serious and brushed off the encounter. Sometime later, Ware pulled out his cash. James Jr. then took the money from Ware's hands and ran out of the store. Ware followed James Jr. outside, but saw that James Jr.'s car was gone. Ware contacted James Jr. in an effort to get his money back. That effort was unsuccessful and Ware went to the Shaw police department. Ware and a local police officer went to James Jr.'s apartment, and James Jr. told them that he gave the money to his mother. The next day, Ware and his mother went to James Jr.'s parents' house. Roy Lee Washington, James Jr.'s brother and Ware's acquaintance, answered the door and them that James Jr. was not there. Ware then returned to the Shaw police department to file a report for the stolen money. Later that night, Ware returned to James Jr.'s parents' house. Roy, Roy's sister, Evelene Denise Coleman Carr, and their parents, Evelene and James Coleman Sr., were there. Roy answered the door and went outside to talk with Ware. The others in the house could hear them talking outside, and then heard gunshots. They ran outside to find Roy lying on the front porch with gunshot wounds, and saw Ware run to and drive away his car, a white Monte Carlo. Shortly after, Officer Gary Liggins with the Washington County Sheriff's Department was on a routine patrol when he saw a white Monte Carlo parked behind Old Whitestone Church. Because there had been a lot of church vandalism in the area, he proceeded to investigate. As he approached the car, he saw Ware running from the wooded area behind the church to the trunk of the car. Ware closed the trunk, got into the car, and attempted to flee. Officer Liggins pulled up behind the car, with his lights and sirens activated. Once the car stopped, Liggins approached the vehicle and asked Ware what he was doing behind the church. Ware responded that he was "rolling up a blunt," but Officer Liggins stated there was no evidence Ware had been smoking marijuana. After confirming that there had been no sign of disturbance at the church, Ware was released. In response to the shooting at the Colemans' residence, Investigator Jeff Joel with the Bolivar County Sheriff's Department was sent to the scene. After speaking with James Sr. and Carr, Ware was identified as the suspect and a "BOLO" was put out for his car. A few hours later, Ware's vehicle was located and he was taken into custody. A gunshot-residue test was conducted at this time and Ware was indicted and charged with Roy's murder. After the arrest, Investigator Joel was informed of the traffic stop at the church and, along with two other officers, went to the church and searched the wooded area behind it. Several items were found, but were wet and ultimately discarded and unavailable at trial. An autopsy was performed on Roy, and it was found that he died from multiple gunshot wounds. An expert in gunshot-residue analysis opined that no particles of residue were identified on Roy, but that particles indicative of gunshot residue were present on Ware's palms. Ware testified in his own defense at trial and denied shooting Roy. He admitted to being at the church shortly after the shooting, but explained that he was waiting on James Jr. Ware was convicted of murder and sentenced to serve life in the custody of the Mississippi Department of Corrections ("MDOC"). Ware filed a motion for judgment notwithstanding the verdict, or alternatively, for a new trial. The circuit court denied the motion. Ware appealed.

## **ISSUES**

Whether (1) the evidence was insufficient to support the verdict; (2) the verdict was against the overwhelming weight of the evidence; and (3) Ware received ineffective assistance of counsel.

## HOLDING

(1) Because testimony at trial showed that Ware was enraged and adamant about getting his money back, because witnesses at the scene testified that the victim was talking to Ware shortly before they heard gunshots and saw Ware running from the scene, and because gunshot residue particles were found on Ware's hands, sufficient evidence was presented to support the verdict. (2) Because the victim's mother and sister were certain in their identifications of Ware as the person who fled the scene, and because credibility of witnesses is for the jury to determine, the verdict was not against the overwhelming weight of the evidence and allowing it to stand would not sanction an unconscionable injustice. (3) Because a heat of passion manslaughter instruction was not supported by the facts or evidence, because the facts and evidence did not support an aiding and abetting or concert of action instruction, and because Ware's counsel's decision not to object to the State's gun residue expert was a matter of trial strategy that could not give rise to an ineffective assistance of counsel claim, Ware failed to show that he received ineffective assistance of counsel. Therefore, the Supreme Court affirmed the judgment of the Bolivar County Circuit Court.

**Affirmed - 2019-KA-00866-SCT (Sept. 3, 2020)**

Opinion by Justice Griffis

Hon. Albert B. Smith III (Bolivar County Circuit Court)

Merrida Coxwell & Charles Richard Mullins for Appellant - Barbara Wakeland Byrd & Brenda Fay Mitchell (Att'y Gen. Office) for Appellee

Briefed by [Claire Scott](#)

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## **MISSISSIPPI COURT OF APPEALS DECISIONS – SEPTEMBER 1, 2020**

### ***COURT OF APPEALS - CIVIL CASES***

#### **BOYANTON V. BROTHERS PRODUCE, INC.**

##### **CIVIL - CONTRACTS**

**CONTRACTS - JOINT VENTURE - INTENT** - In examining factors to form a joint venture, actual intent to form a joint venture is essential

**CONTRACTS - NEGLIGENT MISREPRESENTATION - ELEMENTS** - The plaintiff must satisfy all of the following elements in order to prove a claim for negligent misrepresentation: (1) a misrepresentation or omission of a fact; (2) that the representation or omission is material or significant; (3) that the person charged with the negligence failed to exercise that degree of diligence and expertise the public is entitled to expect of such persons; (4) reasonable reliance upon the misrepresentation or omission; (5) suffered damages as a direct and proximate result of such reasonable reliance

##### **FACTS**

In early 2015, Brent Erenwert, who was then the president of Brothers Produce, Inc., ("Brothers Produce"), and Michael Alise, of Gulf Coast Produce Distributors Inc. ("Gulf Coast Produce"), sought to work together and grow their produce distribution businesses into the Louisiana market. Alise sought advice from Carl Boyanton, who's company, Farmer Fresh Produce, Inc ("Farmer Fresh"), had been involved in the Louisiana market before Boyanton sold the company in 2013. Boyanton claimed that he, Alise, and Erenwert discussed the possibility of forming a joint venture between their respective companies, but that there was never a written agreement other than text messages or emails. Boyanton claimed that Alise and Erenwert's proposed business plan was to lease a third of Boyanton's warehouse and open a joint business ("Gulf Coast Brothers") to get into the Louisiana market. Boyanton would not have any partnership or ownership interest in Gulf Coast Brothers or be involved in the day-to-day management, but would be a vendor for product. However, there was not a written business plan regarding expenses and expected profits. In July 2016, a Gulf Coast Produce employee informed Boyanton that Gulf Coast Produce and Brothers Produce were no longer interested in leasing the warehouse. Boyanton, on both his behalf and on behalf of Farmer Fresh, sued Erenwert, Brothers

Produce, Gulf Coast Produce, and Michael and Christi Alise. Boyanton claimed that the parties formed a joint venture that pertained to the storage, transport, supply, and distribution of produce using a Boyanton's Picayune warehouse. Boyanton alleged breach of contract agreement(s), promissory estoppel, negligent misrepresentation, and tortious interference with prospective business relations. Boyanton also later alleged claims for fraudulent misrepresentation and equitable estoppel. The Pearl River County Circuit Court granted summary judgment in favor of the defendants on all claims and dismissed Boyanton's lawsuit without prejudice. The Alises and Gulf Coast Produce were later dismissed with prejudice after their representation that they "settled this matter" with Boyanton. Boyanton appealed.

## **ISSUES**

Whether there was a genuine issue of material fact concerning (1) breach of contract based on alleged joint venture; (2) breach of contract based on the sublease or sub-sublease; (3) equitable estoppel; (4) promissory estoppel; (5) negligent misrepresentation; and (6) fraudulent misrepresentation.

## **HOLDING**

(1) Because there was a lack of evidence in the record to prove actual intent among the parties to join the joint venture, Boyanton failed to present sufficient evidence to create a genuine issue of material fact. (2) Because neither Erenwert nor Brothers Produce Inc. were mentioned anywhere in the sub-sublease, there was not a genuine issue of material fact and the circuit court did not err in granting summary judgment in Erenwert and Brothers Produce's favor on this issue. (3) Because Erenwert's response to Boyanton indicated at least an inference that they were good to go forward with the execution of the sub-sublease, the evidence, when viewed in favor of Boyanton, was sufficient to create a genuine issue of material fact. (4) Because there was no evidence that Erenwert or Brothers Produce made any express or explicit promise, there was not a genuine issue of material fact regarding Boyanton's promissory estoppel claim. (5) Because Boyanton failed to put on any evidence that Erenwert made any misrepresentations to him regarding the sublease at the time Boyanton executed it, and because Boyanton's negligent misrepresentation claim was based upon alleged promises of future conduct even after Boyanton signed the sublease, the circuit court properly granted summary judgment in Erenwert and Brothers Produce's favor on Boyanton's negligent misrepresentation claim. (6) Because Erenwert's statement that "we're good to go" did not rise to the level of fraudulent intent to deceive Boyanton, the circuit court properly granted summary judgment in Erenwert and Brothers Produce's favor on Boyanton's fraudulent misrepresentation claim. Therefore, the Court of Appeals affirmed in part and reversed in part the judgment of the Pearl River County Circuit Court.

### **Affirmed in Part & Reversed & Remanded in Part - 2019-CA-00269-COA (Sept. 1, 2020)**

Opinion by Presiding Judge Carlton

Hon. Claiborne McDonald (Pearl River County Circuit Court)

Kristopher W. Carter for Appellant - Christopher Howell Murray & Kristi Rogers Brown for Appellees

Briefed by [Fatelia Avery](#)

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## **STUART V. ST. DOMINIC-JACKSON MEM'L HOSP.**

### **CIVIL - MEDICAL MALPRACTICE**

**CIVIL PROCEDURE - DISCOVERY - OUT-OF-TIME DISCOVERY** - The Court of Appeals has "neither the prerogative nor the inclination to mire itself in the details of managing the pre-trial discovery process, which is properly left to the discretion of the trial court"

**CIVIL PROCEDURE - SUMMARY JUDGMENT - HEARING** - Miss. R. Civ. P. 56 neither explicitly nor implicitly provides the right to a hearing on a motion for summary judgment

**EVIDENCE - EXPERT TESTIMONY - DUTY OF CARE** - A plaintiff's medical malpractice claim must contain expert medical testimony that articulates the duty of care a physician owes to a particular patient under the circumstances and identifies the particular point that the physician breached that duty and caused injury to the plaintiff

**EVIDENCE - EXPERT TESTIMONY - RELIABILITY** - The testimony of a physician is sufficiently reliable if his opinions are based on his interpretation of medical records in light of his experience, training, and expertise as a qualified physician in his field of medicine

**EVIDENCE - EXPERT TESTIMONY - SPECULATION** - Under our standards for the admission of expert testimony, a qualified medical expert is permitted to extrapolate causation testimony from the patient's clinical picture although the medical records contain no objective medical evidence establishing causation

### **FACTS**

Edward Stuart was rendered permanently disabled from a car accident in 1997. In 2010, Stuart began to experience difficulty opening his hands, as well as increased spasticity, and checked in to St. Dominic's Hospital ("St. Dominic") to investigate his complaints. A CT scan was ordered, but Stuart stated he was unable to lift his hands above his head to fit into the machine. Stuart alleged that the technician forcefully pulled his arms over his head to force him into the machine. Stuart then began experiencing uncontrollable, full-body spasms for the remainder of his hospitalization. Two days later, Dr. Stephen Crawford conducted a CT scan with contrast. Stuart informed Crawford that he was experiencing spasms and asked Crawford to wait until he completed a spasm before injecting a dye into Stuart's spine. Stuart stated he suffered a severe, uncontrollable spasm at the exact time of puncture and was immediately paralyzed. Stuart has been bed-ridden since his hospitalization and now requires twenty-four-hour care. Stuart filed a medical malpractice claim against St. Dominic and Crawford in the Hinds County Circuit Court. The circuit court granted St. Dominic and Dr. Crawford's second motions for summary judgment. Stuart appealed.

### **ISSUES**

Whether the trial court erred by (1) failing to make a formal ruling on Stuart's motion to strike; (2) allowing out-of-time discovery; (3) considering the renewed motions for summary judgment without a hearing; (4) granting summary judgment to Dr. Crawford; and (5) granting summary judgment to St. Dominic.

### **HOLDING**

(1) Because a trial court's grant of summary judgment may serve as an implicit denial of any outstanding motions, the trial court did not err by failing to make a formal ruling on Stuart's motion to strike. (2) Because the pre-trial discovery process is properly left to the trial court's discretion, the Court of Appeals did not find that the trial court abused its discretion by allowing the experts' depositions after the original deadline and the issue was without merit. (3) Because Miss. R. Civ. P. 56 neither explicitly nor implicitly provides the right to a hearing on a motion for summary judgment, the trial court did not err by considering the motions for summary judgment without a hearing. (4) Because neither of Stuart's witnesses testified as to how Dr. Crawford breached the standard of care in performing the lumbar puncture, the trial court did not err in granting summary judgment to Dr. Crawford. (5) Because Stuart's experts' opinions were based on reliable facts and data, and because the experts' opinions on causation were not speculative, the trial court erred in granting summary judgment to St. Dominic's. Therefore, the Court of Appeals affirmed in part and reversed and remanded in part the judgment of the Hinds County Circuit Court.

### **CONCURRENCE IN PART & DISSENT IN PART**

Presiding Judge Wilson agreed with the Court's affirmation of the trial court's grant of summary judgment to Dr. Crawford. He dissented with the majority's conclusion that Stuart's experts' testimonies were based on reliable facts and were not speculative. He argued the testimony was only based on possibilities, not probabilities, and nothing could be offered to support the opinion other than the expert's own "education, training, and experience."

#### **Affirmed in Part; Reversed & Remanded in Part - 2019-CA-00212-COA (Sept. 1, 2020)**

En Banc Opinion by Judge McCarty - Concurrence in Part & Dissent in Part by Presiding Judge Wilson

Hon. Jeff Weill Sr. (Hinds County Circuit Court, First Judicial Dist.)

David Earl Rozier Jr., Richard Paul Williams III, Jenessa Jo Carter Hicks, & Daryl Matthew Newman for Appellants - John Earnest Wade Jr., Stephen P. Kruger, Claire W. Ketner, & Thurman Lavelle Boykin III for Appellees

Briefed by [William "Jack" Simpson](#)

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