

MISSISSIPPI SUPREME COURT DECISIONS – MARCH 25, 2021**SUPREME COURT - CIVIL CASES****CURRY V. CLEMONS****CIVIL - STATE BOARDS & AGENCIES**

VICTIMS' COMPENSATION - MISS. CRIME VICTIMS' COMPENSATION ACT - PURPOSE - The Miss. Crime Victims' Compensation Act allows crime victims to file applications for compensation resulting from economic loss arising from criminally injurious conduct to the Victim Compensation Division of the Attorney General's Office

APPELLATE PROCEDURE - MISS. CRIME VICTIMS' COMPENSATION ACT - FILINGS - An appellant must execute and file a bond payable to the state with the circuit clerk; the bond must be filed within thirty days of the receipt of the final decision of the Attorney General

APPELLATE PROCEDURE - JURISDICTION - STATUTORY BONDS - Statutory bond requirements are jurisdictional issues; failure to pay a statutory bond deprives the appellate court of jurisdiction

FACTS

In December 2016, two individuals assaulted and robbed Curtis Curry in his home. Two years later, Curry sent an application for compensation to the Victim Compensation Division ("VCD") of the Mississippi Attorney General's Office. The VCD denied Curry's claim and deemed him ineligible for relief because he was under the supervision of the Mississippi Department of Corrections at the time of the incident. Curry admitted he was on probation at the time but alleged that the denial violated his rights under the Fourteenth Amendment. Curry appealed the VCD decision to the Coahoma County Circuit Court in September 2019. The circuit court entered an order, finding that Curry failed to file a cost bond required by Miss. Code Ann. § 99-41-13(a). As a result, the circuit court lacked jurisdiction and dismissed Curry's case. Curry appealed.

ISSUE

Whether the circuit court erred by determining it lacked jurisdiction due to Curry's failure to file a cost bond as required by Miss. Code Ann. § 99-41-13(a).

HOLDING

Because failure to pay a statutory bond deprives the appellate courts of jurisdiction, and because Curry failed to pay the bond within thirty days as required by statute, the circuit court lacked jurisdiction. Therefore, the Supreme Court affirmed the judgment of the Coahoma County Circuit Court.

Affirmed - 2020-CP-00920-SCT (Mar. 25, 2021)

Opinion by Chief Justice Randolph

Hon. Charles E. Webster (Coahoma County Circuit Court)

Pro se for Appellant - Brandon Kyle Malone (Att'y Gen. Office) for Appellee

Briefed by [Jacob D. Hamm](#)

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GONZALEZ V. COASTAL INDUS. CONTRACTORS, INC.**CIVIL - PERSONAL INJURY**

TORTS - VICARIOUS LIABILITY - SCOPE OF EMPLOYMENT - Conduct of a servant is within the scope of employment only if: (1) it is of the kind he is employed to perform; (2) it occurs substantially within the authorized time and space limits; (3) it is actuated, at least in part, by a purpose to serve the master; and (4) force is intentionally used by the servant against another and the use of force is not unexpected by the master

MOTOR CARRIER SAFETY REGULATIONS - DRUG TESTING - POST-ACCIDENT TESTING - Pursuant to 49 C.F.R. § 382.303(b), drug testing is required in cases in which the commercial driver receives a citation and another person requires immediate medical attention away from the scene or any vehicle involved in the accident is disabled as a result

EVIDENCE - ADMISSIBILITY - RELEVANCY - Miss. R. Evid. 401 states “evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the case”

TORTS - DAMAGES - PUNITIVE DAMAGES - Punitive damages cannot be awarded unless a plaintiff can prove by clear and convincing evidence that the defendant acted either with actual malice or with gross negligence evidencing a willful, wanton, or reckless disregard for the safety of others

PROFESSIONAL RESPONSIBILITY - JUDICIAL MISCONDUCT - IMPROPRIETY - A judge should avoid impropriety and the appearance of impropriety in all activities; this applies to both professional and personal conduct

FACTS

In June 2017, Clayton Harmer, an employee of Coastal Industrial Contractors (“Coastal”), failed to yield to a stop sign and struck Leighann Gonzalez’s vehicle. Gonzalez filed suit alleging negligence and gross negligence by Harmer and Coastal and argued that Coastal was vicariously liable and directly liable for negligent hiring, training, supervision, and entrustment. Coastal admitted vicarious liability by stipulation, moved for partial summary judgment, and sought to have the direct liability claims dismissed. The trial court granted Coastal’s motion, granted Gonzalez’s *ore tenus* motion, and dismissed Harmer with prejudice. Gonzalez filed a motion for reconsideration and for clarification of the order dismissing direct liability claims against Coastal, which the trial court denied. Before the trial court denied that motion, Coastal filed a motion for partial summary judgment on the issue of punitive damages and argued that Gonzalez was prohibited from recovering punitive damages based on a claim of direct liability; however, the trial court denied Coastal’s motion. Following trial, the jury returned a verdict in favor of Gonzalez on the issue of compensatory damages and awarded her \$3.5 million. The trial was bifurcated, and the jury was reminded that it would next decide whether punitive damages should be awarded. Before the jury returned, Gonzalez made an *ore tenus* motion for recusal and a mistrial, alleging that the judge was biased because the judge’s name was in consideration for a federal judgeship and that the judge would not allow punitive damages in an effort to increase his conservative appeal. The trial court denied the motion for recusal and motion for mistrial. When the jury returned to consider punitive damages, Gonzalez argued that the proximate cause of Gonzalez’s injuries was Coastal’s negligent hiring and retention of Harmer. Gonzalez alleged Harmer was unqualified to drive because he had several traffic violations during the preceding three years of his employment, and that Harmer omitted one of his violations on his job application. Gonzalez argued Coastal knew or should have known about the violations and that Harmer was unqualified to drive pursuant to federal regulations. Additionally, Coastal hired Safe Haulin to review employment applications to determine if the applicants were qualified to drive. Gonzalez argued that even though Coastal knew of the violations, it hired and retained Harmer in violation of the Federal Motor Vehicle Safety Regulations. Additionally, according to Coastal’s company policy, a driver is not qualified to drive if convicted of two or more speeding violations in the three years preceding employment. The trial court granted a directed verdict in favor of Coastal on the issue of punitive damages. Gonzalez appealed.

ISSUES

Whether the trial court erred by (1) excluding evidence of Harmer’s drug test; (2) excluding evidence regarding whether Harmer was physically qualified to drive due to his hypertension; (3) excluding evidence of whether Harmer made misrepresentations or omissions in his application for employment; (4) refusing to allow the issue of punitive damages to be submitted to the trier of fact; and (5) denying the motion to recuse.

HOLDING

(1) Because any evidence regarding the negative drug test was irrelevant to whether Coastal negligently hired or retained Harmer, and because Gonzales presented no evidence that suggested Harmer might have been using drugs or alcohol during the crash or that Coastal knew of any drug or alcohol use by Harmer, the court did not err in excluding evidence

of Harmer’s drug test. (2) Because Harmer was on medication to control his hypertension, and because Gonzalez could not provide evidence of what Harmer’s blood pressure was at the time of the accident, the court did not err in excluding evidence regarding whether Harmer was physically qualified to drive due to his hypertension (3) Because evidence pertaining to whether Harmer lied on his application was not relevant to whether Coastal was grossly negligent in hiring or retaining Harmer, the issue was moot and the court did not err in excluding evidence of whether Harmer made misrepresentations or omissions in his application for employment (4) Because three violations would not have disqualified Harmer as a commercial driver pursuant to federal regulations, and because Gonzalez provided no evidence that showed Harmer was on his phone while driving on the day of the accident, Harmer was qualified to drive pursuant to the federal regulations and, therefore, the trial court did not err in refusing to allow the issue of punitive damages to be submitted to the trier of fact; and (5) Because Gonzalez failed to cite any authority to support her argument that the judge, who had recently been nominated for a federal judgeship, would not allow punitive damages in an attempt to increase his chances of being confirmed, the trial court did not err by denying the motion to recuse. Therefore, the Supreme Court affirmed the judgment of the Harrison County Circuit Court.

Affirmed - 2019-CA-01435-SCT (Mar. 25, 2021)

Opinion by Justice Coleman

Hon. Christopher Louis Schmidt (Harrison County Circuit Court)

Chuck McRae & Michele D. Biegel for Appellant - Matthew M. Williams & Jennifer M. Young for Appellee

Briefed by [Mackinlee Rogers](#)

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NAVIENT CORP. V. STATE EX REL. FITCH

CIVIL - OTHER

FEDERAL JURISDICTION - PREEMPTION - CONSUMER PROTECTION - The presumption against federal preemption generally applies in consumer protection cases because states have traditionally decided consumer-protection law; historic police powers of the State are not to be superseded by federal law unless that was the clear and manifest purpose of Congress

FEDERAL LAW - HIGHER EDUCATION ACT - STUDENT LOAN SERVICING - 20 U.S.C. § 1098g does not standardize nor coordinate how a customer service representative of a third-party loan servicer shall interact with a customer in the day-to-day servicing of the loan outside of pre-litigation informal collection activity

MISS. CONSUMER PROTECTIONS ACT - DECEPTIVE & UNFAIR TRADE PRACTICES - PROHIBITED CONDUCT - Miss. Code Ann. § 75-24-5(1) prohibits unfair methods of competition affecting commerce and unfair or deceptive trade practices affecting commerce

MISS. CONSUMER PROTECTIONS ACT - DECEPTIVE & UNFAIR TRADE PRACTICES - INJUNCTION - Miss. Code Ann. § 75-24-9 provides that whenever the Attorney General has reason to believe that any person is using, has used, or is about to use any method, act, or practice prohibited by Miss. Code Ann. § 75-24-5, and that proceedings would be in the public interest, he may bring an action in the name of the state against such person to restrain by temporary or permanent injunction the use of such method, act or practice

MISS. CONSUMER PROTECTIONS ACT - DECEPTIVE AND UNFAIR TRADE PRACTICES - STATING A CLAIM - In determining if the State sufficiently alleged a claim under the MCPA, the controlling issue is whether the State has alleged facts that support a reasonable inference of present or future illegal conduct that needs to be enjoined

FACTS

In 2018, the State filed a complaint against Navient Corporation and Navient Solutions, LLC (collectively, “Navient”), alleging the origination of high cost, subprime loans and predatory practices while servicing student-loan borrowers violated the Miss. Consumer Protection Act (“MCPA”). Navient moved to dismiss based on a failure to state a claim and lack of venue. The trial court denied Navient’s motion, finding that venue was proper under Miss. Code Ann. § 11-11-3 because the State brought an action under the MCPA against foreign defendants and that it did not appear beyond

a reasonable doubt that the State would be unable to prove any sets of facts in support of its claims. Navient petitioned the Supreme Court for an interlocutory appeal, arguing that federal law preempted the State’s servicing claims and that injunctive relief under the MCPA did not apply because the alleged loan-origination misconduct ceased and could not recur.

ISSUES

Whether (1) the Higher Education Act (20 U.S.C. § 1098g) preempted the State’s MCPA claims challenging Navient’s alleged conduct in connection with its servicing of federal student loans and (2) the State properly stated a claim under the MCPA where the allegations related exclusively to alleged misconduct that admittedly had ceased and concededly could not recur.

HOLDING

(1) Because states have traditionally decided consumer-protection law, and because the Higher Education Act did not contemplate the allegations, federal law did not preempt the claims. (2) Because Navient suffered no consequences and remained active in its practice with infinite potential to reenter the business of loan origination, the State alleged facts that supported the danger of a present or future unfair trade practice warranting injunctive relief to protect the public’s interest; thus, the State properly stated a claim. Therefore, the Supreme Court affirmed the judgment of the Hinds County Chancery Court.

Affirmed & Remanded - 2019-IA-01391-SCT (Mar. 25, 2021)

Opinion by Justice Coleman

Hon. Denise Owens (Hinds County Chancery Court)

J. Carter Thompson Jr., D. Sterling Kidd, Michael D. Shumsky, Jennifer Levy, Lauren Beebe, Katherine Canning, Nickolas Barber, Mike Kilgarriff, & Patrick Brown for Appellants - Ta’shia Gordon & Mary Jo Woods (Att’y Gen. Office), Patricia A. Bloodgood, Carolyn G. Anderson, June P. Hoidal, Robert B. McDuff, Beth L. Orlansky, Charles O. Lee, & A. Lee Abraham Jr. for Appellee
Briefed by [Ashley Pruitt](#)

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SUPREME COURT - ORDERS

ANDERSON V. STATE

ORDER

ORDER

Randy Anderson filed an Application for Leave to Proceed in the Trial Court. The Supreme Court found that Anderson presented “no arguable basis” for his claims and that the petition should be denied. Further, Anderson previously filed motions for post-conviction relief, each having been rejected, and the Court found that the present petition was successive. The Court issued a warning that future filings deemed frivolous could result in monetary sanctions or in restrictions on his ability to file applications for post-conviction collateral relief, or pleadings in that nature, in forma pauperis. Therefore, the Supreme Court denied Anderson’s Application for Leave to Proceed in the Trial Court.

OBJECTION IN PART

Presiding Justice King agreed that Anderson’s application for post-conviction relief should be dismissed. However, he disagreed that the application was frivolous, and 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. He argued that Anderson made reasonable arguments in his application, and “though a cause may be weak or ‘light-headed,’ that is not sufficient to label it frivolous.” Further, he argued that imposing monetary sanctions on a criminal defendant proceeding in forma pauperis only serves to punish or preclude that defendant from his lawful right to appeal and ultimately violates a defendant’s constitutional rights. Rather, he argued that the Supreme Court should only deny or dismiss motions that lack merit.

Denied - 2018-M-00154 (Mar. 19, 2021)

Order by Justice Maxwell - Objection In Part by Presiding Justice King

Briefed by [Rachel Fewell](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – MARCH 23, 2021

COURT OF APPEALS - CIVIL CASES

GOSSETT V. GOSSETT

CIVIL - CUSTODY

FAMILY LAW - CUSTODY - ALBRIGHT FACTORS - When considering evidence relevant to *Albright* factors, the chancellor has the ultimate discretion to weigh the evidence the way she sees fit

CIVIL PROCEDURE - NEW TRIAL - REQUIREMENTS - A party may only obtain relief on a Miss. R. Civ. P. 59 motion upon showing: (1) an intervening change in controlling law; (2) availability of new evidence not previously available; or (3) the need to correct a clear error of law or to prevent manifest injustice

CIVIL PROCEDURE - NEW TRIAL - NEWLY DISCOVERED EVIDENCE - Under Miss. R. Civ. P. 59, newly discovered evidence is evidence that existed at the time of trial, but was discovered after trial; it does not include evidence that did not exist at the time of trial

FACTS

Chester and Tiffany Gossett married in 2007, and their only child, Laiklynn, was born in 2011. In March 2014, the marriage started to deteriorate, with Tiffany staying out late several times a week without disclosing her whereabouts and isolating herself from Chester and Laiklynn. The parties separated soon after, and Chester filed for divorce in March 2015, alleging adultery, cruel and inhuman treatment, or, in the alternative, irreconcilable differences. Tiffany filed a counterclaim for divorce on the same grounds. Regarding his adultery allegation, Chester claimed Tiffany was having an affair with a former male co-worker who she interacted with at a local casino. Tiffany admitted to gambling with the co-worker but denied an affair. Tiffany was granted temporary custody of Laiklynn during the divorce proceedings. In March 2016, both parties' requests for divorce were denied, and consequently, there was no analysis of the evidence regarding custody of Laiklynn. Chester appealed the denial of his request for divorce. The Court of Appeals affirmed in part and reversed in part, remanding the case to re-examine his adultery claim. On remand, Chester was granted a divorce based on adultery and was granted temporary custody, set to be reviewed at a later date. The chancery court found that three *Albright* factors favored Chester, including continuity of care prior to separation, employment, and stability of the home environment and employment, while none specifically favored Tiffany except "other relevant factors." Chester was later terminated from his job. Tiffany claimed this was because he failed to disclose his 1992 murder conviction on his employment application, however, the record corroborated that Chester did. In response, Tiffany filed a motion for an emergency hearing based upon newly discovered evidence, a motion to set aside the final judgment on remand, and a motion requesting a new trial, all under Miss. R. Civ. P. 59. Her request for an emergency hearing was denied, but a custody-review hearing was ordered regarding "the concerns of the court as expressed in the Final Judgment on Remand regarding the success or failure of the temporary custody order." The custody-review hearing was held in June 2019, where the judge stated she would not reweigh the *Albright* factors based on the evidence from the 2016 divorce hearing but would hear any evidence "which had any bearing on the concerns of the court as expressed in its final judgment on remand, and which had any bearing on the success or failure of the temporary custody order." After the proceeding, Chester was granted permanent custody. Tiffany appealed.

ISSUES

Whether the trial court erred in (1) granting permanent custody to Chester; (2) relying on evidence which was nearly three years old to grant temporary custody to Chester; and (3) denying Tiffany's motion for an emergency hearing to present newly discovered evidence pertaining to custody under Miss. R. Civ. P. 59.

HOLDING

(1) Because the chancellors properly applied the *Albright* factors and evaluated what was best for the child, the trial court did not err in awarding Chester permanent custody. (2) Because the chancellor previously made detailed findings in her final judgment and only granted temporary custody to ensure the arrangement was in the best interest of the child, the trial court did not err in granting temporary custody to Chester based upon the nearly three-year-old evidence. (3) Because the evidence presented under Tiffany's Miss. R. Civ. P. 59 motions all occurred post trial, the trial court did not err in denying her motion for an emergency hearing. Therefore, the Court of Appeals affirmed the judgment of the Washington County Chancery Court.

Affirmed - 2019-CA-01509-COA (consolidated with 2016-CA-00672-COA) (Mar. 23, 2021)

Opinion by Chief Judge Barnes

Hon. Vicki R. Barnes (Washington County Chancery Court)

Nick Crawford & Vicki L. Gilliam for Appellant - Tonya P. Franklin for Appellee

Briefed by [Brie Mansoor](#)

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JACKSON LAND FOOD MART INC. V. FRIERSON

CIVIL - STATE BOARDS & AGENCIES

TAXATION - SALES TAX - RECORD KEEPING - Miss. Code Ann. § 27-65-43 provides that it shall be the duty of every person taxable under this chapter to keep and preserve, for a period of three years, adequate records of the gross income, gross receipts or gross proceeds of sales of the business, including all invoices of merchandise purchased, all bank statements and cancelled checks, and all other books or accounts as may be necessary to determine the amount of tax for which he is liable

TAXATION - AUDITOR ASSESSMENT - PRESUMPTION - A taxpayer's records may be sampled for audit purposes at the discretion of the commissioner, and any assessment rendered as a result of such audit shall be considered prima facie correct

TAXATION - AUDITOR ASSESSMENT - REBUTTING THE PRESUMPTION - Once the auditor's assessment is made and the presumption of prima facie correctness attaches, the taxpayer bears the burden of proof to show that a genuine dispute exists regarding the correctness of the assessment; a taxpayer must do more than merely dispute the auditor's conclusions

FACTS

Jackson Land Food Mart Inc. ("JLFM"), owned equally by Abdo Fadel and Sultan Naji ("owners"), operated a convenience store and gas station in Picayune. JLFM filed taxes, as did Fadel, and Naji with his wife (collectively, "taxpayers"). The Mississippi Department of Revenue ("DOR") signaled it would audit JLFM regarding taxes on prepaid wireless cards, corporate income tax, and sales tax. The DOR informed Fadel and Naji that their personal income returns would also be audited based on income they received from JLFM. The owners admitted that they did not have any documentation showing the markup percentage of specific items or the average markup on items sold in the store. The owners also admitted they did not have any z-tapes, register tapes, or point of sales receipts for sales made during the audit period. The only documentation reflecting sales were handwritten ledgers; however, they did not have records of daily sales. Jessie Armstrong, the assigned auditor from the DOR, performed a ten-day purchase-cycle analysis in which he compared the purchase price of items from the invoices to the retail price of items on the shelf. The analysis led Armstrong to conclude that the average markup was 44%, which contradicted the sales totals on the sales tax returns. Applying this average markup to inventory purchases over the course of the audit yielded an increase in estimated sales. Consequently, the DOR determined the business owed corporate income tax, sales tax, and taxes on prepaid wireless cards. Fadel and Naji each owed thousands in individual income taxes as well. The taxpayers appealed first to the Board of Review, which affirmed the assessment, and then to the Board of Tax Appeals, which also upheld the tax assessments. The Board of Appeals ruled that, because neither the taxpayers nor their representative attended

the hearing, it was not provided with any evidence to rebut the DOR's assessments. The taxpayers consequently appealed to the Hinds County Chancery Court, which similarly concluded that the taxpayers failed to present any evidence that rebutted the presumption that the DOR's assessment was prima facie correct. Therefore, because the taxpayers failed to present a genuine issue of material fact before the court, the chancery court granted summary judgment in favor of the DOR. The taxpayers appealed.

ISSUE

Whether the taxpayers presented sufficient evidence to rebut the presumption that the DOR's assessment that they owed additional taxes was prima facie correct.

HOLDING

Because the taxpayers failed to have adequate records, and in many instances no records, and because the auditor's assessment was presumed to be correct, the taxpayers failed to rebut the auditor's findings and were required to pay the taxes, penalties, and interest assessed to them. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Chancery Court.

Affirmed - 2019-SA-01837-COA (Mar. 23, 2021)

Opinion by Judge McCarty

Hon. Denise Owens (Hinds County Chancery Court, First Judicial Dist.)

James Gary McGee Jr. for Appellants - Morton Ward Smith for Appellee

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

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LAGEMAN V. LAGEMAN

CIVIL - DOMESTIC RELATIONS

FAMILY LAW - DIVORCE - EQUITABLE DIVISION OF ASSETS - When determining an equitable division of assets, the chancery court is tasked with first classifying the assets as either marital or non-marital

FAMILY LAW - DIVORCE - VALUATION OF NON-MARITAL ASSETS - The party claiming assets to be non-marital has the burden of demonstrating their non-marital character to the court; if a party fails to provide accurate or sufficient information or cooperate in the valuation of an asset, the chancellor is entitled to proceed on the best information available to them

FAMILY LAW - DIVORCE - CHILD-SUPPORT GUIDELINES - As provided by the child-support guidelines in Miss. Code Ann. § 43-19-101(1), there is a rebuttable presumption that a child-support payor should be required to pay a percent of their adjusted gross income determined according to the number of children due support

FAMILY LAW - DIVORCE - APPLICATION OF CHILD-SUPPORT GUIDELINES - Pursuant to Miss. Code Ann. § 43-19-101(4), the chancery court is required to make a written finding as to whether the application of the child-support guidelines is reasonable where a party's annual adjusted gross income exceeds \$100,000.00

FAMILY LAW - DIVORCE - COMMINGLING OF NON-MARITAL ASSETS - If the party commingles non-marital assets with marital property or uses them for familial benefit, the non-marital assets may lose their characterization as such and become marital property subject to equitable distribution

FACTS

Scott and Sonya Lageman were married in 2002 and had two minor children together. Approximately six years before marrying Sonya, Scott began working for FedEx as a handler and eventually worked his way up to a pilot position. In May 2019, Scott and Sonya were granted a divorce on the ground of irreconcilable differences. Scott and Sonya submitted to the chancery court for a determination of the remaining issues of child support, alimony, equitable division of real and personal property, and equitable division of marital debt. At the time of trial, Scott reported his monthly adjusted gross income and the value of his FedEx retirement account. The value of Scott's FedEx pension account was not provided for either the beginning of the marriage or the date of the trial. After a one-day trial and pursuant to their

divorce decree, the court ordered in part: (1) Scott should pay monthly child support; (2) Scott should pay monthly into each of the minor children’s college funds; (3) Sonya should receive certain personal property and portions of Scott’s retirement account; and (4) Sonya should receive forty-five percent of the value of Scott’s pension plan as of May 2019. Scott filed a motion for reconsideration and the court denied his motion. Scott appealed.

ISSUES

Whether the trial court erred by (1) failing to classify and consider the value of the marital and separate portions of Scott’s pension and retirement accounts in its equitable-distribution analysis; (2) ordering Scott to pay child support in the amount of twenty percent of his adjusted gross income; and (3) failing to consider other pre-marital assets owned by Scott in conducting its equitable-distribution analysis.

HOLDING

(1) Because Scott did not provide any testimony or evidence as to the valuation of his pension and retirement accounts prior to the marriage, the trial court did not err by failing to classify and consider the value of the marital and separate portions of the pension and retirement accounts in its equitable-distribution analysis. (2) Because the trial court conducted a thorough analysis of the child support award, including a written finding as to whether the child-support guideline was reasonable considering Scott’s annual adjusted gross income, the trial court did not err in ordering Scott to pay child support in the amount of twenty percent of his adjusted gross income. (3) Because there was no information or evidence provided as to whether the pre-marital asset owned by Scott was kept separate or commingled with marital property, the trial court did not err in failing to consider the pre-marital asset in conducting its equitable-distribution analysis. Therefore, the Court of Appeals affirmed the judgment of the DeSoto County Chancery Court.

Affirmed - 2019-CA-01270-COA (Mar. 23, 2021)

Opinion by Judge Lawrence

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

A. E. (Rusty) Harlow Jr. & Kathi Crestman Wilson for Appellant - Charles E. Winfield & Ashlyn Brown Matthews for Appellee

Briefed by [Glory Crocco](#)

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WATKINS V. WATKINS

CIVIL - WILLS, TRUSTS, & ESTATES

WILLS & ESTATES - MUNIMENT OF TITLE - SIGNATURES - Miss. Code Ann. § 91-5-35(1), as in effect on January 3, 2020, stated when a person dies testate owning at the time of death real property in the state and his will purports to devise such realty, then said will may be admitted to probate, as a muniment of title only, by petition signed and sworn to by all beneficiaries named in the will, and the spouse of such deceased person if such spouse is not named as a beneficiary in the will

WILLS & ESTATES - MUNIMENT OF TITLE - SIGNATURES - Miss. Code Ann. § 91-5-35(1), as in effect on July 1, 2020, stated the petition shall be signed and sworn by the personal representative, including an executor, but if there is no such serving executor or other personal representative, then it shall be signed and sworn by the spouse of the decedent

APPELLATE PROCEDURE - JOINDER - NECESSARY PARTY - The joinder of necessary parties can be raised for the first time on appeal, or even noticed by the reviewing court sua sponte

FACTS

Robert Warren Watkins, Jr. (“Robert”) owned real property located at 591 West Hill Drive (“West Hill Drive property”) in which he and his spouse, Donna Watkins (“Donna”) lived together. Before Robert died, he conveyed the West Hill Drive property to himself and his two sons from his previous marriage, Jeremy Watkins (“Jeremy”) and Terrance Watkins (“Terrance”). The quitclaim deed was recorded in the chancery court land records. Robert executed his will at the same time he executed the quitclaim deed. In his will, he named Jeremy as his representative, devised certain personal

property items to Donna, and devised his residual estate and any other property to Jeremy and Terrance. Robert did not specifically describe the West Hill Drive property or any other real property in his will. On January 3, 2020, after Robert died, Jeremy and Terrance filed a petition in the chancery court seeking to have Robert's will probated as a muniment of title pursuant to Miss. Code Ann. § 91-5-35. The petition was signed and sworn to by Jeremy and Terrance. It was not signed or sworn to by Donna. The chancery court entered its judgment admitting Robert's will to probate as a muniment of title. Donna filed a motion to set aside the decree, asserting that the decree was invalid because she was a beneficiary under the will and was also the decedent's spouse, but the petition did not have her sworn signature that she asserted was required by Miss. Code Ann. § 91-5-35(1). Donna asserted that Miss. Code Ann. § 91-5-35(1), as in effect when the petition was filed, required that a petition seeking to probate a will as a proof of title be signed and sworn to by all beneficiaries named in the will, and the spouse of such deceased person if such spouse is not named as a beneficiary in the will. Jeremy and Terrance responded to Donna's motion, asserting that Miss. Code Ann. § 91-5-35 had been amended by H.B. 1375 and only required that the petition be signed and sworn by the personal representative of the decedent's estate and only required the spouse's signature if there was no executor administrator. Relying on the text of H.B. 1375, the chancery court denied Donna's motion and found the petition not defective because it was signed by Jeremy, who was appointed the personal representative of the estate under Robert's will. Donna appealed.

ISSUE

Whether the chancery court erred in entering its judgment admitting Robert's will for probate as proof of title to the West Hill Drive property.

HOLDING

Because Miss. Code Ann. § 91-5-35(1), which was in effect when the petition was filed, required Donna, a beneficiary under Robert's will and Robert's spouse, to sign and swear to the petition, and because the petition lacked her sworn signature, the chancery court lacked subject matter jurisdiction over the action as all necessary parties were not before it. Therefore, the Court of Appeals reversed and remanded the judgment of the Hinds County Chancery Court.

Reversed & Remanded - 2020-CA-00122-COA (Mar. 23, 2021)

Opinion by Presiding Judge Carlton

Hon. Denise Owens (Hinds County Chancery Court, First Judicial Dist.)

Kenya Reese Martin for Appellant - Marvin Lawayne Sanders for Appellees

Briefed by [Lynette Potter](#)

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COURT OF APPEALS - POST-CONVICTION RELIEF

BRITTON V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - PROCEDURAL BAR - EXCEPTIONS - The denial of a post-conviction relief motion is a final judgment and bars subsequent requests for post-conviction relief unless: (1) there are issues with the defendant's supervening insanity prior to the execution of a death sentence; (2) there has been an intervening decision of the U.S. Supreme Court or Mississippi Supreme Court, which would require a different outcome or sentence; (3) there is newly discovered evidence, which was not previously discoverable, that would have been practically conclusive if it were available at trial; or (4) the defendant claims that his sentence has expired, or his probation, parole, or conditional release has been unlawfully revoked

CRIMINAL PROCEDURE - REASONABLE SUSPICION - INTRUSION - When an officer has reasonable suspicion that a probationer subject to a search condition is engaged in criminal activity, there is enough likelihood that criminal conduct is occurring that an intrusion on the probationer's significantly diminished privacy is reasonable

POST-CONVICTION RELIEF - PROBATION REVOCATION - BURDEN OF PROOF - Probation may be revoked upon a showing that the defendant more likely than not violated the terms of probation

FACTS

While on post-release supervision (“PRS”) after being found guilty of child exploitation, Meika Desean Britton was accused of sending text messages to a fourteen-year-old girl. An investigating officer confiscated Britton’s phone but obtained a search warrant before accessing it. The phone’s contents revealed that Britton had been discussing sexually explicit content with minor children and soliciting sexually explicit information and photos from minors. The circuit court found that Britton had violated the terms of his PRS by committing two new acts of child exploitation and subsequently ordered him to serve his suspended sentence. Britton filed his first of two post-conviction collateral relief (“PCR”) motions regarding his PRS revocation in 2017, alleging that the revocation was unlawful. The circuit court denied the motion, finding that Britton’s issues were without merit. The Court of Appeals affirmed the circuit court’s denial. Britton filed his second PCR motion in 2019, reasserting the issues from his first PCR motion. Before his revocation hearing, Britton claimed he had new evidence attesting to his innocence but failed to subpoena witnesses or victims for testimonial support. The circuit court denied his second motion because it was successive, time-barred, and without merit. Britton appealed.

ISSUES

Whether (1) Britton’s PCR motion was procedurally barred; (2) Britton’s due process rights were violated by not being able to confront a witness; (3) Britton’s Fourth and Fourteenth Amendment rights were violated; and (4) Britton was innocent of the alleged crimes that resulted in his PRS being revoked.

HOLDING

(1) Because Britton reasserted the same issues from his first PCR motion, his PCR motion was procedurally barred as a successive motion. (2) Because Britton had the opportunity to call witnesses and victims for testimonial support and failed to do so, Britton’s due process rights were not violated. (3) Because Britton’s phone was lawfully seized and searched with the authority of a proper warrant, Britton’s Fourth and Fourteenth Amendment rights were not violated. (4) Because there was sufficient evidence that Britton more likely than not committed the crimes, Britton’s innocence claim was without merit. Therefore, the Court of Appeals affirmed the judgment of the DeSoto County Circuit Court.

Affirmed - 2020-CP-00478-COA (Mar. 23, 2021)

Opinion by Judge McDonald

Hon. Celeste Embrey Wilson (DeSoto County Circuit Court)

Pro se for Appellant - Lauren Gabrielle Cantrell (Att’y Gen. Office) for Appellee

Briefed by [Rod Bridges](#)

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COURT OF APPEALS - CRIMINAL CASES

MITCHELL V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - ATTEMPT TO COMMIT A CRIME - ELEMENTS - An attempt to commit a crime consists of three elements: (1) an intent to commit a particular crime; (2) a direct ineffectual act done toward its commission; and (3) the failure to consummate its commission

CRIMINAL LAW - ATTEMPT TO COMMIT A CRIME - INTENT - The mere intention to commit a crime is not punishable; the intention must be coupled with an overt act

CRIMINAL PROCEDURE - ATTEMPT - INDICTMENTS - In order to indict a defendant for an attempted crime, the indictment must set out with certainty the specific conduct that the State asserts to be the overt act

FACTS

Victor Mitchell claimed to be in a traffic accident with a large truck that caused him to run off the road and damage his Porsche. Mitchell contacted the owner of the company, T.D, and asked him pay for the repairs to his car and the remaining balance Mitchell owed on the car. Although T.D. did not believe the accident was the truck driver's fault, he agreed to pay for the repairs and the balance owed by Mitchell. T.D. testified that he also offered to give Mitchell \$10,000 "to help him out." However, witnesses testified that Mitchell felt he was cheated. Mitchell spent nearly four months creating a plan to recoup the money he felt he was entitled. Mitchell ultimately decided to kidnap T.D., sexually assault him, and take pictures during the assault. Mitchell intended to use those photos to extort money from T.D. by threatening to post them on social media. Mitchell hired three men to help fulfill his plan: Howard Cameron, Glenn Evans, and Willie Lampley. After meeting with Mitchell, Lampley contacted law enforcement, who encouraged him to continue communicating with Mitchell. Unsatisfied with the response from law enforcement, Lampley reached out directly to T.D. to warn him about the plan. T.D. then contacted law enforcement, and a plan was developed to arrest Mitchell, Cameron, and Evans. Mitchell arrived at the location with Cameron and Evans and all were subsequently arrested. During a search of the vehicles driven by Mitchell and Cameron, officers found multiple items indicating a planned kidnapping. Mitchell was indicted and convicted of conspiracy, attempted kidnapping, attempted sexual battery, and attempted extortion. Mitchell motioned for a directed verdict, which was denied. Following the trial, Mitchell moved for judgment notwithstanding the verdict or a new trial. That motion was denied as well. Mitchell appealed.

ISSUES

Whether (1) the evidence sufficiently supported the attempted kidnapping conviction; (2) the evidence sufficiently supported the attempted sexual-battery conviction; (3) the evidence sufficiently supported the attempted-extortion conviction; (4) the indictment's failure to describe overt acts was harmless error; and (5) the omission of an "overt act" in the jury instructions was harmless error.

HOLDING

(1) Because Mitchell conceded his intentions, because the plan was frustrated, and because there was ample evidence of Mitchell's actions in furtherance of the kidnapping, the evidence was sufficient for the kidnapping conviction. (2) Because Mitchell's actions went beyond mere preparation, the evidence was sufficient. (3) Because Mitchell's intent was clearly demonstrated by his actions, the evidence was sufficient to support his conviction. (4) Because it was clear that Mitchell was provided adequate notice of the charges against him prior to trial, the error was harmless. (5) Because Mitchell failed to preserve an objection to the jury instructions, and because any error found with the instructions was harmless, the claim was without merit. Therefore, the Court of Appeals affirmed the judgment of the Lamar County Circuit Court.

CONCURRENCE IN PART/DISSENT IN PART

Chief Judge Barnes argued that a failure to allege an overt act was an essential element of attempt under Miss. Code Ann. § 97-1-7, and the failure to list an overt act as an element in Jury Instructions 7 and 8 constituted reversible error. She would reverse Mitchell's convictions for attempted kidnapping and attempted sexual battery and dismiss the indictment as to those two counts.

Affirmed - 2019-KA-01768-COA (Mar. 23, 2021)

Opinion by Judge McCarty - Concurrence In Part/Dissent In Part by Chief Judge Barnes

Hon. Claiborne McDonald (Lamar County Circuit Court)

Mollie Marie McMillin (Pub. Def. Office) for Appellant - Allison Elizabeth Horne (Att'y Gen. Office) for Appellee

Briefed by [Fatelia Avery](#)

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SCRUGGS V. STATE

CRIMINAL - FELONY

CONSTITUTIONAL LAW - SEARCH & SEIZURE - LAWFUL DETAINMENT - A person may be detained for investigatory purposes consistent with the Fourth Amendment when the officers have reasonable suspicion, grounded in specific and articulable facts

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

CRIMINAL PROCEDURE - INEFFECTIVE ASSISTANCE OF COUNSEL - DIRECT APPEAL - Under *Nelson*, allegations of ineffective assistance of counsel will be addressed on direct appeal if the parties stipulate that the record is adequate to allow the appellate court to make the finding without consideration of the findings of fact of the trial judge or the record affirmatively shows ineffectiveness of constitutional dimensions

FACTS

In April 2015, Roberto Perez was robbed by two men at gunpoint. Perez was taken to an apartment building where a man was being held for possible identification. Perez did not recognize the man detained but recognized another man in the crowd, Edmon Morgan, as the man who took his phone and wallet. Soon after, an officer took Perez to another location where he identified Taderrius Scruggs as the second suspect. Detective Rogers arrested and questioned Scruggs. The interview with Scruggs was videotaped and subsequently played for the jury. In the interview, Scruggs admitted to robbing a "Mexican" and using a .38-caliber revolver. Further, he stated that he robbed Perez to get his girlfriend out of jail. Morgan, the other suspect, pled guilty to the robbery. He testified at trial using similar facts to those in Scruggs's interview with Detective Rogers. The prosecution rested its case, and the defense moved for a directed verdict, which the trial court denied. Scruggs testified on his own behalf, stating facts that did not align with Morgan's testimony. He denied robbing Perez or needing money for his girlfriend. Scruggs stated that he did not truthfully confess to the police about his involvement, but rather repeated details that Detective Rogers provided during questioning to end the interview. A unanimous jury found Scruggs guilty of armed robbery. Scruggs was sentenced to forty years in the Mississippi Department of Corrections, with fifteen of those years suspended and twenty-five years to serve, followed by five years of post-release supervision. Scruggs appealed.

ISSUES

Whether (1) Scruggs was detained in violation of his right to be free of an unlawful seizure under the Fourth Amendment; (2) the trial court erred in admitting Perez's identification and Scruggs's statements to the police; and (3) Scruggs received ineffective assistance of counsel.

HOLDING

(1) Because Detective Rogers had reasonable suspicion to detain Scruggs based on an anonymous tip supported by the victim's description, it was not a Fourth Amendment violation. (2) Because Scruggs's statements and Perez's identification were obtained as a result of lawful, temporary detention, the identification and statements were admissible. (3) Because Scruggs based his ineffective assistance of counsel claim on decisions related to his lawyer's trial strategy, and because the identification and statements were obtained as a result of a lawful detention and arrest, the ineffective assistance of counsel allegation was not reviewable on direct appeal. Therefore, the Court of Appeals affirmed the judgment of the Alcorn County Circuit Court.

Affirmed - 2019-KA-01579-COA (Mar. 23, 2021)

Opinion by Presiding Judge Carlton

Hon. John R. White (Alcorn County Circuit Court)

George T. Holmes (Pub. Def. Office) for Appellant - Brittney Sharae Eakins (Att'y Gen. Office) for Appellee

Briefed by [MaryScott Polk](#)

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