

MISSISSIPPI SUPREME COURT DECISIONS – AUGUST 26, 2021**SUPREME COURT - CIVIL CASES****CASCIO V. CASCIO INVS., LLC****CIVIL - CONTRACT**

CONTRACTS - BREACH OF CONTRACT - DUTY TO READ - Under the *Russell* test, an individual is responsible for knowing the contents of any contract he executes

CONTRACTS - CONSIDERATION - MODIFICATION OF TERMS - When parties enter into a valid contract and no changes are made to the terms of the contract after it has been executed, no additional consideration is required

CIVIL PROCEDURE - JOINDER OF CLAIMS - IMPROPER JOINDER - Under *Rosenfelt*, when a corporation seeks damages for another's breach of contract or tortious acts, the owner of said corporation cannot individually pursue the claim because it is the corporation's claim

CONTRACTS - AMBIGUITY - INTERPRETATION OF TERMS - Under *Kennedy*, a non-competition agreement will only be enforceable if the terms governing the geographical scope and duration of the agreement are reasonable **DAMAGES - EVIDENCE - PROXIMATE CAUSE** - Pursuant to *Delaboussaye*, an award of compensatory damages is appropriate when the evidence produced at trial shows a defendant's actions were the proximate cause of a plaintiff's injuries

DAMAGES - NOMINAL DAMAGES - DOUBLE-RECOVERY - Under *Banks*, when a claim for breach of contract is supported by evidence, the prevailing party should at least be granted nominal damages when actual damages are not awarded

CONTRACTS - INJUNCTIVE RELIEF - EVIDENCE - When a contract that is clear and unambiguous has been breached, injunctive relief may be proper, so long as the injunction aligns with the terms specified by the contract

DAMAGES - PUNITIVE DAMAGES - REASONABLE RELATIONSHIP - Pursuant to Miss. Code Ann. § 11-1-65(f)(ii)(1), an award of punitive damages must be reasonably related to the expected harm that could have arisen from the defendant's actions, as well as the harm that was truly suffered

CIVIL PROCEDURE - CONSTITUTIONALITY OF STATUTE - NOTICE - Pursuant to Miss. R. Civ. P. 24(d), in order to challenge the constitutionality of a Mississippi state statute, the Attorney General must be properly notified so that he first has the chance to determine whether or not the statute in question is unconstitutional

FACTS

Phil Cascio Sr. founded several businesses during his lifetime; including: Cascio Investments ("Investments"), C-Rental Services, Inc. ("C-Rental"), and Cascio's Storage and Warehouse, Inc. ("CSW"). Management of these businesses ultimately fell to Phil Cascio Jr. ("Cascio"). In 2014, Cascio's sisters, Jackie and Phyllis Cascio, brought a shareholder-derivative suit against Cascio for improper use of their family businesses. The parties reached a settlement agreement in 2015. As part of this settlement, the parties agreed to a five-year noncompetition agreement ("NCA"). Notably, the NCA had no specific geographic limit. The finalized version of the NCA applied to CSW, Investments, and C-Rental. Included within the NCA was a provision that stated Cascio would not encourage Investments' clients to make any decisions that would adversely affect Investments. Cascio also agreed to cancel the C-Rental trade name, however, he did not actually perform this cancellation until 2018. At the end of the finalized NCA, Cascio affirmed that he had read and understood the agreement. In 2018, Investments filed a complaint against Cascio for breaching the NCA. In this complaint, Investments alleged that Cascio had contacted five of its customers. These customers included CSW and U.S. Ag Recycling ("U.S. Ag"). More specifically, Investments alleged that Cascio sent a threatening letter to CSW's president, pressuring him to install a sprinkler system in one of CSW's storage facilities. Investments contended that

these threats had prompted it to pay for the system's installation. Investments also alleged that it had been forced to offer U.S. Ag a rent reduction after Cascio convinced the company to move out of Investments' property and into one of Cascio's facilities. As this case progressed, the circuit court saw fit to join Cascio's sisters as plaintiffs. Ultimately, the circuit court found that Cascio had acted reprehensibly in repeatedly breaching a valid and enforceable agreement. As part of its judgment against Cascio, the circuit court awarded nominal damages for contacting Investments' clients. Additionally, after conducting a dedicated evidentiary hearing, the circuit court also issued a separate order awarding punitive damages. These damages included attorney's fees, though they were limited due to a punitive-damages cap. Cascio appealed, and Investments cross-appealed.

ISSUES

Whether the trial court erred when it (1) ruled that the NCA was binding and enforceable; (2) found that consideration was not required to modify the NCA; (3) determined that Investments' lawsuit regarding Cascio's breach of the NCA had been properly filed; (4) ruled that Cascio had violated the terms of the NCA when he wrote a letter to CSW, in which he demanded the installation of a sprinkler system in an Investments-owned building; (5) decided that an award of compensatory damages was warranted based on the evidence; (6) considered the award of nominal damages for Cascio's communication with Baker Distributing ("Baker") and Aramark to be appropriate and not an example of double-recovery; (7) found that injunctive relief, which extended the timeline of the NCA, was proper under the circumstances; (8) ruled that punitive damages were acceptable; (9) found that an award of attorney's fees was appropriate; (10) reduced the total amount of punitive damages, holding that Investments had waived its right to challenge the punitive damages cap; (11) found that M.C.A. § 11-1-65(3)(a), which authorizes the punitive damages cap, is constitutional; and (12) decided not to order additional injunctive relief to bar Cascio from breaching the NCA in the future.

HOLDING

(1) Because Cascio signed the NCA, and because an individual has a duty to understand the terms of any contract he enters, the trial court did not err when it determined that the NCA was binding and enforceable. (2) Because no alterations were made to the NCA after Cascio signed the agreement, and because Cascio's consideration was the profit he made from the settlement, the trial court did not err when it found that additional consideration was not required to modify the NCA. (3) Even though the trial court erred when it improperly joined the Cascio sisters' claims with their company's claim, because Investments' attorney had signed the complaint pursuant to Miss. R. Civ. P. 11(a), the trial court did not err when it determined that Investments had properly filed its lawsuit. (4) Because Cascio had sent CSW a threatening letter which prompted Investments to purchase the sprinkler system and ultimately caused Investments to suffer financial harm, and because the terms of the NCA only prohibited Cascio from communicating with ten of Investments' customers exclusive of CSW, the trial court did not err when it ruled that Cascio had violated the terms of the NCA. (5) Because the evidence offered at trial showed that Cascio caused Investments to spend \$53,665.28 on the sprinkler system and lose \$4,800.00 after US A.G.'s rent was reduced, the trial court did not err when it awarded Investments compensatory damages. (6) Because the award for nominal damages concerned the claims involving Baker and Aramark, and because Investments was only granted actual damages for their claim regarding CSW, the trial court did not err when it ruled that the award of nominal damages did not constitute double recovery. (7) Because Investments had grounds to enforce the NCA, the language used in the injunction reflected the terms of the NCA, the NCA specified how long the injunction should last, and because the evidence showed that an injunction was warranted on three separate occasions, the trial court did not err when it granted injunctive relief by extending the timeline of the NCA. (8) Because an evidentiary hearing for punitive damages was conducted, because the evidence demonstrated that Cascio had acted with malice, because the award aligned with prior verdicts, and because the facts of the case justified the award, the trial court did not err by granting Investments punitive damages. (9) Because the evidence presented at trial supported the judgment, and because attorney's fees could be granted for any work done prior to the decree of the final verdict, the trial court did not err when it found that an award of attorney's fees was appropriate. (10) Because Investments did not properly notify the Attorney General about their constitutional challenge to Miss. Code Ann. § 11-1-65(3)(a), the trial court did not err when it found that Investments had waived its right to challenge the constitutionality of the punitive damages cap. (11) Because Investments had waived its right to challenge the constitutionality of the punitive damages cap, the Supreme Court declined to analyze whether or not Miss. Code Ann. § 11-1-65(3)(a) is constitutional. (12) Because Investments could simply hold Cascio in contempt of the NCA if he breached the agreement in the future, and

because Investments failed to cite any relevant authority in its argument, the trial court did not err when it did not grant Investments additional injunctive relief. Therefore, on direct appeal, the Supreme Court affirmed in part and reversed and rendered in part the judgment of the Washington County Circuit Court. On cross-appeal, the Supreme Court affirmed the judgment of the Washington County Circuit Court.

CONCURRENCES IN PART & DISSENTS IN PART

Chief Justice Randolph concurred with the majority's resolution of Issues 1-3, 6-9. Further, he concurred in part on Issue 5, agreeing that the rent reduction that Investments paid to U.S. Ag constituted sufficient evidence to support an award of substantial damages. He additionally concurred with the majority on all issues raised by cross-appeal. However, he dissented on Issue 4, arguing that Cascio's threatening letter to CSW did not constitute a breach of the NCA because it ultimately created no negative financial impact.

Justice Griffis concurred with the majority in part but dissented with the majority's opinion on several issues. Specifically, he argued that the NCA was unreasonable because it had no geographic limit. He also argued that Cascio's letter to CSW did not violate the NCA because the agreement did not prohibit Cascio from contacting CSW as the system was a voluntary installation, and the installation did not have an adverse financial impact upon CSW. Furthermore, he argued that there was no substantial evidence to show that Investments was due an award of actual damages for the sprinklers since the system was genuinely useful. Hence, given that there was no breach of the NCA and damages should not have been paid for the sprinklers, the actual damages Investments suffered did not merit the amount of punitive damages the court awarded. He also argued that Cascio should have had an opportunity to present adverse testimony regarding attorney's fees.

On Direct Appeal: Affirmed in Part; Reversed and Rendered in Part. On Cross-Appeal: Affirmed - 2019-CA-01506-SCT (Aug. 26, 2021)

Opinion by Justice Chamberlin - Concurrences In Part & Dissents In Part by Chief Justice Randolph & Justice Griffis

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

O. Stephen Montagnet III for Appellant - William C. Brabec, Lindsey O. Watson, & Timothy J. Anzenberger for Appellees

Briefed by [John McDonald](#) and [Marianna Nichols](#)

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HUGHES V. SHIPP

CIVIL - CONTRACT

CONTRACTS - EQUITABLE RELIEF - UNJUST ENRICHMENT - Unjust enrichment involves an implied promise to pay what one is equitably entitled to in good conscience

CONTRACTS - UNJUST ENRICHMENT - STATUTE OF LIMITATIONS - The three-year statute of limitations period for an unjust enrichment claim begins to run when the cause of action accrues

CONTRACTS - EQUITABLE RELIEF - STANDARD OF REVIEW - Pursuant to Miss. R. Civ. P. 41(b), involuntary dismissal can be disturbed only if the trial court's finding is unsupported by substantial evidence or if it is manifestly erroneous

FACTS

In 2004, James Hughes paid Tom Shipp \$100,000 as an investment in the development of Rose Lake community. In exchange, Tom promised in writing to convey two lots to Hughes. Three months later, Tom died. Hughes did not probate a claim with Tom's estate; however, he subsequently began working with Tom's wife, Sandy Shipp, and son, David Shipp. In 2008, Hughes paid \$30,000 to Rose Lake, LLC as an investment. After the development continued to stall, Hughes met with Sandy and David. Following the meeting, Sandy and David avoided Hughes and refused to meet with him again. In September 2017, Hughes sued Sandy, David, and the now inoperative Rose Lake, LLC for breach of contract or, in the alternative, unjust enrichment. The chancellor found that there was no meeting of the minds to support the formation or ratification of the prior agreement. Additionally, the chancellor found Hughes's alternative

implied-contract claim of unjust enrichment to be barred by the statute of limitations. Hughes appealed, and the Court of Appeals affirmed, holding that because of the statute of frauds, no valid contract for purchase of the land occurred between Hughes and Tom in 2004. Furthermore, the Court of Appeals held that the statute of limitations had run, but it nevertheless affirmed the dismissal, as any equitable claim based on the \$100,000 should have been made against Tom's estate and that Hughes failed to identify an explicit promise for the \$33,000 payment. Hughes appealed.

ISSUES

Whether the trial court erred in (1) finding the statute of limitations had run on Hughes's unjust enrichment claim and (2) dismissing Hughes's unjust enrichment claim due to his failure to identify an explicit promise for the \$33,000 payment.

HOLDING

(1) Because the three-year statute of limitations begins to run when the cause of action accrues, and because the chancellor made no factual finding as to when Hughes's unjust enrichment claim accrued, the appellate court improperly declared his unjust-enrichment claim as timely, therefore the Supreme Court remanded the question of when Hughes's unjust-enrichment cause of action accrued to the trial court. (2) Because Hughes was not required to provide evidence of David and Sandy's express promise to establish his unjust-enrichment claim, as the doctrine of unjust enrichment involves a promise that is implied in law, and because the chancellor made no finding as to whether Hughes's failure to file a claim against Tom's estate prevented him from claiming unjust enrichment, the Supreme Court reversed the appellate court's opinion in part to the extent it affirmed the chancellor's involuntary dismissal of the Hughes' unjust-enrichment claim. Therefore, the Supreme Court affirmed in part and reversed and remanded in part the judgment of the Yazoo County Chancery Court.

DISSENT

Justice Griffis argued that because no rule required the chancellor to state his factual finding, and because the chancellor stated that he believed the statute of limitations had run, the chancellor's determination should have been upheld under the deferential standard of review. He further contended that dismissal of Hughes's unjust enrichment claim for the \$100,000 payment was proper because the claim accrued when Tom died, and more than three years had passed since his death. Finally, he argued that Hughes failed to prove that the \$133,000 payment unjustly enriched Sandy or David.

Affirmed in Part; Reversed & Remanded in Part - 2018-CT-01654-SCT (Aug. 26, 2021)

En Banc Opinion by Justice Maxwell - Dissent by Justice Griffis

Hon. James Christopher Walker (Yazoo County Chancery Court)

Dennis L. Horn, Shirley Payne, & Leigh Kathryn Payne Horn for Appellant - John Prince Martin & Donald A. McGraw Jr. for Appellees

Briefed by [Katharine Van Pelt](#)

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SUPREME COURT - ORDERS

IN RE: COMM'N ON MANDATORY CONTINUING LEGAL EDUC.

ORDER

ORDER

This en banc Order by the Supreme Court, made in consideration of the Court's own motion, amended Rule 1 of the Rules and Regulations for Mandatory Continuing Legal Education. This amendment to the Rules became effective August 1, 2021. Exhibit A, referenced and attached to the Order, shows the amendments to Rule 1.

Ordered - 89-R-99011-SCT (Aug. 20, 2021)

En Banc Order by Presiding Justice King
Briefed by [William Doherty](#)

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LUSTER V. STATE

ORDER

ORDER

Stanley Luster filed an Application for Leave to Proceed in Trial Court, claiming that he was entitled to post-conviction collateral relief based upon an unlawful sentence as a habitual offender, a jury verdict that was not adequately supported by the evidence, an alleged conflict of interest, the absence of DNA testing, his alleged eligibility for parole consideration, and the ineffective assistance of trial counsel. The Supreme Court found that Luster's unlawful sentence claim was time-barred, successive-writ-barred, failed to meet any exceptions, and lacked an arguable basis. His claims of a jury verdict based on unlawful evidence and an alleged conflict of interest were time-barred, successive-writ-barred, barred by res judicata, and failed to meet any applicable exceptions to those statutory bars. The absence of DNA testing claim was time-barred, successive-writ-barred, waived, and failed to meet any exception. Luster's parole consideration involved a determination to be made by a circuit court judge. His ineffective assistance of trial counsel claim was time-barred, successive writ-barred, failed to meet any exception to those statutory bars, and did not satisfy the requisite prongs of deficient performance and prejudice. The Court warned that any frivolous future filings may result in monetary sanctions and restrictions on filing applications for post-conviction collateral relief, or pleadings in that nature, in forma pauperis. Therefore, the Supreme Court denied Luster's Application for Leave to Proceed in Trial Court.

OBJECTION IN PART

Presiding Justice King agreed that Luster's application for post-conviction relief should be dismissed. However, he disagreed that the application was frivolous. He also disagreed with the Court's warning that future frivolous filings may result in monetary sanctions or restrictions on filing applications for post-conviction collateral relief in forma pauperis. He argued that Luster made reasonable arguments in his application, and a case is not necessarily frivolous because it is weak or light-headed. Additionally, 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. He argued that the Court should deny or dismiss motions that lack merit.

Denied - 2021-M-00348 (Aug. 18, 2021)

En Banc Order by Justice Chamberlin - Objection in Part by Presiding Justice King
Briefed by [Idena Allen](#)

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MCPHAIL V. MCPHAIL

ORDER

ORDER

In December 2020, Justin McPhail filed a Notice of Appeal, upon which the Court unanimously dismissed. Following the dismissal, the Court ordered the chancellor to hold a hearing regarding McPhail's incarcerated status and provide to the appellate court with findings of fact and conclusions of law should an appeal be filed. On March 22, 2021, Justin McPhail filed a Permission for Extension or Reopening of Time to File Petition for Interlocutory Appeal for Excusable Neglect (the "Pleading") regarding the chancellor's February 24, 2021, order, dated twenty-six days prior to McPhail's filing of the Pleading. After due consideration, the Court held that the Pleading should be treated as a timely notice of

appeal under Miss. R. App. P. 4(a). Additionally, the Court ordered that McPhail's filing fee was due and payable to the Clerk of the Court and the appeal shall proceed in accordance with Miss. R. App. P. 10-11.

OBJECTION IN PART

Presiding Justice Kitchens agreed that the Pleading should be treated as a timely notice of appeal from the chancellor's February 24, 2021, order; however, he disagreed with charging a filing fee against McPhail. He argued that because McPhail was incarcerated, had no liquid assets, and had presented justiciable issues concerning the chancellor's order, the filing fee should have been waived in its entirety.

Ordered - 2020-M-00739-SCT (Aug. 19, 2021)

En Banc Order by Chief Justice Randolph - Objection In Part by Presiding Justice Kitchens

Briefed by [John C. Nelson, Jr.](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – AUGUST 24, 2021

COURT OF APPEALS - CIVIL CASES

BLANEY V. BLACK JACK OIL CO., INC.

CIVIL - PERSONAL INJURY

CIVIL PROCEDURE - APPEALS - FINAL JUDGMENT - A final, appealable judgment is one that adjudicates the merits of the controversy and settles all the issues as to all the parties' and requires no further action by the lower court

CIVIL PROCEDURE - SUMMARY JUDGMENT - MULTIPLE PARTIES - Miss. R. Civ. P. 54(b) governs when a summary judgment dismisses some but not all the parties to a lawsuit

CIVIL PROCEDURE - FINAL JUDGMENT - CERTIFICATION - Under Miss. R. Civ. P. 54(b), any order that adjudicates fewer than all the parties will not terminate the action as to any of the parties absent certification as a final judgment by the trial judge

FACTS

James Blaney was injured while working on an oil well owned by Aldridge Operating Company ("Aldridge"). Aldridge hired Blaney's employer, Oil Tools & Supplies Inc. ("Oil Tools"), and Black Jack Oil Company ("Black Jack") as independent contractors to convert the well from oil to saltwater. Aldridge also hired the owner of Comor Industries ("Comor"), William Gardner, to serve as its onsite representative. When a tool became lodged in the well, Black Jack, Blaney, and Gardner agreed upon a plan to retrieve it. During the extraction effort, a piece of equipment detached and struck Blaney in the head. Blaney filed suit against Black Jack, Aldridge, Gardner, and Comor for negligently using an improper procedure to remove the tool from the well. Black Jack, joined by Aldridge, filed a motion for summary judgment arguing that Blaney's claims failed because he did not designate an expert to testify that the chosen retrieval method was negligent. The trial court granted the motion. Blaney appealed.

ISSUE

Whether the trial court order was a final, appealable judgment over which the Court of Appeals had jurisdiction.

HOLDING

Because Blaney's claims against Gardner and Comor remained, and because the order granting summary judgment was not certified as final by the trial court as required by Miss. R. Civ. P. 54(b), it was not an appealable final judgment. Therefore, the Court of Appeals dismissed the appeal for lack of appellate jurisdiction.

Appeal Dismissed - 2019-CA-01583-COA (Aug. 24, 2021)

Opinion by Presiding Judge Wilson
Hon. Lillie Blackmon Sanders (Adams County Circuit Court)
Louis G. Baine III & Thurman Lavelle Boykin III for Appellants - Donna Marie Meehan, Joseph James Valencino, & Dennis J. Phayer for Appellees
Briefed by [Rachel Gholson](#)

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HOOGHE V. SHAW

CIVIL - STATE BOARDS & AGENCIES

ADMINISTRATIVE LAW - APPELLATE REVIEW - AGENCY CONCLUSIONS - An agency's conclusions must remain undisturbed unless the agency's order (1) is not supported by substantial evidence, (2) is arbitrary or capricious, (3) is beyond the scope or power granted to the agency, or (4) violates one's constitutional rights

ADMINISTRATIVE LAW - JUDICIAL REVIEW - SCOPE - Pursuant to Miss. Code Ann. § 47-5-807, any offender who is aggrieved by an adverse decision rendered pursuant to any administrative review procedure may, within thirty days after receipt of the agency's final decision, seek judicial review of the decision; just because an inmate attempts to raise certain legal theories in an administrative grievance or appeal of the same does not take it outside the scope of judicial review contemplated by § 47-5-807

FACTS

In June 2019, Thomas Hooghe, an inmate at the East Mississippi Correctional Facility ("EMCF"), was transported temporarily to the Central Mississippi Correctional Facility ("CMCF"). Two weeks after arriving at CMCF, Hooghe filed a grievance with the Mississippi Department of Correction's ("MDOC") Administrative Retrieval Program ("ARP") requesting his personal property from EMCF. Hooghe asserted that the property contained legal documents necessary for his impending lawsuit against Warden Shaw. Subsequently, Hooghe filed a motion for injunctive relief in his case against Warden Shaw, stating that, during his time at CMCF, his personal property had disappeared. Upon arriving at EMCF, Property Officer C. Young conducted the first step of the ARP grievance response and stated that Hooghe received his personal property. Hooghe then appealed the ARP's response. In his appeal, Hooghe noted that his legal papers and other unspecified property were still missing. Subsequently, Deputy Warden Rice confirmed that Hooghe had received all personal property bearing his name. After receiving notice of Hooghe's motion for injunctive relief, Warden Shaw ordered an investigation into Hooghe's missing property. The investigation did not determine where Hooghe's property had gone. However, the investigation did result in Hooghe receiving copies of all the legal papers and some personal property that he had reported missing. Hooghe later filed a complaint in the circuit court, seeking judicial review of the ARP decision under Miss. Code Ann. § 47-5-807. The circuit court entered an order affirming the MDOC's decision and dismissed the complaint. Hooghe appealed.

ISSUES

Whether the circuit court erred in (1) considering Hooghe's complaint as a request for judicial review of an administrative decision under Miss. Code Ann. § 47-5-807 and (2) affirming the MDOC's decision.

HOLDING

(1) Because Miss. Code Ann. § 47-5-803 authorizes the ARP to oversee complaints against the MDOC by inmates, and because Hooghe's complaint did not include constitutional violations, the circuit court did not err in treating Hooghe's complaint as an appeal of an administrative decision under Miss. Code Ann. § 47-5-807. (2) Because Hooghe failed to demonstrate that the prison ever possessed or confiscated any of the allegedly missing property, because Hooghe failed to establish that he ever purchased or owned the property, and because Hooghe failed to prove that the decision was not supported by evidence, was arbitrary or capricious, was beyond the MDOC's authority, or was a violation of Hooghe's statutory or constitutional rights, the circuit court did not err in affirming the MDOC's decision. Therefore, the Court of Appeals affirmed the judgment of the Lauderdale County Circuit Court.

Affirmed - 2020-CP-00625-COA (Aug. 24, 2021)
Opinion by Presiding Judge Carlton
Hon. Charles W. Wright Jr. (Lauderdale County Circuit Court)
Pro se for Appellant - Steven James Griffin for Appellee
Briefed by [Chandler Coleman](#)

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MAULDIN CO. V. TURNAGE

CIVIL - TORTS-OTHER THAN PERSONAL INJURY & PROPERTY DAMAGE

CIVIL PROCEDURE - MOTION PRACTICE - FINDINGS OF FACT - A trial court is not obligated to make particularized findings of fact and conclusions of law, even when a party moves for more particularized findings

CIVIL PROCEDURE - MOTION PRACTICE - WAIVER - A party's failure to ensure that its motion is heard by the court constitutes a waiver

APPELLATE PROCEDURE - PROCEDURAL BAR - FAILURE TO CITE AUTHORITY - Failure to cite any authority is a procedural bar, and a reviewing court is not obligated to hear the issue

FACTS

Earnest Turnage purchased a tractor, which came with a two-year warranty, from Mauldin Company ("Mauldin"). Shortly after, Turnage sent the tractor to Mauldin for repairs on two occasions. On the second occasion, the tractor was returned to Turnage with transmission issues, which led Mauldin to give Turnage a loaner tractor. Mauldin claimed that it loaned Turnage the tractor for one day while Turnage claimed that he was to keep the loaner until his tractor was repaired. Turnage kept the loaner for ten days until Mauldin returned the tractor, still without a proper repair. Because the tractor still did not work properly, Turnage was required to hire two additional workers to help with his business and later paid a third party to repair the tractor. Mauldin sued for replevin of the loaned tractor, and Turnage counterclaimed, asserting negligence in failing to properly repair the tractor. After a bench trial, Turnage was awarded \$12,554.19 for repairs to the tractor and hiring additional labor. The trial court denied Mauldin's post-trial motions. Mauldin appealed.

ISSUES

Whether the trial court erred by (1) denying Mauldin's Miss. R. Civ. P. 41(b) motion to dismiss based on lack of evidence; (2) holding that Turnage attempted to mitigate his damages (3) failing to make sufficient factual findings and denying Mauldin's Miss. R. Civ. P. 52(a) motion for additional findings; (4) denying Mauldin's motion for relief pursuant to Miss. R. Civ. P. 60(b); (5) failing to dismiss Turnage's counterclaim for want of prosecution; and (6) disregarding the warranty and limitation of the liability agreement.

HOLDING

(1) Because the trial court found sufficient evidence to support causation based on the testimony and exhibits, the trial court did not err in denying the Rule 41(b) motion. (2) Because Mauldin was aware that it failed to properly repair Turnage's tractor but failed to attempt additional repairs, and because Turnage was forced to hire additional labor in order to maintain his business, the trial court did not err in holding that Turnage reasonably attempted to mitigate his damages. (3) Because the trial court was not obligated to make particularized findings of fact under Rule 52(a), and because the order contained all of the findings of fact and conclusions of law necessary for proper review, the trial court did not err by denying Mauldin's 52(a) motion. (4) Because Mauldin failed to supply any legal authority on the issue, the Rule 60(b) issue was without merit. (5) Because Mauldin failed to ensure that his motion was heard, the issue was waived on appeal. (6) Because Mauldin's brief was completely devoid of legal authority, the issue was without merit. Therefore, the Court of Appeals affirmed the judgment of the Smith County Circuit Court.

Affirmed - 2019-CA-01587-COA (Aug. 24, 2021)
Opinion by Judge Westbrook

Hon. Eddie H. Bowen (Smith County Circuit Court)
Phillip Lloyd Londeree for Appellant - Corey Daniel Gibson for Appellee
Briefed by [Channing Curtis](#)

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SIMS V. SIMS

CIVIL - DOMESTIC RELATIONS

FAMILY LAW - CUSTODY - GRANDPARENT VISITATION - Miss. Code Ann. § 93-16-3(2) requires a grandparent seeking visitation rights to have a viable relationship with each grandchild rather than with at least one grandchild

CIVIL PROCEDURE - APPELLATE REVIEW - OVERTURNING RULINGS - When a chancellor's findings turn on conflicting testimony and witness credibility, the chancellor alone has the authority to determine what the disputed testimony shows and the appellate court cannot second-guess the chancellor's ruling

FAMILY LAW - CUSTODY - GRANDPARENT VISITATION - Miss. Code Ann. § 93-16-3 and controlling caselaw provides that the court must first find a "viable relationship and unreasonable denial of visitation" before it considers the best interests of the child for purposes of grandparent visitation

CIVIL PROCEDURE - DISCOVERY - WITNESS DISCLOSURE - Chancery Ct. R. 1.10 requires exclusion of testimony of an expert witness who was not designated as such to all attorneys of record at least sixty days before trial

FACTS

Danny Sims and his wife, Jonelle Sims, filed suit to establish grandparent-visitation rights with their four grandchildren in February 2018 after Danny's son, Daniel Sims, and his wife, Mary Sims, cut off visitation between the grandparents and the minor children. A dispute in 2013 concerning a rental property and cell phone payments caused the broken relationship between the families. Trial was set for January 2019. In November 2018, Danny and Jonelle identified Dr. William Criss Lott as an expert witness to testify to the psychological fitness of Danny and Jonelle for visitation. Daniel and Mary moved to exclude Dr. Lott on the basis of allegedly inadequate expert designation and sought attorney's fees for the motion. Five business days before the trial date in January 2019, Danny and Jonelle served the report from Dr. Lott. The chancellor did not exclude Dr. Lott from testifying but continued the trial date and ordered Danny and Jonelle to pay attorney's fees. After an unsuccessful mediation, trial ensued, resulting in the chancellor's denial of Danny and Jonelle's petition for visitation rights. Danny appealed.

ISSUES

Whether the chancellor erred when she (1) denied grandparent visitation based on her determination that Danny failed to establish a viable relationship with the grandchildren; (2) determined that Danny failed to prove that Daniel and Mary unreasonably withheld his visitation rights; (3) failed to consider the best interests of the children; (4) ruled that the chancery court did not have jurisdiction to grant a temporary hearing; and (5) directed Danny to pay attorney's fees.

HOLDING

(1) Because Danny failed to meet the statutory requirement of Miss. Code Ann § 93-16-3(2) to have a viable relationship with the two youngest grandchildren, and because the chancellor was not required to undertake a *Martin* analysis, the chancellor did not err in denying visitation rights. (2) Because parents with custody have a paramount right to control the environment to which their children are exposed, and because there was conflicting testimony and witness credibility, the chancellor did not err in determining that Danny failed to prove his visitation rights were unreasonably withheld. (3) Because the court only considers the best interests of the child upon a finding of a viable relationship between the grandparents and the grandchildren, and because Danny failed to establish such a relationship, the chancellor did not err in failing to consider the best interests of the children. (4) Because Danny failed to provide a sufficient record for the court's review, the question of jurisdiction was procedurally barred. (5) Because Danny and Jonelle failed to comply with Chancery Ct. R. 1.10 regarding expert witness disclosure, the chancellor was within her

discretion to impose attorney's fees sanctions. Therefore, the Court of Appeals affirmed the judgment of the Madison County Chancery Court.

Affirmed - 2020-CA-00327-COA (Aug. 24, 2021)

Opinion by Presiding Judge Carlton

Hon. Cynthia L. Brewer (Madison County Chancery Court)

Robert W. Lawrence for Appellant - W. Benton Gregg for Appellees

Briefed by [Ansley McLellan](#)

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STEPHENS V. STEPHENS

CIVIL - DOMESTIC RELATIONS

FAMILY LAW - DIVORCE - STANDARD OF REVIEW - Under *Evans*, chancellors are afforded wide latitude in fashioning equitable remedies in domestic relations matters, and their decisions will not be reversed if the findings of fact are supported by substantial credible evidence

FAMILY LAW - CHILD SUPPORT - VOLUNTARY TERMINATION OF EMPLOYMENT - Pursuant to the precedent set in *Bailey*, the Court of Appeals has never allowed a reduction in a pre-existing child support obligation due to voluntary termination of employment”

DIVORCE - SETTLEMENT AGREEMENTS - JURISDICTION - Under *Harper*, even if an appeal is pending, a court may re-examine the question of custody support at any time if a change of conditions is shown

FACTS

In 2006, Rachel Stephens and William Hays Stephens were married. During their near-decade of marriage, they had three children. In June 2016, the Chancery Court of Oktibbeha County issued the Stephenses' a divorce on the ground of irreconcilable differences. The court's final judgment on the issue incorporated a property settlement, child custody, and a support agreement ("PSA"). The PSA required William to pay Rachel \$2,500 in child support on the 15th of each month beginning on July 15, 2016, to maintain a \$500,000 life insurance policy, and to pay half of all the children's medical expenses not covered by insurance. William was held in contempt for failure to comply with the PSA in October and December 2016 respectively, and the court ordered him to pay the child support arrearage totaling \$5,000. In February 2017, William petitioned for modification of the PSA. He requested a decrease in the child support obligation, claiming a reduction in income and children's needs. In July 2017, the court denied William's petition for modification and found him in contempt of the order for the third time, ordering to pay \$2,500 in past-due child support. Over the next year William, was held in contempt twice more, and the court ultimately found that he owed \$13,500 in unpaid child support. In December 2018, Williams filed a second petition for modification of the PSA, claiming that the \$2,500 monthly child support obligation was unreasonable due to a significant decrease in his income. In April 2019, Rachel filed a counter-petition for contempt, enforcement, and other relief. In August 2019, the Stephenses' attended a hearing, and the court found that William could have paid the child support, but deliberately failed to do so and denied his request for modification. During the hearing, William testified that his monthly income had only decreased by \$214, that he voluntarily ended his employment in July 2018 in an attempt to avoid incarceration, and that he had made no changes in the leisurely activities in his life, continuously attending concerts, football games and taking international trips. The court found that William was in contempt of the order for the sixth time for failure to pay child support and maintain life insurance, and ordered William to pay by September 6, 2019 or be incarcerated. On September 6, 2019, William appealed and paid \$24,687 as a supersedeas bond. In October 2019, Rachel filed another petition for enforcement and relief to recover child support that vested after the August 2019 order. She sought \$7,500. In January 2020, the Stephenses attended a hearing, and the court ordered that William pay \$11,076.82 or be incarcerated immediately. William paid \$13,847 as a supersedeas bond and appealed.

ISSUES

Whether the (1) trial court erred by denying William’s request to modify the child support obligation despite his inability to pay; (2) trial court erred by not allowing William or his former employer to testify regarding his finances prior to June 2018; (3) trial court erred by holding William in contempt; and (4) trial court’s order was void in its entirety because it lacked jurisdiction.

HOLDING

(1) Because William did not present clear and convincing evidence in support of his inability to pay the child support as ordered in the PSA or that a substantial and material change had occurred, the trial court did not err in denying William’s request for modification of the payments. (2) Because the chancellor’s 2018 order concluded that William had adequate financial resources, and because William was precluded from relitigating the issue in 2019, the chancellor did not err by not admitting the testimony into evidence. (3) Because William offered no evidence to support his claim of inability to pay the child support, the trial court did not err in holding him in contempt. (4) Because the chancery court retained continuous jurisdiction over the final order of the PSA, and because the chancellor did not err in finding William in contempt, the court did not lack jurisdiction, and the order as issued was not void. Therefore, the Court of Appeals affirmed the judgment of the Oktibbeha County Chancery Court.

Affirmed - 2019-CA-01421-COA (Aug. 24, 2021)

Opinion by Judge Greenlee

Hon. Paula Drungole-Ellis (Oktibbeha County Chancery Court)

Timothy C. Hudson, Courtney Bradford Smith, & Lindsay Jo Wilkinson for Appellant - Lee Ann Self Turner & Ashlyn Brown Matthews for Appellee

Consolidated with:

Affirmed - 2020-CA-00106-COA (Aug. 24, 2021)

Hon. Paula Drungole-Ellis (Oktibbeha County Chancery Court)

Timothy C. Hudson, Courtney Bradford Smith, & Lindsay Jo Wilkinson for Appellant - Lee Ann Self Turner & Ashlyn Brown Matthews for Appellee

Briefed by [Kelsey Davis](#)

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WARD V. CRANFORD

CIVIL - CONTRACT

CONTRACTS - INTERPRETATION - FOUR CORNERS - A contract’s meaning and interpretation must be derived from the four corners of the document

CONTRACTS - INTERPRETATION - AMBIGUITY - A contract is ambiguous if it is subject to more than one reasonable interpretation; whether a contract is ambiguous is a question of law for the court to decide and is subject to de novo review on appeal

CONTRACTS - INTERPRETATION - PAROL EVIDENCE - A latent ambiguity arises when a writing appears on the fact of it certain and free from ambiguity, but the ambiguity is introduced by evidence of something extrinsic, or by some collateral matter out of the instrument; relevant parol evidence or extrinsic evidence should be used to resolve a latent ambiguity

FACTS

Ray and Mary K. (“Kathy”) Ward entered into a lease purchase agreement with Marilyn Cranford. The lease term was three years and gave Cranford the option to buy the property for \$44,000 at any point during the lease agreement. Each month, \$400 of rent was credited against the option price. Cranford paid the Wards a total of \$20,000 by three separate checks. Two of the checks were dated ten days prior to the parties’ contract, and the third was dated the same day as the contract. However, the contract contained no mention of this sum and its purpose. Cranford believed the \$20,000 went toward the purchase amount. Before the end of the lease term, Cranford gave the Wards a cashier’s check of \$9,600, which she stated was the remaining balance of the \$44,000 and intended to exercise her purchase option. The

Wards, through counsel, informed Cranford that the remaining amount was \$33,915 and, if she wanted to purchase, she must pay that amount or they would evict her from the property. The Wards stated that the purchase price was \$64,000, not \$44,000. Kathy provided a signed preliminary document to Cranford that stated the balance was \$64,000. Cranford denied signing the document and testified she did not recognize it. The Wards also argued that the checks totaling \$20,000 before the contract should not be applied to the credited amount due to the language of the contract. The contract stated that Cranford “may make additional payments during the term of the lease against the option price.” Since Cranford wrote the checks before the execution of the contract, the Wards argued the \$20,000 did not apply to the option price since it was not during the lease term. At trial, the court found the contract unambiguous. A judgment was made in favor of Cranford, and the trial court ordered the Wards to convey the property to Cranford in a special warranty deed once the \$9,600 had been tendered. The Wards appealed.

ISSUE

Whether the trial court erred in finding that the contract between the parties was unambiguous.

HOLDING

Because each party interpreted the language of the contract to have different but reasonable meanings, the contract was ambiguous. Therefore, the Court of Appeals reversed and remanded the judgment of the Choctaw County Chancery Court.

CONCURRENCE IN RESULT

Judge Westbrook argued that the contract interpretation remained unambiguous based on the four corners of the document. She agreed that the purpose of the \$20,000 needed to be addressed by the trial court on remand.

DISSENT

Judge Emfinger argued that the contract interpretation was unambiguous and, therefore, that no parol evidence or testimony should have been allowed. Based on the contract language, he argued that the trial court erred in crediting the \$20,000 in checks to the option price.

Reversed & Remanded - 2020-CA-00410-COA (Aug. 24, 2021)

Opinion by Presiding Judge Wilson - Concurrence in Result by Judge Westbrook - Dissent by Judge Emfinger
Hon. Joseph Kilgore (Choctaw County Chancery Court)
Kelsey Leigh Dismukes & J. Lane Greenlee for Appellants - Jay Howard Hurdle for Appellee
Briefed by [Marlee Russell](#)

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COURT OF APPEALS - CRIMINAL CASES

DILLE V. STATE

CRIMINAL - FELONY

EVIDENCE - HEARSAY - DYING DECLARATION - A dying declaration is admissible if the wounded person is in extremis and dies after making the statement, the person realizes that he is mortally wounded, and the person has no hope of recovery

CRIMINAL PROCEDURE - MISTRIAL - IMPROPER OCCURRENCES - Mistrial is reserved for those instances where the trial court cannot take any action which would correct improper occurrences inside or outside the courtroom; the grant of a mistrial is left to the sound discretion of the trial judge

CRIMINAL PROCEDURE - JURY QUESTIONS - ADDITIONAL INSTRUCTIONS - Miss R. Crim. P. 23.3(a) provides that parties have a procedural and constitutional right to be present when a court reviews a jury question and issues a response

CRIMINAL PROCEDURE - JURY SELECTION - RACIAL DISCRIMINATION - If a peremptory challenge appears to be merely based on race, a *Batson* challenge will require a race-neutral reason for the peremptory challenge, provided that the objecting party demonstrates a prima facie showing that the exercise of the peremptory challenge was based only on race

CONSTITUTIONAL LAW - RIGHT TO SPEEDY TRIAL - BALANCING TEST - To determine whether the state has violated the right of an accused to a speedy trial, the court shall consider the following factors: (1) the length of the delay, (2) the reasons for the delay, (3) whether the defendant asserted his right to a speedy trial, and (4) whether the defendant was prejudiced by the delay

CRIMINAL LAW - GROUNDS FOR REVIEW - MOTIONS - Issues that are not raised in a motion for judgment notwithstanding the verdict or new trial are procedurally barred from raising on appeal issue

CRIMINAL PROCEDURE - PROSECUTORIAL MISCONDUCT - PREJUDICIAL EFFECT - Prosecutors have broad leeway in forming arguments but are restricted from employing tactics which are inflammatory, highly prejudicial, or reasonably calculated to unduly influence the jury

FACTS

In 2014, Lincoln Dille shot Kanisky Lacey eight times in a gas station parking lot, resulting in Lacey's death. Dille's girlfriend, Rosemary Johnson, was previously in a relationship with Lacey and shared a child with him. Prior to this altercation, Lacey threatened Dille on multiple occasions, causing Dille to acquire a peace bond and a gun. On the night of the shooting, Dille and Johnson met with Lacey to exchange custody of the child. A surveillance video showed that Johnson remained in the car while Dille approached Lacey as he opened the back door where the child sat. The two conversed, and Lacey gestured towards Johnson's car. Dille then took a few steps toward Lacey and pointed a gun at him. Dille backed away and lowered the gun. As Lacey leaned into the back of his car and gestured toward Dille, Dille ran forward and shot Lacey. Johnson got out of the car and heard Lacey ask Dille, "Why did you shoot me?" When Responding Officer Lincoln Lampley arrived on the scene and placed Dille under arrest, Dille claimed he shot Lacey in self-defense. However, upon searching the scene, police found that Lacey was unarmed. In February 2014, Detective Nashata Lucket interviewed Dille and Johnson, but neither party called her as witness. In April 2014, Dille was indicted on charges of first-degree murder and shooting a firearm into a vehicle. Dille's trial was set for December 2014, but after several motions and orders, the trial was reset for June 2018. The State filed a motion in limine to exclude Lacey's toxicology report, but there was no ruling by the court in the record. Neither party brought a motion pertaining to the report at the second trial. The trial ended in a mistrial because the jury failed to reach a verdict. A retrial was set for November 2018 and reset for April 2019 since Dille could not obtain the first trial's transcript on time. Dille filed several pre-trial motions including one to bar the State from calling "surrogate medical examiners" to testify who were not present at Lacey's autopsy. The State filed a motion to allow Johnson's testimony of Lacey's final words and moved to exclude questioning of Officer Lampley on a pending investigation regarding an administrative action. The circuit court denied Dille's motion to prevent "surrogate medical examiners." The circuit court granted the State's motions to allow Johnson's testimony about Lacey's last words and to exclude questions to Officer Lampley about the investigation. As Dille's second trial began in April 2019, the State used ten preemptory challenges striking black jurors during voir dire. Dille raised a *Batson* challenge, and the State presented reasons for the strikes. The court accepted the State's reasons. The State called Chief Medical Examiner Mark LeVaughn to testify about the autopsy report. Although LeVaughn did not perform the actual autopsy, he reviewed the entire file before signing off on the report. Once the jury was excused, both parties questioned Lampley on the unresolved investigation. Lampley claimed he did not know what the issue was about. Dille called his father and Johnson to testify, both of which spoke highly of his character. Johnson testified that Lacey had confronted both her and Dille and tried to provoke Dille into a fight. The court did not allow Johnson to testify about Lacey's assault on a previous boyfriend, Arcola, to which the defense made a proffer. During the proffer, Johnson testified that Lacey and a friend jumped Arcola since he was with Lacey and Johnson's child, but the jury was not present for this testimony. During a recess, Lacey's sister approached Johnson telling Johnson that she did not like how Johnson was testifying. Johnson told the court that she felt intimidated, but her testimony was truthful. Dille moved for a mistrial, and the court denied his motion. The jury received instructions on first-degree murder, second-degree murder, heat-of-passion manslaughter, shooting into an occupied vehicle, and self-defense. Afterwards, both parties made closing arguments. The State used "send-a-message" arguments such as "do the right thing" and "to make the right decision" during their closing argument, and the defense made no objection at trial. While deliberating, the jury sent a question about what would be considered the "fatal act" mentioned in the instruction on first-degree murder.

The judge wrote back without divulging the note to either party and told the jury to refer to the instructions and continue deliberating. The jury found Dille guilty of first-degree murder but not guilty of shooting into a vehicle. Dille was sentenced to life imprisonment. Dille filed a motion for judgment notwithstanding the verdict or alternatively for a new trial. After hearing the post-trial motion arguments, the circuit court judge said it would issue and order within ten days, but none were rendered within the time frame. Dille appealed.

ISSUES

Whether (1) the circuit court erred in admitting Lacey’s “dying declaration”; (2) the circuit court erred by limiting Dille’s proffer of testimony from Officer Lampley; (3) the circuit court erred by denying Dille’s motion for a mistrial; (4) the circuit court erred in its handling of the jury question; (5) the circuit court erred by excluding testimony of Lacey’s assault on Arcola; (6) the circuit court erroneously denied Dille’s *Batson* challenges; (7) the circuit court erred in denying Dille’s motion to strike the surrogate medical examiner’s testimony; (8) Dille was denied his constitutional right to a speedy trial; (9) the circuit court erroneously suppressed Lacey’s toxicology report; (10) statements by the State constituted prosecutorial misconduct; (11) the State failed to prove all elements of first-degree murder; (12) there was overwhelming evidence of justifiable homicide; and (13) Dille received ineffective assistance of counsel.

HOLDING

(1) Because Lacey’s statement was a dying declaration, which allows for the admittance of hearsay evidence as an exception to the general bar on hearsay evidence, and because the statement was relevant since Dille claimed self-defense and Lacey’s state of mind was at issue, the circuit court did not err in admitting Lacey’s statement. (2) Because the jury could not logically give Lampley’s testimony less weight as a result of the pending investigation in an unrelated matter, the circuit court did not err in limiting Dille’s proffer. (3) Because Dille’s case was not substantially and irreparably prejudiced by the encounter between Johnson and Lacey’s sister, the circuit court did not err in denying Dille’s motion for a mistrial. (4) Because Dille had a procedural and constitutional right to be present when the judge reviewed the jury question, the circuit court failed to apprise the State and the Dillie as required. However, because the circuit court gave no substantive supplemental instruction to the jury, the error was irreversible and harmless. (5) Because the statements were hearsay, and because the jury was presented extensive evidence of Dille’s own personal experiences with Lacey to establish a basis for Dille’s fear of Lacey, the circuit court did not err in excluding testimony on the assault on Arcola. (6) Because the circuit court found race-neutral reasons for excluding potential jurors, and because the record did not indicate the race of other jurors that the State did not exclude, there was no merit to Dille’s *Batson* challenges. (7) Because Dr. LeVaughn was a court-accepted expert and had reviewed and signed off on the autopsy, there was no error in allowing Dr. LeVaughn to testify. (8) Because Dille was not prejudiced by delays to his trial, and because the weight of the *Barker* factors was against Dille, Dille was not denied his constitutional right to a speedy trial. (9) Because the circuit court did not rule on the suppression of Lacey’s toxicology report, and because the issue was not raised in Dille’s motion for JNOV or a new trial, it was procedurally barred from appellate review. (10) Because Dille did not contemporaneously object to the State’s closing argument at trial, it was procedurally barred from being raised on appeal. Nevertheless, because the comments made by the prosecutor during the State’s closing argument were not inflammatory or misstatements of facts nor were they meant to excite the passion of the jury, there was no prosecutorial misconduct. (11) Because Dille did not cite any legal authority to support his claim that the State failed to prove all elements of first-degree murder, the issue was procedurally barred from consideration. Nevertheless, because a reasonable trier of the facts could find that the evidence showed Dille acted with deliberate design, there was no merit to the claim that the State failed to prove the elements of first-degree murder. (12) Because the facts did not constitute overwhelming evidence of justifiable homicide, and because allowing the jury’s verdict to stand would not be an unconscionable injustice, Dille’s issue was meritless. (13) Because the parties did not stipulate that the record was adequate for the court to evaluate the claim of ineffective assistance of counsel, and because the record did not affirmatively show ineffectiveness of constitutional dimensions, the court did not rule on Dille’s ineffective assistance of counsel claim. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

Affirmed - 2019-KA-00855-COA (Aug. 24, 2021)

Opinion by Judge McDonald

Hon. Winston L. Kidd (Hinds County Circuit Court, First Judicial Dist.)

Mollie Marie McMillin (Pub. Def. Office) & *Pro se* for Appellant - Ashley Lauren Sulser (Att’y Gen. Office) for Appellee

Briefed by [Abbey Bufkin](#) & [Katie Lee Crockett](#)

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