BriefServ[SM]

Weekly Newsletter
Mississippi Cases Editor: Greyson Young

MISSISSIPPI SUPREME COURT DECISIONS – AUGUST 6, 2021

SUPREME COURT - CIVIL CASES

METHODIST HEALTHCARE-OLIVE BRANCH HOSP. V. MCNUTT

CIVIL - MEDICAL MALPRACTICE

TORTS - VICARIOUS LIABILITY - RESPONDEAT SUPERIOR - A plaintiff alleging injury to an employee's negligence has the option to sue the employee, the employer, or both
CIVIL PROCEDURE - CLAIM PRECLUSION - STATUTE OF LIMITATIONS - A dismissal with prejudice due to the expiration of the statute of limitations is not a dismissal on the merits for the purposes of claim preclusion
TORTS - VICARIOUS LIABILITY - RESPONDEAT SUPERIOR - The expiration of a statute of limitations as to the employee due to a failure to serve the employee with process does not extinguish the claim against the employer

FACTS

Brandon McNutt visited the emergency room at Methodist Healthcare in May 2016 complaining of a chest and shoulder pain. Dr. Vivian Sze Ting Lo examined him, diagnosed him with a panic attack and referred him to a psychiatrist. Brandon died two days later of a heart attack. Brandon's mother, Bettye McNutt, filed a wrongful death suit in July 2018 against Dr. Lo and Methodist Healthcare, claiming to have given them written presuit notice of the claim on May 9, 2018, via certified mail. In October 2018, Dr. Lo filed a motion to dismiss because she had not been served with a presuit notice required by Miss. Code Ann. § 15-1-36(15). The circuit court granted Dr. Lo's motion because she had not received the presuit notice, and the circuit court dismissed with prejudice because the statute of limitations had expired. Methodist, then, filed a motion for partial summary judgment on McNutt's claim for vicarious liability based on Dr. Lo's negligence. The circuit court denied Methodist's motion for partial summary judgment because they had received presuit notice, and the statute of limitations against Methodist was extended by sixty days. Methodist appealed.

ISSUE

Whether the claim against Methodist was extinguished when their employee was dismissed due to a failure to serve presuit notice and when dismissal was with prejudice because the statute of limitations has expired.

HOLDING

Because Dr. Lo's dismissal with prejudice due to the expiration of the statute of limitations was not an adjudication on the merits, and because McNutt properly served Methodist with presuit notice, McNutt's claim against Methodist was not extinguished. Therefore, the Supreme Court affirmed and remanded the judgment of the DeSoto County Circuit Court.

SPECIAL CONCURRENCE

Justice Maxwell argued that since the respondeat superior law permitted McNutt to sue Dr. Lo, Methodist, or both, then a procedural defect in the suit against Dr. Lo should not be imputed to the claim against Methodist. Therefore, the trial court correctly denied the motion for partial summary judgment.

CONCURRENCE IN RESULT

Chief Justice Randolph argued that the purpose of the statute of limitations was met with the timely filing of suit against Methodist. He differed from the majority opinion, however, in arguing that a dismissal with prejudice is an adjudication on the merits.

DISSENT

Justice Coleman argued that since the statute of limitations expired as to Dr. Lo, then no action against Methodist for Dr. Lo's negligence could be pursued under vicarious liability. The statute of limitations protected the employer. Therefore, the denial of the motion for partial summary judgment was improper.

Affirmed & Remanded - 2020-IA-00199-SCT (Aug. 6, 2021)
En Banc Opinion by Presiding Justice Kitchens - Special Concurrence by Justice Maxwell - Concurrence In Result by Chief Justice Randolph - Dissent by Justice Coleman
Hon. Celeste Embrey Wilson (DeSoto County Circuit Court)
Bradley W. Smith & Craig C. Conley for Appellant - Cheryl Long & Thomas J. Long for Appellees
Briefed by Cade Perry Barlow

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MISSISSIPPI SUPREME COURT DECISIONS – AUGUST 5, 2021

SUPREME COURT - CIVIL CASES

A.H v. K.M.

CIVIL - DOMESTIC RELATIONS

DOMESTIC RELATIONS - ADOPTION - TERMINATION OF PARENTAL RIGHTS - Pursuant to Miss. Code Ann. § 93-15-111, a court's order accepting a parent's voluntary release terminates all parental rights to the child
CIVIL PROCEDURE - INTERLOCUTORY ORDER - WITHDRAWAL - Pursuant to Miss. R. Civ. P. 54(b), a court may reverse an interlocutory order for any reason it finds sufficient

FACTS

In July 2019, K.M. signed a Surrender of Parental Rights and Consent to Adoption for her minor child, A.M. K.M. had previously contacted an adoption agency and chose A.H., a Georgia resident, as the person to adopt A.M. After A.H.'s attorney filed a petition for adoption with the chancery court, the chancellor entered an order granting temporary custody to A.H., thereby allowing her to take A.M. with her to Georgia. The order contained the following language: "the surrender of parental right form signed by the mother complied with the applicable statutes, and is accepted by the Court pursuant to Miss. Code Ann. § 93-15-111." In August 2019, the chancellor entered a fiat, setting the date for the hearing on the adoption and termination of parental rights. On August 26, 2019, K.M. filed a Withdrawal of Consent to Voluntary Surrender of Parental Rights, stating that she no longer consented to A.M.'s adoption. After a hearing on K.M.'s subsequent motion for temporary relief, A.H. filed a motion to strike in January 2020, claiming that K.M. had no standing to challenge the adoption because the chancery court had terminated K.M.'s parental rights when it accepted her surrender. In March 2020, the chancellor entered an order withdrawing K.M.'s Surrender of Parental Rights and Consent to Adoption and setting aside the Order Granting Temporary Custody. The chancellor found that K.M. suffered both economical and personal duress which compelled her to sign the surrender. The chancellor ordered the child's return to K.M.'s custody and dismissed A.H.'s Petition for Adoption. The chancellor also denied A.H.'s motions for a new trial and for relief from the order and for other relief. A.H. appealed.

ISSUE

Whether K.M. lacked standing to file a withdrawal of her surrender of parental rights and consent to adoption after the chancellor stated acceptance and found that the surrender complied with the applicable statutes.

HOLDING

Because the chancery court scheduled a fiat hearing to terminate K.M.'s parental rights after executing its order granting temporary custody, and because the chancellor was not manifestly wrong or clearly erroneous in dissolving the problematic acceptance language in the order granting temporary custody due to K.M.'s personal duress, the chancery

court properly found that K.M. withdrew her surrender before it was accepted. Therefore, the Supreme Court affirmed the judgment of the Forrest County Chancery Court.

CONCURRENCE IN PART & IN RESULT

Justice Chamberlin argued that the language in the order granting A.H. temporary custody clearly demonstrated that the chancery court accepted K.M.'s surrender. Therefore, he posited that the question before the Court was whether the chancery court had the power to withdraw its acceptance of the surrender. Because the order containing the acceptance did not adjudicate all claims of all parties in the dispute, the chancery court may, pursuant to Miss. R. Civ. P. 54(b), reverse such an interlocutory order for any reason it considers sufficient. As such, he agreed that the chancellor did not abuse her discretion in reversing her acceptance of the surrender.

Affirmed - 2020-CA-00296-SCT (Aug. 5, 2021)
Opinion by Justice Griffis **-** Concurrence In Part & In Result by Justice Chamberlin
Hon. Deborah J. Gambrell (Forrest County Chancery Court)
George W. Schmidt, II for Appellant **-** *Pro Se* for Appellees
Briefed by Katharine Van Pelt

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Parish Transp. LLC v. Jordan Carriers Inc.

Civil - Contract

CONTRACTS - STATUTE OF FRAUDS - REQUIREMENTS - A writing must meet three requirements to satisfy the statute of frauds: (1) the writing must be sufficient to indicate that a contract for the sale has been made between the parties; (2) the writing must be signed by the party against whom enforcement is sought; and (3) the writing must specify a quantity
CONTRACTS - STATUTE OF FRAUDS - SIGNATURE - Under Miss. Code Ann. § 75-1-201, "signed" is defined as using any symbol executed or adopted with present intention to adopt or accept a writing
CONTRACTS - STATUTE OF FRAUDS - SEPARATE WRITINGS - A "writing" for purpose of the statute of frauds may consist of separate writings, connected together by express reference to each other or internal evidence of their unity, relation, or connection; by so connecting the writings, otherwise separate documents may incorporate by reference the terms of each document

FACTS

In 2016, Eric Parish of Parish Transport LLC emailed Doug Jordan of Jordan Carriers Inc. inquiring about purchasing equipment. Throughout the parties' negotiations, Jordan's emails concluded with a signature line that included his company name and phone number. Parish made an offer to purchase and, in response, Jordan emailed, "OK, Let's do it[,]" but, instead of his usual signature line, it said "[s]ent from my iPhone." Jordan replied twice more to Parish's emails, indicating his intent to go through with the sale and each concluding with the informal signature line. Jordan Carriers then entered into a verbal agreement with a third party to sell that same equipment. Jordan Carriers then emailed Parish Transport to inform of their intent to sell to the other party. Parish replied stating that there was a binding and enforceable agreement. Jordan Carriers filed a declaratory judgment action to determine whether there was a valid contract between Jordan Carriers and Parish Transport. Parish then filed a complaint against Jordan Carriers, alleging breach of contract and negligent misrepresentation. In response, Jordan Carriers moved to dismiss, which the court denied, or alternatively, to transfer venue, which the court granted. The two actions were then consolidated. Jordan Carriers moved for summary judgment, which the court granted, finding that the emails between the parties did not satisfy the statute of frauds. Parish Transport appealed, and the Court of Appeals found that the emails were too ambiguous to constitute a valid contract. Parish Transport filed for writ of certiorari.

ISSUES

Whether (1) the UETA applied; (2) the UETA permits an email to be a writing that satisfies the statute of frauds; (3) typed names on an email constituted an electronic signature under Mississippi's UETA; (4) the sender's name and email address in the "from" field of an email was an electronic signature; (5) the email chain can be construed together to constitute the entirety of a writing; and (6) the email chain constituted a signed, written contract that satisfied the statute of frauds under the UETA.

HOLDING

(1) Because Jordan admitted that using emails and text messages to correspond with potential customers were normal, standard business operating procedures at Jordan Carriers, and because Jordan's deposition testimony and the continuous email exchange between both parties illustrated an agreement between the parties to conduct the sale of equipment by electronic means, the UETA applied. (2) Because under the UETA, an electronic record is a record created, generated, sent, received, or stored by electronic means, and because if a law requires a record be in writing or if it requires a signature, the UETA allows for an electronic record to satisfy the requirement, if an email meets the three requirements needed to qualify as a writing pursuant to the statute of frauds, then the email can satisfy the statute of frauds regardless of its being in electronic form; thus, the email correspondence between two parties regarding the sale of goods could be a valid contract under the statute of frauds. (3) Because the validity of an electronic signature is dependent upon the party's intent when executing the writing, typed names on an email could constitute an electronic signature under Mississippi's UETA if the person intended to adopt or accept the writing; thus, it is a question of fact. (4) Because Mississippi law requires some form of execution that signifies an intent to accept or adopt the writing, merely sending an email from one's email account is not enough to show an intent to enter into a contract. (5) Because the email chain concerned the same subject matter throughout, and because the signed email was so closely related to the unsigned email, the email chain could be construed together to constitute the entirety of a writing. (6) Because the record was silent regarding whether Jordan intended to adopt the entire email chain as a whole, and because the record was also silent regarding whether Jordan intended to adopt "Sent to my iPhone" as a symbol to sign contracts via his mobile device, there was a genuine issue of material fact regarding Jordan's intent to adopt the entire email chain as a whole; thus, the trial court erred by granting Jordan Carriers's motion for summary judgment. Therefore, the Supreme Court reversed and remanded the judgment of the Adams County Circuit Court.

Reversed & Remanded - 2019-CT-01109-SCT (Aug. 5, 2021)
En Banc Opinion by Presiding Justice Kitchens
Hon. Debra W. Blackwell (Adams County Circuit Court)
Ken R. Adcock, Mark D. Morrison, & William C. Ivison for Appellants - Grayson R. Lewis for Appellee
Briefed by J. Evan Thomas

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PETRO HARVESTER OIL & GAS CO., LLC v. BAUCUM

CIVIL - PERSONAL INJURY

TORTS - PERSONAL INJURY - ADMINISTRATIVE REMEDIES - A landowner affected by deposited oil field waste is not required to exhaust administrative remedies before the Mississippi State Oil and Gas Board before asserting common-law claims of negligence, nuisance, trespass, strict liability, and breach of contract against oil companies

TORTS - OIL, GAS, & OTHER MINERALS - REMEDIES - The Mississippi State Oil and Gas Board's remedies are limited to accessing and enforcing penalties and bringing suits to prevent a person from violating statutes pertaining to the conservation of oil and gas

FACTS

Tay and Deidra Baucum (collectively, "the Baucums") each owned real property neighboring the Petro Harvester Oil & Gas Co. ("Petro Harvester") Laurel Oil Field, which contained a Class II disposal well that was used for the noncommercial disposal of waste. In March 2014, the Mississippi State Oil and Gas Board ("MSOGB"), the

Environmental Protection Agency ("EPA"), and the Mississippi Department of Environmental Quality ("MDEQ") examined the area surrounding the properties for pollution and naturally occurring radioactive material ("NORM"), and no citations were issued. In April 2014, the Baucums filed suit against Petro Harvester in the Jones County Circuit Court for damages to real property, alleging that their property could only be used for waste disposal due to illegal dumping and disposal from the Laurel Oil Field. The Baucums amended the complaint to include an additional claim for injunctive relief. Petro Harvester filed a motion to dismiss/stay because the Baucums did not exhaust their administrative remedies before the MSOGB prior to filing suit. The Baucums and Petro Harvester opted to proceed on a parallel track in the circuit court and before the MSOGB. In August 2016, Deidra filed a second amended complaint, alleging that Petro Harvester's disposal of waste had caused her cancer. Deidra voluntarily withdrew her petition before the MSOGB, so it was dismissed without prejudice. The circuit court dismissed the Baucums' claims without prejudice and instructed them to assert related claims before the MDEQ first. After discovery, the Baucums' filed a motion to lift stay, which was denied. The Baucums then filed a second motion to lift stay and agreed to remove the negligence per se claim from their complaint. The circuit court lifted the stay on the personal injury claims, but the property damage claims remained stayed until all administrative remedies had been exhausted before the MSOGB. The Baucums and Petro Harvester both petitioned for interlocutory appeals.

ISSUES

Whether the trial court erred by (1) lifting the stay on the Baucums' personal injury claims and (2) finding that the Baucums must exhaust their administrative remedies prior to proceeding in the circuit court on their property damage claims.

HOLDING

(1) Because no adequate administrative remedy existed for both the Baucums' property damage and personal injury claims, the trial court did not err in lifting the stay on the Baucums' personal injury claims. (2) Because no adequate administrative remedy exists for both the Baucums' property damage and personal injury claims, the trial court erred in finding that the Baucums must exhaust their administrative remedies prior to proceeding in the circuit court on their property damage claims. Therefore, the Supreme Court affirmed in part and reversed and remanded in part the judgment of the Jones County Circuit Court.

Affirmed in Part; Reversed & Remanded in Part - 2019-IA-01442-SCT (Aug. 5, 2021)
Opinion by Presiding Justice King
Hon. Dal Williamson (Jones County Circuit Court)
R. David Kaufman, Brett Woods Robinson, Ryan Jeffrey Mitchell, William F. Blair, Norman Elvin Bailey Jr., & Jacob Arthur Bradley for Appellants - Michael D. Simmons, Paul Manion Anderson, Walker (Bill) Jones III, David Wayne Baria, Justin Ronald Glenn, Samuel Steven McHard, Jesse Mitchell III, & Douglas Egan Adams II for Appellees

Consolidated with:

Affirmed in Part; Reversed & Remanded in Part - 2019-IA-014777-SCT (Aug. 5, 2021)
Hon. Dal Williamson (Jones County Circuit Court)
Walker (Bill) Jones III, David Wayne Baria, Michael D. Simmons, Samuel Steven McHard, Jesse Mitchell III, Paul Manion Anderson, Douglas Egan Adams II, & Justin Ronald Glenn for Appellants - William F. Blair, R. David Kaufman, Brett Woods Robinson, Ryan Jeffrey Mitchell, Norman Elvin Bailey, & Jacob Arthur Bradley for Appellees
Briefed by Idena Allen

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WHITE V. NATIONWIDE MUT. INS. CO.

CIVIL - INSURANCE

CONTRACTS - CREATION - SURETY BONDS - The issuance of a surety bond creates a contractual relationship between the surety and its principal

CONTRACTS - ELEMENTS - CONSIDERATION - An enforceable contract consists of an offer, an acceptance of that offer, and consideration; for consideration to be valid, it must have been bargained for

CONTRACTS - PROMISSORY ESTOPPEL - ELEMENTS - To support a claim of promissory estoppel, the claimant must prove that (1) the promisor made a promise on which the promisor intended the promisee rely; (2) the promisee in fact relied on that promise; and (3) injustice would arise if that promise were not enforced

FACTS

Eddie Carthan was elected to serve a four-year term as Holmes County Supervisor; however, pursuant to Miss. Code Ann. § 25-1-13, he was required to obtain a surety bond before he could take office in January 2016. In satisfaction of that requirement, Nationwide Mutual Insurance Company ("Nationwide") issued a Public Official Bond (the "First Bond") as a $100,000 surety for Carthan. This First Bond was issued with a term of only one year, therefore, in March 2016, the Holmes County Board of Supervisors (the "Board") asked Nationwide if the one-year bond could be "converted" to a four-year bond. Nationwide complied and issued another Public Official Bond (the "Second Bond") as a $100,000 surety for Carthan's entire four-year term. The Board subsequently paid the premium on the Second Bond; however, the premium on the First Bond was never paid. In April 2019, State Auditor Shad White determined that Carthan had not been eligible to hold office in Mississippi and demanded that Carthan and Nationwide repay Holmes County a total of $184,184.12. In defense of this demand, the State Auditor argued that Nationwide was liable under two separate surety bonds securing Carthan's faithful performance, each in the amount of $100,000. The State Auditor then sued Carthan, alleging that Nationwide breached its statutory duties as Carthan's surety and seeking to recover the full $200,000 under the two bonds. Nationwide answered, advising that its liability under the First Bond was $10,543.58, an amount representing Carthan's salary during the three months the First Bond had been in effect, and that its liability under the Second Bond was the full $100,000. Nationwide then tendered $110,543.58 to the State Auditor, and the State Auditor subsequently moved for summary judgment, seeking the full $100,000 on the First Bond, arguing that it had not been cancelled. Nationwide later counterclaimed to recoup the $10,543.58 it had paid under the First Bond, citing newly found evidence that the First Bond had been cancelled following a non-payment of its premium. Nationwide moved for summary judgment on its counterclaim, and the State Auditor responded, arguing that the Board's failure to pay for the First Bond did not necessarily mean the surety contract failed for lack of consideration. Upon hearing the competing motions, the trial court held that the First Bond was unenforceable for lack of consideration due to the Board's non-payment of the premium and granted Nationwide judgment as a matter of law on both the State Auditor's claim that Nationwide was liable for the entire $100,000 penalty on the First Bond and Nationwide's counterclaim to recoup the $10,543.58 paid out on the First Bond. The State Auditor appealed.

ISSUES

Whether the trial court erred by (1) holding the First Bond was unenforceable for lack of consideration due to the Board's non-payment of the premium and (2) refusing to enforce the First Bond under the doctrine of promissory estoppel.

HOLDING

(1) Because the agreed-upon bargain was that Nationwide would act as Carthan's surety under the First Bond if the Board paid the $350 premium, and because the Board never paid that premium, the trial court did not err by holding the First Bond was unenforceable for lack of consideration due to the Board's non-payment of the premium. (2) Because there was no promise that the First Bond would remain in effect despite the Board's nonpayment, because there was no reliance by the Board that the First Bond would not be cancelled, and because there was no detriment suffered by the Board, the trial court did not err by refusing to enforce the First Bond under the doctrine of promissory estoppel. Therefore, the Supreme Court affirmed the judgment of the Hinds County Chancery Court.

Affirmed - 2020-CA-01173-SCT (Aug. 5, 2021)
Opinion by Justice Maxwell
Hon. Tiffany Piazza Grove (Hinds County Chancery Court)
Stephen Friedrich Schelver (Att'y Gen. Office) for Appellants - Ron A. Yarbrough for Appellees
Briefed by John C. Nelson, Jr.

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SUPREME COURT - ORDERS

WILSON V. STATE

EN BANC ORDER

ORDER

Christopher Wilson filed an Application for Leave to Proceed in the Trial Court. Because the Court of Appeals affirmed his conviction, and because the mandate was issued on June 5, 2007, the Supreme Court found the petition was time-barred. Further, Anderson previously filed ten motions for post-conviction relief, therefore, the Court found that the present petition was successive. The issues raised in Wilson's petition had been raised previously, so the claims were also barred under the doctrine of res judicata. The Court further found that Wilson failed to present an "arguable basis" for his claim to warrant an exception to the procedural bars. The Court also 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 Wilson's Application for Leave to Proceed in the Trial Court.

OBJECTION IN PART

Presiding Justice King agreed that Wilson's application for post-conviction relief should be dismissed. However, he disagreed that the application was frivolous, and that the warning regarding future filings being deemed frivolous may result in monetary sanctions or restrictions on filing applications for post-conviction collateral relief in forma pauperis. He argued that Wilson 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 a 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 - 2017-M-00230 (July 29, 2021)
Opinion by Justice Coleman - Objection in Part by Presiding Justice King
Briefed by Morgan A. Jones

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SUPREME COURT - CRIMINAL CASES

BUFORD V. STATE

CRIMINAL - FELONY

CRIMINAL PROCEDURE - ILLEGAL DETAINMENT - FREE TO LEAVE - An illegal detainment occurs when a reasonable person would have believed that they were not free to leave in light of all the circumstances
CRIMINAL PROCEDURE - ILLEGAL DETAINMENT - VOLUNTARY CONVERSATION - Officers may engage in voluntary conversation no matter what facts are known to them because it involves no force and no detainment of the person interviewed
CRIMINAL PROCEDURE - SEARCH AND SEIZURE - CONSENT - A search conducted under valid consent is constitutionally permissible, and the scope of the search is that of objective reasonableness

CRIMINAL PROCEDURE - SEARCH AND SEIZURE - PLAIN FEEL - If an officer lawfully pats down a suspect's outer clothing and feels an object whose contour or mass makes its identity immediately apparent, there has been no invasion of the suspect's privacy beyond that already authorized by the officer's search

FACTS

Jason Sebren repaired a mobile home owned by Sybil Brooks in exchange for her permission to live there. Unknown to Brooks, Michael Buford helped Sebren make repairs, and Buford and his wife also moved into the mobile home. After Sebren moved out of the mobile home, Brooks told Buford to move out because there was no agreement between Brooks and Buford. That same morning, Brooks called the Pearl Police Department claiming that people were living in her mobile home without her permission. Four police officers arrived at the scene. One of the police officers asked Buford if he could search him, and Buford consented. The officer found a smokeless tobacco canister containing what he believed to be crystal methamphetamine. Subsequently, Buford was indicted for the possession of methamphetamine. Before trial, Buford filed a motion to suppress all property and other evidence seized by law enforcement as the fruit of an illegal search and seizure. The trial court ruled against the motion, and Buford was convicted as charged. The Court of Appeals affirmed the trial court's ruling. Buford petitioned for writ of certiorari.

ISSUES

Whether Buford (1) was illegally detained and (2) consented to a general search of his person that extended to the tobacco can in his pocket.

HOLDING

(1) Because the officers were engaged in a voluntary conversation with Buford in a mobile home where he was not authorized to be, and because Buford was handcuffed only after sufficient evidence of methamphetamine on his person, Buford was not illegally detained. (2) Because the officer asked for, and was granted, general consent to search Buford's person, he did not retain a reasonable expectation of privacy in the contents of a tobacco can found in his pocket. Therefore, the Supreme Court affirmed the judgment of the Rankin County Circuit Court.

Affirmed - 2019-CT-00024-SCT (Aug. 5, 2021)
En Banc Opinion by Presiding Justice King
Hon. John H. Emfinger (Rankin County Circuit Court)
George T. Holmes & Hunter Nolan Aikens (Pub. Def. Office) for Appellant - Barbara Wakeland Byrd (Att'y Gen. Office) for Appellee
Briefed by Carter Babaz

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MISSISSIPPI COURT OF APPEALS DECISIONS – AUGUST 5, 2021

COURT OF APPEALS - CIVIL CASES

BOWMAN V. BOWMAN

CIVIL - DOMESTIC RELATIONS

CONTRACTS - INTERPRETATION - AMBIGUITY - The Supreme Court has established a three-tiered approach to contract interpretation, including: (1) attempt to determine the legal purpose or intent based solely on an objective reading of the words; (2) apply the discretionary canons of contract construction if the terms are ambiguous; and (3) consider extrinsic or parol evidence of the parties' intent only if traditional canons of construction do not resolve the ambiguity

DIVORCE - PROPERTY DIVISION - *FERGUSON* FACTORS - Not every case requires consideration of all eight of the *Ferguson* Factors because the chancellor may consider only those factors he finds applicable to the property in question

DIVORCE - PROPERTY DIVISION - REVERSAL - A division of marital property will be reversed if it is based on findings of fact that are manifestly wrong or clearly erroneous

FACTS

David and Robin Bowman married in February 2012. Prior to their marriage, the two formed their own business, Rainbow Ventures LLC, with each owning fifty percent. David received income from disability insurance and had separate assets valued at approximately $3,188,456. Robin worked as an attorney both prior to and during the marriage, receiving an annual salary of $92,000, and had separate assets valued at approximately $1,378,000. David and Robin signed an antenuptial agreement before marrying. In October 2015, Robin filed a complaint for divorce. From 2015 to June 2019, the chancellor entered a temporary order and appointed a forensic accounting expert to analyze the marital assets, and David and Robin jointly consented to an irreconcilable differences divorce, agreeing to submit the equitable division of the marital estate to the chancellor. In December 2019, the chancellor entered a final opinion, awarding David marital assets valued at $318,213.53 and Robin marital assets valued at $248,313.53. David filed a motion to alter or amend the judgment, which was denied. David appealed.

ISSUES

Whether the chancellor (1) erred in interpreting the antenuptial agreement and classifying assets; (2) erred by not analyzing the *Ferguson* factors; (3) made a clearly erroneous finding of fact regarding contributions to the joint bank accounts; (4) erred by refusing to award David interest on a loan he made to Robin during the marriage; and (5) erred by failing to establish a value or a date for valuing a car that was a marital asset.

HOLDING

(1) Because the chancellor properly determined that the relevant provisions of the antenuptial agreement were conflicting and ambiguous, and because Section 4 of the agreement provided a clear way to designate marital property, the chancellor did not err in his interpretation. (2) Because the chancellor's opinion was sufficient to show that he considered the relevant facts, a more deliberate, factor-by-factor *Ferguson* analysis was not necessary. (3) Because the chancellor's division of the EverBank accounts was based in part on clearly erroneous findings, and because this error could have impacted the chancellor's division of other marital assets, the chancellor did err in his findings and the issue should be remanded for further consideration. (4) Because David did not assert any claims of unjust enrichment at trial, and because David's promissory note was not part of the marital estate, the chancellor did not err by declining to consider the terms of the disputed promissory note. (5) Because the chancellor ordered the parties to split the repair costs and then split the sale proceeds, the chancellor effectively valued the car and did not err. Therefore, the Court of Appeals affirmed in part and reversed and remanded in part the judgment of the Lamar County Chancery Court.

CONCURRENCE IN PART & DISSENT IN PART

Judge Westbrooks agreed that the chancellor acted within his discretion in awarding David repayment without considering the disputed promissory note, and she agreed that some provisions of the antenuptial agreement were ambiguous. However, she noted that the chancellor failed to clearly specify how he chose to interpret the conflicting provisions and would therefore remand the issue for resolution. She disagreed with the majority, finding that the chancellor's finding regarding the EverBank accounts was in fact supported by substantial evidence and that the chancellor should have set a specific demarcation date for valuation of the vehicle. Lastly, she believed the *Ferguson* factors should have been applied to the marital assets and that precedent called for the issue to be reversed and remanded.

Affirmed in Part; Reversed & Remanded in Part - 2020-CA-00183-COA (Aug. 5, 2021)
En Banc Opinion by Presiding Judge Wilson - Concurrence in Part & Dissent in Part by Judge Westbrooks
Hon. Michael Chadwick Smith (Lamar County Chancery Court)
Natalie J. Gideon for Appellant - S. Christopher Farris for Appellee
Briefed by Greyson Young

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RAHMAN V. LYONS

CIVIL - DOMESTIC RELATIONS

APPELLATE PROCEDURE - APPEALS - TIMELINESS - Once the trial court enters its judgment or order, the appellant must file the notice for appeal within thirty days
APPELLATE PROEDURE - TIMELINESS - MANDATORY DISMISSAL - If a notice of appeal is not filed within the thirty-day window, the trial court will dismiss the appeal
APPELLATE PROCEDURE - SUBJECT MATTER JURISDICTION - *ABERCROMBIE* RULE - If there is no appeal of a case's final judgment within the notice of appeal timeframe, participating parties in that case cannot challenge the court's jurisdiction in later proceedings

FACTS

Omar Rahman and John Lyons married as Mississippi residents in October 2013. In January 2018, they filed a joint complaint for divorce in the Madison County Chancery Court. The complaint listed Rahman as a Nebraska resident and Lyons as a Mississippi resident for at least the last six months prior to filing the complaint. The agreed final judgment of divorce was entered along with an attached property settlement which also listed Lyons as a Mississippi resident. In August 2018, Rahman filed a petition to dismiss the agreed final judgment of divorce and property settlement agreement. Rahman claimed he was under duress and intimidation when he signed the judgment and agreement, and that the property settlement agreement was unreasonably excessive. In April 2019, Rahman filed an amended petition which claimed the court lacked subject-matter jurisdiction because both he and Lyons had moved to Nebraska on July 21, 2017, and neither party had moved back to Mississippi to establish residency for the six months prior to the complaint's filing as required by state statute. Lyons filed a petition claiming that Rahman failed to follow the terms of the property settlement agreement and requested the chancery court find Rahman in contempt and place him in jail for an amount of time determined by the chancery court. On August 26, 2019, the amended petition to do away with the agreed final judgment of divorce was denied. In March 2020, the chancery court held a hearing regarding Lyons's petition for contempt, and, on April 29, 2020, the chancery court found Rahman in contempt and issued a contempt order. In May 2020, Rahman filed a motion to amend the order of contempt or, alternatively, for a new trial which was denied. Rahman appealed.

ISSUES

Whether the chancery court erred in issuing the order (1) denying the amended petition to set aside the agreed final judgment of divorce and (2) of contempt and the order denying the motion to amend the order of contempt or, in the alternative, for new trial.

HOLDING

(1) Because Rahman's notice of appeal for the amended petition was filed ten months after the order was entered, because the notice of appeal was not filed in a timely manner as set by Miss. R. App. P. 4(a), and because Miss. R. App. P. 2(a)(1) required any appeal not timely filed to be dismissed, the chancery court did not err in issuing the order denying the amended petition to set aside the agreed final judgment of divorce. (2) Because the petition for contempt was a separate action, because the issue of subject-matter jurisdiction was already decided in the previous order denying the amended petition to set aside the agreed final judgment of divorce, and because Rahman was a party in the original litigation and did not appeal in a timely fashion, the chancery court did not err in issuing the order of contempt and the order denying the motion to amend or, in the alternative, for new trial. Therefore, the Court of Appeals affirmed in part the judgment of the Madison County Chancery Court and dismissed in part Rahman's appeal.

Affirmed In Part; Appeal Dismissed In Part - 2020-CA-00788-COA (Aug. 3, 2021)
Opinion by Judge Emfinger

Hon. Cynthia L. Brewer (Madison County Chancery Court)
Michael J. Malouf & Robert Eugene Jones II for Appellant - Richard Coleman Williams for Appellee
Briefed by William Doherty

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