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Weekly Newsletter

Mississippi Cases Editor: Greyson Young

GREENWOOD LEFLORE HOSP. V. WATSON

CIVIL - MEDICAL MALPRACTICE

MISS. TORT CLAIMS ACT - STATUTE OF LIMITATIONS - TOLLING - Under Miss. Code Ann. § 11-46-3(a), all actions shall be commenced within one year after the tortious action is based, except that filing a notice of claim within the one-year period will toll the statute of limitations for ninety-five days from the date the CEO receives notice of the claim

MISS. TORT CLAIMS ACT - STATUTE OF LIMITATIONS - NOTICE - Miss. Code Ann. § 11-46-3(b) provides that no action whatsoever may be maintained by the claimant until the claimant receives a notice of denial of claim or the tolling period expires, whichever comes first, after which the claimant has an additional ninety days to file suit; failure to file within the time allowed is an absolute bar to any further proceedings under this chapter

FACTS

Roxanne Watson was a patient of Dr. John Lucas III of Greenwood Leflore Hospital ("GLH"). In May 2017, Watson underwent a surgical procedure performed by Dr. Lucas and, on June 5, 2018, filed an initial complaint of medical malpractice. Prior to filing the complaint, Watson sent a notice of claim letter to GLH and Dr. Lucas on April 6, 2018, according to Miss. Code Ann. § 15-1-36(15). GLH filed a motion to dismiss Watson's complaint in October 2018, arguing that Watson failed to comply with the Mississippi Tort Claims Act's ("MTCA") ninety-day waiting period contained in Miss. Code Ann. § 11-46-11(1) as Watson's lawsuit was filed sixty days after her notice of claim letter. The trial court granted GLH's motion to dismiss. Watson filed a second, identical complaint on March 14, 2019. GLH filed a second motion to dismiss, contending that the second complaint was not in compliance with Miss. Code Ann. § 11-46-11 because it was filed outside of the one-year statute of limitations and no notice of claim had been filed. The trial court denied the motion to dismiss. GLH appealed.

ISSUES

Whether (1) Watson was required to provide a second pre-suit notice before filing her second complaint; and (2) the ninety-five-day tolling period under Miss. Code Ann. § 11-46-11(3) is tolled when a complaint is filed before the ninety-five-day period.

HOLDING

(1) Because the MTCA requires a notice of a claim and not a notice of complaint, and because Watson's intervening first complaint was of no consequence, the trial court did not err in finding that GLH's motion to dismiss should be denied on this point. (2) Because the second lawsuit was identical to the first, and because Watson filed her second complaint within the additional time allotted to her by Miss. Code Ann. § 11-46-11(3)(b), Watson remained entitled to the benefit from the tolling provisions, and the trial court did not err. Therefore, the Supreme Court affirmed and remanded the judgment of the Leflore County Circuit Court.

DISSENT

Justice Coleman argued that, regardless of the first issue of whether Watson had to serve notice again following the dismissal of her first complaint, the statute of limitations had run against her claims. He argued Watson's claim accrued on May 22, 2017 and that forty-six days remained in the limitations period after she served initial notice. Once the trial court dismissed her initial complaint, he argued that the remainder began running again before ultimately expiring on

February 22, 2019, resulting in Watson filing her second complaint twenty days late. Additionally, he argued that the majority misapplied the holding in *Acreo* when examining the MTCA's notice requirements.

Affirmed & Remanded - 2020-IA-00037-SCT (Sept. 9, 2021)
Opinion by Justice Ishee **-** Dissent by Justice Coleman
Hon. Carol L. White-Richard (Leflore County Circuit Court)
Harris Frederick Powers III, Tommie Gregory Williams Jr., & Tommie G. Williams for Appellants **-** Chynee Allen Bailey for Appellee
Briefed by Anna Tucker

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Lockhart v. Lockhart

Civil - Domestic Relations

REAL PROPERTY - DISSOLUTION & DIVORCE - PROPERTY DISTRIBUTION - Miss. Code § 11-21-11 provides that if, at a hearing, the court opines that a sale of land or any part of land will better promote the interests of all parties than a partition, or if the court is content that an equal division cannot be made, it will order a sale of the land and order a division of the proceeds amongst the cotenants, according to their respective interests
FAMILY LAW - EQUITABLE DISTRIBUTION - *FERGUSON* FACTORS - A chancellor must proceed with equitable distribution using the factors considered in *Ferguson*: (1) direct or indirect economic contribution to the acquisition of the property; (2) contribution to the stability and harmony of the marital and family relationships as measured by quality, quantity of time spent on family duties and duration of the marriage; and (3) contribution to the education, training or other accomplishment bearing on the earning power of the spouse accumulating the assets
FAMILY LAW - EQUITY - PRINCIPALS AND MAXIMS OF EQUITY - He who comes into equity must come with clean hands

FACTS

Following the 2017 divorce of Michael Lockhart and his ex-wife Stella Payton, the Forrest County Chancery Court entered a 2018 Findings of Fact, Conclusions of Law and Final Judgment ("2018 Order"), which equitably distributed property between the two. Payton filed a Motion for Reconsideration and/or Clarification, Alternatively Motion for Partition of Property and Notice of Hearing. Payton maintained that, in the 2018 Order, the trial court failed to consider her emotional attachment to the marital home and did not define "proceeds" as related to Lockhart's businesses. Payton further requested a new contract signed by one of Lockhart's businesses be included in the proceeds and to be awarded the marital home and equitable division of all other assets. In the alternative, Payton argued under Miss. Code Ann. § 11-21-11 that the sale of all marital real property would further each party's interests. In response, Lockhart argued he had an emotional attachment to the marital home and that no further decisions regarding equitable distributions aside from the 2018 Order were necessary. The trial court denied Payton's motion, noting that equitable distribution as required by law was made in the case and finding that no new evidence warranted a change to the 2018 Order was presented. Neither Lockhart nor Payton appealed the 2018 Order. In August 2018, Payton filed a contempt complaint against Lockhart for failure to adhere to the 2018 Order. Lockhart counterclaimed for contempt against Payton, alleging similar actions. The trial court appointed Steve Headrick as special master in October 2018 to investigate and make a recommendation regarding equitable division related to the 2018 Order. Headrick's report recommended valuating and selling all real property owned by the parties. In 2019, following trial of Payton's contempt complaint, the trial court entered the 2019 Order addressing each piece of property to clarify the 2018 Order, finding that it was vague and ambiguous. The trial court noted that, although the marital home was to be sold and proceeds divided under the 2018 Order, the Order failed to value the home and determine property equity amounts. Based on Payton's testimony at trial and the mortgage balance, the court assigned a $228,000 value to the marital home, leaving a $78,000 equity. The trial court valued each of the remaining real properties and ordered the proceeds to be divided equally, taking into consideration mortgages and similar debts. Regarding Lockhart's business and Payton's proceeds award, the trial court found that the 2018 Order did not mention the beginning date and was ambiguous on what would be considered

"proceeds." To clarify, the court defined "proceeds" synonymously with profit and awarded each party one-half interest in the businesses. Other marital property including a motorcycle and piano were determined by the trial court to under Headrick's authority to transfer ownership if disputes continued. Both parties were found in contempt and under the doctrine of "unclean hands," and the trial court declined to award either attorney's fees. The trial court ordered Lockhart to pay Payton $53,992.50 within thirty days of the entry of the Opinion and Final Judgment which accounted for her one-half interest in Lockhart's properties. Lockhart argued it would be impossible for him to pay within that timeframe. In August 2019, Lockhart filed a Motion for Recusal and argued that Chancellor Smallwood should recuse from the proceedings because Payton's attorney's firm hosted a fundraising event for Smallwood. The trial court denied Lockhart's Motion to Recuse. Lockhart appealed.

ISSUES

Whether the trial court erred in (1) altering the property division ruling from the 2018 Order; (2) its assignment of values to parcels of real property; (3) its determination of "proceeds;" (4) finding Lockhart in contempt; (5) failing to penalize Payton's admitted contempt and/or by allowing Payton equitable relief in light of Payton's contempt; (6) failing to assign any rental income to Lockhart from the Dearborn and Palmetto properties; (7) failing to provide any provision for Lockhart to retrieve his personal property; and (8) denying Lockhart's motion to recuse.

HOLDING

(1) Because the 2019 Order merely clarified the methods used in executing the 2018 Order's demands without modifying it, the trial court did not err in altering the property division ruling from the 2018 Order. (2) Because the trial court specified the evidence it used in the 2019 Order in its valuation of real property subject to the 2018 Order, and because the trial court based its value assignments on the best evidence it had, Lockhart's assignment of error was without merit. (3) Because the 2018 Order and the 2019 Order both made clear that the line of demarcation was the date of the divorce, and because the 2019 Order did not award Lockhart one-half of Payton's net business loss but rather found that Payton's 2017 taxes reflected a business loss and, as a result, there were no "proceeds" to divide, Lockhart's argument lacked merit. (4) Because the trial court's finding of contempt with respect to Lockhart's failure to turn over property was supported by the language of the 2018 Order, the testimony of the parties, and the special master's reports, the argument was without merit and the trial court did not manifestly err by finding Lockhart in contempt. (5) Because Payton received a citation of contempt for willfully and deliberately ignoring the commands of the 2018 Order, and because Lockhart failed to point to, and the record was devoid of, any "relief granted" to Payton that had any relation to the trial court's findings of contempt, Lockhart's assignment of error was without merit. (6) Because Lockhart failed to cite any authority supporting his argument, the Court declined to address the assignment of error. (7) Because Lockhart did not give a specific reason he believed the trial court erred and cited no legal authority showing that the trial court's omission to resolve issues of personal property was reversible error, the Court declined to address the issue on the merits. (8) Because the evidence presented by Lockhart showed only that Chancellor Smallwood worked for the founding partner of the firm representing Payton almost fifteen years prior to Chancellor Smallwood's appointment to the cause, the trial court did not commit manifest error in its finding that Lockhart failed to show beyond a reasonable doubt that Chancellor Smallwood was unqualified or biased toward either party and in denying Lockhart's motion to recuse. Therefore, the Supreme Court affirmed the judgment of the Forrest County Chancery Court.

Affirmed - 2020-CA-00343-SCT (Sept. 9, 2021)
Opinion by Justice Chamberlin
Hon. Sheila Havard Smallwood (Forrest County Chancery Court)
Carol Ann Bustin for Appellant - *Pro se* for Appellee
Briefed by Le'Ronda Gates

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MISS. COMM'N ON JUDICIAL PERFORMANCE V. WATTS

CIVIL - JUDICIAL PERFORMANCE

JUDICIAL PERFORMANCE - PRACTICE OF LAW - RESTRICTIONS - Miss. Code Ann. § 9-9-9 provides that a county judge shall not practice law in the county where he sits
JUDICIAL PERFORMANCE - PRACTICE OF LAW - WIND-DOWN PERIOD - Miss. Code Ann. § 9-1-25 provides a newly elected judge with a six-month period to conclude his pending cases
JUDICIAL PERFORMANCE - MISCONDUCT - REMOVAL - A judge may be reprimanded by the Supreme Court for willful misconduct or conduct prejudicial to the administration of justice; alternatively, a judge's negligence or ignorance not amounting to bad faith can have the same effect of being prejudicial to the administration of justice and bringing the judicial office into disrepute

FACTS

In November 2018, Mark Watts was elected County Court Judge in Jackson County. Watts began his term on January 1, 2019, and his first six months in office concluded on June 30, 2019. After his first six months, Judge Watts participated or appeared as counsel in nine cases. In August 2019, opposing counsel filed a motion to disqualify Judge Watts as counsel for being a sitting judge. The Mississippi Commission on Judicial Performance ("Commission") met after finding probable cause for a formal complaint and found that Judge Watts should be publicly reprimanded and fined. The Commission filed a Joint Motion for Approval of Recommendation to the Supreme Court in April 2021. Judge Watts joined the Commission's filings.

ISSUES

Whether Judge Watt's conduct was violative of Mississippi law or judicial canons and (2) of a nature such that he should be removed from the bench.

HOLDING

(1) Because Judge Watts continued to practice law after the six-month wind-down period following the beginning of his term, he violated Mississippi law and prejudiced the administration of justice. (2) Because the record was devoid of any evidence that Judge Watts practiced law for personal gain or benefit, and because his actions did not represent willful misconduct, his actions did not warrant removal. Therefore, the Supreme Court publicly reprimanded and fined Judge Watts $2,500.

Public Reprimand - 2021-JP-00429-SCT (Sept. 9, 2021)
En Banc Opinion by Chief Justice Randolph
Hon. Kent McDaniel (Mississippi Commission on Judicial Performance)
Rachel L. Wilson & Megan Courtney Brittain for Petitioner **-** *Pro se* for Respondent
Briefed by Channing Curtis

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VIKING INS. CO. OF WIS. V. MISS. FARM BUREAU CAS. INS. CO.

CIVIL - INSURANCE

INSURANCE - UNINSURED MOTORIST COVERAGE - PRIMARY INSURER - In the context of uninsured motorist coverage, the primary insurer refers to the issuer of the policy in its entirety under which the vehicle involved is covered
INSURANCE - UNINSURED MOTORIST COVERAGE - LIABILITY COVERAGE OFFSET - When an injuring party's liability coverage compensates an injured insured, the primary insurer of an uninsured motorist ("UM") coverage policy is entitled to the entirety of the offset from the injuring party's liability coverage against the UM stacked policies
INSURANCE - UNINSURED MOTORIST COVERAGE - STACKING - If multiple vehicles are covered under the same policy, each of these individual vehicle coverages may be stacked so that, if an insured is injured while driving one of the vehicles covered, the coverages of the other vehicles on the policy increase the overall uninsured motorist coverage

FACTS

Cameron Conwill, the insured, collided with a Nissan Altima while operating his Kawasaki motorcycle and was injured. At the time of the accident, Conwill was covered under two automobile-insurance policies. One policy was issued by Mississippi Farm Bureau Casualty Insurance Company ("Farm Bureau") and provided uninsured motorist ("UM") coverage limits of $25,000 per person for two vehicles uninvolved in the accident – a policy total of $50,000. The other policy, issued by Viking Insurance Company ("Viking"), provided UM coverage limits of $25,000 per person for the Kawasaki motorcycle involved in the accident and another uninvolved motorcycle – a policy total of $50,000. Conwill had a combined total of $100,000 of UM coverage at the time of the accident. After the accident, the Altima driver's liability coverage insurance company tendered its policy limit of $50,000 to Conwill. Viking and Farm Bureau agreed that, because Viking insured the Kawasaki involved in the accident, the first $25,000 of the $50,000 liability payment should offset Viking's $25,000 UM obligation on the Kawasaki motorcycle. The dispute arose over how the remaining $25,000 in liability coverage should be offset against Viking's remaining $25,000 UM obligation and Farm Bureau's $50,000 UM obligation. Farm Bureau paid Conwill $33,333.33 and filed suit, arguing that two-thirds of the remaining $25,000 in liability coverage should be offset against Farm Bureau's UM obligations because it provided two of the three uninvolved-vehicle coverages to Conwill. The circuit court agreed and held that the remaining $25,000 in liability offset was to be pro-rated between Farm Bureau and Viking in proportion to each's portion of the remaining $75,000 in UM coverage. Viking appealed, arguing its issuance of the primary UM policy entitles it to the entirety of the offset from the injuring party's liability insurance.

ISSUES

Whether (1) in the context of UM coverage, the determination of a primary insurer is based on the policy covering the owner of the vehicle involved or the individual coverage of the vehicle involved and (2) the application of state precedent articulating a primary policy framework rather than a primary coverage framework perpetuates wrong.

HOLDING

(1) Because UM provisions are construed from the perspective of the injured insured, and because state precedent has consistently held that the primary insurer refers to which policy, not individual coverage, covers the vehicle involved, Viking was the primary insurer and was, therefore, entitled to the entirety of the liability offset against its stacking policy. (2) Because the Court's concern is with the injured insured rather than the insurance companies, Farm Bureau's argument for pro rata distribution based on non-primary coverages failed to prove Mississippi's primacy rule perpetuated wrong. Therefore, the Supreme Court reversed and rendered the judgment of the Lee County Circuit Court.

Reversed & Rendered - 2020-CA-00836-SCT (Sept. 9, 2021)
Opinion by Justice Ishee
Hon. John R. White (Lee County Circuit Court)
William E. Whitfield III & James E. Welch Jr. for Appellant - Goodloe Tankersley Lewis for Appellee
Briefed by Garner Vance

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MISSISSIPPI COURT OF APPEALS DECISIONS – SEPTEMBER 7, 2021

COURT OF APPEALS - CIVIL CASES

O'BRIEN V. PEGUES

CIVIL - CONTRACT

CONTRACTS - ELEMENTS - VALIDITY - If the material terms of an agreement are not sufficiently definite, a contract is unenforceable

CIVIL PROCEDURE - STATUTE OF LIMITAITONS - CAUSE OF ACTION - Where the primary cause of an action and remedy of a case are not purely and exclusively equitable, the ten-year statute of limitations under Miss. Code Ann. § 15-1-39 cannot apply

CONTRACTS - IMPLIED CONTRACT - UNJUST ENRICHMENT - Where one anticipates payment from a third party, and they are compensated adequately, the principles of implied contract and unjust enrichment do not apply

FACTS

Edward Scott was an African American farmer who, as a result of discrimination by the United States Department of Agriculture ("USDA"), lost his farmland to foreclosure. Scott elected to participate in arbitration and retained Phillip Fraas to represent him. In May 2010, Fraas hired Patrick O'Brien as an expert witness in the field of economic damages. Following arbitration, Scott received over six million dollars in damages and subsequently repurchased his farmland. Thereafter, Fraas filed a motion to recover his attorney's fees from the Department of Justice ("DOJ"), which included $134,587 in fees billed by O'Brien. In May 2014, O'Brien sent Scott a letter, requesting personal payment of his bill. Willena White, Scott's daughter, paid O'Brien $20,000 with the intention of being repaid upon O'Brien's receipt of payment by the DOJ. In July 2014, the USDA filed a petition, arguing that Fraas's bill was excessive and O'Brien's bill was inflated. Following negotiations, Fraas accepted sixty-five percent of the original bill. O'Brien was then paid $71,971 by Fraas in March 2015. This left O'Brien with $42,616 outstanding from his original bill when coupled with the $20,000 provided by White. Scott died in October 2015, and his heirs at law did not open an estate. In October 2016, O'Brien filed a petition for the appointment of an administrator and requested that the chancery court impose an equitable lien on Scott's farmland for the amount of his outstanding bill. Following a bench trial, the chancery court found that O'Brien's claim was barred by both one-year and three-year statutes of limitations, there was no evidence of a valid contract requiring Scott to pay O'Brien for any costs not paid by the USDA, the relief sought by O'Brien was harsh and unusual, and that the unpaid portion of O'Brien's bill was not the obligation of Scott or his heirs. O'Brien appealed.

ISSUES

Whether the chancery court erred in (1) finding that a valid contract did not exist as a matter of law; (2) finding a statute of limitations barred O'Brien's action; (3) not applying principles of implied contract and unjust enrichment; and (4) failing to impose a constructive trust or an equitable lien on the subject property.

HOLDING

(1) Because neither Fraas nor O'Brien contemplated what would happen if the government did not pay the total amount of fees, the required element that there be a sufficiently definite agreement between Fraas or O'Brien was not present, and, therefore, the chancery court properly found that a valid contract did not exist as a matter of law. (2) Because the primary cause of action and remedy sought were not purely equitable, the catch-all three-year statute of limitations applied, and because the suit was filed more than three years after O'Brien completed his services, the chancery court did not err in finding the statute of limitations barred O'Brien's action. (3) Because O'Brien anticipated payment from the USDA, not Scott personally, and because O'Brien was compensated adequately for his time, the chancery court did not err by not applying principles of implied contract and unjust enrichment. (4) Because O'Brien did not seek out other equitable remedies within the applicable statute of limitations, because there was no evidence that Scott intended to pay fees that were not paid by the USDA, and because there was no evidence that Scott intended to create an encumbrance on the farmland, the chancery court did not err in failing to impose a constructive trust or an equitable lien on the property. Therefore, the Court of Appeals affirmed the judgment of the Bolivar County Chancery Court.

Affirmed - 2020-CA-00405-COA (Sept. 7, 2021)
Opinion by Chief Judge Barnes
Hon. Catherine Farris-Carter (Bolivar County Chancery Court, Second Judicial Dist.)
John Marshall Alexander & Robert G. Johnston for Appellant - Sheldon G. Alston & Robert Lane Bobo for Appellees
Briefed by Mariel Soehner

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AMERSON V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - PROBATION - FELONY - Under Miss. Code Ann. § 47-7-37.1, if a court finds by a preponderance of the evidence that a probationer or a person under post-release supervision has committed a felony, the court may revoke his probation and impose any or all of the sentence

POST-CONVICTION RELIEF - PROBATION - REVOCATION - Probation revocation is based on a preponderance of the evidence presented to the judge at the revocation hearing; there is no requirement that a defendant be indicted and a trial held in order for post-release supervision to be revoked

CRIMINAL PROCEDURE - PROBATION - REVOCATION - It is not necessary that a defendant be convicted of crimes charged to suffer revocation of his probation; probation may be revoked upon a showing that a defendant more likely than not violated the terms of probation

FACTS

Lee Tommie Amerson was indicted in November 2018 on charges of assault in violation of Miss. Code Ann. § 97-3-7. In July 2019, Amerson pled guilty to aggravated assault and was sentenced to serve ten years in the custody of the Mississippi Department of Corrections ("MDOC"), with eight years and 292 days suspended and five years of non-reporting post-release supervision. In October 2019, Amerson was arrested by the East Mississippi Drug Task Force ("EMDTF") and charged with strong armed robbery and possession of methamphetamine. Amerson's probation officer filed a petition for revocation based on his new arrest. Amerson's post-release supervision was revoked, and, based on Miss. Code Ann. § 47-7-37.1, he was ordered to serve the suspended portion of his sentence in the custody of the MDOC. In May 2020, Amerson filed a motion for post-conviction collateral relief, which was denied by the trial court in August 2020. Amerson appealed.

ISSUES

Whether the trial court erred in (1) revoking Amerson's post-release supervision and imposing his suspended sentence; (2) failing to give Amerson a speedy trial; and (3) finding that the evidence presented against Amerson was sufficient.

HOLDING

(1) Because the trial court found by a preponderance of the evidence that Amerson committed the felony offenses of robbery and possession of methamphetamine, the trial court did not err in revoking Amerson's post-release supervision and imposing his suspended sentence. (2) Because there is no requirement that Amerson be indicted and a trial held in order for post-release supervision to be revoked, the trial court did not err in failing to give Amerson a speedy trial. (3) Because it must only be shown that Amerson "more likely than not" violated the terms of his probation before probation can be revoked, the trial court did not err in finding that evidence presented against Amerson was sufficient. Therefore, the Court of Appeals affirmed the judgment of the Lauderdale County Circuit Court.

Affirmed - 2020-CP-01011-COA (Sept. 7, 2021)
Opinion by Judge Westbrooks
Hon. Robert Thomas Bailey (Lauderdale County Circuit Court)
Pro se for Appellant - Scott Stuart (Att'y Gen. Office) for Appellee
Briefed by Macy Walters

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