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Weekly Newsletter

Mississippi Cases Editor: Greyson Young

MISSISSIPPI SUPREME COURT DECISIONS – SEPTEMBER 2, 2021

SUPREME COURT - CIVIL CASES

AM. TOWER ASSET SUB, LLC v. MARSHALL CTY.

CIVIL - STATE BOARDS & AGENCIES

CIVIL PROCEDURE - APPEALS - MUNICIPALITY JUDGMENT - Pursuant to Miss. Code Ann. § 11-51-75, an aggrieved party may appeal a decision of the board of supervisors by filing a notice of appeal
CIVIL PROCEDURE - APPEALS - NOTICE - Miss. Code Ann. § 11-51-75 states that the notice of appeal must be delivered to the president of the board of supervisors
APPELLATE PROCEDURE - DISMISSAL - NOTICE - Miss. R. App. P. 2(a)(1) mandates dismissal only when the notice of appeal is untimely

FACTS

Tillman Infrastructure, LLC applied for a special exception through the Marshall County Planning Commission to build a tower on a designated agricultural zone in Marshall County. American Tower Corporation, which owned an existing wireless-telecommunications tower in the area, opposed Tillman's exception and argued that the standards for a special exception could not be satisfied. The Marshall County Board of Supervisors unanimously approved the exception. In response, American Tower filed a timely notice of appeal in the Marshall County Circuit Court. The same day, American Tower hand delivered and emailed the notice of the appeal to the Marshall County Chancery Clerk, who also served as the clerk of the Board of Supervisors. American Tower also emailed notice to Tillman's attorney. Marshall County filed a motion to dismiss the appeal and argued that the circuit court lacked jurisdiction for failing to provide notice to the president of the Board of Supervisors as required by Miss. Code Ann. § 11-51-75. Tillman joined Marshall County's motion and argued that American Tower did not have standing to prosecute its appeal. The circuit court granted the motion and dismissed Tillman as a party. American Tower appealed.

ISSUE

Whether the service or delivery of notice of appeal satisfied the provision of Miss. Code Ann. § 11-51-75 requiring a copy of the notice of appeal be delivered to the president of the Board of Supervisors upon filing.

HOLDING

Because Miss. R. App. P. 2(a)(1) only mandates dismissal when an appeal has not been filed timely, the defect was procedural and could have been remedied. Therefore, the Supreme Court reversed and remanded the judgment of the Marshall County Circuit Court.

DISSENT

Justice Coleman argued that the statute required a copy of the notice of appeal to be delivered to the president of the Board of Supervisors. He dissented with the majority's holding, which he argued, rewrote the statute that service on the clerk, rather than the president, was sufficient.

Reversed & Remanded - 2020-CA-00718-SCT (Sept. 2, 2021)
Opinion by Justice Griffis - Dissent by Justice Coleman
Hon. John Kelly Luther (Marshall County Circuit Court)
Michael J. Bentley & Simon T. Bailey for Appellant - Amanda Whaley Smith, Michael K. Graves, & Thomas Waller for Appellees
Briefed by J. Evan Thomas

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Supreme Court - Orders

Williams v. State

En Banc Order

ORDER

Randy C. Williams filed an Application for Leave to Proceed in the Trial Court. Williams was convicted of rape, sentenced to thirty years, and has since filed a single application for leave to seek post-conviction relief in the trial court. Williams claimed ineffective assistance of counsel here. The Court noted that an ineffective-assistance claim might be excepted from procedural bars in exceptional circumstances, but it must appear that there is some basis of truth to the claim. The Supreme Court found that Williams's claim was insufficient to merit waiving the procedural bars. Further, the Court issued a warning that future filings deemed frivolous could result in monetary sanctions or in restrictions on filing applications for post-conviction collateral relief, or pleadings in that nature, in forma pauperis. Therefore, the Supreme Court denied Williams's Application for Leave to Proceed in the Trial Court.

OBJECTION IN PART

Presiding Justice King agreed that Williams's Application for Leave to Proceed in the Trial Court should be dismissed. However, he disagreed with the warning that future filings deemed frivolous may result in monetary sanctions or restrictions on filing applications for post-conviction collateral relief in forma pauperis. He argued that monetary sanctions placed on indigent defendants only serves to punish or preclude the defendants from their lawful rights to appeal and further violates a defendant's constitutional rights. Further, he argued that novel arguments which might remove a criminal defendant from confinement should not be discouraged by the threat of monetary sanctions and restrictions on filing. Rather, he argued that the Supreme Court should only dismiss or deny motions that lack merit.

Denied - 2021-M-00655 (Aug. 24, 2021)
En Banc Order by Justice Beam - Objection In Part by Presiding Justice King
Briefed by Emily Duck

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Wilson v. State

Order

ORDER

William Matthew Wilson filed three motions: an Unopposed Motion for Leave to Reply, a Motion for Out-of-Time Appeal, and a Motion to Proceed in Forma Pauperis. The Supreme Court granted the Unopposed Motion for Leave to Reply, allowing Wilson to electronically re-file his reply as prescribed by Section 3(A)(3) of the Appellate E-Filing Administrative Procedures. Additionally, the Court found that the circuit court lacked jurisdiction to reopen the time for appeal and further refused to suspend the Rules of Appellate Procedure and to treat his appellate brief as an application for an out-of-time appeal. Therefore, the Court denied Wilson's Motion for Out-of-Time Appeal. Regarding the Motion to Proceed in Forma Pauperis, the Court held that the denial of the Motion for Out-of-Time Appeal rendered the Motion to Proceed in Forma Pauperis moot. Therefore, the Supreme Court dismissed Wilson's Motion to Proceed in Forma Pauperis.

OBJECTION

Presiding Justice King objected to the order denying Wilson's Motion for an Out-of-Time Appeal. He argued that the motion should be granted under the good cause exception in Miss. R. App. P. 2(c). He argued that because Wilson's attorney never advised him of his right to appeal the trial court's refusal to set aside a guilty plea, and because Wilson's attorney advised him that he was no longer his attorney, good cause existed to grant Wilson's Motion for an Out-of-Time Appel. Thus, he argued Wilson's failure to timely perfect his appeal was through no fault of his own, since, despite a desire to appeal the refusal to set aside the guilty plea, he did not know he could and was without an attorney to consult on the matter. Further, he argued that because Wilson faces another potential death sentence upon resentencing, and because the death penalty is irrevocable, the Court was diminishing its heightened responsibility by denying the out-of-time appeal when Wilson's death was at issue. For these reasons, he argued that the Court should grant Wilson's Motion for an Out-of-Time Appeal.

Granted. Denied. Dismissed - 2021-M-00005-SCT (Aug. 26, 2021)
En Banc Order by Justice Coleman - Objection by Presiding Justice King
Briefed by Samuel Taylor Rayburn

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MISSISSIPPI COURT OF APPEALS DECISIONS – AUGUST 31, 2021

COURT OF APPEALS - CIVIL CASES

COLEMAN V. COLEMAN

CIVIL - REAL PROPERTY

PROPERTY - CONVEYANCE - QUALITY OF ESTATE - A possessor of real property may not convey an estate greater in quality than that which she possesses
PROPERTY - CONVEYANCE - WARRANTY DEED - A life estate cannot be enlarged to a fee simple estate by the gifting of a warranty deed
PROPERTY - CONVEYANCE - MUTUAL MISTAKE - When both parties are operating under a mutual mistake of material fact regarding the interests possessed by the parties at the time of an agreement purportedly conveying those property interests, the agreement may be set aside in whole or in part
PROPERTY - CONVEYANCE - INTERPRETATION - When construing an instrument of conveyance, the chancellor must consider the document as a whole, and the intent of the parties must be gathered from the plain and unambiguous language contained therein

FACTS

Thomas Hill Coleman ("Coleman") owned two adjacent twenty-acre tracts of land in Alcorn County. Coleman died testate in 1977. Coleman's Last Will and Testament devised a life estate in the land to his wife, Evelyn Coleman, and remainder interests being equal as tenants in common to his four sons, Thomas, Mike, Frazier, and Larry. In 1987, in an attempt to forgive a debt of Frazier and equally give to the other sons, Evelyn entered into a written agreement with her sons in which she purportedly granted Thomas a parcel of land and forgave debts owed by the other three sons. However, no land was described in the agreement, and all four sons and Evelyn signed the agreement. Subsequently, Evelyn gave Thomas a warranty deed to the property. In 2012, Evelyn died, and, shortly thereafter, Thomas's attorney discovered that Evelyn only possessed a life estate in the property, which she had attempted to convey to Thomas as a fee simple interest in the 1987 warranty deed. To cure the defect in the 1987 warranty deed and consolidate Thomas's interest in the land deeded to him by his mother, the attorney sent quitclaim deeds to Thomas's brothers. Frazier signed, but Mike and the conservator of Larry's estate refused. Later, Mike initiated an action to quiet and confirm title in the Alcorn County Chancery Court. The matter was tried in 2019, at which time all parties admitted to a mutual mistake in believing Evelyn possessed a fee simple interest in the property at the time of the 1987 agreement. Notwithstanding Evelyn's lack of a fee simple interest and the parties' mutual mistake, the chancellor found that it was the intent of the

parties to the 1987 agreement to grant Thomas a fee simple interest in the property. Therefore, the chancellor declared Thomas the sole owner in fee simple. Mike appealed.

ISSUES

Whether (1) Evelyn could have conveyed a property interest in fee simple, while only having a life estate; (2) there was mutual mistake among all parties to the agreement; and (3) the sons did not convey an interest in the 1987 agreement.

HOLDING

(1) Because Evelyn only possessed a life estate interest at the time of the 1987 agreement, and because the granting of the warranty deed did not increase her interests in the property, she could not have conveyed a fee simple interest to Thomas, and, therefore, the trial court erred in finding the 1987 agreement to reflect an intended conveyance. (2) Because the parties were mistaken regarding the interest that Evelyn possessed, and because her interest was a material fact, the agreement as to the conveyance in fee simple was void. (3) Because the plain language of the 1987 agreement did not describe any conveyance of property interest from the brothers to Thomas, the trial court improperly interpreted that Larry and Mike intended to convey their remainder interests in the agreement. Therefore, the Court of Appeals reversed and rendered the judgment of the Alcorn County Chancery Court.

Reversed & Rendered - 2020-CA-00389-COA (Aug. 31, 2021)
Opinion by Judge Westbrooks
Hon. Stephen Travis Bailey (Alcorn County Chancery Court)
Gregory D. Keenum for Appellant - Michael D. Chase for Appellees
Briefed by Morgan Jones

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SAVELL V. MANNING

CIVIL - CUSTODY

FAMILY LAW - CUSTODY - GUARDIAN AD LITEM - Under Miss. Code Ann. § 93-5-23 a chancellor may use their discretion in weighing the evidence of abuse or neglect to support appointing a guardian ad litem
CIVIL PROCEDURE - CONTEMPT - DISCRETION - Because of their proximity to the case, a chancellor may use their discretion to decide when a litigant is in contempt by willfully and deliberately ignoring a court order; the only defenses to a contempt violation include an inability to comply with the court order or that the court order was unclear
CRIMINAL PROCEDURE - SENTENCING - SUSPENDED SENTENCE - A suspended sentence is different than probation because it does not require a defendant to report to an officer, and the suspension can be revoked if a defendant fails to meet the conditions of the court
CIVIL PROCEDURE - ATTORNEY'S FEES - *MCKEE* ANALYSIS - A *McKee* analysis is not always required for the award of attorney's fees because, under Miss. Code Ann. § 9-1-41, a chancellor may award attorney's fees based on the evidence and their own opinion
FAMILY LAW - CHILD SUPPORT - MEDICAL SUPPORT - Miss. Code Ann. § 43-19-101(6) requires that all orders for child support include reasonable medical support; in any case in which child support is at issue, the court shall make findings either on record or in the judgment regarding the availability to all parties of health insurance coverage for the child and the cost of such coverage to all parties

FACTS

After Ashley Savell gave birth to Allen in July 2017, Jason Manning filed a complaint to establish paternity and seek custody. Savell filed a counterclaim for custody and child support. In October 2017, the chancellor issued an order granting Manning limited supervised visitation. A month later, Manning filed a petition of contempt against Savell for refusing to allow him visitation. Savell disputed Manning's understanding of the previous order and filed a motion for temporary legal and physical custody of Allen. In January 2018, the chancellor granted Savell temporary legal and physical custody and ordered Manning to pay child support. Later that year, the chancellor issued an order granting

Manning supervised visitation every other weekend. Manning subsequently filed a second and third petition of contempt against Savell. In September 2018, the chancellor issued an order granting Manning unsupervised visitation every other weekend, and, less than a month later, Manning brought another contempt petition. Savell conceded that she had refused visitation and requested the appointment of a guardian ad litem ("GAL"), claiming that Manning failed to provide a safe place for Allen. Additionally, Savell contacted Jones County Child Protective Services ("CPS"), making allegations of abuse and neglect against Manning. In January 2019, Savell filed a petition of contempt against Manning, alleging Manning failed to comply with the court-ordered visitation requirements. At trial and after a review of the CPS findings, the chancellor found that Savell's allegations were "unsubstantiated." The chancellor granted Savell physical custody and Manning supervised visitation every other weekend, holidays, birthdays, and during summer and spring breaks. The chancellor ordered Manning to pay child support and awarded him $2,400 in attorney's fees. Further, the chancellor sentenced Savell to a thirty-day jail sentence for contempt but suspended the sentence on the condition that she followed the court orders. Savell appealed.

ISSUES

Whether the chancellor erred by (1) failing to appoint a GAL; (2) declining to find Manning in contempt; (3) finding Savell in contempt; (4) imposing Savell's suspended sentence; (5) awarding attorney's fees without conducting a *McKee* analysis; (6) failing to provide for Allen's medical support in the final judgment; (7) failing to clarify the responsibilities of the parties concerning Allen's educational and extracurricular expenses in his written order; and (8) not clarifying the award of custody in the final judgment.

HOLDING

(1) Because the chancellor had discretion to determine whether there was a sufficient factual basis to support appointing a GAL, and because Savell failed to offer any specific allegations that supported the appointment, the chancellor did not err by declining to appoint a GAL. (2) Because there was no evidence that Manning willfully or deliberately ignored an order of the court by being out of sight of a supervisor over the course of weekend visits, and because there was no evidence that Manning willfully or deliberately failed to provide Ashley or the court clerk his new address, the chancellor did not err by failing to find Manning in contempt. (3) Because Savell admitted to willfully ignoring an order of the court, and because her criminal contempt was proven beyond a reasonable doubt, the chancellor properly found that she was in contempt. (4) Because the chancellor clearly did not impose a term of "probation," and because there was nothing unlawful about the suspended sentence, Savell's argument was without merit. (5) Because the absence of a *McKee* analysis is not always a reversible error, and because Savell's repeated denials of visitation forced Manning to file successive contempt petitions, the award was reasonable, and, therefore, the chancellor did not err. (6) Because Miss. Code Ann. § 43-19-101(6) requires medical support to be included in all cases involving child support, the chancellor erred by not including them in the final judgment. (7) Because the record did not clearly establish Savell's income at the time of trial, and because it was not clear whether the chancellor intended for the parties' respective shares of the expenses to be fixed based on their incomes at the time of trial or to fluctuate based on subsequent changes in their incomes, the chancellor erred and should have clarified each parties' respective obligations. (8) Because the final judgment did not reflect the chancellor's bench ruling, the chancellor erred by failing to clarify the custody arrangement. Therefore, the Court of Appeals affirmed in part and reversed and remanded in part the judgment of the Jones County Chancery Court.

Affirmed in Part; Reversed & Remanded in Part - 2019-CA-01745-COA (Aug. 31, 2021)
Opinion by Presiding Judge Wilson
Hon. Franklin C. McKenzie Jr. (Jones County Chancery Court, Second Judicial Dist.)
Jeffrey Birl Rimes for Appellant - *Pro se* for Appellee
Briefed by Carter Babaz

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WILKAITIS V. MISS. CHILD.'S HOME SOC'Y

CIVIL - CONTRACT

CONTRACTS - DEFENSES - MUTUAL MISTAKE - A mutual mistake between parties is where a variance exists between their agreement and the instrument intended to express it; the burden of proof is upon the party trying to establish mutual mistake, and the proof must establish such a mistake beyond a reasonable doubt

CONTRACTS - MUTUAL MISTAKE - RESCISSION - A mutual mistake of fact is one common to both parties to a contract, wherein each labor under the same misconception respecting a material fact; such a mistake is unquestionably grounds for relief and recission

FACTS

Canopy Children's Solutions ("Canopy"), a non-profit provider of educational, behavioral, and social services, contacted Dr. John Wilkaitis, a child psychiatrist, regarding a position as its medical director. During negotiations, Canopy hired a public accounting firm to appraise the fair market value of Dr. Wilkaitis's private practice and provide a compensation evaluation for the medical director position. Both Canopy and Dr. Wilkaitis understood that the value of Dr. Wikaitis's in-patient services would be omitted from the evaluation. The parties agreed to the terms of an employment agreement and properly executed said agreement. During a second evaluation to re-evaluate the fair market values of Dr. Wilkaitis's practice and compensation, the accounting firm realized that it had erroneously included the value of Dr. Wilkaitis's in-patient services in its initial evaluation. When Canopy learned of the error, it unilaterally reduced Dr. Wilkaitis's salary. Dr. Wilkaitis sued for breach of contract in chancery court. The court rescinded the contract based upon a finding of a mutual mistake of fact that both parties were operating under at the time the contract was signed regarding the actual fair market value of Dr. Wilkaitis's compensation. Dr. Wilkaitis appealed.

ISSUE

Whether the chancery court erred by rescinding the employment agreement based on a finding of mutual mistake.

HOLDING

Because both parties formed the contract based on the mistaken belief that compensation reflected only the fair market value of Dr. Wilkaitis's out-patient services, the chancery court did not err by rescinding the contract based on a finding of mutual mistake. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Chancery Court.

Affirmed - 2020-CA-00272-COA (Aug. 31, 2021)
Opinion by Judge McCarty
Hon. J. Dewayne Thomas (Hinds County Chancery Court, First Judicial Dist.)
T. Jackson Lyons for Appellant - Hugh Ruston Comley & C. Joyce Hall for Appellee
Briefed by Regan Monk

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