

MISSISSIPPI SUPREME COURT DECISIONS – OCTOBER 7, 2021***SUPREME COURT - CIVIL CASES*****ESTATE OF GREENWOOD V. MONTPELIER U.S. INS. CO.****CIVIL - INSURANCE**

APPELLATE PROCEDURE - BRIEFING REQUIREMENTS - WAIVER - Failure to cite relevant authority obviates the appellate court's obligation to review such issues; the law is well established that points not argued in the brief on appeal are abandoned and waived

INSURANCE - LIABILITY - IMPUTED KNOWLEDGE - An agent cannot be held liable for misrepresentations that could be cleared by the insured reading the policy

INSURANCE - BAD-FAITH CLAIMS - BURDEN OF PROOF - In order to prevail in a bad-faith claim against an insurer, the plaintiff must show that the insurer lacked an arguable or legitimate basis for denying the claim, or that the insurer committed a willful or malicious wrong, or acted with gross and reckless disregard for the insured's rights

FACTS

William Greenwood owned Antique Wood Company of Mississippi and was in the business of buying salvage rights to old buildings in order to strip them of valuable materials to sell. Greenwood purchased the salvage rights to an old building in Vicksburg and was insured by Mesa Underwriters Specialty Insurance Company ("Mesa"), which at the time was known as Montpelier U.S. Insurance Company, through a policy sold by Dixie Specialty Insurance ("Dixie") and Central Insurers of Grenada, Inc. ("Grenada") to cover "debris removal" for this project. The policy contained a provision that excluded coverage of demolition, specifically excluding property damage arising out of the demolition or wrecking on any building with an original height in excess of four stories. Greenwood began to dismantle the building which resulted in a lawsuit filed by the owners of the adjacent building. They claimed that Greenwood's actions during the dismantling of the building caused significant damage to an adjacent wall of their building and requested that the demolition be stopped immediately. The demolition continued which the owners of the adjacent building claimed caused significant additional damage. Greenwood filed a claim with Mesa, then Montpelier, to cover the suit, causing an investigation to be conducted into Greenwood's business and the incident. Mesa denied both indemnity and defense for the claim, citing the demolition exclusion, Greenwood's ownership of the building which he did not insure, and the application for insurance which stated that the project would be "100% debris removal." In 2013, Greenwood brought suit against Mesa, Dixie, and Grenada for breach of contract, bad faith denial of coverage, and conspiracy. In 2015 and 2018, the Supreme Court heard interlocutory appeals in which they held that the proper venue for the suit was Warren County, and that Greenwood did not properly serve Grenada with notice respectively. Following these appeals the trial court granted summary judgment to Mesa and Dixie, finding that Greenwood's claim resulted from demolition that was excluded by the insurance policy. The trial court also granted summary judgment to Mesa and Dixie on Greenwood's claims of bad faith and conspiracy. Greenwood appealed.

ISSUES

Whether (1) the trial court erred by improperly weighing the evidence and usurping the role of the jury when it determined that Greenwood's work was demolition and, in turn, summarily dismissed Greenwood's claim; (2) Mesa and Dixie should have been held liable for their agents' knowledge about Greenwood's business and breaching their duty to exercise reasonable care in providing proper general liability coverage for the business; (3) the trial court erred by summarily dismissing Greenwood's claim for breach of good faith and fair dealing because Mesa failed to investigate the claim against Greenwood.

HOLDING

(1) Because Greenwood failed to cite authority supporting his claims and state a standard of review on appeal, and because he failed to meet his burden of proof, the trial court did not err in granting summary judgment. (2) Because the liability of insurance agents is expressly limited to misrepresentations that cannot be cured by reading the policy, and because the policy in this case expressly excluded coverage for demolition work on buildings over four stories and coverage for damage to common walls, Mesa and Dixie was not liable for their agents' actions or lack of knowledge. (3) Because on appeal Greenwood pointed to nothing approaching "a willful or malicious wrong" or "gross and reckless disregard for the insured's rights" on appeal, the trial court did not err in granting summary judgment in favor of Mesa and Dixie. Therefore, the Supreme Court affirmed the judgment of the Warren County Circuit Court.

Affirmed - 2020-CA-00506-SCT (Oct. 7, 2021)

Opinion by Justice Ishee

Hon. Toni Demetresse Terrett (Warren County Circuit Court)

Chuck McRae & Annette Elise Bulger Mathis for Appellant - Mark W. Verret for Appellees

Briefed by [Kelsey Davis](#)

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SHOPE V. WINKELMANN

CIVIL - MEDICAL MALPRACTICE

CIVIL PROCEDURE - APPEALS - STATUTE OF LIMITATIONS - Miss. Code. Ann. § 11-51-79 states that appeals from the county court shall be taken and bond given within thirty days from the date of entry of the final judgment or decree on the minutes of the court; Unif. R. Cir. & Cnty. Ct. P. 5.04 states that this is the standard for every appeal whether on the record or by trial de novo

CIVIL PROCEDURE - APPEALS - NOTICE - Miss. R. App. P. 4 states that a notice of appeal filed after announcement or entry of the judgment but before the disposition of any of the above motions is ineffective to appeal from the judgment or order, or part thereof, specified in the notice of appeal, until the entry of the order disposing of the last such motion outstanding

CIVIL PROCEDURE - APPEALS - PAYMENT OF COSTS - Unif. Civ. R. Cir. & Cnty. Ct. P. 5.09 states that the appellant must pay all court costs incurred below and likely to be incurred on appeal as estimated by the circuit court clerk; pursuant to *Belmont*, the payment of costs is both jurisdictional and required

CIVIL PROCEDURE - EXPENSES - SHIFTING COSTS - Miss. R. App. P. 10(b)(4) states that the clerk and reporter prepare additional parts at the appellant's expense unless the appellant obtains from the trial court an order requiring the appellee to pay the expense

FACTS

Dr. Michael Winkelmann prescribed Daniel Shope opioid medication for lower back pain. Shope later signed a policy which stipulated that if Shope used any illegal substances, Dr. Winkelmann may stop prescribing any or all medications. In 2014, Dr. Winkelmann ended his patient-physician relationship with Shope on grounds that Shope failed to comply with the policy. In 2018, Shope filed a complaint against Dr. Winkelmann. The county court awarded summary judgment to Dr. Winkelmann, finding the two-year statute of limitations barred the claim. Shope filed a notice of appeal in the circuit court and designated the record. The notice was suspended until disposition of the posttrial motions. The same day, Dr. Winkelmann filed a Miss. R. Civ. P. 59 motion to alter or amend the judgment, requesting the trial court consider relief under Miss. R. Civ. P. 11 and the Litigation Accountability Act. In September 2020, the trial court delivered a bench opinion under seal, found damages, and issued a supplemental monetary judgment. On September 15, 2020, the clerk submitted an amended estimate of \$4,297.50 for preparing the record and \$348 from the court reporter. With Shope's prepayment, the balance due was \$2,052. Shope failed to pay by October 4, 2020, thirty days after the trial court ruled on Dr. Winkelmann's posttrial motion. Shope argued that he was only required to pay the portions of the record that he designated under the Miss. R. App. P. On October 16, Dr. Winkelmann filed a motion

to dismiss Shope's appeal for lack of appellate jurisdiction. On October 23, Shope paid the remaining balance plus an additional \$500 and filed a certificate of compliance. In November 2020, the circuit court dismissed the appeal. Shope appealed.

ISSUE

Whether the circuit court had appellate jurisdiction.

HOLDING

(1) Because Shope failed to timely pay the cost bond when he did not pay all costs within the thirty days required by statute, and because Shope failed to seek an order from the trial court shifting the costs to Dr. Winkelmann, the circuit court lacked appellate jurisdiction. Therefore, the Supreme Court affirmed the judgment of the Rankin County Circuit Court.

Affirmed - 2020-CA-01265-SCT (Oct. 7, 2021)

Opinion by Justice Beam

Hon. Dewey Key Arthur (Rankin County Circuit Court)

Robert Shuler Smith & Abby Gale Robinson for Appellant - H. Wesley Williams III, Roy A. Smith Jr., & Chris J. Walker for Appellees

Briefed by [Katie Lee Crockett](#)

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WATKINS & EAGER, PLLC V. LAWRENCE

CIVIL - TORTS-OTHER THAN PERSONAL INJURY & PROPERTY DAMAGE

TORTS - EMPLOYMENT - MCARN WRONGFUL TERMINATION CLAIM - *McArn* applies to employer-employee relationships and does not extend to equity members in any limited-liability organization or other types of employment relationships

CONTRACTS - INTERPRETATION - AMBIGUOUS VEL NON - A contract is only ambiguous when a reasonably intelligent person who knows the customs, practices, usages, and terminology as generally understood in a certain trade or business can derive two reasonable interpretations of the same clause

CIVIL PROCEDURE - MOTION PRACTICE - DISMISSAL - When considering a motion to dismiss, the allegations in the complaint must be taken as true, and the motion should not be granted unless it appears beyond a reasonable doubt that the plaintiff will be unable to prove any set of facts in support of his claim

FACTS

Richard T. Lawrence filed his original complaint for wrongful termination in Hinds County Circuit Court. Watkins & Eager, PLLC ("the firm") moved to dismiss the complaint for failure to state a claim. The trial court granted the motion and granted Lawrence leave to amend his complaint. Lawrence's amended complaint alleged thirty claims, including breach of the PLLC operating agreement and wrongful termination. Lawrence alleged he was terminated and expelled without cause, adequate notice, or a chance to be heard. Further, Lawrence alleged that he was terminated because he reported illegal activities happening in the firm and believed he was entitled to whistleblower protections. The firm filed a motion to dismiss under Miss. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted, the subject on appeal, and an answer denying Lawrence's claims. The circuit court denied the firm's motion to dismiss in full. The firm petitioned for interlocutory appeal.

ISSUES

Whether (1) the PLLC agreement was a valid and binding contract; (2) Article IV of the PLLC operating agreement was ambiguous vel non; (3) Lawrence failed to state a claim for breach of contract; and (4) Lawrence failed to establish a *McArn* wrongful termination claim.

HOLDING

(1) Because an LLC operating agreement is considered a contract and should be interpreted according to contract law, the PLLC agreement was a valid and binding contract. (2) Because there was only one reasonable meaning of Article IV of the PLLC operating agreement, the contract was unambiguous and could be enforced. (3) Because the amended PLLC agreement was a binding contract, and because Article IV of the PLLC operating agreement was unambiguous, Lawrence failed to state a claim for breach of contract. (4) Because *McArm* applies to the relationship between an employer and employee and not between a member and company, and because Lawrence was an equity member not qualified to seek protection under a *McArm* exception, Lawrence failed to establish a *McArm* wrongful termination claim. Therefore, the Supreme Court reversed and remanded the judgment of the Hinds County Circuit Court.

Reversed & Remanded - 2020-IA-00547-SCT (Oct. 7, 2021)

Opinion by Chief Justice Randolph

Hon. Adrienne Annett Hooper-Wooten (Hinds County Circuit Court, First Judicial Dist.)

R. David Kaufman, M. Patrick McDowell, & Jacob Arthur Bradley for Appellant - James Ashley Ogden for Appellee

Briefed by [Meagan Guyse](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – OCTOBER 5, 2021

COURT OF APPEALS - CIVIL CASES

BROWN V. BROWN

CIVIL - DOMESTIC RELATIONS

FAMILY LAW - DIVORCE - PROPERTY SETTLEMENT AGREEMENTS - A party who fails to take the necessary action to enforce or protect his or her rights under a property settlement agreement must bear the consequences of his or her failure

FAMILY LAW - DIVORCE - BREACH OF SETTLEMENT AGREEMENTS - A settlement reached by parties, announced to the court, and read into the record is binding on the parties

FAMILY LAW - DIVORCE - RES JUDICATA - In a contempt action, the doctrine of res judicata bars parties from litigating claims within the scope of the judgment in a prior action; this includes claims that were made or should have been made in the prior suit

FAMILY LAW - DIVORCE - ATTORNEY'S FEES - Although a party who successfully prosecutes a contempt action may be entitled to attorney's fees, when the court denies a spouse's petition for contempt, no award of attorney's fees is warranted

FACTS

In December 2014, Katherine Brown filed for divorce from Jim Brown. Jim answered the filing for divorce and counterclaimed for custody of the children. The commencement of this action led to a highly litigious two-and-a-half years of failed attempts to agree on the custody of the minor children and property rights between the parties. In October 2017, both parties filed a motion to dismiss the fault-based grounds of their pleadings and consented to the entry of a judgment of divorce due to their irreconcilable differences, including their Property Settlement, Child Custody and Support Agreement ("PSCCSA"). The chancery court entered an agreed order dismissing the fault grounds and granting a final judgment of divorce. According to a provision in the PSCCSA, the parties had sixty days to amicably divide the remaining items of personal property or seek judicial assistance from the court. The agreement stated that until the final decision was made, all disputed items would remain in the family home, which Jim had possession of per the agreement. Thereafter, Katherine and Jim conceded on a number of items, but negotiations stalled when Katherine's counsel sent an email to Jim's counsel stating that they needed to obtain a hearing date to address the remaining disputed marital property. However, Katherine's counsel failed to seek the court's assistance within the sixty-day deadline and filed her first petition for contempt against Jim in May 2018, seven months after sending the email. In response to

Katherine's petition, Jim counterclaimed for contempt against Katherine. The chancery court first heard from the parties in August 2018 when Katherine's attorney informed the chancery court that the parties agreed to flip a coin to finalize the division of the property. Katherine's case-in-chief continued on November 8, 2018 when the chancery court again addressed the division of the disputed property and ordered the parties to settle the property allocation by November 15, 2018. After the hearing, the parties met as ordered by the chancery court, but Katherine refused to participate in the agreed coin flip and left the matter of the disputed property unresolved. The parties failed to submit any information to the chancery court on the disputed items by the November 15th deadline. At the end of November 2018, the chancery court suspended any ruling on the contempt motion and ordered that if the parties did not resolve the property dispute by December 10, 2018, the divorce judgment would be set aside. On December 7, 2018, Jim filed a motion for reconsideration, asking the chancery court to rule Katherine had waived her right to any of the property because of her refusal to participate in the coin toss. Three days later, Katherine filed a response to the November 2018 order from the chancery court and requested extended time to divide the personal property, but she did not file a response to Jim's motion for reconsideration. On December 21, 2018, the chancery court withdrew its November 30, 2018 order and entered an opinion and final judgment. The chancery court found both parties in contempt of the divorce judgment and denied attorney's fees. In January 2019, Katherine filed a motion to alter or amend the December 21, 2018 judgment, arguing that the chancery court made no finding to support its conclusion that both parties were in contempt, but she did not raise the issue of the chancery court's refusal to distribute the parties' personal property. In February 2019, Katherine filed a second motion for contempt and for enforcement of the divorce judgment. In response, Jim argued Katherine's motion was not timely filed, that she was barred from seeking relief because she had "unclean hands," that the division of property issue was res judicata, and that she was not entitled to any relief. Further, Jim filed a motion to dismiss. The case was assigned to a new chancellor and was heard at the end of January 2020. After the argument, the chancery court found that Katherine's motion to alter and amend was timely filed, Katherine did not provide any proof that she was not in contempt, and ultimately refused to revisit the property division issue. On March 25, 2020, the chancery court entered its judgment on the outstanding motions, denying all relief besides the relief Katherine sought regarding counseling for one of the children and correcting a clerical error from December 2018. Katherine appealed.

ISSUES

Whether the chancery court erred by (1) declining to address the allocation of personal property in its December 21, 2018 order; (2) denying Katherine's second motion for contempt to revisit the issue of the adjudication of the division of the parties' personal property under the doctrine of res judicata in its March 25, 2020 order; (3) finding Katherine in contempt and determining that she was not entitled to an award of attorney's fees.

HOLDING

(1) Because Katherine failed to comply with the settlement and failed to submit any proof to the court of the disputed items, and because Katherine never withdrew her consent to the irreconcilable-differences divorce and she failed to enforce her right to obtain her personal property in the several opportunities availed to her, and because Katherine's constructive trust claim failed because there was no clear and convincing proof that Jim was wrongfully holding items that belonged to her, the chancery court did not err in its December 21, 2018 order by declining to divide the parties' personal property. (2) Because the parties announced a settlement of the issue of property division at the beginning and end of the hearing of Katherine's first contempt action, because the parties failed to submit anything further to the chancery court on that issue as ordered, and because the issue was settled and resolved in the chancery court's December 21, 2018 order, Katherine was barred from raising anything further about the division of property in the second contempt action and the chancery court did not err in not considering it in the March 20, 2020 order. (3) Because there was substantial evidence that Katherine violated the judgment of divorce, the chancery court did not err in finding Katherine in contempt of court and in denying Katherine's request for attorney's fees. Therefore, the Court of Appeals affirmed the judgment of the Oktibbeha County Chancery Court.

Affirmed - 2020-CA-00416-COA (Oct. 5, 2021)

Opinion by Judge McDonald

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

Richard Shane McLaughlin & Jak McGee Smith for Appellant - J. Douglas Ford for Appellee

Briefed by [Elise Tucker](#)

ESTATE OF HUMPHREY V. TUNICA CNTY. HEALTH & REHAB LLC

CIVIL - CONTRACT

CONTRACTS - HEALTHCARE - PRIMARY PHYSICIAN - Under Miss. Code Ann. § 41-41-203, a primary physician is a physician designated by an individual or the individual's agent, guardian, or surrogate, to have primary responsibility for the individual's healthcare or, in the absence of a designation, or if the designated physician is not reasonably available, a physician who undertakes the responsibility

CONTRACTS - CAPACITY - HEALTHCARE SURROGATE - Under Miss. Code Ann. § 41-41-211, a surrogate may make a healthcare decision for a patient who is an adult or emancipated minor if the patient has been determined by the primary physician to lack capacity and no agent or guardian has been appointed or the agent or guardian is not reasonably available

CONTRACTS - ARBITRATION - MOTION TO COMPEL - To determine the validity of a motion to compel arbitration under the Federal Arbitration Act, courts conduct a two-pronged inquiry to determine whether: (1) there is a valid arbitration agreement and whether the parties' dispute is within the scope of the arbitration agreement and (2) legal constraints external to the parties' agreement foreclosed arbitration of those

FACTS

In May 2012, Leroy Humphrey's son, Alta Humphrey, signed an admission agreement with Tunica County Health & Rehab LLC ("Tunica County Rehab") to admit Leroy as a resident in the facility. The admission agreement contained an arbitration provision which stated that any legal claim that arose out of or related to the admission agreement or any service or healthcare provided by the facility to the residents, should be resolved exclusively by binding arbitration pursuant to the Federal Arbitration Act. The admission agreement identified Alta as the responsible party acting on behalf of Leroy. There was no evidence in the record that Alta had power of attorney over Leroy or that any court had appointed Alta as guardian or conservator of Leroy. On that same day, Dr. Richard Waller, owner and medical director of Tunica County Rehab, completed and signed a statement that Leroy Humphrey was unable to sign an admission agreement due to dementia and confusion. Prior to this, Dr. Waller had not provided any care or treatment to Leroy. However, records and admissions forms dated May 23, 2012 described Dr. Waller as Leroy's "physician" or "attending physician." It was not until almost four years later that a patient information sheet identified Dr. Waller as Leroy's "primary physician." While Leroy was a resident at Tunica County Rehab, he was assaulted by his roommate, Bobby Humphrey, as the administrator of Leroy's estate ("Estate"), sued Tunica County Rehab for negligence, gross negligence, and premises liability. In response, Tunica County Rehab moved to compel arbitration. Opposing arbitration, the Estate asserted that Alta did not qualify as a healthcare surrogate and thus was not authorized to sign the admission agreement on Leroy's behalf and bind him to arbitration. The Estate argued that Miss. Code Ann. § 41-41-211(1) required a patient's primary physician to determine a potential resident's lack of mental competency for the statute to apply, and that Dr. Waller was not Leroy's "primary physician" as defined under Miss. Code Ann. §41-41-203(o). The trial court conducted a hearing on the matter and found that, because Mississippi law does not require a party to prove the designation of a primary physician through medical records, and because the designation of Dr. Waller alone was enough, the requirements of Miss. Code Ann. §41-41-211 were satisfied and, therefore, Alta possessed the requisite authority to execute the admission agreement which bound him to arbitration. The trial court granted Tunica County Rehab's motion to compel arbitration and issued its order compelling arbitration. The Estate appealed.

ISSUES

Whether (1) Dr. Waller was "designated" as Leroy's primary physician under Miss. Code Ann. §41-41-203(o); (2) the documents Tunica County Rehab presented to the trial court in support of its motion to compel arbitration sufficiently proved that Dr. Waller was Leroy's "primary physician" because he had undertaken the responsibility of Leroy's health care at the time of Leroy's admission; (3) Alta had authority to execute the admission agreement as Leroy's health-care surrogate.

HOLDING

(1) Because the patient information sheet that identified Dr. Waller as Leroy’s “primary physician” was not evidence that Dr. Waller had been designated as Leroy’s primary physician on the date Leroy was admitted, which was four years earlier, and because none of the other documentation that Tunica County Rehab relied upon indicated that Leroy or his “agent, guardian, or surrogate” designated Dr. Waller as Leroy’s “primary physician,” but rather as “Leroy’s physician” or his “attending physician,” Dr. Waller was not “designated” as Leroy’s “primary physician” under Miss. Code Ann. §41-41-203(o). (2) Because contemporaneously prepared and signed documents showed that Dr. Waller undertook the responsibility for Leroy’s primary healthcare, and because Leroy’s patient face sheet listed Waller as his primary physician, the trial court properly held that Waller was Leroy’s primary physician. (3) Because Waller found Leroy lacked capacity, and because no agent or guardian had been appointed and no agent or guardian was reasonably available, the trial court properly held that Alta was authorized to execute the admissions agreement as Leroy’s healthcare surrogate, thus binding Leroy to arbitration. Therefore, the Court of Appeals affirmed the judgment of the Tunica County Circuit Court.

DISSENTS

Presiding Judge Wilson argued that Waller did not undertake primary responsibility for Leroy’s healthcare. He further argued that the documentary evidence presented by Tunica County Rehab supporting its motion to compel arbitration was insufficient to carry its burden of proof that Waller was Leroy’s primary physician. Therefore, he would have reversed and rendered the decision of the trial court.

Judge Westbrook argued that Waller was not Leroy’s primary physician and, therefore, could not find that Leroy lacked capacity, making it impossible for Alta to qualify as a healthcare surrogate to act on behalf of Leroy. She further argued that Alta also had no power of attorney over Leroy, nor had he been appointed as Leroy’s guardian or conservator for purposes of making health-care decisions for Leroy. Therefore, Judge Westbrook would have reversed and rendered the decision of the trial court.

Affirmed - 2020-CA-00355-COA (Oct. 5, 2021)

En Banc Opinion by Presiding Judge Carlton - Dissents by Presiding Judge Wilson & Judge Westbrook

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

Walter Alan Davis, Reid Kendall Posey, & Steven W. Pittman for Appellant - Joseph Spencer Young Jr. for Appellee

Briefed by [Dallas Martin](#)

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JOHNSON V. BENTON

CIVIL - OTHER

PROPERTY - TRIBAL LAW - PROOF OF MEMBERSHIP - To be subject to tribal law, a party must first prove that he or she is a member of a recognized tribe and then that the action occurred on recognized tribal lands

CIVIL PROCEDURE - CONTEMPT - DISCRETION - Contempt is an issue of fact to be decided on a case-by-case basis; the chancery court has substantial discretion in deciding whether a party is in contempt

CIVIL PROCEDURE - CONTEMPT - REQUIREMENTS - A citation for contempt is appropriate when the offending party has willfully or deliberately ignored the court or the court’s directive

FACTS

Paul Benton owned a tract of land (“the Property”) with certain members of Curtis Johnson’s family as tenants in common. The lawsuit began when Benton filed a petition for the partition of the Property, which neither Johnson nor his family challenged. As part of the partition, the parties signed an agreed order that prohibited them from entering designated areas of each other’s property. Johnson violated the order by continuing to enter the Property. Johnson ignored repeated requests to cease trespassing, forcing Benton to file a petition for contempt. Johnson filed a motion to dismiss, claiming, for the first time, that he was a Creek Indian and he and his “ancestral lands” were subject to tribal

sovereign immunity, however, he did not provide any proof of his heritage. Accordingly, the trial court denied Johnson's motion to dismiss and granted Benton's petition for contempt. Johnson appealed.

ISSUES

Whether the trial court erred in (1) declining to apply Indian tribal law and thereby denying Johnson's motion to dismiss and (2) finding Johnson in contempt of court.

HOLDING

(1) Because Johnson failed to offer any evidence of his ancestry or that the Property is "ancestral land," the trial court did not err in declining to apply tribal law and denying his motion to dismiss. (2) Because Johnson repeatedly trespassed on Benton's private property in violation of the agreed order, and because the trial court was within its authority to enforce the order, the trial court did not err in finding Johnson in contempt of court. Therefore, the Court of Appeals affirmed the judgment of the Holmes County Chancery Court.

Affirmed - 2019-CP-01087-COA (Oct. 5, 2021)

Opinion by Chief Judge Barnes

Hon. James Christopher Walker (Holmes County Chancery Court)

Pro se for Appellant - Katherine Barrett Riley & Brandi Ratliff Hamilton for Appellee

Briefed by [Rachel Gholson](#)

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LAIRY V. CHANDLER

CIVIL - LEGAL MALPRACTICE

CORPORATIONS - PROFESSIONAL LIMITED LIABILITY COMPANY - RESPONSIBILITY FOR OTHERS - Miss. Code Ann. § 79-29-920(1) states that when members or employees of a professional limited liability company are rendering professional services, one member or employee is not liable for another member's or employee's conduct unless the member or employee is in direct supervision and control of the other

TORTS - LEGAL MALPRACTICE - UNDERLYING CLAIM - In a legal malpractice claim, it is the plaintiff's burden to prove that the underlying claim would have succeeded if it was properly prosecuted

EVIDENCE - LEGAL MALPRACTICE - WORKERS' COMPENSATION - When a plaintiff claims legal malpractice based on an underlying workers' compensation claim, the plaintiff must have medical records to show the extent of the claimed disability

PUNITIVE DAMAGES - EXCESSIVE AWARDS - NET WORTH - A defendant must raise the issue of net worth during the punitive damages phase of trial or else it will be deemed waived

FACTS

In March 2008, Lori Chandler was injured while driving a forklift at her job. She visited a doctor and was restricted to light duty and advised to get physical therapy. After three days of light-duty work, Chandler was fired because her employer ran out of light-duty work. In August 2008, Chandler approached Turner & Associates, PLLC to file a worker's compensation claim. Chandler met with Carolyn T. Karriem, but the parties disputed whether Chandler also met with Angela T. Lairy. In February 2009, Chandler testified that she contacted Lairy who told her that she had to complete all her doctor visits before she could receive a settlement offer from the employer. Chandler did not contact the firm again until 2011 and began to ask whether her previous employer made a settlement offer. Nobody at Turner & Associates had filed the claim, and the two-year statute of limitations had already passed. When Karriem realized her error, she fabricated a \$25,000 settlement offer from Chandler's employer, which Chandler declined. Karriem continued to fabricate settlement offers in increasing amounts until Chandler accepted a fictitious \$100,000 settlement offer in June 2013. Karriem then created a fictitious settlement offer and agreement from a fictitious person to which Chandler signed. In December 2013, Chandler terminated Lairy to find another attorney. She contacted her former employer who informed her that no settlement offer was ever given. In February 2014, Chandler filed suit for legal malpractice

and compensatory and punitive damages against Lairy, Karriem, the estate of the then-managing attorney, and the law firm. The trial court awarded partial summary judgment to Chandler against Lairy, Karriem, the estate, and the law firm regarding liability. The parties then waived a jury trial, and the issues of compensatory damages and punitive damages was determined in a bench trial. The trial court found all defendants jointly and severally liable for \$50,000 in compensatory damages and \$100,000 in punitive damages for Karriem’s fraudulent behavior. Lairy, Karriem, the estate, and the law firm appealed.

ISSUES

Whether the trial court erred in (1) granting partial summary judgment against Lairy on the issue of liability; (2) finding Chandler sustained \$50,000 of compensatory damages; and (3) failing to consider Karriem’s net worth when awarding punitive damages.

HOLDING

(1) Because Lairy was not the managing partner at the firm during the statute of limitations period, the trial court erred by granting partial summary judgment against Lairy. (2) Because Chandler could only prove total or partial disability for at best two months in the underlying worker’s compensation claim, the trial court erred when it awarded compensatory damages for more than two years. (3) Because Karriem did not raise the issue of her net worth during the punitive damages stage of the trial, the issue was waived on appeal. Therefore, the Court of Appeals affirmed in part and reversed and remanded in part the judgment of the Clay County Circuit Court.

CONCURRENCES IN PART & DISSENTS IN PART

Presiding Judge Carlton argued that the \$50,000 compensatory damages award was supported by substantial evidence. In support of her position, she noted the Court should give deferential treatment to the trial court, Chandler could not continue physical therapy due to her pregnancy, Chandler was unable to receive medical services after her pregnancy because she was told to go through worker’s compensation procedures, and much of Chandler’s evidence was not challenged by the defense.

Judge McCarty argued that the awarded compensatory damages were warranted because of Karriem’s dishonesty and the important duty that lawyers owe their clients.

Affirmed in Part; Reversed & Remanded in Part - 2019-CA-01423-COA (Oct. 5, 2021)

Opinion by Presiding Judge Wilson - Concurrences in Part & Dissents in Part by Judge Carlton & Judge McCarty
Hon. Larry E. Roberts (Clay County Circuit Court)

Randolph Walker, Angela Turner Ford, & Barbara Lee Clark for Appellants - Charles M. Merkel Jr., Edward P. Connell Jr., Robert Alexander Carson III, John H. Cocke, & Corrie Schuler for Appellee

Briefed by [Christian Eaves](#)

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PRENDERGAST V. HARRISON CNTY. SHERIFF’S DEP’T

CIVIL - STATE BOARDS & AGENCIES

ADMINISTRATIVE LAW - APPELLATE REVIEW - COMMISSION CONCLUSIONS - A commission’s conclusions must remain undisturbed unless the commission’s order (1) is not supported by substantial evidence, (2) is arbitrary or capricious, or (3) violates one’s statutory rights

ADMINISTRATIVE LAW - STATE AGENCIES - APPEALS - The proper method of seeking review of a state agency board’s decision to file a writ of certiorari with the circuit court

FACTS

In August 2015, Troy Peterson won the election to become sheriff of the Harrison County Sheriff’s Department (“HCSD”). After Peterson won the election but before he took office, his predecessor made Carolyn Prendergast the permanent supervisor of the Department’s Communications Division. Prendergast met the qualifications on the job

listing, and the job opportunity increased her salary. Peterson’s transition team reevaluated the needs of the HCSD, which included reassigning several employees and changing salaries depending on each employee’s qualifications. Prendergast was one of at least twenty people reassigned to another division, which lowered her salary by over \$9,000. In January 2016, Prendergast appealed Peterson’s decision to the Civil Service Commission for the HCSD (“Commission”), arguing that her demotion was based on political reasons and not made in good faith. The Commission held a hearing and affirmed Peterson’s department-wide decisions. In February 2017, Prendergast appealed the Commission’s decisions to the Harrison County Circuit Court, which affirmed the Commission’s ruling in July 2020. Prendergast appealed.

ISSUES

Whether (1) the Commission’s finding was supported by substantial evidence and not arbitrary or capricious; (2) the Commission applied an erroneous legal standard; (3) the Commission erred by allowing Peterson to substitute his own will instead of the results of a competitive examination; (4) the Commission erred by refusing to pay the cost of preparing the transcript of the investigative hearing; (5) the Commission erred by deferring to its legal counsel to conduct the hearing; and (6) Prendergast should be awarded back pay for the wrongful employment action taken against her.

HOLDING

(1) Because Peterson’s decision for reassignment was made for good cause and not in bad faith, because at least twenty employees were also reassigned with salary adjustments due to budgetary restraints, because Prendergast failed to establish any First Amendment violations, and because her successor was more qualified for the position, the Commission’s finding was supported by substantial evidence, was not arbitrary and capricious, and did not violate a statutory right. (2) Because Prendergast failed to provide any alternative legal standard that was required, the issue was without merit, and the Commission did not apply an erroneous legal standard. (3) Because there was no evidence that Peterson was required to fill the position based on an examination, the Commission did not deprive Prendergast of her due process rights. (4) Because Prendergast presented no authority that required the HCSD to bear the cost of the hearing transcript alone, the Commission did not deprive Prendergast of her due process rights by refusing to pay the cost of preparing the transcript. (5) Because the Commission’s counsel assisted on procedural and evidentiary matters but did not assist on substantive matters during the hearing, the Commission did not deprive Prendergast of her constitutional due process rights. (6) Because there was substantial evidence that supported Peterson’s reassignment, and because the Commission’s decision was not arbitrary or capricious or contrary to law, Prendergast was not entitled to back pay. Therefore, the Court of Appeals affirmed the judgment of the Harrison County Circuit Court.

Affirmed - 2020-CC-00972-COA (Oct. 5, 2021)

Opinion by Judge McDonald

Hon. Lawrence Paul Bourgeois Jr. (Harrison County Circuit Court, First Judicial Dist.)

Joseph Richard Tramuta & Russell S. Gill for Appellant - Alben Norris Hopkins Jr. for Appellee

Briefed by [Allyson Avant](#)

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YORK V. ROOT

CIVIL - WRONGFUL DEATH

APPELLATE PROCEDURE - NOTICE OF APPEAL - EXTENSION - Pursuant to Miss. R. App. P. 4(g), an extension of time to appeal after the deadline has passed shall be granted only upon a showing of excusable neglect

APPELLATE PROCEDURE - EXCUSABLE NEGLIGENCE - BURDEN OF PROOF - The party requesting an extension of time to appeal bears the burden of establishing excusable neglect

APPELLATE PROCEDURE - EXCUSABLE NEGLIGENCE - RELEVANT FACTORS - The following factors may be used when determining excusable neglect: (1) the danger of prejudice to the non-movant, (2) the length of the delay and its potential impact on judicial proceedings, (3) the reason for the delay, including whether it was within the reasonable control of the movant, and (4) whether the movant acted in good faith

FACTS

After her husband's suicide, Victoria York sued Dr. Benjamin Root Jr. and Mississippi Neuropsychiatric Clinic for medical malpractice and wrongful death. On July 30, 2019, the circuit court granted Root's motion for summary judgment, imposing an August 29, 2019 deadline for York to file a notice of appeal. Ultimately, York failed to file a timely notice of appeal. On September 6, 2019, York's attorneys, Bradley Clanton and Laura McKee Zouein, contacted opposing counsel to request an out-of-time appeal, which was rejected. On September 18, 2019, York filed a motion for an extension of time to appeal and included an affidavit from Clanton arguing that his illness and subsequent hospitalization constituted excusable neglect, entitling York to an extension of time to appeal. Clanton's affidavit did not mention Zouein, and York's motion mentioned Zouein only in a footnote to announce that Zouein had stopped working on the case. Following a hearing, the circuit court determined that York failed to prove excusable neglect and denied her motion for an extension. York appealed.

ISSUES

Whether the circuit court erred in (1) determining that York failed to meet her burden of establishing excusable neglect and (2) denying York's motion for an extension of time to appeal.

HOLDING

(1) Because Zouein was active in the case and could have filed the notice of appeal in a timely manner, because Clanton filed other pleadings during the course of his illness, because York failed to submit an explanation as to why Zouein failed to file a notice of appeal, and because Zouein remained responsible for the case and could not unilaterally decide to end her involvement, the circuit court did not err in determining that York failed to establish excusable neglect. (2) Because there was substantial evidence that York failed to establish excusable neglect, the circuit court did not err in denying York's motion for an extension of time to appeal. Therefore, the Court of Appeals affirmed the judgment of the Madison County Circuit Court.

Affirmed - 2020-CA-00135-COA (Oct. 5, 2021)

Opinion by Presiding Judge Wilson

Hon. Steve S. Ratcliff III (Madison County Circuit Court)

Bradley S. Clanton & Megan Mariah Patrick for Appellant - Lynda Clower Carter & Ashley W. Gunn for Appellees

Briefed by [Mary Anna Brand](#)

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COURT OF APPEALS - POST-CONVICTION RELIEF

GREER V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - PROCEEDINGS - CHARACTERIZATION - A pleading cognizable under the Uniform Post-Conviction Collateral Relief Act is treated as a post-conviction relief motion and is controlled by the applicable procedural rules, regardless of how the pleading has been characterized

POST-CONVICTION RELIEF - PETITION - FILING - Miss. Code Ann. § 99-39-7 provides that the Supreme Court must grant permission to file a post-conviction relief motion if the petitioner's conviction has previously been affirmed on appeal

POST-CONVICTION RELIEF - PROCEEDINGS - JURISDICTION - If a petitioner does not request permission from the Supreme Court to file a post-conviction relief motion, the circuit court lacks jurisdiction over the motion

FACTS

In June 1999, Raymond Greer was convicted of capital rape and sentenced to serve a term of life imprisonment. This conviction and sentence were affirmed by the Court of Appeals. Greer subsequently filed a motion for post-conviction relief (“PCR”), which was dismissed by the circuit court. Again, the Court of Appeals affirmed the dismissal, finding that the Supreme Court had not granted Greer leave to proceed and therefore deprived the circuit court of jurisdiction. Later, Greer filed a motion for relief from judgment, which was denied by the circuit court. Once again, the Court of Appeals affirmed the denial. In 2017, Greer filed a petition for parole recommendation, which was denied by the circuit court. Green then appealed, which was dismissed by the Supreme Court. In 2018, Greer petitioned for a parole hearing and filed a Motion to Vacate, Set-Aside Illegal Sentence Pursuant to Error of Sentencing Under Wrong Statute, both of which were denied by the circuit court. Greer then filed an application for leave to proceed in the circuit court with a PCR motion, which was denied by the Supreme Court. In February 2020, Greer filed a Petition for Reclassification Hearing, requesting that the circuit court reclassify him as a non-violent offender to be eligible for parole. The circuit court denied Greer’s petition, stating that the court did not have authority to reclassify him and recommend his parole to the Mississippi Parole Board. Greer appealed.

ISSUE

Whether the circuit court had jurisdiction over Greer’s petition seeking to reclassify his capital-rape conviction as a non-violent offense.

HOLDING

Because Greer did not structure his reclassification petition as a PCR motion under the Uniform Post-Conviction Collateral Relief Act, and because Greer did not request the Supreme Court’s leave to proceed on his request as required to collaterally attack his sentence, the circuit court lacked jurisdiction over Greer’s petition. Further, it was immaterial that the circuit court incorrectly denied rather than dismissed Geer’s petition. Therefore, the Court of Appeals affirmed the judgment of the Hancock County Circuit Court.

Affirmed - 2020-CP-00317-COA (Oct. 5, 2021)

Opinion by Chief Judge Barnes

Hon. Roger T. Clark (Hancock County Circuit Court)

Pro se for Appellant - Michael Dewayne Wilson Sr. (Att’y Gen. Office) for Appellee

Briefed by [Abbey Bufkin](#)

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WILLIAMS V. STATE

CIVIL - POST-CONVICTION RELIEF

CRIMINAL PROCEDURE - DUTIES OF COUNSEL - GUILTY PLEAS - Counsel has a duty to fairly, even if that means pessimistically, inform the client of the likely outcome of a trial based upon the facts of the case; if counsel believes that it is in his client’s best interest to plead guilty, it is his duty to inform him of that fact

POST-CONVICTION RELIEF - EVIDENCE - CONTRADICTION TESTIMONY - Trial courts are permitted to rely upon an appellant’s sworn testimony from a plea hearing that contradicts assertions made in the motion for post-conviction relief

POST-CONVICTION RELIEF - INVOLUNTARY PLEAS - ERRONEOUS ADVICE - A plea is considered involuntary if the defendant’s attorney affirmatively misinformed him regarding his eligibility for earned time or trusty time, the attorney’s erroneous advice was not corrected, and the defendant pled guilty in reliance on the erroneous advice

FACTS

In November 2017, Mario Williams pled guilty to armed robbery and armed carjacking and was sentenced to twenty-five years on each count to be served concurrently. In November 2019, seeking to withdraw his guilty pleas and proceed to trial, Williams filed a petition for post-conviction collateral (“PCR”) relief. In June 2020, the circuit court summarily

denied and dismissed the petition, finding that Williams's pleas were entered voluntarily, knowingly, and intelligently and that he was correctly advised of the charges against him and the consequences of the guilty pleas. Williams appealed.

ISSUES

Whether Williams was (1) coerced by his attorney into pleading guilty and (2) misinformed by counsel as to the amount of time he would be required to serve, rendering his plea involuntary.

HOLDING

(1) Because Williams's attorney advising him of his possible sentence did not amount to coercion, and because Williams gave sworn testimony that he was not coerced by his counsel, Williams's claim that he was coerced into pleading guilty had no merit. (2) Because any misinformation that Williams might have received from his attorney as to parole and good-time eligibility was corrected by the guilty plea petition, Williams's claim that he was misinformed by his counsel had no merit. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

Affirmed - 2020-CP-00638-COA (Oct. 5, 2021)

Opinion by Judge Emfinger

Hon. Tomie T. Green (Hinds County Circuit Court, First Judicial Dist.)

Pro se for Appellant - Meta S. Copeland (Att'y Gen. Office) for Appellee

Briefed by [Cade Perry Barlow](#)

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