

MISSISSIPPI SUPREME COURT DECISIONS – OCTOBER 21, 2021***SUPREME COURT - POST-CONVICTION RELIEF*****COX V. STATE****CRIMINAL - DEATH PENALTY - POST CONVICTION**

CRIMINAL PROCEDURE - PRO SE REPRESENTATION - COMPETENCY - The competency hearing test is whether the trial judge received information which, objectively considered, should reasonably have raised a doubt about a defendant's competence and alerted him to the possibility that the defendant could neither understand the proceedings, appreciate their significance, nor rationally aid his attorney in his defense

CONSTITUTIONAL LAW - RIGHT TO REPRESENTATION - PRO SE REPRESENTATION - An unwilling defendant may not be compelled to accept the assistance of a lawyer and has a right to self-representation in a criminal trial

CRIMINAL PROCEDURE - PRO SE REPRESENTATION - COMPETENCY - A defendant representing himself must not suffer from a mental defect that would prevent him from making a rational choice in regard to his legal options

FACTS

In October 2016, the Capital Post-Conviction Relief Counsel ("CPCC") filed the first of seventeen open motions on Cox's behalf. CPCC filed a Motion for Leave to Proceed in the Trial Court with a Petition for Post-Conviction Relief and numerous motions for enlargement which were granted. The Supreme Court granted CPCC leave to amend Cox's petition for post-conviction relief. In 2018, Cox sent letters to the Court that stated that, if he could, he would dig up his deceased wife and kill her again. The letters also expressed his desire to waive all his appeals and be executed immediately. Later that same year, Cox filed a pro se motion, requesting that his appointed counsel be dismissed. He further stated that his Anabaptist religious beliefs would not allow him to have lawyers. The Clerk of the Court gave notice of the letters and motions to the State and CPCC. The State then filed a motion to remand this matter to the Union County Circuit Court to determine if Cox was willing and capable of waiving his appeals. CPCC filed a motion to withdraw Cox's pro se motions and waivers with an affidavit signed by Cox in support. Cox stated that he did not want to dismiss his attorneys or waive his rights to continue his post-conviction case. Cox claimed that he was depressed and had not been on any medication for several years. He urged CPCC to oppose the State's motion to remand. In November 2018, Cox filed another pro se motion of retraction. CPCC filed an amended petition for post-conviction relief, which was followed by another pro se motion to terminate his counsel. The volley of motions continued, and Cox filed a motion for "appeals prevention 'after the fact' of competency determined," asking that, if he was found competent, he would like to terminate his counsel and represent himself. Cox wrote a letter to CPCC forbidding them from hindering his execution in any way and attached an affidavit that claimed they were violating his constitutional rights by not allowing him to represent himself. At the competency hearing, Cox pled that he was competent and again urged the Court to dismiss his counsel. After several witnesses, including two experts, testified, the trial court determined that Cox was competent, capable of making decisions, did not suffer from any defect that could substantially affect his ability to make decisions, and understood that he was to be executed. Two weeks later, Cox filed a motion with the Supreme Court to terminate all appeals, to dismiss all counsel, and to proceed with execution. CPCC requested that counsel not be dismissed, arguing that this was a case of first impression and that counsel was needed to ensure proper representation on this first impression issue. CPCC filed another motion for appeal that the State moved to dismiss on account of Cox's competence. Cox responded by filing another pro se motion to terminate counsel and prohibit CPCC

from filing any more motions. The Court ordered CPCC and the State to respond. CPCC responded with previous arguments, and the State argued that Cox's motion should be granted.

ISSUE

Whether Cox was competent to waive all present and future appeals and did in fact knowingly and voluntarily waive such appeals.

HOLDING

Because Cox repeatedly articulated a desire to dismiss all counsel and to end all challenges to his conviction and death sentence, because Cox repeatedly expressed that he did not want appointed counsel to take any actions contrary to his instructions, and because Cox had the mental capacity to appreciate his position and make rational choices regarding his defense, Cox was competent to and did in fact waive all of his present and future appeals, and, thus, was not entitled to post-conviction relief. Therefore, the Supreme Court affirmed the judgment of the Union County Circuit Court regarding Cox's competency to dismiss his appeals. The Court denied the appeal filed by CPCC and granted Cox's pro se motions to dismiss his appeals and set his execution date. Further, the Court denied Cox's motion to dismiss his counsel, keeping CPCC in an advisory role through Cox's execution with no standing to proceed on Cox's behalf and pursue hearings further in contravention of Cox's decision.

Post-Conviction Relief Denied - 2015-DR-00978-SCT (Oct. 21, 2021)

En Banc Opinion by Chief Justice Randolph

Hon. Kent E. Smith (Union County Circuit Court)

Krissy C. Nobile, Benjamin H. McGee III, & Treasure R. Tyson (Mississippi Office of Capital Post-Conviction Counsel) for Appellant - Ladonna C. Holland (Att'y Gen. Office) for Appellee

Consolidated with:

Affirmed - 2021-CA-00515-SCT (Oct. 21, 2021)

Hon. Kent E. Smith (Union County Circuit Court)

Krissy C. Nobile, Benjamin H. McGee III, Treasure R. Tyson, & Brandon Kyle Malone (Mississippi Office of Capital Post-Conviction Counsel) for Appellant - Ladonna C. Holland & Brad Alan Smith (Att'y Gen. Office) for Appellee

Briefed by [J. Evan Thomas](#)

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SUPREME COURT - CIVIL CASES

SELF V. MITCHELL

CIVIL - ELECTION CONTEST

ELECTION LAW - SPECIAL ELECTIONS - VOTES - Special elections will be required only when (1) enough illegal votes were cast for the contestee to change the result of the election or (2) so many votes are disqualified that the will of the voters is impossible to discern

ELECTION LAW - TECHNICAL VIOLATIONS - VITIATION - In the absence of fraud or intentional wrongdoing or some extreme radical departure by election officials, technical violations of law will not vitiate an election

FACTS

On November 5, 2019, Wayne Self lost the election for the Leflore County District Four Supervisor to Eric Mitchell. The election results were then certified by the Leflore County Election Commission. Self requested a new election, alleging various violations of the Mississippi Election Code. One of Self's grievances was that the electronic votes on a voting machine in the Rising Sun Precinct were counted even though the machine malfunctioned when it attempted to retrieve the final count tape. Because of this, the results tape matched a different serial number than the original voting machine. Self alleged that the voting machine in question had enough illegal votes to change the results of the election.

After a special circuit judge was appointed to preside over the case, the trial court invalidated 167 absentee ballots, which accounted for ten and eight tenths' percent of the total votes cast. After the final vote was tallied, the trial court found that a new election was not warranted and granted summary judgment for Mitchell. Self appealed.

ISSUE

Whether the trial court erred by not excluding the electronic votes in the Rising Sun Precinct on an unregistered voting machine.

HOLDING

Because there was no evidence adduced at trial that the election officials failed to handle the votes cast on the contested electronic voting equipment with great care, and because only ten and eight tenths' percent of the votes were invalidated by the court, which did not affect the result of the election, the trial court did not err in including the electronic votes from the Rising Sun Precinct. Therefore, the Supreme Court affirmed the judgment of the Leflore County Circuit Court.

Affirmed - 2020-EC-00427-SCT (Oct. 21, 2021)

Opinion by Justice Beam

Hon. Jeff Weill Sr. (Leflore County Circuit Court)

Margarette Lafaye Meeks for Appellant - Willie Griffin for Appellee

Briefed by [Mariel Sochner](#)

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SUPREME COURT - CRIMINAL CASES

FICKLIN V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - LARCENY - ELEMENTS - Under Miss. Code Ann. § 97-17-42, any person who shall, willfully and without authority, take possession of or take away a motor vehicle of any value belonging to another, with intent to either permanently or temporarily convert it or to permanently or temporarily deprive the owner of possession or ownership, and any person who knowingly shall aid and abet in the taking possession or taking away of the motor vehicle, shall be guilty of larceny and shall be punished based on the value of the motor vehicle involved according to the schedule in Miss. Code Ann. § 97-17-41

APPELLATE PROCEDURE - ASSISTANCE OF COUNSEL - LINDSEY BRIEFS - Under *Lindsey*, appellate counsel must (1) file and serve a brief in compliance with Miss. R. App. P. 28(a)(1)-(4), (7); (2) certify in the brief that there are no arguable issues supporting the client's appeal, and that the appellate counsel has reached this conclusion after scouring the record thoroughly; and (3) send a copy of the brief to the defendant, inform the defendant that counsel could find no arguable issues in the record, and advise the defendant of his or her right to file a pro se brief

FACTS

In July 2018, a sergeant with the Philadelphia Police Department received a dispatch call concerning a possible switched tag. Bobby Pattillo, an investigator for the department, was assigned the case. After investigation, the vehicle associated with the tag was found at a Canton towing service. Upon inspection, James Ficklin's driver's license was found inside the vehicle. Pattillo traveled to the Madison County Sheriff's Department jail to speak with Ficklin who was being held there on unrelated charges. Ficklin was advised of his rights and signed a *Miranda* waiver form. Ficklin confessed in writing to Pattillo that he came across the running vehicle with the keys in it and drove it to a few locations. At trial, however, Ficklin changed his story and denied ever driving the vehicle. Ficklin moved to suppress his confessions, but the trial court denied his motion, finding his confessions were voluntary. A jury convicted Ficklin for taking away a motor vehicle under Miss. Code Ann. §§ 97-17-42 and -41(2), and the trial court sentenced him to serve eight years in

the Mississippi Department of Corrections. The trial court denied Ficklin's motion for a new trial or judgment notwithstanding the verdict. Ficklin appealed.

ISSUE

Whether there were any arguable issues on appeal that warranted a supplemental briefing.

HOLDING

Because Ficklin's appellate counsel filed a brief in compliance with *Lindsey* asserting that Ficklin's case presented no arguable issues for appeal, and because the Court permitted Ficklin extra time to submit a pro se briefing but he never did so, there were no arguable issues in the record that warranted supplemental briefing. Therefore, the Supreme Court affirmed the judgment of the Neshoba County Circuit Court.

Affirmed - 2020-KA-01191-SCT (Oct. 21, 2021)

Opinion by Justice Chamberlin

Hon. Larry E. Roberts (Neshoba County Circuit Court)

Justin T. Cook & George T. Holmes (Pub. Def. Office) for Appellant - Ashley L. Sulser & Brittney S. Eakins (Att'y Gen. Office) for Appellee

Briefed by [Regan Monk](#)

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WRIGHT V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - INVESTIGATORY SEARCH - REASONABLE SUSPICION - An informant's tip may provide reasonable suspicion to make an investigatory stop if it is accompanied by some indication of reliability; reliability may be shown from the officer's independent investigation of the informant's information

CRIMINAL LAW - REASONABLE SUSPICION - TRANSFER - Reasonable suspicion and probable cause can be transferred from officer to officer and police department to police department

CRIMINAL LAW - FELON IN POSSESSION - KNIVES - Miss. Code Ann. § 97-37-5(1) prohibits convicted felons from possessing any bowie knife, dirk knife, butcher knife, or switchblade knife

CRIMINAL LAW - FELON IN POSSESSION - DIRK KNIFE - To qualify as a dirk knife, a weapon must: (1) have a blade with at least one sharpened edge which tapers to a point and (2) be designed primarily for use as a stabbing weapon

FACTS

Officer John Bolton received a tip that there was an individual with a gun at an apartment complex who had previously trespassed on the same premises. Bolton asked police department dispatch to send an officer to the scene. At the scene, Lieutenant Aaron Grob spoke with several individuals who had seen the man, later identified as Senque Wright. After the individuals pointed out Wright, Grob approached Wright and told him to turn around and place his hands on the wall. During a subsequent pat down, a knife in Wright's pocket pierced Grob, and Grob found a packet of a crystalized substance he believed to be methamphetamine. Wright was arrested for possessing a controlled substance and charged with methamphetamine possession and felon in the possession of a prohibited weapon. The jury found from the evidence that Wright was guilty of felon in possession of a dirk knife. Wright appealed.

ISSUES

Whether the (1) trial court erred by denying Wright's motion to suppress and (2) State presented sufficient evidence to sustain the jury's verdict.

HOLDING

(1) Because the informant alerted Bolton of a man with a gun at the apartments where Wright had trespassed before, and because witnesses in the common area of the apartments corroborated the informant's information and directed

Grob to Wright, Grob had the reasonable suspicion necessary to conduct an investigatory search, and, therefore, the trial court did not err in denying Wright's motion to suppress. (2) Because a reasonable juror could have found that the knife was a dirk knife under Miss. Code Ann. § 97-37-5(1), there was sufficient evidence to sustain the jury's verdict. Therefore, the Supreme Court affirmed the judgment of the Pearl River County Circuit Court.

DISSENT

Presiding Justice King argued that the evidence of the knife should have been suppressed because the tip from the informant was uncorroborated, making it insufficiently reliable to support reasonable suspicion. Because Bolton never informed Grob of the information received from the tip, Grob had no reasonable suspicion to conduct the investigatory stop. He argued that because there was no evidence in the record showing that the knife was primarily designed for stabbing, it was not a prohibited dirk knife under Miss. Code Ann. § 97-37-5(1).

Affirmed - 2020-KA-00505-SCT (Oct. 21, 2021)

Opinion by Justice Coleman - Dissent by Presiding Justice King

Hon. Claiborne McDonald (Pearl River County Circuit Court)

Hunter N. Aikens & George T. Holmes (Pub. Def. Office) for Appellant - Barbara Byrd (Att'y Gen. Office) for Appellee

Briefed by [Carter Babaz](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – OCTOBER 19, 2021

COURT OF APPEALS - CIVIL CASES

CLARK V. MIDDLEBROOKS

CIVIL - STATE BOARDS & AGENCIES

INMATE DISCIPLINE - JUDICIAL REVIEW - TIMELINESS - Pursuant to Miss. Code Ann. § 47-4-807, an aggrieved inmate must seek judicial review within thirty days of receiving a first-step response form

JUDICIAL REVIEW - TIMELINESS - REBUTTAL - An attempt to seek judicial review is adequate to rebut a challenge to timeliness

APPELLATE PROCEDURE - NOTICE - RECIPIENTS - Unif. Civ. R. Cir. & Cnty. Ct. P. 504 requires written notice of appeal to be filed with the circuit court clerk and a copy of the notice to be provided to all parties in addition to the lower court whose order is being appealed

FACTS

Terrence Clark, an inmate in the custody of the Mississippi Department of Corrections ("MDOC"), received a rule violation report after his urine sample tested positive for THC. He was found guilty of the violation at a disciplinary hearing and was later denied relief on appeal. On September 16, 2019, Warden Scott Middlebrooks signed the first-step response form denying relief, and Clark acknowledged receipt of the decision three days later. The form advised Clark that he was eligible to seek judicial review within thirty days of his receipt of the first step response form, which he proceeded to do. Although Clark mailed his motion for judicial review within thirty days of receiving the first-step response form, the circuit clerk did not accept it for filing because Clark failed to include the filing fee. On November 15, 2019, the circuit clerk received the necessary filing fee and thereafter stamped the petition filed; however, the thirty-day window for timeliness had passed. Additionally, the certificate of service attached to the petition only provided notice to the circuit clerk and district attorney, and the certificate of service attached to the notice of appeal included notice only to the circuit clerk, not Middlebrooks or the MDOC. The trial court found that it lacked jurisdiction to consider the motion because the petition had not been timely filed. Clark appealed.

ISSUES

Whether (1) Clark successfully sought judicial review within thirty days of receiving the first-step response form and (2) the trial court had jurisdiction over the appeal.

HOLDING

(1) Because Clark mailed his petition to the circuit clerk within thirty days of receiving his first-step response form, he timely sought judicial review. (2) Because Clark did not provide notice of his appeal to the MDOC, the trial court lacked jurisdiction over the appeal. Therefore, the Court of Appeals affirmed the judgment of the Wilkinson County Circuit Court.

SPECIAL CONCURRENCE

Judge Westbrook advocated for the Supreme Court to set a definitive rule as to what is considered a good-faith attempt by incarcerated pro se litigants to provide adequate notice and service or process to avoid cases such as the one at issue. Looking specifically at the facts of this case and precedent at hand, she argued that, because Clark failed to provide actual notice to the MDOC, his good faith attempt to provide notice still prohibited a grant of jurisdiction to the trial court.

DISSENT

Judge McCarty argued that because Clark, as a *pro se* inmate, made a good-faith effort to provide notice to the MDOC, jurisdiction was conferred to the trial court. He further contended that the trial court violated Clark's right to due process because it dismissed his appeal without providing him with notice and an opportunity to cure his deficiency.

Affirmed - 2020-CP-00136-COA (Oct. 19, 2021)

Opinion by Judge Emfinger - Special Concurrence by Judge Westbrook - Dissent by Judge McCarty

Hon. Lillie Blackmon Sanders (Wilkinson County Circuit Court)

Pro se for Appellant - No Appearance for Appellee

Briefed by [Katharine Van Pelt](#)

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THORNHILL V. WALKER-HILL ENV'T

CIVIL - TORTS-OTHER THAN PERSONAL INJURY & PROPERTY DAMAGE

ADMINISTRATIVE LAW - WORKERS' COMPENSATION - EXHAUSTION OF ADMINISTRATIVE REMEDIES - The Mississippi Workers' Compensation Commission has exclusive jurisdiction to determine in the first instance whether the claimant is entitled to workers' compensation benefits; thus, the claimant must exhaust administrative remedies before instituting an action for the alleged bad faith denial of those benefits

TORTS - WORKERS' COMPENSATION - COMPROMISE SETTLEMENTS - Miss. Code Ann. § 71-3-29 provides that the rules of the Mississippi Workers' Compensation Commission shall govern compromise settlements where the prescribed schedules are not applicable and which, in its discretion, may be made in cases where it is not possible to determine the exact extent of disability, as for example in certain injuries to the back or head

TORTS - WORKERS' COMPENSATION - BAD-FAITH CLAIMS - The elements of an action for bad faith for a workers' compensation carrier's failure to reimburse claimant are: (1) an insurance contract between the employer and the carrier; (2) the carrier's denial of a compensable claim without an arguable or legitimate reason; and (3) the denial of which rises to the level of an independent tort

CIVIL PROCEDURE - WORKERS' COMPENSATION - SUBJECT MATTER JURISDICTION - When an action against an employer and workers' compensation carrier alleges an intentional tort in bad faith failure to pay benefits, the action is within subject matter jurisdiction of circuit court

FACTS

On July 5, 2017, Jeremy Thornhill injured his back while working at Walker-Hill Environmental ("the Employer"). He allegedly reported the injury to his supervisor the following day. On July 7, 2017, Thornhill provided a urine sample for

drug testing at the request of the Employer. The specimen was cold, and Thornhill was unable to provide a second sample. After several days of missed work, he was fired for refusing to submit to a drug test. Thornhill sought medical care that resulted in a surgical recommendation for his back injury. In October 2017, he filed a petition to controvert with the Mississippi Workers' Compensation Commission ("the Commission"). Although the Employer and Zurich American Insurance Company of Illinois, its insurance carrier, ("the Carrier") (collectively, "the Employer/Carrier") filed an answer admitting that Thornhill's back injury stemmed from his employment and that he had provided proper notice of the injury, his benefits were denied because he refused drug testing. In April 2018, the Employer/Carrier filed an amended answer denying that Thornhill had suffered a work-related injury and that he had provided notice of an injury. After performing an independent medical examination, Dr. Robert McGuire concluded that Thornhill needed surgical intervention to reach maximum medical improvement. In July 2019, Thornhill and the Employer/Carrier filed a joint application pursuant to Miss. Code Ann. § 71-3-29 for the Commission to approve their compromise settlement. The Employer/Carrier agreed to pay Thornhill \$145,000 while maintaining that he did not sustain a compensable injury. The Commission approved the settlement, finding that it was in Thornhill's best interest, and dismissed the case with prejudice. There were no additional pending matters before the Commission at that time. Thornhill signed a general release drafted by the Employer/Carrier where he and the Employer/Carrier agreed that administrative remedies had been exhausted. Additionally, he reserved the right to bring a bad faith claim against the Employer/Carrier. In January 2020, Thornhill filed suit against the Employer/Carrier in the Marion County Circuit Court, alleging bad faith denial of his workers' compensation claim. The Employer/Carrier filed a motion to dismiss, arguing that Thornhill had not exhausted his administrative remedies and that the circuit court did not have jurisdiction because the Commission did not find that he had a compensable claim or was entitled to benefits. The circuit court granted the motion to dismiss, finding that Thornhill must obtain a ruling from the Commission that he is entitled to the benefits at issue before filing a bad faith denial of workers' compensation benefits. Thornhill appealed.

ISSUE

Whether the circuit court erred by granting the Employer/Carrier's motion to dismiss.

HOLDING

Because Thornhill's administrative remedies were exhausted after the Commission approved the compromise settlement without any additional pending matters, and because the circuit court had jurisdiction to hear Thornhill's bad faith claim due to the lack of a pending matter that could result in an inconsistent jury verdict or judgment, the circuit court erred by granting the Employer/Carrier's motion to dismiss. Therefore, the Court of Appeals reversed and remanded the judgment of the Marion County Circuit Court.

Reversed & Remanded - 2020-CA-01181-COA (Oct. 19, 2021)

Opinion by Presiding Judge Wilson

Hon. Anthony Alan Mazingo (Marion County Circuit Court)

Raynetra Lashell Gustavis, Rogen K. Chhabra, & Darryl Moses Gibbs for Appellant - Olivia Yen Truong, Doris Theresa Bobadilla, & Nathan L. Burrow for Appellees

Briefed by [Idena Allen](#)

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WALTERS INVS., INC. V. SPELL

CIVIL - CONTRACT

CIVIL PROCEDURE - SUMMARY JUDGMENT - GENUINE DISPUTES - A grant of summary judgement is proper if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law; a dispute is genuine where the evidence is such that a reasonable jury could return a verdict for the nonmovant

CONTRACTS - INTERPRETATION - AMBIGUITY - When interpreting a contract, the court must first determine if the contract is ambiguous by reviewing the express wording of the four corners of the contract; if the contract is unambiguous, the intention of the contracting parties should be gleaned solely from the wording of the contract

CONTRACTS - IMPLIED COVENANT OF GOOD FAITH & FAIR DEALING - APPLICABILITY - All contracts contain an implied covenant of good faith and fair dealing in performance and enforcement; the covenant holds that neither party will do anything which injures the right of the other to receive the benefits of the agreement

CONTRACTS - IMPLIED COVENANT OF GOOD FAITH & FAIR DEALING - GOOD FAITH - Good faith is the faithfulness of an agreed purpose between two parties, a purpose which is consistent with justified expectations of the other party; the breach of good faith is bad faith characterized by some conduct which violates standards of decency, fairness, or reasonableness

FACTS

Walters Investments, Inc. (“Walters”) operated a Little Caesar Enterprises Inc. (“Little Caesar”) franchise (the “Franchise”). To become a Little Caesar franchisee, Walters had to sign the Little Caesar’s franchise agreement (the “Franchise Agreement”), which contained provisions requiring that (1) all franchisees must refurbish and remodel franchised restaurants at least once every five years at the franchisee’s expense (the “Remodel Obligation”) and (2) in the case of a transfer of the Franchise, the transferor shall remain liable for all obligations in connection with the Franchise that arose prior to the effective date of such transfer (the “Transfer Provision”). In 2016, Walters entered into transfer negotiations with Robert Spell, and, in October of that year, the parties signed a purchase agreement to transfer the Franchise to Spell (the “Purchase Agreement”). However, the effectiveness of the Purchase Agreement and transfer was subject to Little Caesar’s approval of Spell as a franchisee, and, during the preapproval process, a dispute arose between Walters and Spell regarding the Remodel Obligation, which was to be completed by December 2017. Each party asserted that under the relevant agreements, the other was solely responsible for the Remodel Obligation and the associated out-of-pocket cost. After failing to reach an agreement, Walters filed a complaint against Spell in April 2017 for breach of contract, asserting that the Purchase Agreement had transferred the Remodel Obligation to Spell and that Spell had breached the Purchase Agreement by refusing to pay for the remodel. In May 2017, Spell moved to dismiss the complaint for failure to state a claim, arguing that Walters’s duties under the Remodel Obligation had arisen prior to the execution of the Purchase Agreement and therefore remained solely Walters’s responsibility under the express terms of the Transfer Provision and the Purchase Agreement. Nevertheless, the chancellor denied Spell’s motion to dismiss. During discovery, a Little Caesar representative testified that Walters had been notified in 2015 regarding the upcoming remodel; however, Walters offered hearsay testimony that Spell likewise knew of the impending remodel prior to his signing of the Purchase Agreement. The Little Caesar representative and Spell both refuted this evidence with testimony that Spell did not learn of the Remodel Obligation until a meeting in December 2016, after which Spell had offered to move forward with the transfer of the Franchise if Walters agreed to split the cost of the Remodel Obligation with him, however, Walters never responded to that offer. Following discovery, Spell moved for summary judgment. The chancellor granted the motion, finding that the Purchase Agreement and Franchise Agreement were unambiguous and that no genuine issue of material fact existed. Walters filed a motion to reconsider the grant of summary judgment which was denied. Walters appealed.

ISSUES

Whether the chancellor erred by (1) resolving disputed facts in Spell’s favor; (2) misconstruing the terms of the Purchase Agreement; and (3) requiring Walters to prove that Spell had breached the implied covenant of good faith and fair dealing.

HOLDING

(1) Because there was no competent record evidence to create a genuine dispute of fact regarding whether Spell knew about the Remodel Obligation prior to signing the Purchase Agreement, the chancellor did not err by resolving disputed facts in Spell’s favor. (2) Because the four corners of the parties’ contract contained no ambiguity as to which party bore the responsibility for the Remodel Obligation, the chancellor did not err by misconstruing the terms of the Purchase Agreement. (3) Because the parties’ contract clearly provided that Spell had no duty to assume the Remodel Obligation, because Spell was justified in his expectation that the duty to remodel remained solely Walters’s responsibility, and because Spell was nonetheless willing to voluntarily share in the financial burden of the remodel cost with Walters, the

chancellor did not err by requiring Walters to prove that Spell had breached the implied covenant of good faith and fair dealing. Therefore, the Court of Appeals affirmed the judgment of the Madison County Chancery Court.

Affirmed - 2020-CA-00698-COA (Oct. 19, 2021)

Opinion by Judge Smith

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

David Ringer & Brenton Matthew Carter for Appellant - Mark C. Carroll, Kelly McReynolds McLeod, & Mary Clark Joyner for Appellee

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

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