

**MISSISSIPPI SUPREME COURT DECISIONS – DECEMBER 2, 2021*****SUPREME COURT - CIVIL CASES*****STEWART V. MISS. BAR****CIVIL - BAR MATTERS**

**BAR MATTERS - PETITION FOR REINSTATEMENT - REQUIREMENTS** - Pursuant to Miss. R. Discipline 12, no person disbarred or suspended for a period of six months or longer shall be reinstated to the privilege of practicing law except upon petition to the Court; reinstatement to the practice of law following any discipline shall be only upon proof of compliance with any such sanctions

**BAR MATTERS - PETITION FOR REINSTATEMENT - BURDEN OF PROOF** - To demonstrate entitlement to reinstatement, the petitioner must: (1) state the cause or causes for suspension or disbarment; (2) give the name and current address of all persons, parties, firms or legal entities who suffered pecuniary loss due to the improper conduct; (3) make full amends and restitution; (4) show that he has the necessary moral character for the practice of law; and (5) demonstrate the requisite legal education to be reinstated to the privilege of practicing law

**FACTS**

Peter A.C. Stewart III graduated from the University of Mississippi School of Law in 1992 and was admitted to practice law in Mississippi in 1997. In 2007, Stewart was suspended from practice by the Supreme Court following his sixth violation of the Mississippi Rules of Professional Conduct and his failure to appear at his disciplinary hearing. Stewart was suspended from practice for one year by the Court and thereafter until such time as he passed the Multi-State Professional Responsibility Exam. Following his suspension, Stewart closed his practice and sought the help of the Mississippi Bar's Lawyer and Judges Assistance Program ("LJAP"). Stewart executed a five-year substance-abuse monitoring contract with LJAP and attached the contract to his petition for reinstatement. In compliance with the Court's 2007 opinion, Stewart apologized to former clients, reimbursed the Bar and paid the filing fees for this case, and has volunteered with civic and charitable organizations. Thereafter, Stewart petitioned for reinstatement.

**ISSUE**

Whether Stewart satisfied the requirements to be reinstated to the practice of law.

**HOLDING**

Because Stewart communicated his apologies to his former client that suffered pecuniary loss, because Stewart reimbursed the Bar for all expenses incurred in the proceedings and paid the filing fees for the case at issue, because Stewart showed that he had rehabilitated himself and had the requisite moral character sufficient for reinstatement, and because there was sufficient evidence to demonstrate that Stewart had the requisite legal education to be reinstated, Stewart satisfied the requirements of Miss. R. Discipline 12 for reinstatement. Therefore, the Supreme Court granted Stewart's reinstatement.

**Reinstatement Granted - 2020-BR-01310-SCT (Dec. 2, 2021)**

En Banc Opinion by Justice Ishee

Mark A. Nelson for Petitioner - Adam Bradley Kilgore & Melissa Selman Scott for Respondent

Briefed by [Marianna Nichols](#)

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## SUPREME COURT - ORDERS

### IN RE: COMM'N ON MANDATORY CONTINUING LEGAL EDUC.

#### EMERGENCY ADMINISTRATIVE ORDER

#### ORDER

This Emergency Administrative Order by the Supreme Court grants the petition of the Commission of Continued Legal Education (“the Commission”) and temporarily modifies Rule 3 of the Rules and Regulations of Mandatory Continued Legal Education. Due to the ongoing COVID-19 pandemic, for the 2021-2022 reporting year, the in-person requirement for Continued Legal Education (“CLE”) courses shall be waived, and attorneys will have the option to earn CLE credits through online courses, via webinar, or in-person. Additionally, Rule 3(b) has been temporarily amended to allow newly licensed attorneys to complete the CLE-required new lawyer program online, by webinar, or in-person. Furthermore, newly licensed lawyers now have until July 31, 2022, to complete the new lawyer program. These CLE courses must still adhere to the remaining provisions outlined in Rules 3 and 4. Any attorney who cannot satisfy his or her CLE requirements may ask the Commission to grant a hardship exemption, a time extension, or both, if applicable.

Ordered - 2021-AD-00001-SCT & 89-R-99011-SCT (Nov. 17, 2021)

En Banc Order by Chief Justice Randolph

Briefed by [John McDonald](#)

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## MISSISSIPPI COURT OF APPEALS DECISIONS – NOVEMBER 30, 2021

### COURT OF APPEALS - CIVIL CASES

#### EMBREY V. YOUNG

#### CIVIL - DOMESTIC RELATIONS

**FAMILY LAW - CUSTODY - GUARDIAN AD LITEM** - A chancellor is required to appoint a guardian ad litem, whether the parties requested a guardian ad litem or not, only if there is a sufficient factual basis to support a legitimate claim of abuse or neglect

**FAMILY LAW - CUSTODY - ALBRIGHT FACTORS** - The *Albright* factors are as follows: (1) the child’s age, health, and sex; (2) which parent had the continuity of care before the separation; (3) which parent has the best parenting skills; (4) which parent has the willingness and capacity to provide the primary child care; (5) each parent’s employment and its responsibilities; (6) each parent’s physical and mental health and age; (7) the emotional ties between the child and each parent; (8) each parent’s moral fitness; (9) the child’s home, school, and community record; (10) the child’s preference, if the child is over twelve years old; (11) the stability of the home environment; and (12) any other relevant equitable factor

**FAMILY LAW - CUSTODY - ALBRIGHT ANALYSIS** - The chancellor is required to address and consider the *Albright* factors in determining what custody arrangement would be in the child’s best interest

#### FACTS

Jonathan Embrey and Maria Young began dating in 2012. A few months after the couple moved into Jonathan’s grandmother’s house, Maria became pregnant with their first child, D.M.E. Maria claimed Jonathan became verbally and physically abusive as the years continued. In 2018, Maria became pregnant with their second child, N.A.E. She stopped working as the pregnancy progressed. Maria and Jonathan separated in November 2018, and Maria and D.M.E. moved in with her family. On November 9, 2018, Jonathan filed a petition for legitimation, child custody, and other

relief, arguing that he should be awarded both temporary and permanent legal custody, physical custody, and control of D.M.E. and the unborn child. He sought visitation periods, division of all medical expenses, federal and state tax deductions for both children, and an emergency hearing due to D.M.E. missing school. The chancery court entered a temporary order in November 2018, giving both parents joint and legal custody of D.M.E. until a final order was entered. The temporary order also specified time periods for physical custody, as well as plans for the birth of the second child. Maria gave birth to N.A.E. in December 2018. Because the couple could not agree on visitation for N.A.E., the court entered a “Holiday Order,” specifying Jonathan’s visitation. The court entered another temporary order in January 2019, ordering the couple to continue joint legal and joint physical care, custody, and control of the minor children. Later, in 2019, Jonathan told Maria that D.M.E. had been sexually abused by his cousin on Maria’s side of the family, however, Jonathan could not provide a specific date for the abuse. The parties agreed to take D.M.E. to see a therapist over the alleged abuse. D.M.E. saw a therapist, Ashley Schachterle, fifteen times from May to September 2019. Schachterle concluded that the sexual-abuse claims were unsubstantiated. In October 2020, Maria filed a response and counter-petition, requesting Jonathan’s petition to be dismissed and she be awarded attorney’s fees. She also requested permanent physical custody and joint legal custody of both minor children and that Jonathan be ordered to pay their educational, extracurricular, and child-care expenses, as well as any medical, orthodontic, or dental expenses not covered by insurance. The chancery court tried the matter in December 2020. Schachterle testified for Maria, stating her conclusions about the unsubstantiated sexual-abuse claims, as well as that D.M.E. told the therapist that Jonathan coached him on what to say during sessions about the alleged abuse. CPS investigated these claims, found them to be unsubstantiated, and closed the case. Maria attended co-parenting therapy sessions after Schachterle advised both parties to do so, but Jonathan did not attend the sessions. Schachterle testified that she believed D.M.E. would benefit from the structured routine of primarily living with one parent due to the difficult transition he had to make each week. During trial, Maria talked about the sexual abuse allegations, stating that D.M.E. never told her and that CPS concluded that the claims were unsubstantiated. Maria stated that she was a self-employed artist, making \$500 per month, until she moved in with her fiancé, Kyle Crenshaw, after October 2020 and has been a stay-at-home mother since. Jonathan admitted to making derogatory comments about Maria in front of the children, though he apologized. Jonathan also testified to the schedule he had for D.M.E. while in his care, as well as to his monthly income of \$1,618.50. Maria called multiple witnesses, including her aunt Lisa Walker, who testified that D.M.E. was never alone with the cousin, her child, who allegedly sexually abused him. Kyle, Maria’s husband, testified to her caring nature as a mother and his financial status since he provides for Maria and the children. The chancellor found Jonathan to be the natural and biological father of both children. The parties were awarded joint legal custody of the minor children, and Maria was awarded sole physical custody. The court established a visitation schedule for Jonathan, as well as the child support amount and specifics for claiming the children on the taxes for each party. Jonathan appealed.

## ISSUES

Whether the chancery court erred in (1) failing to appoint a guardian ad litem (“GAL”) and (2) awarding custody of the minor children to Maria.

## HOLDING

(1) Because it is the chancellor’s discretion to appoint a GAL based on a legitimate issue of neglect or abuse, because Jonathan did not move for an appointment of a GAL, and because Jonathan did not produce sufficient, specific evidence to support the sexual abuse allegations, the chancery court did not err in not appointing a GAL. (2) Because Maria was home all day to tend to the child, because Johnathan failed to present evidence to rebut the presumption that the child’s young age favored Maria, because evidence supported the court’s findings that Maria worked less and had a flexible schedule, because the chancellor found that the moral-fitness factor was neutral and she did not hear any testimony that either parent was morally unfit, because the parenting-skills factor favored Maria because of the derogatory language John used against Maria in the presence of the children, because Maria attended parenting therapy but John did not, because there was no requirement that the chancellor specifically address the question of siblings and custody, and because Johnathan did not raise the argument to the chancery court, the chancery court did not abuse its discretion in its analysis of the *Albright* factors and its award of sole physical custody of the minor children to Maria. Therefore, the Court of Appeals affirmed the judgment of the Tate County Chancery Court.

**Affirmed - 2021-CA-00091-COA (Nov. 30, 2021)**

Opinion by Judge McDonald

Hon. Vicki B. Daniels (Tate County Chancery Court)  
Jerry Wesley Hisaw for Appellant - *Pro Se* for Appellee  
Briefed by [Marlee Russell](#)

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## MORNINGSTAR V. PERKINS LAW FIRM

### CIVIL - TORTS-OTHER THAN PERSONAL INJURY & PROPERTY DAMAGE

**APPELLATE PROCEDURE - BOND - TIMELINESS** - Pursuant to Miss. Code Ann. § 11-51-79, appeals from the county court shall be taken and bond given within thirty days from the date of the entry of the final judgment or decree on the minutes of the court

**APPELLATE PROCEDURE - BOND - JURISDICTION** - A cost bond on appeal is jurisdictional because it is a statutory requirement for appeal

#### **FACTS**

In 2014, Felecia Perkins and Jessica Ayers of Perkins Law Firm provided legal services to Akecheta Morningstar in a civil matter. Subsequently, Morningstar filed a complaint against the Perkins Law Firm, seeking monetary damages based on Perkins and Ayer's prior representation. Perkins and Ayers then filed a motion to dismiss Morningstar's complaint. After a hearing, the county court dismissed the matter, denying Morningstar's request for monetary sanctions. On February 21, 2020, Morningstar filed a motion to appeal the county court's dismissal. On March 2, 2020, Morningstar partially paid his appeal costs, leaving \$10.45 still owed towards his appeal costs. Subsequently, Perkins and Ayers filed a motion to dismiss Morningstar's appeal and requested monetary sanctions against Morningstar. Perkins and Ayers argued that the circuit court should dismiss Morningstar's appeal because Morningstar failed to pay the appeal costs within thirty days of the county court's dismissal. Morningstar responded by arguing that he was not notified of his remaining balance due to delays with the United States postal service until long after the county court's decision. Furthermore, Morningstar claimed that he did not receive the county court's order dismissing his complaint until February 18, 2020. The circuit court granted the motion to dismiss but denied the request for monetary sanctions. Morningstar appealed.

#### **ISSUES**

Whether the trial court erred in determining that (1) Morningstar received proper notice of the county court's dismissal and (2) the county court lacked appellate jurisdiction.

#### **HOLDING**

(1) Because Morningstar filed his notice of appeal within thirty days of the entry of final judgment, Morningstar offered no evidence supporting his claim of insufficient notice. (2) Because Morningstar failed to timely pay the entire cost bond within thirty days of the dismissal his appeal as required by Miss. Code Ann. § 11-51-79, the appeal was not perfected, and the circuit court lacked appellate jurisdiction. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

#### **Affirmed - 2020-CP-01203-COA (Nov. 30, 2021)**

Opinion by Presiding Judge Carlton

Hon. David Anthony Chandler (Hinds County Circuit Court, First Judicial Dist.)

*Pro se* for Appellant - Felecia Perkins & Jessica Nicole Ayers for Appellees

Briefed by [Chandler Coleman](#)

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**COURT OF APPEALS - CRIMINAL CASES**

## WESTMORELAND V. STATE

### CRIMINAL - FELONY

**CRIMINAL LAW - CHILD NEGLECT - SUFFICIENT EVIDENCE** - Under *Madden*, when a child repeatedly reports incidents of sexual abuse to their primary caretaker, and the caretaker allows the abuse to continue, it has been found to be sufficient evidence to convict on charges of felony child neglect

**CRIMINAL LAW - CHILD NEGLECT - MANDATORY REPORTER** - Pursuant to Miss. Code Ann. § 97-5-51(2)(a), an unlicensed daycare provider is considered a mandatory reporter

**CRIMINAL PROCEDURE - CIRCUMSTANTIAL EVIDENCE - JURY INSTRUCTION** - Under *Nevels*, a jury instruction requiring an additional burden of proof for circumstantial evidence is no longer required

**CRIMINAL PROCEDURE - APPEALS - INEFFECTIVE ASSISTANCE OF COUNSEL** - Under *Strickland*, an appellant claiming ineffective assistance of counsel must prove (1) counsel's performance was deficient and (2) the deficient performance prejudiced the defense

### FACTS

In 2009, Sherry Westmoreland began operating an unlicensed daycare out of the home that she shared with her husband, John Westmoreland, in Hammond, Mississippi. In the time that Sherry ran the daycare she took care of several children, including "Mary," "Lucy," "Anne," "Ellie," "Jane," and their granddaughter "Katie." John was said to have worked away from the home during the day but would return while Sherry was still caring for the children. In 2018, Jane's mother, Betty, called Anne's mother, Eleanor, to say that Jane reported witnessing John sticking his tongue in Katie's mouth, and that she was concerned the same had happened to Anne. Anne confirmed to both Jane and Eleanor that John had kissed her. In October 2018, John was indicated on six counts of touching a child for lustful purposes and one count of sexual battery. He pled guilty to four counts of touching a child for lustful purposes. Sherry was charged with six counts of child neglect for unlawfully, feloniously, and knowingly permitting the continued abuse of six children in her care. In October 2019, Sherry went to trial. The prosecution brought nine witnesses to prove their case. Mary, Anne, and Susan each testified to being abused by John on multiple occasions, and each testified that they either tried to inform Sherry or had substantial reason to believe that she had direct knowledge of the abuse. The forensic interviewer for each girl testified as well. Each had a recording of their conversation with the girls played for the jury during their testimony, which confirmed the children's testimonies, and opined that each of the children made disclosures that were consistent with a child who had been sexually abused. The other witnesses consisted of: Jane, who testified that she was witness to other children being abused on multiple occasions when Sherry was present; Eleanor, who testified to the phone call with Betty and that Anne confirmed being abused; and Brad McDonald, the lead investigator on the case who testified that, upon searching the Westmoreland residence, Sherry said that she had told John to stop kissing the children on the mouth. The defense brought only John and Sherry to testify. John testified that Sherry had no knowledge of the abuse because he abused the children while she was not present, and that he believed she would have stopped it had she been aware. Sherry testified that she lacked knowledge of the abuse as well and agreed that she would have attempted to intervene or report the abuse had she had knowledge of it but admitted that she did tell McDonald that she recently told John to stop kissing the children on the mouth. In October 2019, Sherry was convicted of three counts of felony child neglect and one count of misdemeanor failure to report a sex crime against a minor. She then filed a motion for a new trial, which was denied. Sherry appealed.

### ISSUES

Whether (1) the evidence was insufficient to support the charges and (2) Sherry's counsel was constitutionally ineffective for failing to request a circumstantial-evidence jury instruction.

### HOLDING

(1) Because, based on the evidence presented at trial, a reasonable jury could conclude that Sherry knowingly permitted the continued sexual abuse of three of the minors in her care and violated the mandatory-reporter requirement for failure to report the sex crime against Mary, there was sufficient evidence to support the convictions. (2) Because Sherry's claim of ineffective counsel did not satisfy the first prong of *Strickland*, and because her attorney was not required to

request a circumstantial-evidence jury instruction, Sherry's defense was not constitutionally ineffective. Therefore, the Court of Appeals affirmed the judgment of the Lafayette County Circuit Court.

**Affirmed - 2020-KA-00509-COA (Nov. 30, 2021)**

Opinion by Judge Lawrence

Hon. John Andrew Gregory (Lafayette County Circuit Court)

Mollie Marie McMillin (Pub. Def. Office) for Appellant - Meta S. Copeland (Att'y Gen. Office) for Appellee

Briefed by [Kelsey Davis](#)

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