

MISSISSIPPI SUPREME COURT DECISIONS – MARCH 17, 2022**SUPREME COURT - CIVIL CASES****CHRISTMAS V. CHRISTMAS****CIVIL - WILLS, TRUSTS, & ESTATES**

WILLS & ESTATES - VALID EXECUTION - CREDIBLE WITNESSES - Pursuant to Miss. Code Ann. § 91-5-1, a valid will must be attested by two or more credible witnesses in the presence of the testator

WILLS & ESTATES - PROVING EXECUTION - HANDWRITING - Pursuant to Miss. Code Ann. § 91-7-7, if none of the subscribing witnesses can be produced to prove the execution of the will, it may be established by proving the handwriting of a testator and of the subscribing witnesses to the will, or of some of them

WILLS & ESTATES - PROVING EXECUTION - DECEASED WITNESSES - Although under Miss. Code Ann. § 91-7-7, the testimony of only one living witness is sufficient to establish a will's proper execution, proof of two signatures of witnesses is required to prove due execution where the witnesses to a will are deceased

FACTS

In 1987, Luke Beard executed a will that named his daughter, Diane Christmas, as executrix, and left all of Beard's property, which included thirty-two acres of land, to his grandson, Antonio Christmas. Diane was unaware of the creation of the will. The will was subscribed by Robert E. Jones, Sr., and his son Robert E. Jones, Jr. as attesting witnesses to the will's execution. In 2002, Diane petitioned to open an estate, and Antonio was unaware of the estate proceeding. In 2003, Antonio found Beard's will in a closet. However, Antonio did not tell Diane about the will and took no action regarding the will. In 2014, Diane filed a second petition to open an estate. Antonio was also unaware of this estate proceeding. According to Antonio, an order was entered closing the estate and vesting title of the thirty-two-acre property to Diane. In 2017, Good Hope, Inc., began cutting timber on the property. Antonio subsequently learned about the estate actions that Diane filed when he attempted to stop the timber harvest. In 2018, Antonio petitioned to probate Beard's will, and the matter went before the chancery court. At trial, Antonio and Diane testified that Beard's signature was the signature on the will. However, both of the subscribing witnesses were deceased at the time of the trial. A local attorney verified the genuineness of Jones, Jr.'s signature, but was not asked to verify the signature of Jones, Sr. on the will. The chancery court found that Antonio failed to present required evidence of attestation of the purported will as required by law and dismissed the petition. Antonio appealed, and the Court of Appeals found that Antonio presented sufficient evidence to admit Beard's will to probate. Therefore, the Court of Appeals reversed the chancery court's decision and remanded the case for further review. Diane petitioned for writ of certiorari.

ISSUE

Whether the chancery court erred by dismissing Antonio's petition to probate the purported will.

HOLDING

Because Antonio only proved the handwriting of one subscribing witness when both witnesses to the will were deceased, the chancery court did not err by dismissing Antonio's petition to probate the will. Therefore, the Supreme Court reversed the judgment of the Court of Appeals and reinstated and affirmed the judgment of the Lincoln County Chancery Court.

The Judgment of the Court of Appeals is Reversed. The Judgment of the Lincoln County Chancery Court is Reinstated & Affirmed - 2019-CT-01821-SCT (Mar. 17, 2022)

En Banc Opinion by Justice Griffis

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CLAIBORNE CNTY. HOSP. V. TRUITT

CIVIL - MEDICAL MALPRACTICE

TORTS - MEDICAL NEGLIGENCE - ELEMENTS - In order to establish a prima facie case of medical negligence, the plaintiff has the burden to establish the following elements through sworn expert testimony: (1) a duty existed requiring the defendant to conform to a specific standard of conduct for the protection of others against an unreasonable risk of injury, (2) a failure to conform to the required standard occurred, and (3) such breach of duty by the defendant proximately caused an injury to the plaintiff

EVIDENCE - MEDICAL MALPRACTICE - EXPERT TESTIMONY - Expert testimony in a medical malpractice case demonstrates how the applicable standard of care was disregarded and certifies that the defendant's failure was the proximate cause, or proximate contributing cause, of the plaintiff's alleged injuries

TORTS - MEDICAL NEGLIGENCE - LAYMAN'S EXCEPTION - Medical negligence may be established only by expert medical testimony except for instances where a layman can observe and understand the negligence as a matter of common sense and practical experience

FACTS

Julius Truitt was involved in an automobile accident and was subsequently transported to Claiborne County Hospital ("CCH"). Upon arrival at CCH, Truitt noted he experienced pain in his left knee and lower back. Truitt was examined by a physician who noted Truitt's pain as moderate tenderness and swelling in his left leg accompanied by pain and limited weight-bearing. The physician did not notate any tenderness in Truitt's back and followed up by ordering a CT scan of Truitt's lumbar and cervical spine, an X-ray of Truitt's tibia, fibula, and knee, and a urinalysis. Neither the CT scan nor the X-ray indicated traumatic injury. Additionally, the X-ray did not indicate dislocation or subluxation. CCH alleged that a nurse assisted Truitt to the restroom to administer the urinalysis. During the urinalysis, while handing the urine sample to the nurse, a loud popping noise was noted and Truitt lost his balance and was unable to put weight on his left leg. The nurse assisted him back to bed and a second set of X-rays was taken, which indicated Truitt had a fracture of the proximal left tibia. Truitt later filed a complaint against CCH alleging medical negligence in his care and treatment. Truitt specifically alleged that CCH was negligent by failing to assist him to the restroom to administer a urine sample, failing to give a proper diagnosis of his medical condition, and failing to render treatment consistent with a proper diagnosis. CCH later filed a motion for summary judgment, alleging that Truitt failed to establish a prima facie case of medical negligence because Truitt failed to establish the required elements through sworn expert testimony. Truitt responded with a memorandum in opposition and argued there were genuine issues of material fact and that he was exempt from producing sworn expert testimony pursuant to the layman's exception. Despite this assertion, Truitt provided a response to CCH's First Set of Interrogatories which stated that Truitt's expert expected to testify that the care provided fell below the standard of care that CCH had a duty to provide. Without addressing the layman's exception, the trial court denied CCH's motion for summary judgment, ruling that there was a genuine issue of material fact because, in Truitt's response to the interrogatory, he stated that his expert would testify that CCH's breach of the standard of care was a proximate cause or contributing factor to Truitt's injury. CCH appealed.

ISSUE

Whether the trial court erred by denying CCH's motion for summary judgment.

HOLDING

Because the layman's exception did not apply to the facts of this case due to Truitt's claim involving the rendering of medical services and a nurse's professional judgment for which expert testimony was required, and because Truitt failed to produce sworn expert testimony establishing a prima facie case of medical negligence, the trial court erred by denying

CCH's motion for summary judgment. Therefore, the Supreme Court reversed and rendered the judgment of the Claiborne County Circuit Court.

Reversed & Rendered - 2020-IA-01017-SCT (Mar. 17, 2022)

Opinion by Justice Beam

Hon. Tomika Harris Irving (Claiborne County Circuit Court)

Gaye Nell Lott Currie for Appellant - Anita M. Stamps & Larry Stamps for Appellee

Briefed by [Le'Ronda Gates](#)

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**HOLCOMB, DUNBAR, WATTS, BEST, MASTERS, & GOLMON, P.A. v. 400 S. LAMAR OXFORD
MAD HATTER PARTNERS, LLC**

CIVIL - REAL PROPERTY

CIVIL PROCEDURE - AFFIRMATIVE DEFENSE - WAIVER - If a party fails to raise an affirmative defense in its original answer, the defense is deemed waived

CIVIL PROCEDURE - APPEALS - WAIVER - Issues not raised at trial cannot be raised on appeal

CIVIL PROCEDURE - MOTIONS TO AMEND - DENIAL - Motions to amend should be denied when there has been undue delay, bad faith, or dilatory motive on the part of the movant

TORTS - LIBEL - STATUTE OF LIMITATIONS - All actions for slanderous words concerning the person or title, for failure to employ, and for libels, shall be commenced within one year after the cause of action accrued

FACTS

Holcomb, Dunbar, Watts, Best, Masters, & Golmon, P.A. (“Holcomb Dunbar”) entered a nine-year commercial lease with Greenville Compress Co. in 2009 that was segmented into three three-year options. Holcomb Dunbar renewed the lease in 2012 for an additional three-year term. Later, Greenville Compress Co. sold the property to 400 South Lamar Oxford Mad Hatter Partners, LLC (“Mad Hatter”). Bradley Best of Holcomb Dunbar then met with Mad Hatter’s principal, Blake Tarrt, in 2015 to discuss the lease renewal. Best told Tarrt that Holcomb Dunbar was in the process of constructing a new building for its office and informed Tarrt that Holcomb Dunbar would move out after the construction of the new building was finished. The lease was renewed in 2015 with a 2018 expiration. Tarrt told Best he would help find a new tenant to take over, but no provision in the lease required Mad Hatter to locate a subtenant. Holcomb Dunbar notified Tarrt that it would move out in November 2016 and asked if it would need to find a replacement tenant, but Tarrt did not respond. Holcomb Dunbar vacated the property in November 2016 and made its last rental payment for April 2017. In June and July 2017, Mad Hatter sent notices of default to Holcomb Dunbar. In July 2017, Best sent Tarrt a notice of alleged breach of the lease because Mad Hatter “breached its obligations under the lease and its duty to conduct itself in good faith and to deal fairly with the firm in numerous and repeated respects.” Mad Hatter responded with a letter threatening a lawsuit for legal possession of the premises and past-due rent if the firm did not pay \$19,500 in past due rent and related fees in three days. Mad Hatter claimed that it never forfeited or terminated the lease. Mad Hatter then filed an amended complaint requesting possession of the premises and damages, a writ of possession, \$32,000 in past due rent and fees, and accelerated rent through the end of the lease term. A trial court hearing was held on Mad Hatter’s motion for summary judgment and motion to quash and on Holcomb Dunbar’s motion for partial summary judgment and motion to amend. Mad Hatter prevailed on all motions. The trial court held that Holcomb Dunbar was responsible for all twenty months of unpaid rent, plus late fees, totaling \$133,900. The Court of Appeals affirmed the trial court’s decision. Holcomb Dunbar petitioned for writ of certiorari.

ISSUES

Whether the trial court erred by (1) awarding Holcomb Dunbar past due rent; (2) ruling that summary judgment was appropriate; (3) finding that Holcomb Dunbar’s mitigation argument was waived due to its failure to raise the issue prior to appeal; whether the trial court erred by (4) granting Mad Hatter’s motion to quash Holcomb Dunbar’s request for

records related to a news story posted online; (5) denying Holcomb Dunbar's untimely motion to amend its counterclaim by adding claims of libel and libel per se against Tartt.

HOLDING

(1) Because Mad Hatter's letters of default did not amount to termination of the lease, because Mad Hatter did not oust Holcomb Dunbar from the premises, and because Holcomb Dunbar's election of remedies affirmative defense was waived, Holcomb Dunbar was obligated to pay rent and therefore breached the lease making the trial court's award of past-due rent proper. (2) Because Holcomb Dunbar's claims of material breach were either immaterial or occurred prior to the most recent lease renewal, the trial court's ruling of summary judgment was appropriate. (3) Because Holcomb Dunbar did not raise a mitigation argument at the trial court level, the Court of Appeals' finding that Holcomb Dunbar's mitigation argument was waived was proper. (4) Because the matter addressed by the records of a news story was not relevant to the lease dispute at issue and no further context that the story would provide was needed, the trial court's grant of Mad Hatter's motion to quash was proper. (5) Because Holcomb Dunbar filed its motion to amend extremely close to the date of trial, and because the emails on which the claims were based were barred by the statute of limitations, the trial court did not err by denying Holcomb Dunbar's untimely motion to amend its counterclaim. Therefore, the Supreme Court affirmed the judgment of the Lafayette County Circuit Court.

Affirmed - 2019-CT-01702-SCT (Mar. 17, 2022)

En Banc Opinion by Justice Ishee

Hon. Frank G. Vollar (Lafayette County Circuit Court)

Michael N. Watts & Bradley Truett Golmon for Appellant - Joseph T. Getz & Lewis Clayton Culpepper III for Appellees

Briefed by [Meagan Guyse](#)

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LEASY V. SW GAMING, LLC

CIVIL - PERSONAL INJURY

CIVIL PROCEDURE - FAILURE TO PROSECUTE - ABUSE OF DISCRETION - In reviewing a trial court's dismissal for failure to prosecute, the Court will reverse only if it finds the trial court abused its discretion

CIVIL PROCEDURE - DISCRETIONARY FINDING - CLEAR ERROR - The reviewing court should not reverse a discretionary finding by the lower court unless it comes to a definite and firm conviction that the court below committed a clear error of judgment in the conclusion it reached upon weighing of relevant factors

CIVIL PROCEDURE - DISMISSAL - DELAY - Under Miss. R. Civ. Pro. 41(b), delay alone may suffice for dismissal, and prejudice may be presumed from this delay

CIVIL PROCEDURE - DISMISSAL - ACTUAL PREJUDICE - Aggravating factors or actual prejudice may bolster a case for dismissal, but they are not requirements

FACTS

In June 2014, Victoria Leasy was allegedly injured when she slipped and fell in the bathroom of her hotel room located at Harlow's Casino. Leasy filed a complaint naming Churchill Downs Inc. as the defendant in March 2017. On May 1, 2017, an agreed order was entered substituting SW Gaming as the defendant. At the time of the alleged injury, Harlow's Casino was owned by SW Gaming, LLC ("SW Gaming"). On May 2, 2017, Leasy sent SW Gaming a set of interrogatories and Requests for Production of Documents. No further action was taken until SW Gaming filed a motion to dismiss in May 2019. Leasy claimed she had good cause for her delay in prosecuting the case because she was making a good faith effort to ascertain the amount in controversy. Leasy claimed that the causation of her alleged injury was complicated due to the fact that she was involved in a motor vehicle collision in August 2015 which may have exacerbated or worsened her pre-existing condition. Leasy further argued that any delay in the case had not prejudiced the defendant. SW Gaming argued that memories and physical evidence had gone stale asserting they had little evidence regarding Leasy's accident because the employees who were working at the time of the accident were no longer employed. During the hearing on the motion to dismiss, Leasy's attorney offered to bear the expense for the preparation

of a medical records summary to assist SW Gaming in learning the substance of the medical records and offered to pay the cost of a private investigator to locate any witnesses who were no longer employed at the casino. The trial court found that Leasy's actions presented a clear record of dilatory and contumacious conduct and granted SW Gaming's motion to dismiss. Leasy appealed the trial court's decision. The Court of Appeals reversed the trial court's decision finding that Leasy's delay was excusable, that SW Gaming failed to prove it suffered actual prejudice from the delay, and that lesser sanctions were more appropriate than a dismissal. SW Gaming petitioned for writ of certiorari.

ISSUES

Whether (1) the Court of Appeals applied the correct standard of review; (2) Leasy's two-year delay alone justified dismissal; (3) SW Gaming was required to prove it was prejudiced by the delay; (4) lesser sanctions would cure the prejudice caused by Leasy's delay; and (5) the Court of Appeals improperly adopted Leasy's argument as record fact to excuse the delay.

HOLDING

(1) Because the Court of Appeals performed its own de novo review instead of applying the abuse-of-discretion standard, it failed to apply the correct standard of review. (2) Because aggravating factors or actual prejudice are not requirements for dismissal, Leasy's delay alone justified dismissal. (3) Because prejudice may be inferred from delay, SW Gaming was not required to prove actual prejudice. (4) Because the trial court's finding that lesser sanctions would not cure the prejudice caused by Leasy's delay was supported by the record and not clearly erroneous, the trial court did not err in its finding. (5) Because the Court of Appeals made no finding that the trial court's decision was not supported by substantial evidence or was clearly erroneous, it erred in adopting Leasy's argument as record fact to excuse the delay. Therefore, the Supreme Court reversed the judgment of the Court of Appeals and reinstated and affirmed the judgment of the Washington County Circuit Court.

DISSENT

Presiding Justice King argued that the trial court abused its discretion by basing a finding of delay in part upon the time between the alleged injury and the filing of a complaint within the statute of limitations and by relying on facts without evidentiary support. He also argued that because nothing in the record indicates when the employment of the employees ended, nothing in the record indicates that any delay on Leasy's part impacted their availability. He further argued that the trial court erred in failing to consider that SW Gaming failed to respond to discovery. Therefore, trial court's decision should have been reversed.

The Judgment of the Court of Appeals is Reversed. The Judgment of the Washington County Circuit Court is Reinstated & Affirmed - 2019-CT-01505-SCT (Mar. 17, 2022)

En Banc Opinion by Chief Justice Randolph - Dissent by Justice King

Hon. W. Ashley Hines (Washington County Circuit Court)

Yancy B. Burns for Appellant - Blake Damon Smith, Dale Gibson Russell, & Lawrence Dylan King III for Appellee

Briefed by [Dallas Martin](#)

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MISS. BAR V. HENDERSON

CIVIL - BAR MATTERS

BAR MATTERS - DISCIPLINE - NOTIFICATION - According to Miss. R. Discipline 13(a), within fifteen days of being disciplined in another jurisdiction, an attorney admitted to practice in Mississippi must provide complaint counsel a certified copy of the discipline; failure to do so shall, upon petition by complaint counsel, result in the immediate suspension of the attorney pending final resolution by the Court

BAR MATTERS - FOREIGN JURISDICTION - CONCLUSIVE EVIDENCE - A certified copy of a public censure from a foreign jurisdiction is conclusive evidence of the guilt of the offense or unprofessional conduct on which said sanction was ordered, thus further fact-finding is unnecessary when a sanction is imposed by another jurisdiction

BAR MATTERS - FOREIGN JURISDICTION - SANCTIONS - Sanctions imposed in Mississippi generally mirror the sanction imposed in the sister state, absent extraordinary circumstances which compel, justify, or support variance from the foreign jurisdiction's sanction

FACTS

Florida M. Henderson was an attorney licensed to practice in Mississippi and Tennessee. In an order dated July 15, 2021, the Tennessee Supreme Court issued a public censure of Henderson. The public censure order generally described Henderson's wrongful conduct. It stated that Henderson agreed to represent a client in a small estate matter, wherein her client made false statements regarding the decedent's marital status while testifying in open court. Henderson failed to take proper remedial action prior to the conclusion of the proceeding and did not subsequently address the issue directly with her client. Rather, Henderson filed a subsequent petition on behalf of the decedent's estate alleging that the client had made knowingly false statements in her testimony. Henderson did not report this censure to the Mississippi Bar ("the Bar"). In October 2021, after discovering the Tennessee disciplinary action, the Bar filed a formal complaint with the Supreme Court asking that Henderson be disciplined and ordered to pay the Bar's costs and expenses related to filing the complaint. In her response, Henderson admitted that she failed to inform the Mississippi Bar of her discipline in Tennessee. In December 2021, the Supreme Court suspended Henderson from practicing law in Mississippi, pending a final decision on the appropriate means of discipline. The Supreme Court requested additional information evincing Tennessee's reason for deeming censure the appropriate discipline. The Bar asserted that its investigation revealed the Board of Professional Responsibility of the Tennessee Supreme Court made no factual findings when ordering the censure. Moreover, other supplemental documentation from the Mississippi Bar provided no additional context for Tennessee's disciplinary decision. Thus, the Mississippi Supreme Court based its decision solely on Tennessee's censure order.

ISSUE

The extent of final discipline that was imposed on Henderson in this State.

HOLDING

Because Henderson's misconduct was conclusively established and of serious nature, and because there are no extraordinary circumstances to support a more or less severe form of discipline than a public censure, the information provided to the Court was sufficient to support imposing discipline that mirrored Tennessee's decision of imposing a public censure. Therefore, the Supreme Court ordered Henderson be assessed all costs and expenses associated with the matter, as well as public reprimand in open court by the presiding judge on the first day of the next term of the circuit court of DeSoto County, with appellant in attendance.

Public Reprimand & Assessment of Costs - 2021-BD-01141-SCT (Mar. 17, 2022)

En Banc Opinion by Justice Maxwell

Pro se for Appellant - Melissa Selman Scott for Appellee

Briefed by [Chatham M. DeProspero](#)

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MISSISSIPPI COURT OF APPEALS DECISIONS – MARCH 15, 2022

COURT OF APPEALS - CIVIL CASES

DESOTO CNTY. V. VINSON

CIVIL - REAL PROPERTY

PROPERTY - DIVISION - ALTERATION - An existing subdivision plat may be altered or vacated either by (1) filing a petition in chancery court pursuant to Miss. Code Ann. § 19-27-31, or (2) petitioning the board of supervisors or other governing authority of the municipality pursuant to Miss. Code Ann. § 17-1-23

PROPERTY - DIVISION - AUTHORITY - According to Miss. Code Ann. § 17-1-23(4), a board of supervisors may alter or vacate a map or plat upon petition by the landowner desiring the change, accompanied by the written agreement of the persons to be adversely affected by or directly interested in the change

PROPERTY - DIVISION - WRITTEN REQUIREMENT - It is only when the directly interested or adversely affected persons agree in writing that the landowner may secure the vacation or alteration from the board of supervisors

FACTS

In February 2020, Mitchell Shaw petitioned the DeSoto County Board of Supervisors (“the Board”) for a division of lot 40 of the A.E. Allison Subdivision, which he owned, into two separate parcels. Shaw did not include the names of any parties who would be adversely affected or directly interested in the division of the lot in his application required by Miss. Code Ann. § 17-1-23(4). Moreover, Shaw did not give any of his neighbors notice of the filing of the application, nor did he provide notice that the application would be presented for approval at a board meeting in May 2020. At the May 2020 board meeting, the minutes reflected that Shaw stated that he had not spoken to his neighbors about the division of the lot when the supervisor asked him. The minutes further reflected that the supervisors made a motion, which was seconded, to approve lot 40 for final subdivision approval. The minutes also stated that the owners of lot 39 were the only directly interested or adversely affected parties and that they would be required to sign the final plat before recording. At a June 2020 board meeting, the minutes from the May 2020 board meeting were approved by the Board; however, there was no evidence of Shaw or the Board acquiring the signature of the lot 39 landowners. Ten days after the May 2020 board meeting, the owners of lot 21, Anthony and Quma Vinson, filed a notice of appeal pursuant to Miss. Code Ann. § 11-51-75, alleging that the Board failed to appropriately determine the names of persons directly interested or adversely affected by the decision of the Board necessary to approve the division of lot 40 and that the Board failed to provide notice to appropriate parties and require that they agree in writing, as required by Miss. Code Ann. § 17-1-23(4). In January 2021, the circuit court entered an order reversing the Board’s decision, ordering that the application be resubmitted with written approval of directly interested or adversely affected persons, or else the landowner must proceed under Miss. Code Ann. § 19-27-31 in the chancery court. The Board appealed.

ISSUES

Whether (1) the Board acted arbitrarily, capriciously, or outside the scope of its authority in determining that the owner of lot 39 was the only directly interested party to Shaw’s petition and (2) the circuit court erred in finding that the Board acted outside of its authority in approving Shaw’s application based on a misinterpretation of Miss. Code Ann. § 17-1-23(4).

HOLDING

(1) Because Shaw did not set forth in his petition the names of the persons to be adversely affected or directly interested in the proposed property division, and because Shaw did not speak to anyone in the neighborhood about his petition, the Board acted outside the scope of its authority in determining that the owner of lot 39 was the only directly interested party. (2) Because Shaw received approval from the Board to divide lot 40 into two lots without listing any adversely affected or directly interested parties in his petition, without giving anyone notice of the action, and without anyone signing a written agreement to divide the lot, the circuit court did not err in reversing the Board’s decision. Therefore, the Court of Appeals affirmed the judgment of the DeSoto County Circuit Court.

Affirmed - 2021-CA-00122-COA (Mar. 15, 2022)

Opinion by Judge Emfinger

Hon. Gerald W. Chatham Sr. (DeSoto County Circuit Court)

Samuel Thomas Barber for Appellant - J. Keith Treadway for Appellees

Briefed by [J. Evan Thomas](#)

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J.D. v. McCOMB SCH. DIST.

CIVIL - PERSONAL INJURY

MISS. TORT CLAIMS ACT - GOVERNMENTAL ENTITY - IMMUNITY - Under the Mississippi Tort Claims Act, sovereign immunity is waived for claims for money damages arising out of the torts of governmental entities and their employees unless they are explicitly exempted under Miss. Code Ann. § 11-46-9(1), which exempts discretionary but not ministerial duties from immunity

TORTS - NEGLIGENCE - SAFE SCHOOL ENVIRONMENT - Miss. Code Ann. § 37-9-69 imposes upon school districts a ministerial duty to use ordinary care and to take reasonable steps to minimize foreseeable risks to students thereby providing a safe school environment

CIVIL PROCEDURE - PLEADING - STANDARD - Under Miss. R. Civ. P. 8(a)(1), to state a claim upon which relief may be granted, a plaintiff must set forth factual allegations, either direct or inferential, respecting each material element necessary to sustain recovery under some actionable legal theory

FACTS

J.D., a sixth-grade student, sued the McComb School District (“the District”) through her mother, Jileta Mingo. J.D. alleged that her teacher Linda Miller, an employee of the District, negligently failed to prevent her classmate, A.B., from attacking and injuring her. J.D.’s complaint alleged that A.B. confronted J.D. during a ceremony in the school gym. After the ceremony, the students returned to Miller’s classroom, where A.B. yelled at Miller and J.D. A.B. cursed at Miller, so Miller removed him from the classroom. A few minutes later, Miller allowed A.B. to re-enter; A.B. then attacked J.D. and caused severe neck, head, and jaw injuries. J.D.’s complaint neither provided further context regarding A.B.’s removal or re-entry nor asserted that A.B. verbally or physically threatened anyone before the attack. However, the complaint did allege that there existed good reason to believe that A.B. had engaged in similar conduct against fellow students and teachers before and after the attack on J.D. Subsequently, the District filed its answer and moved to dismiss under Miss. R. Civ. P. 12(b)(6), arguing it was entitled to discretionary-function immunity under the Miss. Tort Claims Act (“MTCA”). After a hearing on the District’s motion, the circuit court entered an order granting the motion and dismissing the case. Without elaborating further, the circuit court determined that taking as true the facts alleged in the complaint, the complaint failed to state a claim upon which relief may be granted. J.D. appealed.

ISSUE

Whether the circuit court erred by dismissing the complaint for failure to state a claim upon which relief may be granted.

HOLDING

Because the District was not entitled to immunity for its potential breach of the duty to use ordinary care and to take reasonable steps to minimize foreseeable risks, because J.D. adequately stated a claim that the District was negligent in its breach of the ministerial duty to use ordinary care and to take reasonable steps to minimize foreseeable risks to her, and because J.D.’s complaint satisfied the pleading requirement of providing sufficient notice to the defendant of the claims alleged and the grounds upon which relief is sought, the circuit court erred when it dismissed J.D.’s complaint. Therefore, the Court of Appeals reversed and remanded the judgment of the Pike County Circuit Court.

DISSENT

Judge Smith disagreed that J.D.’s complaint sufficiently asserted a claim for negligence against the District. He argued that J.D.’s complaint failed to provide enough context regarding the circumstances surrounding A.B.’s return to the classroom or the conditions under which he was allegedly allowed re-entry. As a result, he found that J.D.’s complaint failed to demonstrate a breach of a duty owed or a negligent act committed on behalf of the District or its employed teacher.

Reversed & Remanded - 2020-CA-00022-COA (Mar. 15, 2022)

En Banc Opinion by Judge Westbrook - Dissent by Judge Smith

Hon. David H. Strong Jr. (Pike County Circuit Court)

Edwin L. Bean Jr. for Appellant - Steven Lloyd Lacey & Allison Perry Fry for Appellee

Briefed by [Garner Vance](#)

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LAND V. LAND

CIVIL - REAL PROPERTY

PROPERTY - RESIDENTIAL - PARTITION - Pursuant to case law and Miss. Code Ann. § 11-21-1, residential property, which is still claimed as homestead property, may be partitioned only by written agreement of the parties and not by chancery court decree

PROPERTY - HOMESTEAD - INVOLUNTARY PARTITION - How much or how little of the homestead property may be subject to the claims of creditors does not affect the prohibition of involuntary partition under Miss. Code Ann. § 11-21-1

FACTS

Theresa and Michael Land, a married couple, purchased residential property in Madison, Mississippi. They owned the property as joint tenants with the right of survivorship. Additionally, the couple lived in and raised a family on the residential property and claimed a homestead exemption on it. Later, Michael conveyed commercial property to himself and Theresa as joint tenants with a right of survivorship. In 2014, Theresa moved out of the residential property, and in 2015 she filed for divorce. In 2019, her complaint for divorce was denied. In May 2020, Theresa filed a complaint to partition by sale both the commercial and residential properties, asking the court to require both properties be sold and the proceeds divided. The trial began in June 2020, and Michael still lived in the residential property and claimed it as a homestead exemption. During the trial, Michael filed a motion to dismiss pursuant to Miss. R. Civ. P. 41(b). The chancellor granted the motion as to the residential property but denied the motion relating to the commercial property. At the trial's conclusion, the chancellor granted the request to partition by sale as to the commercial property, and neither party appealed this decision. However, Theresa appealed the court's decision to deny the partition of the residential property.

ISSUE

Whether the trial court erred by finding that the residential property was not subject to partition by sale without an agreement to do so by the parties.

HOLDING

Because the residential property was jointly owned by the spouses, and because it is irrelevant whether Theresa may claim the homestead exemption on the property, the trial court did not err in ruling the property was precluded from partition by sale without an agreement. Therefore, the Court of Appeals affirmed the judgment of the Madison County Chancery Court.

Affirmed - 2021-CA-00402-COA (Mar. 15, 2022)

Opinion by Judge Emfinger

Hon. James Christopher Walker (Madison County Chancery Court)

Paul E. Rogers for Appellant - Macy Derald Hanson for Appellee

Briefed by [Samuel Taylor Rayburn](#)

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COURT OF APPEALS - POST-CONVICTION RELIEF

BRIDGES V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - PROCEDURAL BAR - WAIVER - A procedural bar to a motion for post-conviction relief may be waived when a fundamental constitutional right is implicated

POST-CONVICTION RELIEF - PROCEDURAL BAR - EXCEPTION - The mere assertion of a constitutional right violation does not trigger an exception to the procedural bar; instead, to obtain a statutory exception to a procedural bar, the appellant must make more than mere assertions and cite authorities for support

POST-CONVICTION RELIEF - INEFFECTIVE ASSISTANCE OF COUNSEL - PERSONAL AFFIDAVIT - In the post-conviction relief context, when a defendant's claims are unsubstantiated by anything other than his own self-serving statement in his affidavit, the defendant's ineffective assistance of counsel claim is without merit

FACTS

In October 1987, Ricky Troy Bridges was charged with simple robbery in Forrest County after robbing a bank and fleeing in a getaway car driven by his accomplice, Melinda Morales. Bridges waived his right to an indictment and pled guilty to simple robbery. He was sentenced to fifteen years in the custody of the Mississippi Department of Corrections ("MDOC") as a habitual offender. Bridges escaped MDOC custody and fled to Alabama, where he was captured and detained on charges related to a separate crime. After serving a twenty-six-year sentence in Alabama, Bridges signed voluntary extradition documents and was returned to MDOC custody in 2015 to serve the remainder of his 1987 sentence for robbery. In 2016, Bridges filed his first post-conviction relief ("PCR") motion, requesting that the Forrest County Circuit Court retroactively run his fifteen-year sentence from 1987 concurrently with his Alabama sentence or alternatively credit him for the time he served in Alabama. The circuit court denied Bridges's motion. In 2019, Bridges filed a second PCR motion, alleging that he was deprived of his due process rights, the right to effective assistance of counsel, and the right to a fair trial due to his attorney's simultaneous representation of both Bridges and his co-defendant, Morales, in the 1987 robbery case. The circuit court denied Bridges's second PCR motion, holding that it was time-barred and a successive motion. Bridges filed a motion for reconsideration, which the circuit court also denied. Bridges appealed.

ISSUES

Whether the circuit court erred by (1) finding there was insufficient evidence to prove that Bridges's second PCR motion met a statutory exception to the procedural bars and (2) failing to find that Bridges showed good cause for failing to provide additional affidavits.

HOLDING

(1) Because Bridges failed to make meaningful arguments or present evidence beyond mere assertions in support of his ineffective assistance of counsel claim, the circuit court did not err in finding that Bridges failed to establish a fundamental-rights exception and holding that his motion was procedurally barred. (2) Because Bridges's personal affidavit supporting his ineffective assistance of counsel claim failed to show that his attorney's performance was deficient and lacked sufficient evidence to support his claim, the circuit court did not err in finding that Bridges's affidavit was deficient and without merit. Therefore, the Court of Appeals affirmed the judgment of the Forrest County Circuit Court.

CONCURRENCE IN PART & IN RESULT

Judge Westbrook agreed with the majority's ruling that Bridges had not provided sufficient evidence to qualify for an exception to the procedural bar for his claim of ineffective assistance of counsel. However, she disagreed with the majority's holding that Bridges waived his attorney's conflict of interest since there was no proof that Bridges's attorney obtained his consent or that the trial court advised Bridges of the conflict.

Affirmed - 2020-CA-00816-COA (Mar. 15, 2022)

Opinion by Judge Smith - Concurrence in Part & In Result by Judge Westbrook

Hon. Jon Mark Weathers (Forrest County Circuit Court)

Julie Ann Epps & Cynthia Ann Stewart for Appellant - Meta S. Copeland (Att'y Gen. Office) for Appellee

Briefed by [Macy Walters](#)

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HORTON V. STATE

CIVIL - POST-CONVICTION RELIEF

POST-CONVICTION RELIEF - SENTENCING - ACTUARIAL TABLES - When the legislature has affixed a set term of years as the maximum sentence and has allowed that sentence to be imposed by a trial judge, the trial judge is not required to apply a term less than life in accordance with actuarial tables

POST-CONVICTION RELIEF - AFFIDAVIT - CONTRADICTIONS - When the only support offered by a convict is his own affidavit, and his affidavit is contradicted by his sworn statement, an evidentiary hearing is not required

FACTS

David Horton pled guilty to second-degree murder and aggravated domestic violence for shooting and killing one woman and shooting and injuring his wife. The circuit court subsequently sentenced Horton to consecutive terms of forty years and twenty years in the custody of the Mississippi Department of Corrections. The sentence was consistent with Horton's plea agreement and the State's sentencing recommendations. Horton filed a motion for post-conviction relief, alleging that his plea and convictions should be set aside because his sentence was unconstitutional and his plea was involuntary. The circuit court denied Horton's motion. Horton appealed.

ISSUES

Whether (1) the sixty-year sentence was unconstitutional because it exceeds Horton's life expectancy based on actuarial tables; (2) Horton's sentence was unconstitutional because the court did not provide an explanation for imposing the maximum sentences; (3) Horton's plea was involuntary because his attorney told him his two sentences would run concurrently, not consecutively; and (4) his attorney misinforming him about his wife's wishes for a consecutive sentence invalidated his guilty plea.

HOLDING

(1) Because the court had the discretion to sentence Horton to terms within the sentencing range and was not required to consult actuarial tables, the sentence was constitutional. (2) Because Horton pled guilty and received the exact sentence he bargained for, no further explanation from the court was required. (3) Because Horton confirmed under oath that he agreed to plead guilty with a recommendation of consecutive sentences, his plea was not involuntary. (4) Because Horton failed to provide an affidavit from his wife, and because his affidavit was contradicted by his sworn plea petition and sworn testimony during his plea hearing, his guilty plea was valid. Therefore, the Court of Appeals affirmed the judgment of the Hinds County Circuit Court.

Affirmed - 2021-CP-00383-COA (Mar. 15, 2022)

Opinion by Presiding Judge Wilson

Hon. Betty W. Sanders (Hinds County Circuit Court, First Judicial Dist.)

Pro se for Appellant - Allison Elizabeth Horne (Att'y Gen. Office) for Appellee

Briefed by [Anna Tucker](#)

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COURT OF APPEALS - CRIMINAL CASES

JACKSON V. STATE

CRIMINAL - FELONY

CRIMINAL LAW - APPEALS - LINDSEY BRIEF - A *Lindsey* brief establishes the procedure to govern cases in which appellate counsel represents an indigent criminal defendant and does not believe his or her client's case presents any arguable issues on appeal

CRIMINAL LAW - APPEALS - ARGUABLE ISSUES - When, upon an independent and thorough review of the record, there is sufficient evidence to support a conviction, there are no arguable issues on appeal

FACTS

In August 2015, Cedric Jackson took D.B., his girlfriend's fourteen-year-old daughter, to a remote location where he forced her to perform oral sex on him while he filmed her with his cell phone. D.B. subsequently informed her grandmother of the encounter; the police were called and D.B.'s shirt was given to a nurse at a rape crisis center. Upon being interviewed by the Memphis Police Department, Jackson waived his *Miranda* rights and allowed officers to search his phone, where the graphic video was discovered. At trial, the video was introduced into evidence, and George Schiro, an expert in the field of forensic DNA analysis, testified that the DNA stains found on D.B.'s shirt matched the DNA of Jackson. The trial court found Jackson guilty of sexual battery of a child at least fourteen years but under sixteen years of age by a person at least thirty-six months older than the child and of filming a minor engaged in sexually explicit conduct. Jackson appealed. Jackson's appointed appellate counsel filed a *Lindsey* brief after finding no arguable issues on appeal, and Jackson was granted time to file a pro se brief, but he did not.

ISSUE

Whether there were any arguable issues for appeal.

HOLDING

Because Jackson's appointed counsel filed a *Lindsey* brief certifying that the record presented no arguable issues for appeal, because Jackson failed to file a pro se brief, and because there was sufficient evidence to support Jackson's convictions, the trial court properly determined that there were no arguable issues for appeal. Therefore, the Court of Appeals affirmed the judgment of the DeSoto County Circuit Court.

Affirmed - 2021-KA-00292 (Mar. 15, 2022)

Opinion by Presiding Judge Wilson

Hon. Celeste Embrey Wilson (DeSoto County Circuit Court)

Mollie Marie McMillin (Pub. Def. Office) for Appellant - Alexandra Rodu Rosenblatt & John W. Champion (Att'y Gen. Office) for Appellee

Briefed by [Mariel Soehner](#)

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