

**MISSISSIPPI SUPREME COURT DECISIONS – MARCH 3, 2022*****SUPREME COURT - POST-CONVICTION RELIEF*****BATISTE V. STATE****CIVIL - DEATH PENALTY - POST CONVICTION**

**CIVIL PROCEDURE - JUDICIAL CONDUCT - RECUSAL** - Miss. Code of Judicial Conduct Canons 3(E)(1)(a) and 3(E)(1)(d)(iv) require a judge to disqualify himself when the judge has personal knowledge of disputed evidentiary facts concerning the proceeding or if to the judges' knowledge, he is likely to be a material witness in the proceeding

**CIVIL PROCEDURE - IMPROPER INFLUENCE - INVESTIGATION** - After a party informs the trial court of potential improper influence on the jury or juror misconduct, the court must determine if an investigation is warranted; an investigation is warranted if the trial judge finds that good cause exists to believe that there was, in fact, an improper influence or extraneous prejudicial information

**CRIMINAL PROCEDURE - SIXTH AMENDMENT VIOLATION - IMPARTIAL JURY** - In order to allow judicial inquiry into a jury's verdict, there needs to be a showing that one or more jurors made statements exhibiting overt racial bias that cast serious doubt on the fairness and impartiality of the jury's deliberations and resulting verdict

**FACTS**

Bobby Batiste was convicted of capital murder and was sentenced to death. After affirming Batiste's conviction and sentence, the Supreme Court determined that he was entitled to file a petition for post-conviction relief ("PCR") because of alleged communications between bailiffs, others, and members of the jury. Batiste filed a petition and attached affidavits from Denise Cranford and Webster Rowan, two members of the jury. In the affidavits, Cranford and Rowan expressed concern that the jury was comprised of only Caucasian people. Cranford alleged a bailiff explained that African Americans will not consider the death penalty. Similarly, Rowan alleged that someone explained to him that you have to be comfortable with the death penalty to serve on the jury and this was why there were no African American jurors. Cranford's affidavit also stated that in the year leading up to her own trial, her sister-in-law was murdered and Judge Kitchens had told her if there was anything he could do to help with her situation to let him know. Because of this, she stated that she felt more comfortable serving on the jury. After the witnesses testified at the hearing, the circuit court recessed and chose to resume on a later date. Batiste was not transported to the hearing, and as a result, the circuit court held an in-camera conference with Batiste's attorney and the State's attorneys present. At the conference, Judge Kitchens expressed concerns regarding the reliability of Cranford's testimony because of the statement regarding the conversation she alleged occurred between her and Judge Kitchens. Judge Kitchens did not recall making such a statement to Cranford but said that might have made such a statement at a campaign event. Batiste filed a motion to recuse arguing that Judge Kitchens became a witness by relying on his personal recollection to assess the reliability of Cranford's testimony and that the state was provided with a new argument by sua sponte raising the issue of Cranford's credibility. The circuit court denied Batiste's motion to recuse. The circuit court also addressed the merits of Batiste's PCR petition finding that Cranford was not a credible witness because Cranford's testimony was contradicted by her affidavit. The circuit court denied both Batiste's motion to alter or amend the order denying the motion to recuse and his PCR motion. Batiste appealed.

**ISSUES**

Whether (1) Judge Kitchens had sufficient involvement to warrant recusal; (2) the trial court abused its discretion in finding no competent evidence to support Batiste's claims; and (3) Batiste's Sixth Amendment Right to an impartial jury was violated.

## **HOLDING**

(1) Because Judge Kitchens merely reacted in a manner to provide Batiste an opportunity to set the record straight and determine what conversation, if any, occurred between himself and Cranford, because such contact did not occur until after the trial had been fully completed, and because there was never anything more than speculation that Judge Kitchens might be a necessary witness in this case, recusal was not warranted. (2) Because the Office of Capital Post-Conviction Counsel failed to follow the appropriate method for post-verdict jury inquiry, and because the use of improper interviews was prohibited and testimony obtained as a result of illegally obtained interviews is unlawful, the trial court did not abuse its discretion in finding no competent evidence. (3) Because the discussions of the racial composition of the jury were brought about within the jury itself, rather than from an extraneous source, and because the discussions between Cranford and Rowan do not reveal any racial animus, Batiste failed to prove by a preponderance of the evidence that his Sixth Amendment right to a fair trial and impartial jury was violated. Therefore, the Supreme Court affirmed the judgment of the Oktibbeha County Circuit Court.

## **DISSENT**

Presiding Justice Kitchens argued that the recusal of Judge Kitchens was warranted because using his own recollection to assess a witness's credibility made him a witness in the case. Further, he argued that because Cranford alleged the conversation was off the record, Judge Kitchens would have needed to rely on his own memory to determine Cranford's truthfulness. Therefore, he argued that denial of post-conviction relief should have been reversed and that the evidentiary hearing should have taken place before a different judge.

### **Affirmed - 2019-CA-00283-SCT (Mar. 3, 2022)**

En Banc Opinion by Justice Chamberlin - Dissent by Presiding Justice Kitchens

Hon. James T. Kitchens Jr. (Oktibbeha County Circuit Court)

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

Briefed by [Dallas Martin](#)

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## ***SUPREME COURT - CIVIL CASES***

### **COOLEY V. PINE BELT OIL CO.**

#### **CIVIL - OTHER**

**CONTRACTS - IMPLIED CONTRACT - INDEMNIFICATION** - A person is entitled to indemnification under an implied contractual relationship only if (1) the damages he seeks to shift are imposed upon him as a result of some legal obligation to the injured person and (2) the claimant did not actively or affirmatively participate in the wrong

**CONTRACTS - INDEMNITY - STATUTE OF LIMITATIONS** - A claim for common law indemnity does not arise until there is legal liability to pay a judgment that should in fairness be paid by another

**CIVIL PROCEDURE - CAUSE OF ACTION - ACCRUAL** - The statute of limitations begins to run when all the elements of a tort, or cause of action, are present

#### **FACTS**

Pine Belt Oil Company ("Pine Belt") purchased a parcel of land from Walter and Tammy Cooley ("the Cooleys") that had long been used for gasoline sales. In September 2008, four months after the sale, a gasoline leak that originated on the property was discovered. The Mississippi Department of Environmental Quality ("MDEQ") was informed, and an investigation into the cause of the leak commenced. As early as October 2008, Pine Belt asserted its innocence and maintained that the Cooleys were responsible for the leak. On March 5, 2009, MDEQ issued an administrative order demanding that the Cooleys, Pine Belt, and the owners of Pine Belt pay remediation costs for the leak. Pine Belt initially refused to pay remediation costs, but eventually began paying them in July 2009. In April 2016, nearly 7 years after its

initial remediation payment, Pine Belt filed a complaint seeking indemnification from the Cooleys for past and future expenses incurred for remediation of the leak. The Cooleys filed a motion for summary judgment that argued Pine Belt's claim was barred by the statute of limitations, but the trial court denied the motion. The Cooleys petitioned for interlocutory appeal.

### ISSUE

Whether the trial court properly denied the Cooleys' motion for summary judgment.

### HOLDING

Because the MDEQ order compelled Pine Belt to pay for present and future remediation costs that Pine Belt believed should be paid by the Cooleys, all the elements of implied indemnity were satisfied and the three-year statute of limitations began to run on March 5, 2009, making Pine Belt's April 2016 complaint outside the statute of limitations; thus, the Cooleys were properly entitled to summary judgment. Therefore, the Supreme Court reversed and rendered the judgment of the Forrest County Circuit Court.

### CONCURRENCE IN PART & DISSENT IN PART

Chief Justice Randolph argued that Pine Belt's claim for the initial MDEQ order was time barred, but that damages imposed by MDEQ orders in 2013 and 2014 constituted separate indemnity claims that were not outside the statute of limitations. Therefore, the trial court did not err in denying the Cooley's motion for summary judgment.

### **Reversed & Rendered - 2019-IA-01835-SCT (Mar. 3, 2022)**

En Banc Opinion by Presiding Justice Kitchens - Concurrence in Part and Dissent in Part by Chief Justice Randolph  
Hon. Robert B. Helfrich (Forrest County Circuit Court)

Walter H. Boone, Andy Lowry, & M. Christine Crockett White for Appellants - Monique M. Weiner, James K. Dukes, & Deborah Deroche Kuchler for Appellee

Briefed by [Rachel Gholson](#)

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## **GAMMA HEALTHCARE INC. V. ESTATE OF GRANTHAM**

### **CIVIL - WORKERS' COMPENSATION**

**CIVIL PROCEDURE - PRECEDENT - CASE OF FIRST IMPRESSION** - In a case of first impression, Mississippi courts look to other jurisdictions in order to determine the matter

**CIVIL PROCEDURE - MOOTNESS - FEDERAL VACATUR** - When a civil case becomes moot pending appeal the established practice in the federal system is to reverse or vacate the judgment and remand with a direction to dismiss; vacatur is in order when mootness occurs through happenstance

**CIVIL PROCEDURE - SANCTIONS - INAPPROPRIATE** - Pleadings that are found to be justiciable, viable, or colorable are not for the purpose of harassment or delay, and thus sanctions are inappropriate; an argument is colorable if it has some hope or chance of success and there is no other rule of law that prevents it from being asserted

### FACTS

In October 2015, Sharon Grantham, who was employed by Gamma Healthcare, Inc. ("Gamma"), was involved in a work-related car accident that rendered Grantham a paraplegic. Upon Grantham's release from an extensive rehabilitation program, an Independent Medical Examination ("IME") was conducted. The IME record stated that Grantham required twenty-four-hour care and was negatively impacted by the lack of an accessible home and vehicle. Gamma and their insurance carrier, Employers Insurance Company of Wausau ("Carrier") provided minimal changes but did not fully provide the necessities listed in the findings of the IME. Grantham then filed two motions to compel medical treatment, arguing that she had not received home accommodations, timely repair of her electric wheelchair, a handicap accessible van, and reimbursement for medical expenses. In March 2017, an Administrative Judge ("AJ") ordered Gamma and Carrier to provide the former modifications. Grantham also moved to appoint a neutral case manager. In November 2017, Grantham filed a third motion to compel medical treatment to address the issues of the

neutral case manager and several home modifications, including the repair of the septic and HVAC systems. In September 2018, the AJ ordered Gamma and Carrier to pay for repairs to the van. The motion to compel home modifications was held in abeyance until the AJ could confer with the case manager. In November 2018, and after they toured Grantham's home, the AJ ordered Gamma and Carrier to pay for specific modifications that had been deemed necessary by the case manager and occupational therapist. Gamma and Carrier petitioned this order, arguing that they should not be financially responsible for certain findings of this order. Grantham sent a letter brief to the Mississippi Workers' Compensation Commission ("Commission"), who conducted a hearing and unanimously found that Gamma's appeal was unsupported and awarded Grantham \$4,000 in attorney's fees and sanctioned Gamma for causing unnecessary delays. Gamma and Carrier appealed. In September 2019, Grantham died during the pendency of this appeal. Her estate moved to be substituted. The motion was granted, but ultimately the case was dismissed by the Court of Appeals as moot. The Court of Appeals then vacated the outstanding orders of the Commission and the AJ and reversed and rendered the Commission's sanctions order against Gamma and Carrier, finding that the Commission had abused its discretion. Grantham's estate petitioned for a writ of certiorari.

### ISSUES

Whether the Court of Appeals erred by (1) applying federal vacatur law, rather than Mississippi case law and (2) reversing and rendering the Commission's sanctions order by finding that the employer and carrier's unsupported denial was colorable.

### HOLDING

(1) Because other jurisdictions have applied federal vacatur law in similar cases, and because the Court of Appeals found that there were legitimate practical reasons for applying federal vacatur law, the Court of Appeals did not err by applying vacatur law. (2) Because the Employer/Carrier asserted a viable argument before the Commission, their appeal could not have been instituted without reasonable grounds, thus the Court did not err by reversing and remanding the Commission's sanctions order. Therefore, the Supreme Court affirmed the judgment of the Court of Appeals.

### DISSENT

Chief Justice Randolph argued that the majority abused its discretion by reversing the Commission's order, as it should be overturned only if it is clearly erroneous and contrary to the weight of the evidence. He found that this was not the case with the issue before the Court. He also argued that the application of federal vacatur law to this case in such a piecemeal manner was not supported by federal or state precedent and failed to apply Miss. R. App. Pro. 43.

**The Judgment of the Court of Appeals is Affirmed. As to the Decision of the Mississippi Workers' Compensation Commission: Appeal Dismissed in Part as Moot; Orders of the Workers' Compensation Commission Vacated in Part; Order Imposing Sanctions Reversed and Rendered - 2019-CT-00913-SCT (Mar. 3, 2022)**

En Banc Opinion by Presiding Justice Kitchens - Dissent by Chief Justice Randolph

Mississippi Workers' Compensation Commission

M. Reed Martz & D. Beth Smith for Appellants - Steven Hiser Funderburg for Appellee

Briefed by [Kelsey Davis](#)

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## ***SUPREME COURT - CRIMINAL CASES***

### **JONES V. STATE**

#### **CRIMINAL - FELONY**

**CRIMINAL LAW - MANSLAUGHTER - DEFINITION** - Miss. Code Ann. § 97-3-35 provides that the killing of a human being, without malice, in the heat of passion, but in a cruel or unusual manner, or by the use of a dangerous weapon, without the authority of law, and not in necessary self-defense, shall be manslaughter

**CRIMINAL PROCEDURE - JURY INSTRUCTIONS - MANSLAUGHTER** - The jury's general verdict should be upheld if sufficient evidence supports a manslaughter conviction, regardless of if the jury was instructed on two factual theories

**CRIMINAL LAW - MANSLAUGHTER - EVIDENCE** - Sufficient evidence of either heat of passion manslaughter or imperfect self-defense can support a manslaughter conviction

**CRIMINAL PROCEDURE - JURY TRIAL - SEQUESTRATION** - Pursuant to Miss. R. Crim. P. 18.8, jury sequestration is mandatory in death penalty cases and discretionary in other cases

**CRIMINAL PROCEDURE - JURY TRIAL - DISPERSAL** - Pursuant to Miss. R. Crim. P. 23.1(b), except in cases in which the jury has been sequestered, the court may permit the jurors to disperse after their deliberations have commenced, instructing them when to reassemble, and giving the admonitions of Miss. R. Crim. P. 18.7

## **FACTS**

In December 2017, Kelvin Towner, Sr. ("Calvin") was shot by Janarius Jones following an altercation involving Calvin's son, Kelvin Towner, Jr. ("Junior"), and Ty McCurdy at Mark Wilson's home the previous day. Junior testified at Jones's trial in October 2020 to the events that occurred in 2017. After returning home from school, Calvin informed Junior that the boys involved in the fight were planning to jump Junior. Calvin and Junior then drove to retrieve a chicken box located down the road from their home. During the trip, Junior saw Jones, McCurdy, and several other people standing outside Wilson's house. As Junior and Calvin drove past, Jones approached the vehicle. Later as Junior and Calvin approached Wilson's house again when returning home, Junior saw Jones holding a gun. Calvin reacted by getting a shotgun from the backseat and placing it in his lap. Calvin then slowed the vehicle and opened his door. Jones then fired two shots, the second of which hit Calvin. Cornelius Patrick testified that on the day of the shooting, he stopped at Wilson's house when he saw Jones standing on the side of the road shirtless in the cold weather. Patrick testified that Jones was visibly angry and silently pacing. Patrick stated that he originally did not see Jones with a gun, but at some point, Jones got Patrick's gun from Patrick's vehicle. Patrick further testified that he saw Jones point the gun toward Calvin's vehicle. Additionally, Patrick testified that, after the gunshots, he heard someone say that Calvin had been shot in the head and saw Jones run away. Willie Wilson ("Willie"), neighbor of Mark Wilson, testified that he saw Junior and Calvin pass by the house and that he then heard gunshots. Willie then went to Wilson's house to investigate and was informed of what had transpired. Willie told Jones that Calvin was dead after Jones appeared out of the bushes. According to Willie, Jones then appeared upset, tossed a cell phone, and ran around the area shouting, "Kill me. Kill me." Deputy Bryant Creel testified that upon arrival on the scene, he was informed that Jones was the shooter. Jones was later arrested after receiving medical treatment. Jones waived his *Miranda* rights and gave an oral statement to Investigator Donald Simpson and a written statement that was dictated by another officer. Jones's written statement indicates, among other things, that he saw a shotgun in Calvin's truck and then fired shots. Investigator Simpson testified that Jones had stated that he knew Calvin wanted to shoot him but did not claim that Calvin fired a shot. At trial, Jones testified in his own defense. Jones stated that on the morning of the incident, Calvin drove to his house and threatened him, believing him to be involved in the fight from the previous day. Jones also testified that he saw Calvin drive past Wilson's house and that he retrieved a gun because he saw Calvin with a gun and was told Calvin was coming back. Jones testified that when Calvin returned, he saw Calvin hit the brakes, open his door, and then point the shotgun at him. Jones then admitted he fired his gun after seeing Calvin with a gun. Jones stated that after the shooting, he ran away from the area because he was fearful for his life and denied that he felt disrespected by Calvin. In August 2018, Jones was indicted for the first-degree murder of Calvin. During the trial, the jury was given various instructions including one for manslaughter. The jury was dispersed for lunch during deliberations. Jones's counsel then objected and moved for a mistrial, which was denied because there was no request for sequestration. The jury found Jones guilty of manslaughter and Jones was sentenced to twenty years in the custody of Mississippi Department of Corrections ("MDOC"), with five years suspended. Jones filed post-trial motions, which were denied. Jones appealed.

## **ISSUES**

Whether the (1) jury's verdict must specify the theory of manslaughter, heat-of-passion, or imperfect self-defense, of which the defendant was found guilty; (2) State presented sufficient evidence to support Jones's conviction of heat-of-passion manslaughter; and (3) circuit court erred by dispersing the jury.

## **HOLDING**

(1) Because heat-of-passion and imperfect self-defense are not degrees of an offense that must be specified, the circuit court did not err by not requiring the jury to specify the verdict. (2) Because the jury could reasonably conclude that Jones acted out of anger and rage after being provoked by Calvin's prior confrontation, Jones's conviction was supported by evidence. (3) Because Jones did not request to sequester the jury, and because the circuit court had discretion to disperse the jury, this issue had no merit; thus, the circuit court did not err by dispersing the jury for lunch. Therefore, the Supreme Court affirmed the judgment of the Scott County Circuit Court.

**Affirmed - 2021-KA-00275-SCT (Mar. 3, 2022)**

Opinion by Justice Chamberlin

Hon. Mark Sheldon Duncan (Scott County Circuit Court)

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

Briefed by [Abbey Bufkin](#)

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## MISSISSIPPI COURT OF APPEALS DECISIONS – MARCH 1, 2022

### COURT OF APPEALS - CIVIL CASES

#### DEW V. HARRIS

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

**TORTS - ALIENATION OF AFFECTION - ELEMENTS** - The elements of an alienation of affection claim include (1) wrongful conduct of the defendant; (2) loss of affection or consortium; and (3) causal connection between such conduct and loss

**CIVIL PROCEDURE - SUMMARY JUDGMENT - DENIAL** - When one party swears to a version of the matter in issue and another party says the opposite, there is an issue of fact sufficient to require denial of a motion for summary judgment

#### **FACTS**

William B. Dew and Rebecca Dew divorced in October 2019 after over twenty years of marriage. After the divorce, Dew filed an alienation of affection lawsuit against P. Shawn Harris alleging that Harris had a sexual relationship with his wife before the divorce and Harris' conduct caused the divorce. Harris moved for summary judgment arguing that his conduct did not cause the destruction of Dew's marriage because the marriage was dead by 2012. Harris included affidavits signed by Rebecca and her three children with Dew, which claimed that the marriage was dead in 2012. Harris also requested the trial court to suspend discovery until the summary judgment motion could be heard. In opposition to the motion for summary judgment, Dew introduced evidence of a healthy marriage in 2019, which included, among other things, a signed affidavit by Dew that claimed his marriage was not dead in 2012, and that Rebecca continued to show love and affection until a few months before the divorce. Dew also alluded to specific examples of love and affection and provided emails from 2018 that show the couple was attending marriage counseling. After briefing on the summary judgment motion, Dew requested additional discovery. The trial court granted Harris's motion for summary judgment and denied Dew's request for additional discovery. Dew appealed.

#### **ISSUE**

Whether the trial court erred when it found that there were no issues of fact related to the causation element of the alienation-of-affection claim.

#### **HOLDING**

Because of the conflicting affidavits and other evidence, and because Dew established a genuine issue of material fact regarding whether there was affection in his marriage and a causal connection between such conduct and loss, the trial

court erred in granting summary judgment. Therefore, the Court of Appeals reversed and remanded the judgment of the Scott County Circuit Court.

**Reversed & Remanded - 2020-CA-01261-COA (Mar. 1, 2022)**

Opinion by Judge McCarty

Hon. Brian Kennedy Burns (Scott County Circuit Court)

Sidney Ray Hill III for Appellant - J. Douglas Smith & Timothy D. Moore for Appellee

Briefed by [Christian Eaves](#)

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## INT'L ASS'N OF CERTIFIED HOME INSPECTORS V. HOME SAFE INSPECTION, INC.

### CIVIL - CONTRACT

**CIVIL PROCEDURE - STANDING - ADMINISTRATIVE REINSTATEMENT** - Administrative reinstatement restores a corporation's ability to file or maintain a lawsuit

**CIVIL PROCEDURE - DAMAGES - RECOVERY** - Damages may only be recovered when the evidence presented at trial removes their quantum from the realm of speculation and conjecture and transports it into reasonable certainty

**CIVIL PROCEDURE - AWARDS - COMPENSATORY DAMAGES** - Compensatory damages, including those for conversion, must be proved with reasonable certainty

**CONTRACTS - NEGLIGENT MISREPRESENTATION - ELEMENTS** - To prevail on a claim of negligent misrepresentation, a party must prove each of the following elements by a preponderance of the evidence: (1) a misrepresentation or omission of a fact; (2) that the representation or omission is material or significant; (3) that the person or entity charged with the negligence failed to exercise that degree of diligence and expertise the public is entitled to expect of such person or entities; (4) that the plaintiff reasonably relied upon the misrepresentation or omission; and (5) that the plaintiff suffered damages as a direct and proximate result of such reasonable reliance

### FACTS

Nick Gromicko, the founder and face of the International Association of Certified Home Inspectors ("InterNACHI"), wanted to protect the organization's 11,000 members from patent lawsuits after he heard that a member was being sued for patent infringement. He contacted Kevin Seddon, the president of HomeSafe Inspection Inc. ("HomeSafe"), a corporation that holds the rights to a number of patents on infrared technology used by home inspectors. After a series of negotiations to reach an agreement, Gromicko discovered that HomeSafe had been administratively dissolved by the Secretary of State. Seddon assured him that the issue had been corrected, and the parties proceeded with their plans. Ultimately, HomeSafe agreed to grant InterNACHI a bulk license for all of its existing members to use HomeSafe's patented infrared technology and HomeSafe agreed to forebear its right to sue existing InterNACHI members for violation of its patent rights. In return, InterNACHI agreed to pay HomeSafe the new-member dues for any new members who used a new, separate application ("IR Application"), which would allow the new members to use the bulk license. Shortly after the contract was executed, Seddon and McDavid became dissatisfied with the location and visibility of the IR application on InterNACHI's website. HomeSafe wanted a landing page on InterNACHI's website where all applicants would be forced to choose between the regular application and the new IR application, but Seddon and McDavid were unable to persuade Gromicko to alter the website. About two years later, HomeSafe sued InterNACHI, and later amended the complaint to name Gromicko as a defendant and add additional claims. Only five claims were ultimately tried: unjust enrichment, breach of contract, conversion, fraudulent misrepresentation, and negligent misrepresentation. The jury found InterNACHI liable for breach of contract and conversion. InterNACHI and Gromicko were found liable for negligent misrepresentation. InterNACHI and Gromicko appealed.

### ISSUES

Whether HomeSafe (1) had standing to sue InterNACHI; (2) proved compensatory damages with reasonable certainty; and (3) proved negligent representation.

## **HOLDING**

(1) Because it had been reinstated to active corporate status and had the right to maintain the lawsuit, HomeSafe had standing to sue InterNACHI. (2) Because the damages model presented at trial was too speculative to sustain compensatory damages for breach of contract and conversion, HomeSafe did not prove compensatory damages with reasonable certainty. (3) Because HomeSafe failed to prove misrepresentation of fact, HomeSafe did not prove negligent representation. Therefore, the Court of Appeals affirmed in part, reversed and rendered in part, and reversed and remanded in part the judgment of the Lafayette County Circuit Court.

**Affirmed in Part; Reversed & Rendered in Part; Reversed & Remanded in Part - 2020-CA-005520-COA (Mar. 1, 2022)**

Opinion by Judge McCarty

Hon. Andrew K. Howorth (Lafayette County Circuit Court)

Goodloe Tankersley Lewis & Lawrence John Tucker Jr. for Appellants - Timothy C. Davis & Stephan L. McDavid for Appellee

Briefed by [Allyson Avant](#)

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## **MISS. DEP'T OF CHILD PROT. SERVS. V. YOUTH CT. OF WARREN CNTY.**

### **CIVIL - DOMESTIC RELATIONS**

**CIVIL PROCEDURE - FAILURE TO FILE - EFFECT** - When addressing the failure to file a brief, the court may (1) take the failure as a confession of error and reverse, which should be done when the record is complicated or of large volume and the case has been thoroughly briefed by the appellant with apt and applicable citation of authority so that the brief makes out an apparent case of error; or (2) disregard the appellee's error and affirm, which should be used when the record can be conveniently examined and such examination reveals a sound and unmistakable basis or ground upon which the judgment may be safely affirmed

**CIVIL PROCEDURE - FRIVOLOUS FILING - SANCTIONS** - Miss. R. Civ. P. 11(b) provides that if any party files a motion or pleading which, in the opinion of the court, is frivolous or is filed for the purpose of harassment or delay, the court may order such a party, or his attorney, or both, to pay to the opposing party or parties the reasonable expenses incurred by such other parties and by their attorneys, including reasonable attorney's fees

### **FACTS**

The Mississippi Department of Child Protection Services ("CPS") attained custody of four minor children from the Youth Court of Warren County. Their maternal aunt and guardian, "Jane Doe," lived in Florida and gained physical placement of the children. A Florida case manager reported allegations of abuse by Doe in August 2020 and a preliminary investigation was conducted. In September 2020, the youth court entered intake orders for each child, adjudging them to be abused children. The youth court then appointed an attorney and guardian ad litem ("GAL") for the children. During a shelter hearing before the youth court judge, a Florida Department of Children and Families ("FDCF") representative claimed she had seen nothing in the home that required the youth court's action. The court was not concerned about the welfare of the children and filed a "Shelter Order," in which the children were to remain in the custody of CPS and physically placed with their aunt. Further, CPS and the GAL were ordered to investigate the allegations made to FDCF. On behalf of the children, the county prosecutor, Ken Harper, filed a formal petition requesting that the youth court inquire into the abuse allegations almost two weeks after the Shelter Order was filed. The youth court held a hearing about the petition in December 2020 at which the CPS representative, another county prosecutor, the children's attorney, Doe, Doe's attorney, and the GAL were all present. Confusion existed about the reasoning behind the petition's filing since neither the children's attorney nor the CPS representative filed the petition. In fact, the children's attorney and the Florida case manager agreed the petition was unsubstantiated and should be dismissed. The youth court dismissed the petition with prejudice and ordered CPS to pay Doe's attorney's fees and other expenses, citing Miss. R. Civ. P. 11(b). CPS appealed.

### **ISSUE**



Whether the youth court erred in ordering that CPS pay Doe’s attorney’s fees and her travel expenses.

**HOLDING**

Because the record clearly shows that the county prosecutor, not CPS, filed the formal petition, CPS has made out an apparent case of error, and because no brief was filed requesting sanctions against any other person or party, the youth court’s order that CPS reimburse Doe’s attorney’s fees and expenses amounted to a reversible error. Therefore, the Court of Appeals reversed & rendered the judgment of the Warren County Youth Court.

**Reversed & Rendered - 2021-SA-00069-COA (Mar. 3, 2022)**

Opinion by Chief Judge Barnes

Hon. John S. Price Jr. (Warren County Youth Court)

Nathan Hodges McIntosh & Duran Deangelo Davis (Att’y Gen. Office) for Appellant - No Appearance for Appellee

Briefed by [Katie Lee Crockett](#)

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